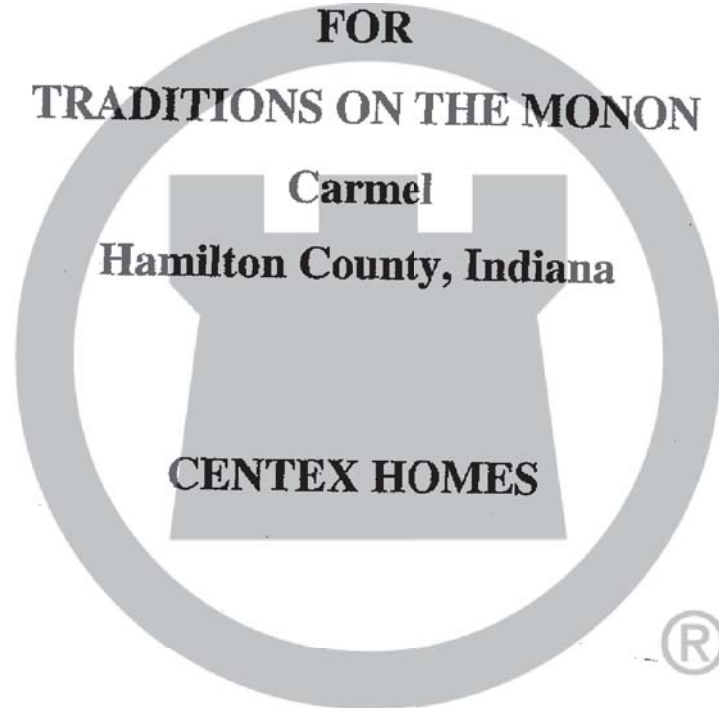


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**DECLARATION OF COVENANTS,  
CONDITIONS & RESTRICTIONS**



**CHICAGO TITLE**

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**DECLARATION OF  
COVENANTS, CONDITIONS & RESTRICTIONS  
FOR  
TRADITIONS ON THE MONON**

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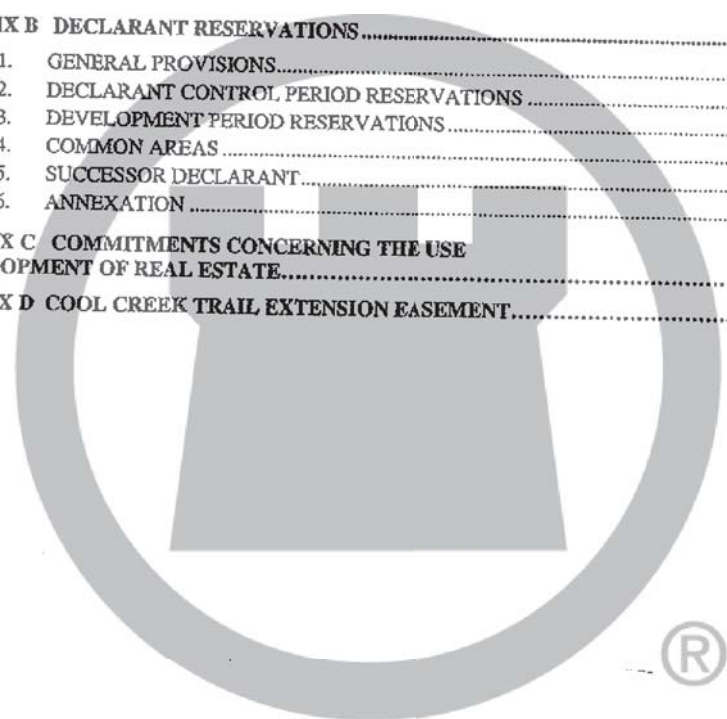
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**DECLARATION OF  
COVENANTS, CONDITIONS & RESTRICTIONS  
FOR TRADITIONS ON THE MONON**

This DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS FOR TRADITIONS ON THE MONON is made by Centex Homes, a Nevada general partnership ("Declarant"), on the date signed below.

Declarant owns the land described in Appendix A of this Declaration, together with all improvements, easements, rights, and appurtenances to the land (collectively, the "Property"). Declarant desires to establish a general plan of development for the Property for a planned community to be known as "Traditions on the Monon". Declarant also desires to provide a reasonable and flexible procedure by which Declarant may expand the Property to include additional real property, and to maintain certain development rights that are essential for the successful completion and marketing of the Property.

Declarant further desires to provide for the preservation, administration, and maintenance of portions of the Property, and to protect the value, desirability, and attractiveness of the Property. As an integral part of the development plan, Declarant deems it advisable to create a homeowners association to perform these functions and activities more fully described in this Declaration and the other Governing Documents described below.

Accordingly, Declarant declares that the Property and any additional property made subject to this Declaration by recording of an amendment of or supplement to this Declaration, will be owned, held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, and easements of this Declaration, including Declarant's reservations in the attached Appendix B. All of these terms, covenants, conditions, restrictions and easements run with the real property and bind all parties having or acquiring any right, title, or interest in any part of the Property, their heirs, successors, and assigns, and inure to the benefit of each Owner of any part of the Property.

**ARTICLE 1  
DEFINITIONS**

DEFINITIONS. The following words and phrases, whether or not capitalized, have specified meanings when used in the Governing Documents, unless a different meaning is apparent from the context in which the word or phrase is used.

1.1. "Additional Land" means real property which may be added to the Property and subjected to this Declaration by Declarant and the owner of such property, as described in Section B.3.2 of Appendix B of this Declaration.

1.2. "Applicable Law" means the statutes and public laws and ordinances in effect at the time a provision of the Governing Documents is applied that pertain to the subject matter of the Document provision, regardless of whether such Applicable Law is specifically or correctly cited in the Governing Documents.

1.3. "Architectural Reviewer" means the entity having jurisdiction over a particular application for architectural approval. During the Development Period, the Architectural Reviewer is Declarant or its designee. Thereafter, the Board-appointed Architectural Control Committee is the Architectural Reviewer.

1.4. "Area of Common Responsibility" means that portion of the Property and those components of the Townhomes for which the Association has maintenance responsibilities, as described with more particularity in Article 4 of this Declaration.

1.5. "Assessment" means any charge levied against a Lot or Owner by the Association, pursuant to the Governing Documents or State law, including but not limited to Initial Assessments, Regular Assessments, Special Assessments, Individual Assessments, and Restoration Assessments, as defined in Article 5 of this Declaration.

1.6. "Association" means the association of Owners of all Lots in the Property, initially organized as Traditions on the Monon Homeowners Association, Inc., an Indiana nonprofit corporation.

1.7. "Board" means the board of directors of the Association.

1.8. "Bylaws" means the bylaws of the Association, as they may be amended from time to time.

1.9. "Common Area" means all of the Property, save and except the Townhome Lots.

1.10. "Common Expenses" means expenses incurred by Declarant or the Association that are to be shared by the Owners, as more particularly described in this Declaration.

1.11. "Declarant" means Centex Homes, a Nevada general partnership, which is developing the Property, or the successors and assigns of Centex Homes that acquire any portion of the Property for the purpose of development and which are designated a "Successor Declarant" by Centex Homes, or by any such successor and assign, in a recorded document.

1.12. "Declarant Control Period" means that period of time during which Declarant controls the operation and management of the Association, pursuant to Appendix B of this Declaration. The duration of the Declarant Control Period is from the date this Declaration is recorded for a maximum period not to exceed the earlier of (1) 7 years from date this Declaration is recorded; (2) 120 days after title to 75% of the Lots in the Property and on the Additional Land has been conveyed to Owners other than Declarant; or (3) the date Declarant resigns, as evidenced by notice delivered to the Resident Agent of the Association.

1.13. "Declaration" means this document, as it may be amended from time to time.

During the Development Period, the rights of Declarant set forth in Appendix B have priority over the main body of this Declaration. (R)

1.14. "Development Period" means the 10-year period beginning the date this Declaration is recorded, during which Declarant has certain rights pursuant to Appendix B hereto, including rights relating to development, construction, expansion, and marketing of the Property. The Development Period is for a term of years and does not require that Declarant own any portion of the Property. Declarant may terminate the Development Period at any time by recording a notice of termination.

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1.15. "Eligible Mortgagee" means a Mortgagee who has submitted to the Association a written notice containing its name and address, the loan number, and the identifying number and street address of the mortgaged Lot.

1.16. "Governing Documents" means, singly or collectively as the case may be, this Declaration, the Plat, the Bylaws, the Association's Articles of Incorporation, and the Rules of the Association, as any of these may be amended from time to time. An appendix, exhibit, schedule, or certification accompanying a Document is a part of that Document.

1.17. "Lot" means a portion of the Property intended for independent ownership, as shown on the Plat, on which there is or will be constructed a Townhome. Where the context indicates or requires, "Lot" includes all improvements thereon. A lot without a Townhome that is owned by the Association as a Common Area is not included within the meaning of "Lot."

1.18. "Majority" means more than half.

1.19. "Member" means a member of the Association, each Member being an Owner of a Lot, unless the context indicates that member means a member of the Board or a member of a committee of the Association.

1.20. "Mortgagee" means a holder, insurer, or guarantor of a purchase money mortgage secured by a recorded senior or first mortgage or deed of trust lien against a Lot.

1.21. "Municipal Entity" means any town, city, township, county, political subdivision or public or private utility, as the context shall require.

1.22. "Owner" means a holder of recorded fee simple title to a Lot. Declarant is the initial Owner of all Lots. Sellers under land contracts are Owners. Mortgagees who acquire title to a Lot through a deed in lieu of foreclosure or through foreclosure are Owners. Persons or entities having ownership interests merely as security for the performance of an obligation are not Owners. Every Owner is a Member of the Association.

1.23. "Plat" means the plat of Traditions on the Monon, recorded on 9-26-05 2005, as Instrument No. 200500063263 in the Office of the Recorder of Hamilton County, Indiana, including all dedications, limitations, restrictions, easements, notes, and reservations shown on the Plat, as it may be amended from time to time.

1.24. "Property" has the meaning given to it in the introductory paragraphs of this Declaration. The Property includes every Lot and all Common Area.

1.25. "Resident" means an occupant of a Townhome, regardless of whether the person owns the Lot.

1.26. "Resident Agent" means the person or entity designated as Resident Agent in the Association's articles of incorporation.

1.27. "Rules" means rules and regulations of the Association adopted in accordance with the Governing Documents. The initial Rules may be adopted by Declarant for the benefit of the Association.

1.28. "State" means the State of Indiana.

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1.29. "Townhome" means the attached single-family dwelling constructed on a Lot. Where the context indicates or requires, "Townhome" includes the exterior appurtenances of the dwelling, such as balconies and porches. In some contexts, such as Townhome Owner, "Townhome" has the same meaning as "Lot."

1.30. "Underwriting Lender" means Federal Home Loan Mortgage Corporation (Freddie Mac), Federal National Mortgage Association (Fannie Mae), Government National Mortgage Association (Ginnie Mae), Federal Housing Administration (HUD/FHA), or U. S. Department of Veterans Affairs (VA), singly or collectively. The use of this term and these institutions may not be construed as a limitation on an Owner's financing options nor as a representation that the Property is approved by any institution.

1.31. "Zoning Commitments" means the standards and zoning commitments set forth in Ordinance No. 2-464-04 approved by the Common Council of the City of Carmel, Indiana, together with those certain Commitments Concerning the Use and Development of Real Estate dated December 17, 2004, a copy of which is attached hereto as Appendix C.

**ARTICLE 2**  
**PROPERTY THAT IS SUBJECT TO THE DECLARATION**  
**AND OTHER GOVERNING DOCUMENTS**

2.1. SUBJECT TO GOVERNING DOCUMENTS. In addition to the Zoning Commitments and other easements and rights created by the Governing Documents, the Property is held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, liens, and easements of this Declaration, including Declarant's reservations in the attached Appendix B, which run with the Property, bind all parties having or acquiring any right, title, or interest in the Property, their heirs, successors, and assigns, and inure to the benefit of each Owner of the Property.

2.2. NO OTHER DECLARATION OR MASTER RESTRICTIONS. The Property is not subject to any other set of declarations or restrictions, other than this Declaration.

2.3. ADDITIONAL LAND. Additional real property, which is referred to as Additional Land, may be added to the Property and subjected to this Declaration and the jurisdiction of the Association (i) on approval of Owners representing at least 2/3 of the Lots in the Property, or (ii) during the Development Period, by Declarant as permitted in Appendix B. Additional Land may be added to the Property by recording a supplemental declaration, including an amendment of Appendix A, in the Office of the Recorder of Hamilton County.

2.4. MERGER WITH ANOTHER ASSOCIATION. Merger or consolidation of the Association with another association must be evidenced by an amendment to this Declaration. The amendment must be approved by Owners of at least 2/3 of the Lots. On merger or consolidation of the Association with another association, the property, rights, and obligations of another association may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to the merger. The surviving or consolidated association may administer the provisions of the Governing Documents within the Property, together with the covenants and restrictions established on any other property under its jurisdiction. No merger or consolidation, however, will have the effect of revoking, changing, or adding to the covenants established by this Declaration within the Property.

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ARTICLE 3  
PROPERTY EASEMENTS AND RIGHTS

3.1. GENERAL: RECORDED EASEMENTS.

3.1.1. General. In addition to other easements and rights established by the Governing Documents, the Property is subject to the easements and rights contained in this Article. The Property also is subject to any easements, licenses, leases, dedications, limitations, restrictions, reservations, and encumbrances of record, including but not limited to those shown or cited on the Plat, which is incorporated herein by reference. Each Owner, by accepting an interest in or title to a Lot, covenants and agrees to be bound by the Other Easements and other prior-recorded instruments affecting the Property.

3.1.2. Easements Shown on the Plat. As shown on the Plat, portions of the Property are burdened with and benefited by (i) Drainage, Sewer, Utility, Landscape and Pedestrian Access Easements, (ii) an Access, Parking, Drainage, Sewer, Utility and Landscape Easement; and (iii) an emergency access easement. These easements are more particularly described in this Article.

3.2. DRAINAGE, SEWER AND UTILITY EASEMENTS. The Drainage, Sewer and Utility Easements (shown on the Plat as part of the Drainage, Sewer, Utility, Landscape and Pedestrian Access Easements and the Access, Parking, Drainage, Sewer, Utility and Landscape Easement) are created and reserved by the Plat and this Declaration as non-exclusive, perpetual easements over the Property (including portions of the Lots) for the use of all public utility companies (not including transportation companies), governmental agencies, Declarant and the Association for access to and installation, maintenance, repair or removal of poles, mains, ducts, drains, lines, wires, cables and other equipment and facilities for the furnishing of utility services, including cable television services. The Drainage, Sewer and Utility Easements are also created and reserved by the Plat and this Declaration for the use of Declarant and the Association for access to and construction, maintenance, operation, repair and control of any retention and detention ponds and improvements comprising and/or related to the storm water drainage system, either by surface drainage or appropriate underground installations, and the use of the Association for access to and maintenance, repair and replacement of such drainage system. The delineation of the Drainage, Sewer and Utility Easement areas on the Plat will not be deemed a limitation on the rights of any entity for whose use any such easement is created and reserved to go on any portion of the Property subject to such easement (including the Lots) temporarily to the extent reasonably necessary for the exercise of the rights granted to it by this Section. Except as installed by Declarant or by third party public utility companies as provided above, no structures or improvements, including without limitation decks, patios, fences, walkways or landscaping, may be erected or maintained upon the Drainage, Sewer and Utility Easements. The water lines and the storm sewer facilities situated on the Property are private.

3.3. LANDSCAPE EASEMENTS The Landscape Easements (shown on the Plat as part of (i) the Drainage, Sewer, Utility, Landscape and Pedestrian Access Easements and (ii) the Access, Parking, Drainage, Sewer, Utility and Landscape Easement) are created and reserved by the Plat and this Declaration as non-exclusive, perpetual easements over the Property (including portions of the Lots) for the use of the Declarant and the Association for installation, maintenance and removal of trees, shrubbery, flowers and other plantings, entryway and street signage and additional similar landscape improvements. These easements include a right of ingress and egress on and over the areas adjacent thereto for the purpose of this maintenance obligation.

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**NOTICE**

Although the Property is platted into individually owned Lots and Townhomes, portions of the Lots and Townhomes are maintained by the Association. Any portion of the Lots that is part of streets, sidewalks, and pathways may be used by Residents of other Lots.

3.4. ACCESS AND PARKING EASEMENT.

3.4.1. Access and Parking Easement. An Access and Parking Easement (shown on the Plat as part of the Access, Parking, Drainage, Sewer, Utility and Landscape Easement) is created and reserved by the Plat and this Declaration over Block 24 (as shown on the Plat), which is part of the Common Area, as a perpetual easement for the use of Declarant and the Association for the maintenance, use, governance, and control of all streets, sidewalks and parking areas in the Property. Declarant also grants to the Owners and Residents, and their invitees, the right to use the streets and sidewalks for vehicular and pedestrian ingress to and egress from their Lots. The Association has the right, from time to time, to use as much as the surface of each Lot as may be reasonably necessary for the Association to perform work on the improvements in the Access and Parking Easement. The Association may assign this easement, or any portion thereof, to a Municipal Entity if the Municipal Entity agrees to accept the assignment.

3.4.3. Private Streets. As identified on the Plat, certain streets on the Property will be constructed and used as private streets.

3.4.3. Control. In exercising this Access and Parking Easement, the Association may do anything reasonably related to the use, maintenance, operation, and governance of the streets, sidewalks, and parking areas. To the extent not prohibited by public law, the Association is specifically authorized to adopt, amend, repeal, and enforce Rules for use of the streets, sidewalks, and parking areas.

3.4.4. Municipal Entity Access. Declarant hereby reserves and grants to the Municipal Entity a non-exclusive easement across the private streets for access and all governmental purposes, including, but not limited to, police and fire protection, garbage collection, mail delivery, building inspection, and any similar purpose. The Association must maintain adequate access in and to the private streets to enable the Municipal Entity (or any entity providing service on behalf of the Municipal Entity) to provide such services.

**PRIVATE STREETS**

The private streets, sidewalks, and parking areas on the Property are subject to Association control, even if they are located on individual Lots.

3.5. PEDESTRIAN ACCESS EASEMENTS. The Pedestrian Access Easements (shown on the Plat as part of the Drainage, Sewer, Utility, Landscape and Pedestrian Access Easements) are created and reserved by the Plat and this Declaration over the Property and certain portions of the Lots as non-exclusive, perpetual easements for the use of Declarant and the Association for the construction, maintenance, use, governance, and control of sidewalks, lighting, landscaping, and similar improvements. Declarant also grants to the Owners and Residents, and their invitees, the right to use the sidewalks for



ingress and egress to the Common Areas. In connection with these Pedestrian Access Easements, the Association has the temporary right, from time to time, to use as much as the surface of each Lot as may be reasonably necessary for the Association to perform its work on the improvements in the Pedestrian Access Easements.

3.6. TREE CONSERVATION AREA EASEMENT. A portion of the Property contains a wooded natural "Tree Conservation Area". This Tree Conservation Area is identified on the Plat. With respect to the Tree Conservation Area, existing trees shall not be removed except as follows:

- 3.6.1 as is necessary to clear underbrush and dead trees;
- 3.6.2 as is necessary for the installation of access easements, rights of ways, streets, paths, sidewalks, utilities, drainage improvements and infrastructure; and
- 3.6.3 as is necessary for public health and safety..

3.7. COOL CREEK TRAIL EXTENSION EASEMENT. Declarant and/or the Association hereby agrees to grant to the City of Carmel a construction easement for the construction of the Cool Creek Trail Extension shown on Appendix D attached hereto and incorporated herein at such time as the location of the Cool Creek Trail Extension is determined. Upon construction of the Cool Creek Trail Extension, Declarant and/or the Association agree to grant to the City of Carmel a perpetual access easement for the Cool Creek Trail Extension. Declarant and/or the Association, as applicable, shall grant such further easements to the City of Carmel as are necessary for the Cool Creek Trail Extension. As required by the Zoning Commitments, Declarant and/or the Association, as applicable, hereby agrees to convey to the City of Carmel or the Carmel Clay Board of Parks and Recreation, that area shown on Appendix C and identified on the Plat as Block 25 for use as a public park. Notwithstanding any other provision of this Declaration, the Board of Directors may convey such easements and property described in this Section 3.7 without the consent or approval of the Owners.

3.8. EMERGENCY ACCESS EASEMENT. An Emergency Access Easement, as shown on the Plat, is created and reserved by the Plat and this Declaration as a non-exclusive easement for emergency access for the benefit of public and quasi-public emergency, fire, ambulance and police authorities subject only to the provisions contained herein. Such Emergency Access Easement shall be only for emergency purposes and shall not allow public access. Declarant and/or such public authorities may construct bollards and/or take other preventative measures to allow emergency access but not public access across and through the Emergency Access Easement. The Association shall maintain the Emergency Access Easement, but shall have no right to make any changes to the Emergency Access Easement as originally installed and may not install any additional landscaping or other features within the Emergency Access Easement.

3.9. OWNER'S EASEMENT OF ENJOYMENT. Each Owner and his invitees are granted a right and easement of use and of enjoyment over the Access and Parking Easement, the Pedestrian Access Easement, and any Common Areas, and to use of improvements therein, subject to other rights and easements contained in the Governing Documents. An Owner who does not occupy a Townhome delegates this right of enjoyment to the Residents of his Townhome, in which case the Owner is no longer entitled to use the Common Areas. If a portion of the Common Area, such as a recreational feature, is designed for private use, the Association may temporarily reserve the use of such area for certain persons and purposes.

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3.10 OWNER'S MAINTENANCE AND TOWNHOME UTILITY EASEMENTS.

3.10.1. Maintenance Easement. Every Owner is granted an easement over adjoining Lots and the Area of Common Responsibility for the maintenance or reconstruction of his Townhome and other improvements on his Lot.

3.10.2. Townhome Utility Easement. Every Owner of a Lot is granted an easement over, under, and through every other Townhome in the same building in which his Townhome is located for the limited purpose of installing, maintaining, and replacing wires, cables, conduit, and pipes, that serve his Townhome, but only to the extent that use of this easement is reasonable and necessary. The Owner of a Townhome that contains wire, cables, conduit, or pipes that serve one or more other Townhomes has a duty to refrain from interfering with or damaging those items.

3.10.3. Use of Maintenance Easement and Townhome Utility Easement. An Owner's right to use the Maintenance Easement or the Townhome Utility Easement is subject to the consent of the Owner of the adjoining Townhome or, in the case of the Area of Common Responsibility, the Association. Such consent may not be unreasonably withheld. Any dispute as to whether or not a requested entry by an Owner is appropriate, and whether or not the withholding of consent is reasonable, will be resolved by the Board. An Owner's use of the easement may not damage or materially interfere with the use of the adjoining Townhome or Area of Common Responsibility. If an Owner damages an adjoining Lot, Townhome, or Area of Common Responsibility in exercising its rights under this easement, the Owner is obligated to restore the damaged property to its original condition, at his expense, within a reasonable period of time.

3.11 OWNER'S ENCROACHMENT EASEMENT. Every Owner is granted an easement for the existence and continuance of any encroachment by his Townhome (including a Party Wall, as described in Section 8.10) on any adjoining Lot or Common Area now existing or which may come into existence hereafter, as a result of construction, repair, shifting, settlement, or movement of any portion of a building, or as a result of condemnation or eminent domain proceedings, so that the encroachment may remain undisturbed.

3.12 ASSOCIATION'S ACCESS EASEMENT. Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, grants to the Association an easement of access and entry over, across, under, and through the Property, including without limitation all Common Areas and the Owner's Lot and all improvements thereon, for the below-described purposes. In exercising this easement on an Owner's Lot, the Association is not liable to the Owner for trespass.

- a. To perform inspections and/or maintenance that is permitted or required of the Association by the Governing Documents or by applicable law.
- b. To perform maintenance that is permitted or required of the Owner by the Governing Documents or by applicable law, if the Owner fails or refuses to perform such maintenance.
- c. To enforce the Governing Documents, including without limitation the architectural standards and use restrictions.

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- d. To exercise self help remedies (if any) permitted by the Documents and by Applicable Law.
- e. To respond to emergencies.
- f. To grant such easements to utility providers as may be necessary to install, maintain, and inspect utilities serving any portion of the Property.
- g. To perform any and all functions or duties of the Association as permitted or required by the Governing Documents or by applicable law.

3.13 UTILITY EASEMENT. The Association may grant permits, licenses, and easements over the Common Area and the Area of Common Responsibility for utilities, roads, and other purposes necessary for the proper operation of the Property.

**THE DECLARANT AND ASSOCIATION ARE NOT  
RESPONSIBLE FOR YOUR PHYSICAL SECURITY.**

3.14 SECURITY. The Association may, but is not obligated to, maintain or support certain activities within the Property designed, either directly or indirectly, to improve safety in or on the Property. Each Owner and Resident acknowledges and agrees, for himself and his guests, that Declarant, the Association, and their respective directors, officers, committees, agents, and employees are not providers, insurers, or guarantors of security within the Property. Each Owner and Resident acknowledges and accepts his sole responsibility to provide security for his own person and property, and assumes all risks for loss or damage to same. Each Owner and Resident further acknowledges that Declarant, the Association, and their respective directors, officers, committees, agents, and employees have made no representations or warranties, nor has the Owner or Resident relied on any representation or warranty, express or implied, including any warranty of merchantability or fitness for any particular purpose, relating to any fire, burglary, and/or intrusion systems recommended or installed, or any security measures undertaken within the Property. Each Owner and Resident acknowledges and agrees that Declarant, the Association, and their respective directors, officers, committees, agents, and employees may not be held liable for any loss or damage by reason of failure to provide security or ineffectiveness of security measures which may be undertaken.

3.15 DECLARANT'S EASEMENT TO INSPECT AND RIGHT TO CORRECT. For a period of 10 years after the last closing of a sale of a Townhome from Declarant to an Owner, Declarant reserves for itself and for Declarant's architect, engineer, other design professionals, builder, and general contractor the right, but not the duty, to inspect, monitor, test, redesign, correct, and relocate any structure, improvement, or condition that may exist on any portion of the Property, including the Townhomes, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. Declarant will promptly repair, at its sole expense, any damage resulting from the exercise of this right. This Section should not be construed to create a duty for Declarant or the Association, and may not be amended without Declarant's written and acknowledged consent. In support of this reservation, each Owner, by accepting an interest in or title to a Lot, hereby grants to Declarant an easement of access and entry over, across, under, and through the Property, including without limitation all Common Areas and the Owner's Lot and all improvements thereon for the purposes contained in this Section.



**ARTICLE 4**  
**LOTS, TOWNHOMES AND AREA OF COMMON RESPONSIBILITY**

4.1. **LOTS.** The Property is platted into Lots, the boundaries of which are shown on the Plat, and which may not be obvious on visual inspection of the Property. Portions of the Lots are designated by this Declaration to be Areas of Common Responsibility, and are burdened with easements for the use and benefit of the Association, Owners, and Residents. The legal description for each Lot on the Property will be as follows:

Lot \_\_\_ in Traditions on the Monon, a subdivision in Hamilton County, Indiana as per plat thereof recorded 2/2/05 as Instrument Number \_\_\_, in the Office of the Recorder of Hamilton County, Indiana. 200500063263

4.2. **ALLOCATION OF INTERESTS.** The interests allocated to each Lot are calculated by the following formulas.

4.2.1. **Common Expense Liabilities.** The percentage of liability for Common Expenses allocated to each Lot is uniform for all Lots, regardless of the value, size, or location of the Lot or Townhome.

4.2.2. **Votes.** The one vote appurtenant to each Lot is weighted equally for all votes, regardless of any other allocation appurtenant to the Lot.

4.3. **TOWNHOMES.** Each residential Lot is to be improved with a Townhome. The Owner of a Lot owns every component of the Lot and Townhome, including all the structural components and exterior features of the Townhome. Nevertheless, this Declaration identifies components of the Townhomes as Areas of Common Responsibility, to be maintained by the Association as a Common Expense.

**SIZE OF TOWNHOME**

The size of a Townhome may be measured different ways for different purposes, such as for tax purposes, appraisal purposes, marketing purposes, and for purposes of carpeting and paint. No single measurement is definitive for all purposes. Measurements may be of the area under roof, or the air conditioned space, or the area within the Lot's building lines. The Townhome's partition wall cavities and/or its perimeter wall cavities may or may not be included. The Townhome's garage area, attic area, front porch, and/or balcony space, if any, may or may not be included.

4.4. **AREA OF COMMON RESPONSIBILITY.** The Area of Common Responsibility consists of the following components on or adjacent to the Property, even if located on a Lot or a public right of way:

- a. Any Common Area shown on the Plat, and all improvements, signage, and equipment thereon, including water lines and storm sewers, pipes, structures and wet retention areas.
- b. The private streets, sidewalks, and offstreet parking spaces in the Property.
- c. Any perimeter fences or walls on or near the borders of the Property.



- d. All unfenced grounds in the Property.
- e. Any landscape irrigation system that serves the Property.
- f. Any fixture and improvement on or appurtenant to the street and which are intended for the use, operation, or maintenance of a street, including but not limited to curbs, street lamps, and traffic signs.
- g. Any right, title, or interest in real property that is held by the Association for the use and benefit of Owners or Residents of the Property, including any Lot owned by the Association.
- h. Any area, item, easement, or service, the maintenance of which is assigned to the Association by this Declaration or by the Plat.
- i. Any personal property owned by the Association.
- j. Any obligation of the Association under any easements affecting the Property.
- k. The following limited areas and components of the individually-owned Lots and Townhomes, which are to be maintained as a Common Expense:
  - (1) The roofs of the buildings in which the Townhomes are located, including (if any) skylights, gutters, and flashing, but not including roof trusses.
  - (2) The foundations of the buildings in which the Townhomes are located.
  - (3) Water lines from the Common Area to the point at which such water lines protrude through the lowest floor of a Townhome.
  - (4) Sanitary sewer lines from the Common Area to the "clean-out" located on the exterior of a Townhome.
  - (5) Garage doors, but not glass panes, hardware, locks, automatic door openers, or security devices.
  - (6) Exterior materials of the buildings' walls, such as brick veneer, stucco, or siding, and including sealants and fillers.
  - (7) Exterior materials of chimney stacks and caps, but not chimney flues, fireboxes, or the periodic cleaning of flues.
  - (8) Exterior painted surfaces of front doors, but not hardware or other aspects of the front door.
  - (9) Exterior painted surfaces.
  - (10) Decorative trim and hardware on Townhome facades, including street numbers, railings and shutters (but not door hardware).

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- (11) Exterior light fixtures (but not the light bulbs for the light fixtures).
  - (12) All landscaping and grounds on a Lot.
  - (13) Driveways and sidewalks situated on a Lot.
  - (14) Street lights installed by Declarant or the Association, situated on a Lot.
  - (15) Balconies and decks.
- I. Any modification, replacement, or addition to any of the above-described areas and improvements.

**ARTICLE 5**  
**COVENANT FOR ASSESSMENTS**

5.1. **PURPOSE OF ASSESSMENTS.** The Association will use Assessments for the general purposes of preserving and enhancing the Property, and for the common benefit of Owners and Residents, including but not limited to maintenance of real and personal property, management and operation of the Association, and any expense reasonably related to the purposes for which the Property was developed. The Board's decision with respect to the use of Assessments is final.

5.2. **PERSONAL OBLIGATION.** An Owner is obligated to pay Assessments levied by the Board against the Owner or his Lot. Payments are made to the Association at its principal office or at any other place (including to the management company) the Board directs. Payments must be made in full regardless of whether an Owner has a dispute with the Association, another Owner, or any other person or entity regarding any matter to which this Declaration pertains. No Owner may exempt himself from his Assessment liability by waiver of the use or enjoyment of the Common Area or by abandonment of his Townhome. An Owner's obligation is not subject to offset by the Owner, nor is it contingent on the Association's performance of the Association's duties. Payment of Assessments is both a continuing affirmative covenant personal to the Owner and a continuing covenant running with the Lot.

5.3. **ASSESSMENT INCREASES.** In addition to other rights granted to Owners by this Declaration, Owners have the following powers and controls over the Association's budget. At least 30 days prior to the effective date of a Special Assessment or increase in Regular Assessments, the Board will notify an Owner of each Lot of the amount of, the budgetary basis for, and the effective date of the Special Assessment or increase. The Special Assessment or increase will automatically become effective unless Owners representing at least a majority of the Lots disapprove the Special Assessment or increase in Regular Assessment by petition or at a meeting of the Association. In that event, the last-approved budget will continue in effect until a revised budget is approved by the Board. This Section of the Declaration may not be amended without the approval of Owners of at least 75% of the Lots.

5.4. **TYPES OF ASSESSMENTS.** There are 5 types of Assessments: Initial, Regular, Special, Individual, and Restoration.

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**IF YOU BUY A TRADITIONS ON THE MONON TOWNHOME,  
YOU MUST PAY INITIAL  
ASSESSMENTS TO THE ASSOCIATION.**

5.5. INITIAL ASSESSMENTS. Initial Assessments include both an Initial Working Capital Assessment and an Initial Replacement Reserve Assessment.

5.5.1. Initial Working Capital Assessment. Upon the purchase or transfer of a Lot to an Owner other than the Owner purchasing the Lot from Declarant, each new Owner (other than Declarant, a Successor Declarant or a Declarant-affiliate) will pay to the Association an Initial Working Capital Assessment equal to 2 months of the Regular Assessment established from time to time by the Association, as initial working capital to be deposited with the general funds of the Association and to be used by the Association.

5.5.2. Initial Replacement Reserve Assessment. Upon the purchase or transfer of a Lot to an Owner by Declarant, each new Owner (other than Declarant, a successor to Declarant or a Declarant affiliate) will pay to the Association an Initial Replacement Reserve Assessment in the amount of \$200.00 as such Owner's initial contribution to the Replacement Reserve Fund provided in Section 5.11.2. Such Reserve Fund shall be deposited by the Association and used by the Association as provided in Section 5.11.2.

5.5.3. Payment and Collection of Initial Assessment. If the funds are collected by the Declarant, on or before termination of the Declarant Control Period, Declarant will provide the Association with an accounting of any contributions collected and will transfer the balance of such fund to the Association. The Initial Assessment is not an advance payment of the Regular Assessment, but is, instead, in addition to the Regular Assessments that will otherwise become due with respect to the Lot. The payment will be deemed to be the property of the Association and will not be refundable or applied as a credit against any subsequent assessments. No Owner will have any vested or other rights with respect to any such payments. If an Owner's contribution is not collected at time of closing on the Lot, for any reason or no reason, the Owner of the Lot (but not Declarant) is thereafter liable for the contribution, which may be collected by the Association.

5.6. REGULAR ASSESSMENTS.

5.6.1. Purpose of Regular Assessments. Regular Assessments are used for Common Expenses related to the reoccurring, periodic, and anticipated responsibilities of the Association, including but not limited to:

- a. Maintenance, repair, and replacement, as necessary, of the Common Area and Area of Common Responsibility, including snow removal.

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**Most exterior maintenance of your Townhome and Lot, and all maintenance of the Common Area, will be handled and paid for by the Association as a Common Expense.**

- b. Utilities billed to the Association, including water and sanitary sewer utility charges for usage by Owners and Residents.
- c. Services billed to the Association and serving the Lots.
- d. Taxes on property owned by the Association and the Association's income taxes.
- e. Management, legal, accounting, auditing, and professional fees for services to the Association.
- f. Costs of operating the Association, such as telephone, postage, office supplies, printing, meeting expenses, and educational opportunities of benefit to the Association.
- g. Insurance premiums and deductibles.

**Insurance premiums for the Townhome building itself – but not for your personal belongings or personal liability – will be paid by the Association as a Common Expense.**

- h. Contributions to the Reserve Fund, which is described below.
- i. Any other expense which the Association is required by law or the Governing Documents to pay or which, in the opinion of the Board, is necessary or proper for the operation and maintenance of the Property or for enforcement of the Governing Documents.

5.6.2. **Annual Budget.** The Board will prepare and approve an estimated annual budget for each fiscal year. The budget will take into account the estimated income and Common Expenses for the year, contributions to reserve funds, and a projection for uncollected receivables. The Board will make the budget or its summary available to an Owner of each Lot, although failure to receive a budget or summary does not affect an Owner's liability for Assessments.

**IF YOU OWN A TRADITIONS ON THE MONON TOWNHOME,  
YOU MUST PAY ASSESSMENTS TO THE ASSOCIATION.**

5.6.3. **Basis of Regular Assessments.** Regular Assessments will be based on the annual budget, minus estimated income from sources other than Regular Assessments. Each Lot will be liable for its allocated share of the annual budget. If the Board does not approve an annual budget or fails to determine new Regular Assessments for any year, or delays in doing so, Owners will



continue to pay the Regular Assessment as last determined. Regular Assessments will be paid in monthly installments.

5.6.4. Supplemental Increases. If during the course of a year the Board determines that Regular Assessments are insufficient to cover the estimated Common Expenses for the remainder of the year, the Board may increase Regular Assessments for the remainder of the fiscal year in an amount that covers the estimated restoration.

5.6.5. Initial Regular Assessments. Declarant estimates that the Regular Assessment payable for each Lot will initially be \$155 per month. Of this amount, approximately \$40 per month is attributable to cost of water and sanitary sewer utility service for the Townhomes, and approximately \$28 per month is attributable to insuring the Townhomes buildings. The insurance maintained by the Board does not cover any Owner's personal property, the contents of a Townhome or an Owner's personal liability. This amount is not guaranteed and will almost certainly be increased over time as actual expenses for operating and maintaining the Property are incurred.

5.7. SPECIAL ASSESSMENTS. The Board may, from time to time, levy Special Assessments against all Lots for the purpose of defraying, in whole or in part, Common Expenses not anticipated by the annual budget or Reserve Fund. Special Assessments may be used for the same purposes as Regular Assessments. Special Assessments do not require the approval of the Owners, except that Special Assessments for the following purposes must be approved by Owners of least a majority of the Lots: (1) acquisition of real property, (2) construction of additional improvements to the Property -- not repair or replacement of existing improvements, and (3) any expenditure that may reasonably be expected to significantly increase the Association's responsibility and financial obligation for operations, insurance, maintenance, repairs, or replacement.

5.8. INDIVIDUAL ASSESSMENTS. The Board may levy an Individual Assessment against a Lot and its Owner. Individual Assessments may include, but are not limited to: interest, late charges, and collection costs on delinquent Assessments; reimbursement for costs incurred in bringing an Owner or his Lot into compliance with the Governing Documents; fines for violations of the Governing Documents; fees for estoppel letters and copies of Governing Documents; insurance deductibles; submetered utilities serving the Townhomes; reimbursement for damage or waste caused by willful or negligent acts; Common Expenses that benefit fewer than all of the Townhomes, which may be assessed according to benefit received; fees or charges levied against the Association on a per-Lot basis; and "pass through" expenses for services to Townhomes provided through the Association and which are equitably paid by each Lot according to benefit received.

5.9. RESTORATION ASSESSMENTS. The Board may levy a Restoration Assessment against Lots for the purpose of defraying, in whole or in part, the cost of repair or restoration if insurance proceeds or condemnation awards prove insufficient.

5.10. DUE DATE. Initial Assessments are due upon the sale or transfer of a Lot. Regular Assessments are payable in advance, are due on the first calendar day of each month, and are delinquent if not received by the Association on or before the first day of the month. Special, Individual and Restoration Assessments are due on the date stated in the notice of Assessment or, if no date is stated, within 10 days after notice of the Special, Individual or Restoration Assessment is given.

5.11. RESERVE FUNDS. The Association may establish, maintain and accumulate a reserve for operations. The Association will establish, maintain, and accumulate a reserve for replacement and

repair. For all reserves established by the Association, the Association will budget for reserves and may fund reserves out of Initial Assessments or Regular Assessments.

5.11.1. Operations Reserves. The Association may maintain operations reserves at a level determined by the Board to be sufficient to cover the cost of operational or maintenance emergencies or contingencies, including deductibles on insurance policies maintained by the Association.

5.11.2. Replacement Reserves. The Association will maintain replacement and repair reserves at a level that anticipates the scheduled replacement or major repair of components of the Common Area and Area of Common Responsibility.

5.12. ASSOCIATION'S RIGHT TO BORROW MONEY. The Association is granted the right to borrow money, subject to the consent of Owners of at least a majority of Lots and the ability of the Association to repay the borrowed funds from Assessments. To assist its ability to borrow, the Association is granted the right to encumber, mortgage, pledge, or deed in trust any of its real or personal property, and the right to assign its right to future income, as security for money borrowed or debts incurred, provided that the rights of the lender in the pledged property are subordinate and inferior to the rights of the Owners hereunder.

#### ARTICLE 6 ASSESSMENT LIEN

6.1. ASSESSMENT LIEN. Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay Assessments to the Association. Each Assessment is a charge on the Lot and is secured by a lien on the Lot. Each Owner, and each prospective Owner, is placed on notice that his title may be subject to the lien for Assessments attributable to a period prior to the date the party purchased the Lot.

6.2. SUPERIORITY OF ASSESSMENT LIEN. The Assessment lien is superior to all other liens and encumbrances on a Lot, except only for (1) real property taxes and assessments levied by governmental and taxing authorities, (2) a mortgage, deed of trust or vendor's lien recorded before this Declaration, (3) a recorded mortgage or deed of trust lien securing a loan for construction of the original Townhome, and (4) a first or senior purchase money mortgage or vendor's lien recorded before the date on which the delinquent Assessment became due. The Assessment lien is subordinate and inferior to a recorded mortgage lien of any Underwriting Lender.

6.3. EFFECT OF MORTGAGEE'S FORECLOSURE. Foreclosure of a superior lien extinguishes the Association's claim against the Lot for unpaid Assessments that became due before the sale, but does not extinguish the Association's claim against the former Owner. The purchaser at the foreclosure sale is liable for Assessments coming due from and after the date of the sale.

IF YOU FAIL TO PAY ASSESSMENTS TO THE  
ASSOCIATION, THE ASSOCIATION MAY FORECLOSE  
ITS ASSESSMENT LIEN AGAINST YOUR HOME.

6.4. FORECLOSURE OF LIEN. The Association may file and foreclose the lien for Assessments as a mortgage on real property or as otherwise provided by law.

**ARTICLE 7**  
**EFFECT OF NONPAYMENT OF ASSESSMENTS**

7.1. **FAILURE TO PAY ASSESSMENTS.** An Assessment is delinquent if the Association does not receive payment in full by the Assessment's due date. The Association, acting through its Board, is responsible for taking action to collect delinquent Assessments. The Association's exercise of its remedies is subject to applicable laws, and pertinent provisions of the Bylaws. From time to time, the Association may delegate some or all of the collection procedures and remedies, as the Board in its sole discretion deems appropriate, to the Association's manager, management company, an attorney, or a debt collector. Neither the Board nor the Association, however, is liable to an Owner or other person for its failure or inability to collect or attempt to collect an Assessment. The following remedies outlined in this Article 7 are in addition to and not in substitution for all other rights and remedies that the Association has at law or by equity.

7.2. **INTEREST.** Delinquent Assessments are subject to interest from the due date until paid, at a rate to be determined by the Board from time to time, not to exceed the lesser of 18% per annum or the maximum permitted by law. If the Board fails to establish a rate, the rate is 12% per annum. The Association, and its officers, directors, managers, and attorneys, intend to conform strictly to the applicable usury laws of the State of Indiana. Notwithstanding anything to the contrary in the Governing Documents or any other document or agreement executed or made in connection with the Association's collection of Assessments, the Association will not be entitled to receive or collect, as interest, a sum greater than the maximum amount permitted by applicable law. If the Association ever receives, collects, or applies as interest a sum in excess of the maximum rate permitted by law, the excess amount will be applied to the reduction of unpaid Special and Regular Assessments or, if those Assessments are paid in full, reimbursed to the Owner.

7.3. **LATE FEES.** Delinquent Assessments are subject to reasonable late fees, at a rate to be determined by the Board from time to time.

7.4. **COLLECTION EXPENSES.** The Owner of a Lot against which Assessments are delinquent is liable to the Association for reimbursement of reasonable costs incurred by the Association to collect the delinquent Assessments, including attorneys fees and processing fees charged by the management company.

7.5. **ACCELERATION.** If an Owner defaults in paying an Assessment that is payable in installments, the Association may accelerate the remaining installments on 10 days' written notice to the defaulting Owner. The entire unpaid balance of the Assessment becomes due on the date stated in the notice.

7.6. **SUSPENSION OF USE AND VOTE.** If an Owner's account has been delinquent for at least 30 days, the Association may suspend the right of the Owner and the Residents of the Owner's Townhome to use Common Areas and common services during the period of delinquency. The Association may not suspend an Owner or Resident's right of access to the Townhome. The Association may also suspend the right to vote appurtenant to the Lot during the period of delinquency. Suspension does not constitute a waiver or discharge of the Owner's obligation to pay Assessments.

7.7. **MONEY JUDGMENT.** The Association may file suit seeking a money judgment against an Owner delinquent in the payment of Assessments, without foreclosing or waiving the Association lien for Assessments.



7.8. NOTICE TO MORTGAGEE. The Association may notify and communicate with any Mortgagee for a Lot regarding the Owner's default in payment of Assessments.

7.9. APPLICATION OF PAYMENTS. The Association may adopt and amend policies regarding the application of payments. The Association may refuse to accept partial payment, i.e., less than the full amount due and payable. The Association may also refuse to accept payments to which the payer attaches conditions or directions contrary to the Association's policy for applying payments.

**ARTICLE 8**  
**MAINTENANCE AND REPAIR OBLIGATIONS AND LIMITATIONS**

8.1. ASSOCIATION MAINTENANCE. The Association's maintenance obligations will be discharged when and how the Board deems appropriate. The Association maintains, repairs, and replaces, as a Common Expense, all Common Areas and any component of a Townhome or Lot delegated to the Association by this Declaration as an Area of Common Responsibility. Certain aspects of this obligation are more particularly described in this Article.

**HOME OWNERSHIP IS NOT COMPLETELY  
"MAINTENANCE FREE." AS AN OWNER, YOU WILL  
HAVE SOME MAINTENANCE RESPONSIBILITIES.**

8.2. OWNER RESPONSIBILITY. Every Owner has the following general responsibilities and obligations for the maintenance, repair, and replacement of the Property:

- a. To maintain, repair, and replace his Townhome, except for components expressly designated as an Area of Common Responsibility and assigned to the Association by this Declaration.
- b. The routine cleaning of the windows, patio, balcony, porch, deck, sidewalk and driveway area of his Townhome, keeping same in a neat, clean, odorless, orderly, and attractive condition.
- c. To maintain, repair, and replace all portions of the Property for which he is responsible under this Declaration or by agreement with the Association.
- d. To not do any work or to fail to do any work which, in the reasonable opinion of the Board, would materially jeopardize the soundness and safety of the Property, reduce the value thereof, or impair any easement or real property right thereto.
- e. To be responsible for his own willful or negligent acts and those of his or the Resident's family, guests, agents, employees, or contractors when those acts necessitate maintenance, repair, or replacement of the Area of Common Responsibility, any Common Area, the property of another Owner, or any component of the Property for which the Association has maintenance or insurance responsibility.
- f. To (i) keep any portion of the Lot that is subject to the Drainage, Sewer and Utility Easement free from obstructions so that the storm water drainage will be



unimpeded and (ii) not change or alter any drainage areas, including storm sewers, pipe, and structures (including the wet retention area) without appropriate permission of the Municipal Entity and prior written approval of the Association,

8.3. DISPUTES. If a dispute arises regarding the allocation of maintenance responsibilities by this Declaration, the dispute will be resolved by allocating responsibility to the individual Owners. Townhome and Lot maintenance responsibilities that are allocated to the Association are intended to be interpreted narrowly to limit and confine the scope of Association responsibility. It is the intent of this Article that all components and areas not expressly delegated to the Association are the responsibility of the individual Owners.

8.4. CONCRETE AND ASPHALT. Minor cracks in concrete and asphalt, including foundations, garage floors, driveways, streets, sidewalks, porches, and patio slabs, are inevitable as a result of the natural movement of soil (expansion and contraction), shrinkage during the curing of the concrete, and settling of the building. The Association's duty to maintain and repair foundations and other concrete or asphalt of the Property does not extend to minor or cosmetic cracking. Generally, the Association is responsible for repair of the following conditions: (1) leakage or seepage through walls or floors, (2) cracks in concrete, masonry walls, or masonry veneer that exceed 1/4 inch in width; and (3) improper drainage of water from stoops and patios.

8.5. LAWNS AND LANDSCAPING. The Association will maintain the lawn and landscaping throughout the Property, including the Lots, as set forth in the Zoning Commitments. However, each Owner must keep the lawn located on its Lot clean and free of debris and free from animal waste.

8.6. SNOW REMOVAL. The Association will hire a snow removal contractor to remove snow from streets, driveways and sidewalks when warranted. However, the Association is not required to cause snow to be removed unless at least 2" of snow has accumulated. No party may use any chemicals to remove snow or ice from the Property.

8.7. PEST CONTROL. The Association will hire a pest control contractor to perform spraying for pest control on the exterior perimeter of the foundation of the buildings once per year. Owners will be responsible for any other pest control service the Owner deems necessary.

8.8. BALCONIES AND DECKS. Except for routine cleaning, which is the Owner's responsibility, the Association is responsible for the maintenance, repair, and replacement of any balconies and decks that are part of a Townhome. If the outside components of the Townhome are most easily accessed through the Townhome, the Owner will cooperate in providing access to the outside components to the Association's agents and contractors. If requested by the Association, the Owner will remove all personal property from the outside components of his Townhome to facilitate the required maintenance, repair, or replacement. The Owner is liable to the Association for any additional expense incurred by the Association due to an Owner's failure or refusal to cooperate with reasonable requests for access or removal. This Section may not be construed to prevent an Owner at the Owner's sole expense, without right of reimbursement from the Association, from maintaining, repairing, and replacing components of his Townhome's balcony or deck, subject to the Association's architectural control.

8.9. WARRANTY CLAIMS. If Owner is the beneficiary of a warranty against defects in the Area of Common Responsibility, Owner irrevocably appoints the Association, acting through the Board, as his attorney-in-fact to file, negotiate, receive, administer, and distribute the proceeds of any claim against the warranty that pertains to an Area of Common Responsibility.

8.10. PARTY WALLS. A Townhome wall located on or near the dividing line between 2 Lots and intended to benefit both Lots constitutes a Party Wall. To the extent not inconsistent with the provisions of this Section, the Party Wall is subject to the general rules of law regarding party walls and liability for property damage due to negligence, willful acts, or omissions.

8.10.1. Encroachments and Easement. If the Party Wall is on one Lot or another due to an error in construction, the midpoint of the Party Wall is nevertheless deemed to be on the dividing line for purposes of this Section. Each Lot sharing a Party Wall is subject to the Owner's Encroachment Easement (see above).

8.10.2. Right to Repair. If the Party Wall is damaged or destroyed from any cause, the Owner of either Lot may repair or rebuild the Party Wall to its previous condition. The Owners of both Lots and their successors and assigns will have the right to the full use of the repaired or rebuilt Party Wall.

8.10.3. Maintenance Costs. The Owners of the adjoining Lots will share equally in the costs of repair, reconstruction, or replacement of the Party Wall, subject to the right of one Owner to call for larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions, and subject to the two modifications below. If an Owner is responsible for damage to or destruction of the Party Wall, that Owner will bear the entire cost of repair, reconstruction, or replacement. If an Owner fails or refuses to pay his share of costs of repair or replacement of the Party Wall, the Owner advancing monies has a right to file a claim of lien for the monies advanced in the Office of the Recorder of Hamilton County, Indiana. The right of an Owner to contribution from another Owner under this Section is appurtenant to the land and passes to the Owner's successors in title.

8.10.4. Alterations. The Owner of a Lot sharing a Party Wall may not cut openings in the Party Wall or alter or change the Party Wall in any manner. The Party Wall will always remain in the same location as when originally erected.

8.11. OWNER'S DEFAULT IN MAINTENANCE. If the Board determines that an Owner has failed to properly discharge his obligation to maintain, repair, and replace items for which the Owner is responsible, the Board may give the Owner written notice of the Association's intent to provide the necessary maintenance at Owner's expense. The notice must state, with reasonable particularity, the maintenance deemed necessary and a reasonable period of time in which to complete the work. If the Owner fails or refuses to timely perform the maintenance, the Association may do so at Owner's expense, which is an Individual Assessment against the Owner and his Lot. In case of an emergency, however, the Board may, without giving the Owner written notice, take any action it deems necessary to protect persons or property, the cost of the action being the Owner's expense.

ARTICLE 9  
ARCHITECTURAL COVENANTS AND CONTROL



9.1. PURPOSE. Because the Lots are part of a single, unified community, this Declaration creates rights to regulate the design, use, and appearance of the Lots and Common Areas in order to preserve and enhance the Property's value and architectural harmony. One purpose of this Article is to promote and ensure the level of taste, design, quality, and harmony by which the Property is developed and maintained. Another purpose is to prevent improvements and modifications that may be generally considered to be radical, curious, odd, bizarre, or peculiar in comparison to then existing improvements. A third purpose is to regulate the appearance of every aspect of proposed or existing improvements on a Lot, including but not limited to Townhomes, fences, landscaping, retaining walls, yard art, sidewalks and

driveways, and further including replacements or modifications of original construction or installation. During the Development Period, a primary purpose of this Article is to reserve and preserve Declarant's right of architectural control.

9.2. PROHIBITION OF CONSTRUCTION, ALTERATION AND IMPROVEMENT. Without the Architectural Reviewer's prior written approval, a person may not construct a Townhome or make an addition, alteration, improvement, installation, modification, redecoration, or reconstruction of or to the Property. However, an Owner may make non-structural changes to the interior of a Townhome (such as painting or installing wallpaper) without seeking the Architectural Reviewer's approval. The Architectural Reviewer has the right but not the duty to evaluate every aspect of construction, landscaping, and property use that may adversely affect the general value or appearance of the Property.

9.3. ARCHITECTURAL CONTROL DURING THE DEVELOPMENT PERIOD. During the Development Period, all aspects of architectural control will be governed by Section B.3.3. of Appendix B.

9.4. ARCHITECTURAL CONTROL BY ASSOCIATION. The Association has no jurisdiction over architectural matters unless and until such time as Declarant delegates all or a portion of its reserved rights to the Architectural Control Committee (the "ACC"), or the Development Period is terminated or expires. On termination or expiration of the Development Period, or earlier if delegated in writing by Declarant, the Association, acting through the ACC will assume jurisdiction over architectural control.

9.4.1. ACC. The ACC will consist of at least 3 but not more than 7 persons appointed by the Board, pursuant to the Bylaws. Members of the ACC serve at the pleasure of the Board and may be removed and replaced at the Board's discretion. At the Board's option, the Board may act as the ACC, in which case all references in the Governing Documents to the ACC are construed to mean the Board. Members of the ACC need not be Owners or Residents, and may but need not, include architects, engineers, and design professionals who may be paid for their services, as determined from time to time by the Board.

9.4.2. Control for Variances. If the ACC is considering approval of an application that seeks a variance or which, in the ACC's opinion, would constitute a variance of the Property's established standards, the ACC must notify an Owner of each Lot of the nature of the proposed variance at least 20 days before the ACC approves the application. The ACC may approve the variance unless Owners of at least a majority of the Lots disapprove the proposed variance by petition or at a meeting of the Association. This Section of the Declaration may not be amended without the approval of Owners of at least 75% of the Lots.

9.4.3. Discretion; Limits on Liability for Decisions Made. The ACC has sole discretion with respect to taste, design, and all standards specified by this Article. The members of the ACC have no liability for the ACC's decisions made in good faith, and which are not arbitrary or capricious. The ACC is not responsible for: (1) errors in or omissions from the plans and specifications submitted to the ACC, (2) supervising construction for the Owner's compliance with approved plans and specifications, or (3) the compliance of the Owner's plans and specifications with Applicable Law.

**BEFORE MAKING ANY IMPROVEMENT OR ALTERATION  
TO A LOT OR TOWNHOME, A BUILDER OR OWNER**



**MUST APPLY FOR WRITTEN APPROVAL.**

9.5. ARCHITECTURAL APPROVAL. To request architectural approval, an Owner must make written application and submit 2 identical sets of plans and specifications showing the nature, kind, shape, color, size, materials, and locations of the work to be performed. The application must clearly identify any requirement of this Declaration for which a variance is sought. The Architectural Reviewer will return one set of plans and specifications to the applicant marked with the Architectural Reviewer's response, such as "Approved," "Denied," or "More Information Required." The Architectural Reviewer will retain the other set of plans and specifications, together with the application, for the Architectural Reviewer's files. The Architectural Reviewer's approval must be in writing to be effective. Verbal approval by an Architectural Reviewer, the Declarant, an Association director or officer, a member of the ACC, or the Association's manager does not constitute architectural approval by the appropriate Architectural Reviewer.

9.5.1. Deemed Approval. If the Architectural Reviewer fails to respond in writing -- negatively, affirmatively, or requesting information -- within 60 days after the Architectural Reviewer's actual receipt of the Owner's application, the Owner may submit a second request for processing of its original application. If the Board fails to respond within 45 days after the Board's actual receipt of the Owner's second request, the Owner's application is deemed approved. The Owner may then proceed with the improvement, provided the Owner adheres to the plans and specifications that accompanied his application, and provided he initiates and completes the improvement in a timely manner. In exercising deemed approval, the burden is on the Owner to document the Board's actual receipt of the Owner's initial application and second request.

9.5.2. Building Permit. If the application is for work that requires a building permit from the Municipal Entity, the Owner must obtain the appropriate permit. The Architectural Reviewer's approval of plans and specifications does not mean that they comply with the Municipal Entity's requirements. Alternatively, approval by governmental authorities does not ensure Architectural Reviewer approval.

9.5.3. No Approval Required. No approval is required to rebuild a Townhome in accordance with originally approved plans and specifications. Nor is approval required for an Owner to remodel or repaint the interior of a Townhome, provided the work does not impair the structural soundness of the building.

9.5.4. Declarant Approved. Notwithstanding anything to the contrary in this Declaration, any improvement to the Property made by Declarant during the Development Period is deemed to have been approved by the Architectural Reviewer.

9.6. ARCHITECTURAL GUIDELINES. Declarant (during the Development Period) and the Association (thereafter) may publish architectural restrictions, guidelines, and standards, all of which may be revised from time to time to reflect changes in technology, style, and taste.

9.7. PROHIBITED ACTS. The types of acts that may not be commenced without the Architectural Reviewer's prior written approval include, but are not limited to, the following:

- a. Installation of a receiving or transmitting tower, ornamental iron or burglar bars, storm window or door, exterior lighting, storage shed, basketball goal, treehouse,



free standing mailbox, trash can enclosure, patio cover, chimney, or skylight -- if any are visible from another Townhome, Lot, or a street.

- b. Installation of equipment that may create a noise annoyance, such as noise-producing security devices, exterior pumps, and speakers.
- c. Installation of walls, screens, awnings, fences, gates, or carports.
- d. Enclosure of patios, balconies, yards, garages, or carports.
- e. Installation of impermeable decking or other improvement that may interfere with established drainage patterns.

**ARTICLE 10**  
**USE RESTRICTIONS**

10.1. **VARIANCE.** The use of the Property is subject to the restrictions contained in this Article, and subject to Rules adopted pursuant to this Article. The Board or the Architectural Reviewer, as the case may be, may grant a variance or waiver (either fully or with limits or conditions) of a restriction or Rule on a case-by-case basis when unique circumstances dictate. To be effective, a variance must be in writing. The grant of a variance does not become a waiver or estoppel of the Association's right to deny a variance in other circumstances.

10.2. **ASSOCIATION'S RIGHT TO PROMULGATE RULES.** The Association, acting through the Board, is granted the right to adopt, amend, repeal, and enforce reasonable Rules, and penalties for infractions thereof, regarding the occupancy, use, disposition, maintenance, appearance, and enjoyment of the Property. Among other things, each Lot is owned and occupied subject to the right of the Board to establish Rules, and penalties for infractions thereof, governing:

- a. Use of Common Areas and Areas of Common Responsibility.
- b. Hazardous, illegal, or annoying materials or activities on the Property.
- c. The use of Property-wide services provided through the Association.
- d. The consumption of utilities billed to the Association.
- e. The use, maintenance, and appearance of anything visible from the street or other Townhomes.
- f. Landscaping and maintenance of yards.
- g. The occupancy and leasing of Townhomes.
- h. Animals.
- i. Vehicles.
- j. Disposition of trash and control of vermin, termites, and pests.
- k. Anything that interferes with maintenance of the Property, operation of the Association, administration of the Governing Documents, or the quality of life for Residents.

**YES, THERE ARE LOTS OF RULES!**  
EVERY TRADITIONS ON THE MONON RESIDENT IS EXPECTED TO COMPLY  
WITH THESE RULES AND WITH RULES ADOPTED BY THE BOARD OF  
DIRECTORS.

10.3. ANIMALS. No animal, bird, fish, reptile, or insect of any kind may be kept, maintained, raised, or bred anywhere on the Property for food or for any commercial purpose. Customary domesticated household pets may be kept subject to the Rules. The Board may adopt, amend, and repeal Rules regulating the types, sizes, numbers, locations, and behavior of animals at the Property. If the Rules fail to establish animal occupancy units, no more than 2 dogs, or 2 cats, or 1 dog and 1 cat (or such lesser number as may be prescribed by the Municipal Entity) may be maintained in each Townhome. Permission to maintain other types or additional numbers of household pets must be obtained in writing from the Board. No pets may be left unattended outside of a Townhome (including a deck or balcony). The Board may require or cause the removal of any animal determined to be in violation the Rules. Each Owner or Resident must clean any animal waste created by its pets anywhere on the Property.

**BE COURTEOUS TO YOUR NEIGHBORS.  
CLEAN UP AFTER YOUR PET.**

10.4. ANNOYANCE. No Lot or Common Area may be used in any way that: (1) may reasonably be considered annoying to neighbors; (2) may be calculated to reduce the desirability of the Property as a residential neighborhood; (3) may endanger the health or safety of Residents of other Townhomes; (4) may result in the cancellation of insurance on any portion of the Property; (5) violates any law; or (6) creates noise or odor pollution. The Board has the sole authority to determine what constitutes an annoyance.

**CONTROL THE VOLUME.**  
Please be mindful of your neighbors' needs for quiet time at home.

10.5. APPEARANCE. Both the Lot and the Townhome must be maintained in a manner so as not to be unsightly when viewed from the street or neighboring Lots. The Architectural Reviewer will determine what constitutes acceptable appearance standards.

10.6. DECLARANT PRIVILEGES. In connection with the development and marketing of the Property, Declarant has reserved a number of rights and privileges to use the Property in ways that are not available to other Owners and Residents, as provided in Appendix B of this Declaration. Declarant's exercise of a Development Period right that appears to violate a Rule or a Use Restriction of this Article does not constitute waiver or abandonment of the restriction by the Association.

10.7. DRAINAGE. Each Lot has a surface water drainage and grading pattern that relates to the surface water drainage pattern for the entire Property. No person may interfere with the established drainage pattern, systems and improvements over any part of the Property.

10.8. SIDEWALKS & DRIVEWAYS. Sidewalks, driveways, and other passageways may not be used for any purpose that interferes with their ongoing use as routes of vehicular or pedestrian access.

10.9. FIRE SAFETY. No person may use, misuse, cover, disconnect, tamper with, or modify the fire and safety equipment of the Property, including fire hydrants, or interfere with the maintenance and/or testing of same by persons authorized by the Association or by public officials.

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10.10. **LANDSCAPING.** No person or party (other than the Association) may perform landscaping, planting, or gardening anywhere upon the Property or any Lot.

10.11. **LEASING OF TOWNHOMES.** An Owner may lease his Townhome, but must do so subject to the Governing Documents. Any lease must be for a minimum term of 12 months. An Owner is responsible for providing his tenant with copies of the Governing Documents and notifying him of changes thereto. The lease must provide that failure by the tenant or his invitees to comply with the Governing Documents or applicable law is deemed to be a default under the lease. When the Association notifies an Owner of his tenant's violation, the Owner will promptly obtain his tenant's compliance or exercise his rights as a landlord for tenant's breach of lease. The Owner of a leased Townhome is liable to the Association for any expenses incurred by the Association in connection with enforcement of the Governing Documents against his tenant. The Association is not liable to the Owner for any damages, including lost rents, suffered by the Owner in relation to the Association's enforcement of the Governing Documents against the Owner's tenant.

**NOT SOUNDPROOF**  
Although the Townhomes are constructed to reduce the transmission of sound between adjoining Townhomes, the Townhomes are not soundproofed. Some noise transmission between adjoining Townhomes is possible.

10.12. **NOISE AND ODOR.** A Resident must exercise reasonable care to avoid making or permitting to be made loud, disturbing, or objectionable noises or noxious odors that are likely to disturb or annoy Residents of neighboring Townhomes. The Rules may limit, discourage, or prohibit noise or odor producing activities and items in the Townhomes and on the Area of Common Responsibility.

**NOT ODOR-PROOF**  
Do what you can, such as using kitchen vent fans or opening windows, to reduce odors generated by your cooking.

10.13. **OCCUPANCY.** The Board may adopt Rules regarding the occupancy of Townhomes. If the Rules fail to establish occupancy standards, no more than 2 persons per bedroom may occupy a Townhome, subject to the exception for familial status. The Association's occupancy standard for Residents who qualify for familial status protection under the fair housing laws may not be more restrictive than the minimum (i.e., the fewest people per Townhome) permitted by the U. S. Department of Housing and Urban Development.

10.14. **VEHICLES.** This Section pertains to parking on streets and driveways. All vehicles on the Property, whether owned or operated by the Residents or their families and guests, are subject to this Section, the Section on "Parking", below, and any Rules regulating the types, sizes, numbers, conditions, uses, appearances, and locations of vehicles on the Property. Without prior written Board approval, the following types of vehicles and vehicular equipment - mobile or otherwise - may not be kept, parked, or stored anywhere on the Property: mobile homes, motor homes, buses, trailers, boats, snowmobiles, trailers, aircraft, inoperable vehicles, commercial truck cabs, trucks with tonnage over one ton, vehicles that are not customary personal passenger vehicles, and any vehicle that the Board deems to be a nuisance, unsightly, or inappropriate. The Board may prohibit sales, storage, washing, repairs, or

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restorations of vehicles on the Property. This restriction does not apply to vehicles and equipment temporarily on the Property in connection with the construction or maintenance of a Townhome. Vehicles that transport inflammatory or explosive cargo are prohibited from the Property at all times. No vehicle may obstruct the flow of traffic, constitute a nuisance, or otherwise create a safety hazard on the Property. The Association may cause the removal of any vehicle in violation of this Section, the Section on "Parking", below, or the Rules without liability to the owner or operator of the vehicle. The owner or operator of the vehicle will be responsible for any towing charges.

10.15. **GARAGES.** The original garage area of a Townhome may not be enclosed or used for any purpose that would prevent the parking of operable vehicles therein. The automatic garage door opener is to be maintained by the Owner. Garage doors are to be kept closed at all times except when a vehicle is entering or leaving.

**YOU SHOULD PARK YOUR VEHICLES IN YOUR GARAGE.**

10.16. **PARKING.** Residents are expected to park their vehicles in their garages, and use their driveways only for temporary overflow parking. The Association has the right to prohibit or limit parking on streets, and may impose different rules on different streets in the Property, or along sections or sides of streets, and may change the street parking rules from time to time in response to changing conditions, neighborhood standards, Municipal Entity recommendations, aesthetics, or any combination of these. Unless and until the Board adopts different rules for street parking, no vehicle may be parked on any street in the Property. The Board may authorize such vehicles and items parked in violation of this provision to be towed away and the owner of the vehicle or operator will be responsible for any towing charges.

10.17. **RESIDENTIAL USE.** The use of a Lot is limited exclusively to residential purposes or any other use permitted by this Declaration. This residential restriction does not, however, prohibit a Resident from using a Townhome for personal business or professional pursuits provided that: (1) the uses are incidental to the use of the Townhome as a dwelling; (2) the uses conform to applicable governmental ordinances; (3) there is no external evidence of the uses; (4) the uses do not entail visits to the Townhome by employees or the public; and (5) the uses do not interfere with Residents' use and enjoyment of neighboring Townhomes. Other than the completed Townhome itself, no thing or structure on a Lot may be occupied as a residence at any time by any person. This provision applies, without limitation, to the garage and campers.

10.18. **SIGNS.** No sign (other than a "For Sale" sign no larger than 24" high and 30" wide) or unsightly object may be erected, placed, or permitted to remain on the Property or to be visible from windows in the Townhome without the Board's prior written approval. The Board's approval may specify the location, nature, appearance, dimensions, number, and time period of a sign or object. The Association may effect the removal of any sign or object that violates this Section or which the Board deems inconsistent with neighborhood standards without liability for trespass or any other liability connected with the removal.

10.19. **SPECIFIC USES.** Except for ingress and egress, the front yards, sidewalks, and driveways on the Property may not be used for any purpose that has not been authorized in writing by the Board.

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10.20. STRUCTURAL INTEGRITY. No person may directly or indirectly impair the structural soundness or integrity of a building or another Townhome (including by making modifications to a "party wall"), nor do any work that will impair an easement or real property right.

10.21. TELEVISION RECEPTION. Each Resident of the Property will avoid doing or permitting anything to be done that may unreasonably interfere with the television, radio, telephonic, electronic, microwave, cable, or satellite reception on the Property. To the extent not inconsistent with Applicable Law, no person may install exterior television or other antennae, including satellite dishes, without the prior written consent of the Architectural Reviewer. To the extent allowed under Applicable Law and approved by the Architectural Reviewer, such approved antennae or dish is referred to as the "Antennae/Dish."

10.21.1. Definitions. As used in this Section "Antenna/Dish Townhome" means the Townhome served by a satellite dish or antenna, or the Townhome that is obviously intended to be served by a satellite dish or antenna, regardless of whether the service is operational. "Antenna/Dish Owner" means the Owner of a Townhome served by a satellite dish or antenna, regardless of whether the Owner purchases, uses, or has actual knowledge of the satellite dish or antenna.

10.21.2. Owner Responsibility. The installation of an Antenna/Dish on the Area of Common Responsibility automatically subjects the Antenna/Dish Townhome and its Owner to this Section, regardless of who installs the Antenna/Dish and regardless of whether the Antenna/Dish Owner has actual notice of the installation. The Antenna/Dish Owner is solely responsible for (1) the cost of maintaining, repairing, replacing, and removing, as necessary, the Antenna/Dish, and (2) the cost of repairing Common Areas and/or the Area of Common Responsibility if such repairs are necessitated by the Antenna/Dish or its installation, maintenance, repair, or replacement, irrespective of whether the repairs are undertaken by the Antenna/Dish Owner or the Association. If required by the Association, the Antenna/Dish Owner will remove the Antenna/Dish, as necessary, to permit the Association to maintain, repair, or replace Common Areas or the Area of Common Responsibility as the Association, in its sole discretion, deems necessary or desirable.

10.21.3. Association Controls. To the extent permitted by Applicable Law, the Association may adopt and amend reasonable standards for the color, appearance, location, method of installation, maintenance, camouflaging, screening, and use of Antenna/Dishes. The location and installation of an Antenna/Dish on the Area of Common Responsibility must have the prior written approval of the Association, unless the location and installation comply with the most current standards that have been adopted and published by the Association. No party will have the right to install an Antenna/Dish on any portion of a building other than that party's own Townhome.

10.21.4. Interference. An Antenna/Dish or the use of an Antenna/Dish may not interfere with satellite or broadcast reception to other Townhomes or the Common Areas, or otherwise be a nuisance to Residents of other Townhomes or to the Association. The Board of Directors may determine what constitutes a nuisance to the Association.

10.21.5. Risk. An Antenna/Dish on the Area of Common Responsibility exists at the sole risk of the Owner and/or occupant of the Antenna/Dish Townhome. The Association does not insure the Antenna/Dish and is not liable to the Antenna/Dish Owner or any other person for any loss or damage to the Antenna/Dish from any cause. The Antenna/Dish Owner will defend and indemnify the Association, its directors, officers, and Members, individually and collectively,

against losses due to any and all claims for damages or lawsuits, by anyone, arising from his Antenna/Dish.

10.22. WINDOW TREATMENTS. All window treatments within the Townhome that are visible from the street or another Townhome must be maintained in good condition and must not detract from the appearance of the Property. The Architectural Reviewer may require an Owner to change or remove a window treatment that the Architectural Reviewer determines to be inappropriate or unattractive. The Architectural Reviewer may prohibit the use of certain colors or materials for window treatments.

10.23. BALCONIES AND DECKS. An Owner or Resident may not leave any item on his deck or balcony, except as follows: Potted plants, deck or patio furniture (but not a patio umbrella) on balconies and decks on the front of a Townhome; and potted plants, deck or patio furniture (but not a patio umbrella) and a grill on balconies and decks on the back (the garage side) of a Townhome. The Board may adopt Rules further limiting or describing what may be placed on decks and balconies.

#### ARTICLE 11 ASSOCIATION OPERATIONS

11.1. THE ASSOCIATION. The duties and powers of the Association are those set forth in the Governing Documents, together with the general and implied powers of a property owners association and a nonprofit corporation organized under the laws of the State of Indiana. Generally, the Association may do any and all things that are lawful and necessary, proper, or desirable in operating for the peace, health, comfort, and general benefit of its Members, subject only to the limitations on the exercise of such powers as stated in the Governing Documents.

**EVERY OWNER OF A TRADITIONS ON THE MONON TOWNHOME  
AUTOMATICALLY BECOMES A MEMBER OF THE  
TRADITIONS ON THE MONON HOMEOWNERS ASSOCIATION.**

11.2. BOARD. The Association will be governed by a Board of Directors elected by the Members. Unless the Association's Bylaws or Articles of Incorporation provide otherwise, the Board will consist of 5 persons elected at the annual meeting of the Association, or at a special meeting called for that purpose. Unless the Governing Documents expressly reserve a right, action, or decision to the Members/Owners, Declarant, or another party, the Board acts in all instances on behalf of the Association. Unless the context indicates otherwise, references in the Governing Documents to the "Association" may be construed to mean "the Association acting through its Board of Directors."

11.3. MEMBERSHIP. Each Owner is a Member of the Association, ownership of a Lot being the sole qualification for membership. Membership is appurtenant to and may not be separated from ownership of the Lot. The Board may require satisfactory evidence of transfer of ownership before a purported Owner is entitled to vote at meetings of the Association. If a Lot is owned by more than one person or entity, each co-owner is a Member of the Association and may exercise the membership rights appurtenant to the Lot; provided, however, that all co-owners may exercise only 1 vote per Lot, which vote shall be exercised as such co-owners determine. A Member who sells his Lot under a land contract may delegate his membership rights to the contract purchaser, provided a written assignment is delivered to the Board. However, the contract seller remains liable for all Assessments attributable to his Lot until fee title to the Lot is transferred.

11.4. MANAGEMENT COMPANY. The Board may delegate the performance of certain functions to a manager or management company for the Association.

11.5. BOOKS AND RECORDS. The Association will maintain copies of the Governing Documents and the Association's books, records, and financial statements. Books and records of the Association will be made available for inspection and copying pursuant to the requirements of the Indiana Nonprofit Corporation Act of 1991.

11.6. INDEMNIFICATION. The Association indemnifies every officer, director, and committee member (for purposes of this Section, "Leaders") against expenses, including attorney's fees, reasonably incurred by or imposed on the Leader in connection with any threatened or pending action, suit, or proceeding to which the Leader is a party or respondent by reason of being or having been a Leader. A Leader is not liable for a mistake of judgment. A Leader is liable only for his willful misfeasance, malfeasance, misconduct, or actions taken in bad faith. This right to indemnification does not exclude or limit any other rights to which present or former Leaders may be entitled as a matter of law. As a Common Expense, the Association may maintain general liability and directors and officers liability insurance to fund this obligation.

11.7. OBLIGATIONS OF OWNERS. Without limiting the obligations of Owners under the Governing Documents, each Owner has the following obligations:

11.7.1. Information. Within 30 days after acquiring an interest in a Lot, within 30 days after the Owner has notice of a change in any information required by this Subsection (such as a change in Residents), and on request by the Association from time to time, an Owner will provide the Association with the following information: (1) a copy of the recorded deed by which Owner has title to the Lot; (2) the Owner's address, phone number, and driver's license number, if any; (3) any Mortgagee's name, address, and loan number; (4) the name and phone number of any Resident other than the Owner; and (5) the name, address, and phone number of Owner's managing agent, if any.

11.7.2. Pay Assessments. Each Owner will pay Assessments properly levied by the Association against the Owner or his Lot, and will pay Regular Assessments without demand by the Association.

11.7.3. Comply. Each Owner will comply with the Governing Documents as amended from time to time.

11.7.4. Reimburse. Each Owner will pay for damage to the Property caused by the negligence or willful misconduct of the Owner, a Resident of the Owner's Lot, or the Owner or Resident's family, guests, employees, contractors, agents, or invitees.

11.7.5. Liability. Each Owner is liable to the Association for violations of the Governing Documents by the Owner, a Resident of the Owner's Lot, or the Owner or Resident's family, guests, employees, agents, or invitees, and for costs incurred by the Association to obtain compliance, including attorney's fees whether or not suit is filed.

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**ARTICLE 12**  
**ENFORCING THE GOVERNING DOCUMENTS**

12.1. **ENFORCEMENT.** If an Owner violates the Governing Documents or damages the Property, the Association may exercise all rights and remedies available under the Governing Documents and Applicable Law.

12.2. **REMEDIES.** The remedies provided in this Article for breach of the Governing Documents are cumulative and not exclusive. In addition to other rights and remedies provided by the Governing Documents and by law, the Association has the following rights to enforce the Governing Documents:

12.2.1. **Nuisance.** If an act or omission that violates any provision of the Governing Documents is a nuisance, any remedy allowed by law against a nuisance is applicable against the violation.

12.2.2. **Fine.** The Association may levy reasonable charges, as an Individual Assessment, against an Owner and his Lot if the Owner or Resident, or the Owner or Resident's family, guests, employees, agents, or contractors violate a provision of the Governing Documents. Fines may be levied for each act of violation or for each day a violation continues. The fact that Owner pays a fine for a violation does not give the Owner the right to continue the violation. Payment of a fine does not constitute a waiver or discharge of the Owner's obligations under the Governing Documents.

12.2.3. **Suspension.** For any period during which the Owner or Resident, or the Owner or Resident's family, guests, employees, agents, or contractors violate the Governing Documents, the Association may suspend the right of Owners and Residents (i) to use Common Areas (except rights of ingress and egress); and (ii) to vote on matters presented to the Owners. A suspension does not constitute a waiver or discharge of the Owner's obligations under the Governing Documents.

12.2.4. **Self-Help.** In certain limited circumstances, as limited by Applicable Law, the Association may have the right to enter onto a Lot, but not inside a Townhome, to abate or remove, any sign, structure, vehicle or condition that violates the Documents. Prior to exercising such right, the Board will give the violating Owner 5 days' notice of its intent to exercise self-help. In exercising this right, the Board is not trespassing and is not liable for damages relating to its actions, provide it acts reasonably. The Board may levy its costs of abatement against the Lot and Owner as an Individual Assessment.

12.2.5. **Suit.** Failure to comply with the Governing Documents will be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Prior to commencing any legal proceeding, the Association will give the defaulting party reasonable notice and an opportunity to cure the violation.

12.3. **BOARD DISCRETION.** The Board may use its sole discretion in determining whether to pursue a violation of the Governing Documents, provided the Board does not act in an arbitrary or capricious manner. In evaluating a particular violation, the Board may determine that under the particular circumstances (1) the Association's position is not sufficiently strong to justify taking any or further action; (2) the provision being enforced is or may be construed as inconsistent with applicable law; (3) although a technical violation may exist, it is not of such a material nature as to be objectionable to a



reasonable person or to justify expending the Association's resources; or (4) that enforcement is not in the Association's best interests, based on hardship, expense, or other reasonable criteria.

**STATE LAW APPLIES**  
to many of the Association's enforcement rights and remedies.

12.4. NO WAIVER. The Association and every Owner has the right to enforce all restrictions, conditions, covenants, liens, and charges now or hereafter imposed by the Governing Documents. Failure by the Association or by any Owner to enforce a provision of the Governing Documents is not a waiver of the right to do so thereafter. If the Association does waive the right to enforce a provision, that waiver does not impair the Association's right to enforce any other part of the Governing Documents at any future time. No officer, director, or Member of the Association is liable to any Owner for the failure to enforce any of the Governing Documents at any time.

12.5. RECOVERY OF COSTS. The costs of curing or abating a violation are the expense of the Owner or other person responsible for the violation. If legal assistance is obtained to enforce any provision of the Governing Documents, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Governing Documents or the restraint of violations of the Governing Documents, the prevailing party is entitled to recover from the non-prevailing party all reasonable and necessary costs incurred by it in such action, including reasonable attorneys' fees.

**ARTICLE 13**  
**INSURANCE**

13.1. GENERAL PROVISIONS. The broad purpose of this Article is to require that the Property be insured with the types and amounts of coverage that are customary for similar types of properties and that are acceptable to mortgage lenders, guarantors, or insurers that finance the purchase or improvement of Townhomes. Because the insurance requirements of mortgage underwriters are subject to change, as are State-promulgated insurance regulations and policies, this Article tries to balance the need for certain minimum insurance requirements with the desire to adapt to a periodically changing insurance environment. The Board will make every reasonable effort to comply with the requirements of this Article. The Association, and its directors, officers, and managers, will not be liable for failure to obtain any coverage required by this Article or for any loss or damage resulting from such failure if the failure is due to the unavailability of a particular coverage from reputable insurance companies, or if the coverage is available only at a demonstrably unreasonable cost. The cost of insurance coverage and bonds maintained by the Association is a Common Expense.

13.1.1. Requirements Applicable to All Coverage. Insurance policies and bonds obtained and maintained by the Association must be issued by responsible insurance companies authorized to do business in the State of Indiana. The Association must be the named insured on all policies obtained by the Association. The loss payee clause should show the Association as trustee for each Owner and Mortgagee. Policies of property and general liability insurance maintained by the Association must provide that the insurer waives its rights to subrogation under the policy against an Owner. The Association's insurance policies should provide that such policies will not be prejudiced by the act or omission of any Owner or Resident who is not under the Association's control.

13.1.2. Association as Trustee. Each Owner hereby irrevocably appoints the Association, acting through its Board, as trustee to deal with the Property in the event of damage,

destruction, obsolescence, condemnation, or termination of all or any part of the Property. As trustee, the Association will have full and complete authority, right, and power to do all things reasonable and necessary to effect the provisions of this Declaration, including, without limitation, the right to receive, administer, and distribute funds, awards, and insurance proceeds; and to make, execute, and deliver any contract, deed, or other instrument with respect to the interest of an Owner.

13.1.3. Notice of Cancellation or Modification. Each insurance policy maintained by the Association should contain a provision requiring the insurer to give prior written notice to the Board before the policy may be canceled, terminated, materially modified, or allowed to expire, by either the insurer or the insured. The Board will give to Eligible Mortgagees, and the insurer will give to Mortgagees, prior notices of cancellation, termination, expiration, or material modification.

13.1.4. Deductibles. An insurance policy obtained by the Association may contain a reasonable deductible, and the amount thereof may not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the coverage limits required by this Declaration or an Underwriting Lender. In the event of an insured loss, the deductible is treated as a Common Expense of the Association in the same manner as the insurance premium. However, if the Board reasonably determines that the loss is the result of the negligence or willful misconduct of an Owner or Resident or their invitee, then the Board may levy an Individual Assessment against the Owner and his Townhome for the amount of the deductible that is attributable to the act or omission.

13.2. PROPERTY INSURANCE. The Association will obtain blanket all-risk insurance, if reasonably available, for all improvements insurable by the Association. If blanket all-risk insurance is not reasonably available, then at a minimum, the Association will obtain an insurance policy providing fire and extended coverage. This insurance must be in an amount sufficient to cover 100% of the replacement cost of any repair or reconstruction in event of damage or destruction from any insured hazard.

13.2.1. Common Property Insured. The Association will insure Common Areas and property owned by the Association, including any records, furniture, fixtures, equipment, and supplies.

13.2.2. Townhomes Insured by Association. In addition to insuring the Common Areas against casualty loss, the Association will maintain property insurance on the Townhomes as originally constructed. The Association may insure betterments and improvements installed by current or previous Owners. In insuring Townhomes, the Association may be guided by types of policies customarily available for similar types of properties.

13.2.3. Endorsements. To the extent reasonably available, the Association will obtain endorsements to its property insurance policy required by an Underwriting Lender.

13.3. LIABILITY INSURANCE. The Association will maintain a commercial general liability insurance policy over the Common Areas - expressly excluding the liability of each Owner and Resident within his Townhome - for bodily injury and property damage resulting from the operation, maintenance, or use of the Common Area. To the extent reasonably available, the amount of coverage should be at least that required by an Underwriting Lender. The purpose of this requirement is, in part, to assure mortgage companies that the Association maintains at least minimum levels of insurance coverage. The policy should contain a "severability of interest" provision. If that is not available, the policy should

contain an endorsement to preclude the insurer's denial of an Owner's claim because of negligent acts of the Association or other Owners.

13.4. WORKER'S COMPENSATION. The Association may maintain worker's compensation insurance if and to the extent necessary to meet the requirements of State law or if the Board so chooses.

13.5. FIDELITY COVERAGE. The Association may maintain blanket fidelity coverage for any person who handles or is responsible for funds held or administered by the Association, whether or not the person is paid for his services. The policy should be for an amount that exceeds the greater of (1) the estimated maximum funds, including reserve funds, that will be in the Association's custody at any time the policy is in force; or (2) an amount equal to 3 months of Regular Assessments on all Lots. A management agent that handles Association funds should provide evidence of carrying its own fidelity insurance policy, with the same level of coverage.

13.6. DIRECTORS AND OFFICERS LIABILITY. The Association may maintain directors and officers liability insurance, errors and omissions insurance, indemnity bonds, or other insurance the Board deems advisable to insure the Association's directors, officers, committee members, and managers against liability for an act or omission in carrying out their duties in those capacities.

13.7. OTHER POLICIES. The Association may maintain any insurance policies and bonds deemed by the Board to be necessary or desirable for the benefit of the Association.

13.8. OWNER'S RESPONSIBILITY FOR INSURANCE.

13.8.1. Insurance by Owners. Notwithstanding the foregoing, the Board may establish minimum insurance requirements, including types and minimum amounts of coverage, to be individually obtained and maintained by Owners if the insurance is deemed necessary or desirable by the Board to reduce potential risks to the Association or other Owners. If an Owner fails to maintain required insurance, the Board may obtain it on behalf of the Owner who will be obligated for the cost as an Individual Assessment.

13.8.2. Owners' Responsibilities. On request, an Owner will give the Board written notification of any and all structural changes, additions, betterments, or improvements to his Townhome, and any other information the Board may require to maintain adequate levels of insurance coverage. Each Owner will comply with reasonable requests by the Board for periodic inspection of the Townhome for purposes of insurance appraisal. Each Owner, at his expense, will maintain any insurance coverages required of Owners by the Association pursuant to this Article. Each Owner, at his expense, must obtain additional insurance coverage of his real property, improvements, and betterments thereto, or personal property.

13.8.3. Association Does Not Insure. The Association does not insure an Owner or Resident's personal property. Each Owner and Resident is solely responsible for insuring his personal property in his Townhome and on the Property, including furnishings, vehicles, and stored items.

The Association strongly recommends that each Owner and Resident purchase and maintain insurance on his personal belongings.



**ARTICLE 14**  
**RECONSTRUCTION OR REPAIR AFTER LOSS**

14.1. **GENERAL.** Any insured portion of the Townhomes that is damaged or destroyed will be promptly repaired or replaced by the Association unless repair or replacement would be illegal under any State or local health or safety statute or ordinance, or if Owners of at least 80% of the Lots, including each Owner of a Lot that will not be rebuilt or repaired, vote to not rebuild. A vote to not rebuild should not change an insurer's loss payment obligation under a policy, and the vote does not cause a presumption of total loss. Except in specific circumstances set out in this Declaration, the cost of repair or replacement in excess of the insurance proceeds and reserves is a Common Expense. If some but not all of the damaged Townhomes are not repaired or replaced, the insurance proceeds attributable to Townhomes that are not rebuilt will be distributed to the Owners of those Townhomes or to their Mortgagees, as their interests may appear.

14.2. **RESTORATION FUNDS.** For purposes of this Article, "Restoration Funds" include insurance proceeds, condemnation awards, Restoration Assessments, Individual Assessments, and other funds received on account of or arising out of injury or damage to the Property. All funds paid to the Association for purposes of repair or restoration will be deposited in a federally-insured account. Withdrawal of Restoration Funds requires the signatures of at least 2 Association directors or that of an agent duly authorized by the Board.

14.2.1. **Sufficient Proceeds.** If Restoration Funds obtained from insurance proceeds or condemnation awards are sufficient to repair or restore the damaged or destroyed property, the Association, as trustee for the Owners, will promptly apply the funds to the repair or restoration.

14.2.2. **Insufficient Proceeds.** If Restoration Funds are not sufficient to pay the estimated or actual costs of restoration as determined by the Board, the Board will apply the funds available to the repair or restoration and may levy a Restoration Assessment against certain or all of the Owners, as appropriate, to fund the difference.

14.2.3. **Loss Not Covered.** Even if the Association and the Owner have adequate amounts of recommended and required coverage, the Property may experience a loss that is not covered by any insurance. (In this context, "not covered by any insurance" is not referring to the portion of a loss that is not covered due to the operation of a deductible under the insurance policy.) If that occurs, the cost of restoring the Common Areas will be share by Owners as a Common Expense. The cost of restoring individual Townhomes will be borne by the Owners of the affected Townhomes.

14.2.4. **Surplus Funds.** If the Association has a surplus of Restoration Funds after payment of all costs of repair and restoration, the surplus will be applied as follows. If Restoration Assessments were a source of Restoration Funds, the surplus will be paid to Owners in proportion to their contributions resulting from the Restoration Assessment levied against them. However, no Owner may receive a sum greater than that actually contributed by him, and any delinquent Assessments owed by the Owner to the Association will first be deducted from the surplus. Any surplus remaining after the disbursement described in this paragraph will be common funds of the Association to be used as directed by the Board.

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14.3. COSTS AND PLANS.

14.3.1. Cost Estimates. Promptly after the loss, the Board will obtain reliable and detailed estimates of the cost of restoring the damaged Property. Costs may include premiums for bonds and fees for the services of professionals, as the Board deems necessary, to assist in estimating and supervising the repair.

14.3.2. Plans and Specifications. Common Areas will be repaired and restored substantially as they existed immediately prior to the damage or destruction. Townhomes will be repaired and restored substantially in accordance with original construction plans and specifications, unless the Association insures betterments and improvements made by Owners, in which case the Townhomes will be repaired and restored substantially as they existed immediately prior to the damage or destruction. Alternate plans and specifications for repair and restoration of either Common Areas or Townhomes must be approved by the Architectural Reviewer, by the Owners of at least 2/3 of the Lots and by certain Mortgagees if so required by the "Mortgagee Protection" article of this Declaration.

14.4. DUTY TO REPAIR.

14.4.1. Damage to Common Area. After a casualty or condemnation affecting the Common Area, the Association is responsible for restoring the Common Areas to its original condition, with the cost being borne by the Owners as a Common Expense.

14.4.2. Damage to a Townhome. After a casualty or condemnation to a Townhome, the Owner of a damaged Townhome is responsible for repairing or restoring his Townhome to its original condition. The Owner may be required to do so either with proceeds of the Association's insurance coverage or at his own expense, as set forth elsewhere in this Article. The Association has the right to supervise, approve, or disapprove the repair or restoration performed by an Owner during the course thereof.

14.4.3. Association's Right to Coordinate Work. If the work of restoring a Townhome is of such a nature that it requires the cooperation of more than one Owner (for example, because of work to be performed to a Party Wall or to a roof structure) or if the Association otherwise deems it in the best interest of the Property, the Association, at its option, may notify Owner that the Association will coordinate the restoration work for the affected Townhome, in which case the Owner will no longer have the right to perform the work. In assuming the coordination role for the work, the Association may provide that it will coordinate only joint elements of the construction (elements affecting more than one unit), only exterior elements or any other reasonably divisible part of the work, leaving the remainder of the work to be coordinated and performed by the Owner. In any case, the cost of the repair or restoration will be borne and allocated as set forth elsewhere in this Article.

14.4.4. Failure to Repair. If an Owner fails to repair or restore damage as required by this Section, the Association may cause the necessary repairs to be made and levy an Individual Assessment against the Owner and Lot for the cost thereof, after giving the Owner reasonable notice of the Association's intent to do so.

14.4.5. Diligence in Performing Work. Regardless of who performs the repair or restoration work, the work must commence within a reasonable time (less than 30 days) after receipt of notice from the Association that the work must commence. (Generally speaking, this

notice will not be given until the insurance company for the loss is prepared to pay out the proceeds.) The work must then be completed with reasonable diligence.

14.5. OWNER'S LIABILITY FOR INSURANCE DEDUCTIBLE. If repair or restoration of a Townhome is required as a result of an insured loss, the Board may levy an Individual Assessment, in the amount of the insurance deductible, against the Owner or Owners who would be responsible for the cost of the repair or reconstruction in the absence of insurance.

#### **ARTICLE 15 CONDEMNATION**

15.1. CONDEMNATION. If any Townhome, Lot or portion thereof or any of the Common Area is made the subject of a condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the Association will give timely written notice of such proceeding or proposed acquisition to the affected Owners and Eligible Mortgagees. The Association will represent the Owners in any condemnation proceeding or any negotiation settlements or agreements with the condemning authority for acquisition of the Common Area or any part thereof. The condemnation award or proceeds of settlement will be payable to the Association to be held in trust for the Owners and Mortgagees as their interests may appear. The provisions of the Declaration relating to restoration and application of funds in the event of a casualty will be applicable in the event of a condemnation.

#### **ARTICLE 16 MORTGAGEE PROTECTION**

16.1. INTRODUCTION. This Article is supplemental to, not a substitution for, any other provision of the Governing Documents. In case of conflict, this Article controls. Some sections of this Article apply to "Mortgagees" and "Eligible Mortgagees", both as defined in Article 1.1.

16.2. AMENDMENT TO SATISFY REQUIREMENTS OF UNDERWRITING LENDER. This Article establishes certain standards for the benefit of Underwriting Lenders. All Underwriting Lenders must comply with their requirements and guidelines in effect at the time of drafting. If an Underwriting Lender subsequently changes its requirements, the Board, without seeking approval of Owners or Mortgagees, may amend this Article and other provisions of the Governing Documents, as necessary, to meet the requirements of the Underwriting Lender.

16.3. NOTICE REGARDING EXISTENCE OF MORTGAGEE. An Owner who mortgages his Lot should notify the Association, giving the complete name and address of his Mortgagee and the loan number. A Mortgagee may also provide such information directly to the Association. In either case, the Mortgagee will become an Eligible Mortgagee. The Association will treat the notice as the Eligible Mortgagee's request to be notified of any proposed action requiring the consent of Eligible Mortgagees. The Association's obligations to Mortgagees under the Governing Documents extend only to Eligible Mortgagees. All actions and approvals required by Mortgagees will be conclusively satisfied by the Eligible Mortgagees, without regard to other holders of mortgages on Lots not known to the Association. A provision of the Governing Documents requiring the approval of a specified percentage of Eligible Mortgagees will be based on the number of Lots subject to mortgages held by Eligible Mortgagees. For example, "51% of Eligible Mortgagees" means Eligible Mortgagees of 51% of the Lots that are subject to mortgages held by Eligible Mortgagees.

16.4. IMPLIED APPROVAL. The approval of an Eligible Mortgagee is implied when the Eligible Mortgagee fails to respond within 30 days after receiving the Association's written request for



approval of a proposed amendment, provided the Association's request is delivered by certified or registered mail, return receipt requested.

16.5. OTHER MORTGAGEE RIGHTS.

16.4.1. Inspection of Books. The Association will maintain current copies of the Governing Documents and the Association's books, records, and financial statements. Mortgagees may inspect the Governing Documents and records, by appointment, during normal business hours.

16.4.2. Financial Statements. If the Property consists of 50 Lots or more, and if a Eligible Mortgagee submits a written request, the Association will give the Mortgagee a reviewed or audited statement for the preceding fiscal year within 120 days after the Association's fiscal year-end. A Mortgagee may have an audited statement prepared at its own expense.

16.4.3. Attendance at Meetings. A representative of an Eligible Mortgagee may attend and address any meeting that an Owner may attend.

16.4.4. Management Contract. Any contract for professional management of the Association may not require more than 30 days' notice to terminate the contract, nor payment of a termination penalty.

16.6. INSURANCE POLICIES. If an Underwriting Lender that holds a mortgage on a Lot or desires to finance a Lot has requirements for insurance of planned unit developments, the Association must try to obtain and maintain the required coverages, to the extent they are reasonably available, and must try to comply with any notifications or processes required by the Underwriting Lender.

16.7. NOTICE OF ACTIONS. The Association will use its best efforts to send timely written notice to Eligible Mortgagees of the following actions:

- a. Any condemnation or casualty loss that affects a material portion of the Property or the mortgaged Townhome.
- b. Any 60-day delinquency in the payment of Assessments or charges owed by the Owner of the mortgaged Townhome.
- c. A lapse, cancellation, expiration or material modification of any insurance policy maintained by the Association.
- d. Any proposed action that requires the consent of a specified percentage of Eligible Mortgagees.
- e. Any proposed amendment of a material nature, as provided in this Article.

**ARTICLE 17**  
**AMENDMENTS**

17.1. CONSENTS REQUIRED. As permitted by this Declaration, certain amendments of this Declaration may be executed by Declarant alone, or by certain Owners alone, or by the Board alone. Otherwise, amendments to this Declaration must be approved by Owners of at least 2/3 of the Lots.

17.2. METHOD OF AMENDMENT. This Declaration may be amended by any method selected by the Board from time to time, pursuant to the Bylaws, provided the method gives an Owner of each Lot the substance, if not exact wording, of the proposed amendment, a description in layman's terms of the effect of the proposed amendment, and an opportunity to vote for or against the proposed amendment.

17.3. EFFECTIVE. To be effective, an amendment must be in the form of a written instrument (1) referencing the name of the Property, the name of the Association, and the recording data of this Declaration and its prior amendments; (2) signed and acknowledged by an officer of the Association, certifying the requisite approval of Owners; and (3) recorded in the Office of the Recorder of Hamilton County, Indiana.

17.4. DECLARANT PROVISIONS. No amendment may affect Declarant's rights under this Declaration without Declarant's written and acknowledged consent, which must be part of the recorded amendment instrument. This Section may not be amended without Declarant's written and acknowledged consent.

## ARTICLE 18 DISPUTE RESOLUTION

18.1. INTRODUCTION AND DEFINITIONS. The Association, the Owners, Declarant, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, the "Parties") agree to encourage the amicable resolution of disputes involving the Property and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all claims as hereafter defined. As used in this Article only, the following words, when capitalized, have the following specified meanings:

18.1.1 "Claim" means any claim, grievance, or dispute between Parties involving the Property, except Exempt Claims (as defined below). "Claims" include, without limitation:

- a. Claims arising out of or relating to the interpretation, application, or enforcement of the Governing Documents.
- b. Claims relating to the rights and/or duties of Declarant as Declarant under the Governing Documents.
- c. Claims relating to the design, construction, or maintenance of the Property.

18.1.2 "Claimant" means any Party having a Claim against any other Party.

18.1.3 "Exempt Claims" means the following claims or actions, which are exempt from this Article (unless the Party having the Exempt Claim elects not to treat it as exempt from this Article):

- a. The Association's claim for Assessments, and any action by the Association to collect Assessments.

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- b. An action by a Party to obtain a temporary restraining order or equivalent emergency equitable relief to maintain the status quo and preserve the Party's ability to enforce the provisions of this Declaration.
- c. Enforcement of the easements, architectural control, maintenance, and use restrictions of this Declaration.
- d. A suit to which an applicable statute of limitations would expire within the notice period of this Article, unless a Party against whom the Claim is made agrees to toll the statute of limitations as to the Claim for the period reasonably necessary to comply with this Article.
- e. A dispute that is subject to alternate dispute resolution - such as mediation or arbitration - by the terms of Applicable Law or another instrument, such as a contract or warranty agreement, in which case the dispute is exempt from this Article, unless the Parties agree to have the dispute governed by this Article.

18.1.4 "Respondent" means the Party against whom the Claimant has a Claim.

18.2. **MANDATORY PROCEDURES.** Claimant may not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of its Claim until Claimant has complied with the procedures of this Article.

18.3. **NOTICE.** Claimant must notify Respondent in writing of the Claim (the "Claim Notice"), stating plainly and concisely: (1) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (2) the basis of the Claim (i.e., the provision of the Governing Documents or other authority out of which the Claim arises); (3) what Claimant wants Respondent to do or not do to resolve the Claim; and (4) that the Claim Notice is given pursuant to this Section.

18.4. **NEGOTIATION.** Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within 30 days after Respondent's receipt of the Claim Notice, Respondent and Claimant will meet at a mutually-acceptable place and time to discuss the Claim. At such meeting or at some other mutually-agreeable time, Respondent and Respondent's representatives will have full access to the property that is subject to the Claim for the purposes of inspecting the property. If Respondent elects to take corrective action, Claimant will provide Respondent and Respondent's representatives and agents with full access to the property to take and complete corrective action.

18.5. **MEDIATION.** If the parties negotiate but do not resolve the Claim through negotiation within 60 days from the date of the Claim Notice (or within such other period as may be agreed on by the parties), Claimant will have 30 additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the parties mutually agree. The mediator must have at least 5 years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the 30-day period, Claimant is deemed to have waived the Claim, and Respondent is released and discharged from any and all liability to Claimant on account of the Claim.

18.6. **TERMINATION OF MEDIATION.** If the Parties do not settle the Claim within 30 days after submission to mediation, or within a time deemed reasonable by the mediator, the mediator will



issue a notice of termination of the mediation proceedings indicating that the Parties are at an impasse and the date that mediation was terminated. Thereafter, Claimant may file suit or initiate administrative proceedings on the Claim, as appropriate.

18.7. ALLOCATION OF COSTS. Except as otherwise provided in this Section, each Party bears all of its own costs incurred prior to and during the proceedings described in the Claim Notice, Negotiation, and Mediation sections above, including its attorneys fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator.

18.8. ENFORCEMENT OF RESOLUTION. Any settlement of the Claim through negotiation or mediation will be documented in writing and signed by the Parties. If any Party thereafter fails to abide by the terms of the agreement, then the other Party may file suit or initiate administrative proceedings to enforce the agreement without the need to again comply with the procedures set forth in this Article. In that event, the Party taking action to enforce the agreement is entitled to recover from the non-complying Party all costs incurred in enforcing the agreement, including, without limitation, attorneys fees and court costs.

18.9. GENERAL PROVISIONS. A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not party to Claimant's Claim.

18.10. LITIGATION APPROVAL AND SETTLEMENT. In addition to and notwithstanding the above alternate dispute resolution procedures, the Association may not initiate any judicial or administrative proceeding without the prior approval of Owners of at least 75% of the Lots, except that no such approval is required (1) to enforce provisions of this Declaration, including collection of assessments; (2) to challenge condemnation proceedings; (3) to enforce a contract against a contractor, vendor, or supplier of goods or services to the Association; (4) to defend claims filed against the Association or to assert counterclaims in a proceedings instituted against the Association; or (5) to obtain a temporary restraining order or equivalent emergency equitable relief when circumstances do not provide sufficient time to obtain the prior consents of Owners in order to preserve the status quo. Also, the Association may not initiate any judicial or administrative proceeding against Declarant without the approval of Owners of at least 75% of the Lots. The Board, on behalf of the Association and without the consent of Owners, is hereby authorized to negotiate settlement of litigation, and may execute any document related thereto, such as settlement agreements and waiver or release of claims. This Section may not be amended without the approval of Owners of at least 75% of the Lots and 51% of Eligible Mortgagees, as described in Article 16 above.

#### ARTICLE 19 GENERAL PROVISIONS

19.1. COMPLIANCE WITH LAWS. The Owners hereby covenant and agree that the administration of the Association will be in accordance with the provisions of the Governing Documents and applicable laws, regulations, and ordinances, as same may be amended from time to time, of any governmental or quasi-governmental entity having jurisdiction over the Association or Property.

19.2. HIGHER AUTHORITY. The Governing Documents are subordinate to Applicable Law. Generally, the terms of the Governing Documents are enforceable to the extent they do not violate or conflict with Applicable Law.

19.3. NOTICE. All demands or other notices required to be sent to an Owner or Resident by the terms of this Declaration will be sent by ordinary or certified mail, postage prepaid, to the party's last

known address as it appears on the records of the Association at the time of mailing. If an Owner fails to give the Association an address for mailing notices, all notices may be sent to the Owner's Lot, and the Owner is deemed to have been given notice whether or not the Owner actually receives it.

19.4. LIBERAL CONSTRUCTION. The terms and provision of each Document are to be liberally construed to give effect to the purposes and intent of the Document. All doubts regarding a provision, including restrictions on the use or alienability of property, will be resolved in favor of the operation of the Association and its enforcement of the Governing Documents, regardless of which party seeks enforcement.

19.5. SEVERABILITY; ENUMERATED MATTERS. Invalidation of any provision of this Declaration by judgment or court order does not affect any other provision, which remains in full force and effect. The effect of a general statement is not limited by the enumeration of specific matters similar to the general statement.

19.6. CAPTIONS. In all Governing Documents, the captions of articles and sections are inserted only for convenience and are in no way to be construed as defining or modifying the text to which they refer. Boxed notices are inserted to alert the reader to certain provisions and are not to be construed as defining or modifying the text.

19.7. INTERPRETATION. Whenever used in the Governing Documents, unless the context provides otherwise, a reference to a gender includes all genders. Similarly, a reference to the singular includes the plural, the plural the singular, where the same would be appropriate.

19.8. DURATION. Unless terminated or amended by Owners as permitted herein, the provisions of this Declaration run with and bind the Property, and will remain in effect perpetually to the extent permitted by law.

19.9. CONTROLLING DOCUMENT. If there is a conflict between the provisions of this Declaration and the Plat, the terms of this Declaration will control. "Conflict" means a situation where the application of the language in one document contradicts the language in another document. Conflict does not occur where language in one document is simply more restrictive than language in another document.

19.10. APPENDIXES. The following appendixes are attached to this Declaration and incorporated herein by reference:

- A - Description of Property
- B - Declarant Reservations
- C - Commitments Concerning the Use or Development of Real Estate
- D - Cool Creek Trail Extension Easement



# CHICAGO TITLE

SIGNED on this 23<sup>RD</sup> day of September, 2005.

**CENTEX HOMES,**  
a Nevada general partnership

By: Centex Real Estate Corporation,  
a Nevada corporation,  
its managing general partner

By: [Signature]  
Timothy K. McMahon  
Indianapolis Division President

THE STATE OF INDIANA )  
                                  ) SS:  
COUNTY OF MARION    )

This instrument was acknowledged before me on the 23<sup>RD</sup> day of September, 2005, by Timothy K. McMahon, Indianapolis Division President of Centex Real Estate Corporation, a Nevada corporation, on behalf of the corporation, in its capacity as managing general partner of Centex Homes, a Nevada general partnership, on behalf of the general partnership.

[Signature]  
Notary Public - Signature  
Merry Wiggins  
Notary Public - Printed

My Commission Expires: \_\_\_\_\_  
My County of Residence: \_\_\_\_\_



This document prepared by: Tammy K. Haney, Esquire, Bose McKinney & Evans LLP, 600 East 96th Street, Suite 500, Indianapolis, Indiana 46240.





**APPENDIX A**  
**DESCRIPTION OF PROPERTY**

[TO BE INSERTED]



CHICAGO TITLE

Appendix A

Part of the Southeast Quarter of Section 24, Township 18 North, Range 3 East in Hamilton County, Indiana, described as follows:

Commencing at the Southeast corner of the Southeast Quarter of Section 24, Township 18 North, Range 3 East in Hamilton County, Indiana; thence South 88 degrees 23 minutes 47 seconds West (assumed bearing) on and along the South line of said Southeast Quarter 307.68 feet to the Southwest corner of real estate as described in a deed to Tolpygin in Instrument Number 2002-2496 as recorded in the Office of the Hamilton County Recorder (Tolpygin parcel) and the POINT OF BEGINNING of this description; thence continuing South 88 degrees 23 minutes 47 seconds West 501.26 feet to a point on the East right-of-way line of the Monon Railroad as described in a Quitclaim deed to the City of Carmel per Instrument Number 2000-016680 and Instrument Number 2000-016681 said and a point being on a non-tangent curve to the left having a radius of 1962.00 feet; thence northwesterly on and along said curve and the said right-of-way line an arc distance of 956.29 feet to the extension of the South line of real estate as described in a deed to the Carmel Cemetery Association (Cemetery Parcel) in Deed Book 278, Page 370 as recorded in the Office of the Hamilton County Recorder; thence North 88 degrees 23 minutes 47 seconds East on and along said extension and the South line of said Cemetery Parcel 367.90 feet to a point on the West line of The Ritter's H.P.R. recorded in the Office of the Hamilton County Recorder in Plat Cabinet 2, Slide 562; thence South 00 degrees 11 minutes 45 seconds West on said West line 145.77 feet to the Southwest corner of said Ritter's H.P.R.; thence the following six (6) calls on and along the South line of said Ritter's H.P.R. 1.) North 79 degrees 59 minutes 29 seconds East 170.50 feet; 2.) South 81 degrees 08 minutes 47 seconds East 71.41 feet; 3.) North 67 degrees 57 minutes 12 seconds East 44.54 feet; 4.) North 87 degrees 51 minutes 05 seconds East 101.88 feet; 5.) North 57 degrees 13 minutes 24 seconds East 69.78 feet; 6.) South 60 degrees 35 minutes 56 seconds East 55.18 feet; thence South 00 degrees 21 minutes 44 seconds East 409.53 feet to the Southwest corner of real estate as described in a deed to Leppert & Hensley Mortuary Crematory, Inc. per Instrument Number 2002-61980 as recorded in the Office of the Hamilton County Recorder (Mortuary Parcel); thence North 88 degrees 23 minutes 47 seconds East on and along the South line of said Mortuary Parcel 270.10 feet to a point on the East line of said Southeast Quarter; thence South 00 degrees 21 minutes 44 seconds East on and along said East line 50.00 feet; thence South 88 degrees 23 minutes 47 seconds West 175.80 feet to a point on the Northwest corner of real estate as described in a deed to P.S.I. per Deed Record 231, Page 168 recorded in the Office of the Hamilton County Recorder and a point being on a non-tangent curve to the left having a radius of 1903.08; thence southerly on and along said curve an arc distance of 358.78 feet to the POINT OF BEGINNING, containing in all 12.671 acres, more or less.



CHICAGO TITLE

**APPENDIX B**  
**DECLARANT RESERVATIONS**

**B.1. GENERAL PROVISIONS.**

**B.1.1 Introduction.** Declarant intends the Declaration to be perpetual and understands that provisions pertaining to the initial development, construction, marketing, and control of the Property will become obsolete when Declarant's role is complete. As a courtesy to future users of the Declaration, who may be frustrated by then-obsolete terms, Declarant is compiling the Declarant-related provisions in this Appendix.

**B.1.2 General Reservation and Construction.** Notwithstanding other provisions of the Governing Documents to the contrary, nothing contained therein may be construed to, nor may any Mortgagee, other Owner, or the Association, prevent or interfere with the rights contained in this Appendix that Declarant hereby reserves exclusively unto itself and its successors and assigns. In case of conflict between this Appendix and any other Document, this Appendix controls. This Appendix may not be amended without the prior written consent of Declarant. The terms and provisions of this Appendix must be construed liberally to give effect to Declarant's intent to protect Declarant's interests in the Property.

**B.1.3 Purpose of Development and Declarant Control Periods.** This Appendix gives Declarant certain rights during the Development Period and the Declarant Control Period to ensure a complete and orderly buildout and sellout of the Property, which is ultimately for the benefit and protection of Owners and Mortgagees. Declarant may not use its control of the Association and the Property for an advantage over the Owners by way of retention of any residual rights or interests in the Association or through the creation of any contractual agreements that the Association may not terminate without cause with not more than 90 days' notice.

**B.2. DECLARANT CONTROL PERIOD RESERVATIONS.** For the benefit and protection of Owners and Mortgagees, and for the purpose of ensuring a complete and orderly buildout and sellout of the Property, Declarant will retain control of the Association during the Declarant Control Period, subject to the following:

**B.2.1 Initial Board; Transition to Owners.** During the Declarant Control Period, the Board will consist of 3 persons. Within 60 days after the date 50% of the Lots in the Property or the Additional Land have been conveyed to Owners other than Declarant, the Board will call or hold an annual or special meeting of the Members. At that meeting, the Members must elect 2 additional directors. From and after that election, the Board will consist of 5 directors. Near the end of the Declarant Control Period, Declarant or the Association will give written notice of an annual or special meeting of the Members to an Owner of each Lot at least 10 days before the meeting. For that meeting, Owners of 10% of the Lots constitute a quorum. At that meeting, the terms of all 5 directors expire, and the Members must elect 5 directors. These directors will be elected for staggered 3-year terms. The Board elected at the organizational meeting will elect the officers of the Association not later than 30 days after the end of the Declarant Control Period.

**B.2.2 Officers and Directors.** During the Declarant Control Period, Declarant may appoint, remove, and replace any officer or director of the Association, none of whom need be Members or Owners. Each of the individuals is indemnified by the Association, under Section 11.6, as a "Leader."



B.2.3 Weighted Votes. During the Declarant Control Period, the vote appurtenant to each Lot owned by Declarant is weighted 4 times that of the vote appurtenant to a Lot owned by another Owner. In other words, during the Declarant Control Period, Declarant may cast the equivalent of 4 votes for each Lot owned by Declarant on any issue before the Association. On termination of the Declarant Control Period and thereafter, the vote appurtenant to Declarant's Lots is weighted uniformly with all other votes.

B.2.4 Obligation for Assessments. For each Lot owned by Declarant, Declarant is liable for Special Assessments, Individual Assessments, and Restoration Assessments in the same manner as any Owner. Regarding Regular Assessments, during the Declarant Control Period only, Declarant will provide any funds necessary to cover the difference between the Association's actual cash outlays for Common Expenses and the Regular Assessments received from Owners other than Declarant, and has no obligation to pay Regular Assessments or to contribute to reserves. The accounting for Declarant's contribution must be construed in favor of Declarant. At any time during the Declarant Control Period, Declarant may elect in writing - signed and acknowledged by Declarant - to pay Regular Assessments on each Declarant owned Lot in the same manner as any Owner, in which event Declarant will no longer have an obligation to provide special funding for the Association. On termination of the Declarant Control Period, Declarant must begin paying Assessments on each Declarant-owned Lot according to the Lot's allocated interest for Assessments.

B.2.5 Expenses of Declarant. Expenses related to the completion and marketing of the Property will be paid by Declarant and are not expenses of the Association.

B.2.6 Budget Control. During the Declarant Control Period, the right of Owners to veto Special Assessments or increases in Regular Assessments is not effective and may not be exercised.

B.2.7 Management Contract. If Declarant enters into a professional management contract on behalf of the Association during the Declarant Control Period, the Association has the right to terminate the contract without cause or penalty, but with at least 90 days notice to the manager, at any time after a Board elected by the Owners takes office.

B.3. DEVELOPMENT PERIOD RESERVATIONS. Declarant reserves the following easements and special Declarant rights, exercisable at Declarant's sole discretion, at any time during the Development Period:

B.3.1 Changes in Development Plan. Declarant may modify the initial development plan to respond to perceived or actual changes and opportunities in the marketplace. Modifications may include, without limitation, changes in the sizes, styles, configurations, materials, and appearances of Townhomes, buildings, Lots, and Common Areas.

B.3.2 Expansion. The Property is subject to expansion. During the Development Period, Declarant may - but is not required to - annex any real property that is contiguous with, adjacent to, or within 1,000 feet of any real property that is subject to this Declaration. Declarant will annex real property by subjecting it to the Declaration and the jurisdiction of the Association by recording a supplement or an amendment of this Declaration, executed by Declarant, in the Office of the Recorder of Hamilton County, Indiana. The supplement or amendment of annexation must include a description of the additional real property or a reference to the recorded plat that describes the additional real property. Declarant's right to annex land is for a

term of years and does not require that Declarant own land described in Appendix A at the time Declarant exercises its right of annexation.

**B.3.3 Architectural Control.**

**B.3.3.1. Declarant's Rights Reserved.** During the Development Period, Declarant has the absolute right to serve as or to appoint the Architectural Reviewer. Declarant also has the unilateral right to exercise architectural control over vacant Lots and new Townhome construction in the Property. Neither the Association, the Board, nor a committee appointed by the Association or Board (no matter how the committee is named) may involve itself with the approval of new Townhomes and related improvements on vacant Lots. Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that Declarant has a substantial interest in ensuring that the improvements within the Property enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market Townhomes in the Property. Accordingly, each Owner agrees that - during the Development Period - no improvements will be started or progressed on Owner's Lot without the prior written approval of Declarant, which approval may be granted or withheld at Declarant's sole discretion. In reviewing and acting on an application for approval, Declarant may act in its self-interest and owes no duty to any other person or any organization. Declarant may designate one or more persons (such as Declarant's own employees) from time to time to act on its behalf in reviewing and responding to applications.

**B.3.3.2. Delegation by Declarant.** During the Development Period, Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights under this Article to any person or persons deemed by Declarant to be qualified to exercise architectural control. Any such delegation is at all times subject to the unilateral rights of Declarant (1) to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (2) to veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason.

**B.3.3.3. Modifications.** By way of illustration, Declarant may delegate architectural control over modifications of completed Townhomes on Lots owned by persons other than Declarant to a committee comprised of Owners appointed by Declarant, by the Board, or by the Members. Such committee will serve at the pleasure of Declarant during the Development Period, and may not involve itself with the approval of new Townhomes on vacant Lots, which is exclusively the domain of Declarant.

**B.3.4 Land Transfers.** During the Development Period, any transfer of an interest in the Property to or from Declarant is not subject to any transfer-related provision in the Governing Documents. The application of this provision includes, without limitation, Declarant's Lot take-downs, Declarant's sale of Lots to builders, and Declarant's sale of Lots to homebuyers.

**B.3.5 Amendment.** During the Development Period, Declarant may amend this Declaration and the other Governing Documents, without consent of other Owners or any Mortgagee, for the following limited purposes:

- a. To add real property to the Property.
- b. To withdraw real property from the Property.

- c. To create Lots, easements, and Common Areas within the Property.
- d. To subdivide, combine, or reconfigure Lots.
- e. To convert Lots into Common Areas.
- f. To modify the construction and use restrictions of Article 10 of this Declaration.
- g. To merge the Association with another property owners association.
- h. To comply with requirements of an Underwriting Lender.
- i. To resolve conflicts, clarify ambiguities, and to correct misstatements, errors, or omissions in the Governing Documents.
- j. To enable any reputable title insurance company to issue title insurance coverage on the Lots.
- k. To enable an institutional or governmental lender to make or purchase mortgage loans on the Lots.
- l. To change the name or entity of Declarant.
- m. To change the name of the addition in which the Property is located.
- n. To change the name of the Association.
- o. For any other purpose, provided the amendment has no material adverse effect on any right of any Owner.

B.3.6 Completion. During the Development Period, Declarant has (1) the right to complete or make improvements indicated on the Plat; and (2) an easement and right to erect, construct, and maintain on and in the Common Area, Area of Common Responsibility, and Lots owned or leased by Declarant whatever Declarant determines to be necessary or advisable in connection with the construction, completion, management, maintenance, leasing, and marketing of the Property.

B.3.7 Sales. During the Development Period, Declarant reserves for itself the right to sell or lease any Lot owned by Declarant. Lots owned by Declarant are not subject to leasing or occupancy restrictions or prohibitions contained elsewhere in this Declaration or the other Governing Documents.

***DIFFERENT RULES***

The Developer has rights and privileges to use the property in ways that are not available to other owners and residents.

B.3.8 Promotion. During the Development Period, Declarant reserves for itself an easement and right to place or install signs, banners, flags, display lighting, potted plants, exterior decorative items, seasonal decorations, temporary window treatments, and seasonal landscaping on the Property, including items and locations that are prohibited to other Owners and Residents. Declarant reserves an easement and right to maintain, relocate, replace, or remove the same from time to time within the Property. Declarant also reserves the right to sponsor marketing events - such as open houses, MLS tours, and brokers parties - at the Property to promote the sale of Townhomes.

B.3.9 Offices. During the Development Period, Declarant reserves for itself the right to use Townhomes (including any garages attached to such Townhomes) owned or leased by Declarant or trailers parked on the Property as models, storage areas, and offices for the marketing, management, maintenance, customer service, construction, and leasing of the Property and/or Declarant's developments or other products located outside the Property. Also, Declarant reserves for itself the easement and right to make structural changes and alterations on and to



Townhomes used by Declarant as models, storage areas, and offices, as may be necessary to adapt them to the uses permitted herein. Upon completing its use of such Townhomes, Declarant, at Declarant's sole expense, will restore altered Townhomes to conform to the architectural standards of the Property. The restoration will be done within 120 days after termination of the Development Period.

**B.3.10 Access.** During the Development Period, Declarant has an easement and right of ingress and egress in and through the Property for purposes of constructing, maintaining, managing, and marketing the Property and the Additional Land, and for discharging Declarant's obligations under this Declaration. Additionally, Declarant has a right of entry and access to all Townhomes to perform warranty-related work, if any, for the benefit of the Townhome being entered, adjoining Townhomes, or Areas of Common Responsibility. Requests for entry must be made in advance for a time reasonably convenient for the Owner who may not unreasonably withhold consent.

**B.3.11 Controlled Access.** This Section applies if the Property has a controlled access gate. During the Development Period, Declarant may require that the entry gate be left open to the public during daylight hours (or from 6:30 a.m. to 7:00 p.m., whichever is longer) to ensure access to Lots or to the Additional Land by prospective new home purchasers and contractors to complete construction of townhomes.

**B.3.12 Utility Easements.** During the Development Period, Declarant may grant permits, licenses, and easements over, in, on, under, and through the Property for utilities, roads, and other purposes necessary for the proper development and operation of the Property. Declarant reserves the right to make changes in and additions to the easements on any Lot, as shown on the Plat, to more efficiently or economically install utilities or other improvements. Utilities may include, but are not limited to, water, sewer, trash removal, electricity, gas, telephone, television, and security.

**B.4. COMMON AREAS.** At or prior to termination of the Declarant Control Period, Declarant will convey title to the Common Areas to the Association by deed - with or without warranty. At the time of conveyance, the Common Areas will be free of monetary encumbrances except for the property taxes, if any, accruing for the year of conveyance. Declarant's conveyance of title or ownership is a ministerial task that does not require and is not subject to inspection, evaluation, acceptance, or approval by the Association or the Owners.

**B.5. SUCCESSOR DECLARANT.** Declarant may designate one or more Successor Declarants for specified designated purposes and/or for specified portions of the Property, or for all purposes and all of the Property. To be effective, the designation must be in writing, signed and acknowledged by Declarant and Successor Declarant, and recorded in the Office of the Recorder of Hamilton County. Declarant (or Successor Declarant) may subject the designation of Successor Declarant to limitations and reservations. Unless the designation of Successor Declarant provides otherwise, a Successor Declarant has the rights of Declarant under this Section and may designate further Successor Declarants.

**B.6. ANNEXATION.** During the Development Period, each Owner, by the acceptance of a deed to a Lot, will be deemed to have waived such Owner's right to remonstrate against any permit, application or request made by or to a Municipal Entity to annex the Property or any part of the Property to become a part of the Municipal Entity. The Owner will also be deemed to have consented to such annexation.

[End of Appendix B]

**APPENDIX C**  
**COMMITMENTS CONCERNING THE USE**  
**OR DEVELOPMENT OF REAL ESTATE**



CHICAGO TITLE

APPENDIX C TO DECLARATION OF TRADITIONS ON THE MONON  
GUIDE TO ASSOCIATION'S MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS  
64701.3

Page C-1

## COMMITMENTS CONCERNING THE USE AND DEVELOPMENT OF REAL ESTATE

Buckingham Properties, Inc. (hereafter, "Buckingham"), the contract purchaser of the real estate located in Hamilton County, Indiana, and described in what is attached hereto and incorporated herein by referenced as Exhibit "A" (the "Real Estate"), makes the following Commitments (the "Commitments") to the Plan Commission of the City of Carmel (the "Plan Commission") and the Common Council of the City of Carmel, Indiana (the "Council") for the Traditions on the Monon Planned Unit Development Ordinance.

**Section 1. Cross Reference.** These Commitments are made in connection with approvals obtained under Docket Numbers 04070034Z PUD and Ordinance No. Z-464-04.

**Section 2. Exhibits.** The following exhibits are attached hereto and incorporated herein by reference:

**Exhibit "A".** Attached hereto and incorporated herein by reference as Exhibit "A" is the legal description of the real estate (the "Real Estate");

**Exhibit "B".** Attached hereto and incorporated herein by reference as Exhibit "B" is the conceptual site plan (the "Site Plan");

**Exhibit "C".** Attached hereto and incorporated herein by reference as Exhibit "C" is the Site Plan which depicts by a gray shaded area a portion of the Real Estate Buckingham agrees and consents to dedicate to the City of Carmel to accommodate the Cool Creek Trail Extension to the Monon Trail (the "Land Dedication").

**Section 3. Definitions.** Different words and terms are defined throughout these Commitments and, further, the following definitions shall apply throughout these Commitments:

- 1. Developer.** The term "Developer" shall mean and refer to Buckingham and its successors and assigns.
- 2. Cool Creek Trail Extension.** The term "Cool Creek Trail Extension" shall mean and refer to an extension shown on Exhibit "C" which depicts a trail extension which runs east to west and adjoins the Monon Trail on its eastern border. The Cool Creek Trail Extension does not currently exist. The City of Carmel intends to construct this Cool Creek Trail Extension on the Real Estate as depicted on Exhibit "C" or, in the alternative, the City of Carmel may decide to construct the Cool Creek Trail Extension north of the Real Estate.

CHICAGO TITLE



**Section 4. Commitments.** The Developer agrees and commits to the following:

1. To pay to the City of Carmel a sum not to exceed Eight Thousand Dollars (\$8,000.00) toward participation in the cost the City of Carmel shall incur in constructing the Cool Creek Trail Extension; and
2. To grant to the City of Carmel an access easement for construction of the Cool Creek Trail Extension and a perpetual access easement for ingress and egress to the Cool Creek Trail Extension, if the Cool Creek Trail Extension is constructed on the Real Estate. The Developer agrees and commits to execute the necessary documents in order to complete the grant of easements described herein; and
3. The City of Carmel Parks Department may request that the Developer dedicate, in fee simple, to the City of Carmel the area crosshatched on Exhibit "C" and generally located north of Cool Creek to the northern perimeter boundary of the Real Estate to be utilized by the City of Carmel Parks Department for a public park area. The Developer agrees and commits to execute the necessary documents in order to complete the Land Dedication, as described above.

**Section 5. Binding on Successors**

These Commitments are binding on the Developer, the owner of the Real Estate, each subsequent owner of the Real Estate, and each other person acquiring an interest in the Real Estate, unless modified or terminated by the Commission. These Commitments may be modified or terminated only by a decision of the Plan Commission after a public hearing wherein notice as provided by the rules of the Plan Commission has been made. The provisions of this paragraph 5 notwithstanding, these Commitments shall terminate as to any part or parts of the Real Estate hereafter reclassified (rezoned) from Ordinance No. Z-464-04 on the Town's Official Zone Map to another zoning classification.

**Section 6. Effective Date**

The Commitments contained herein shall be effective upon the occurrence of all of the following events:

1. The adoption of an ordinance by the City Council of Carmel, Indiana, assigning the requested Traditions on Monon PUD classification to the Real Estate pursuant to Ordinance No. Z-464-04;
2. The acquisition of the Real Estate by the Developer or its successors and assigns; and



**EXHIBIT "A"**

Part of the Southeast Quarter of Section 24, Township 18 North, Range 3 East in Hamilton County, Indiana, more particularly described as follows:

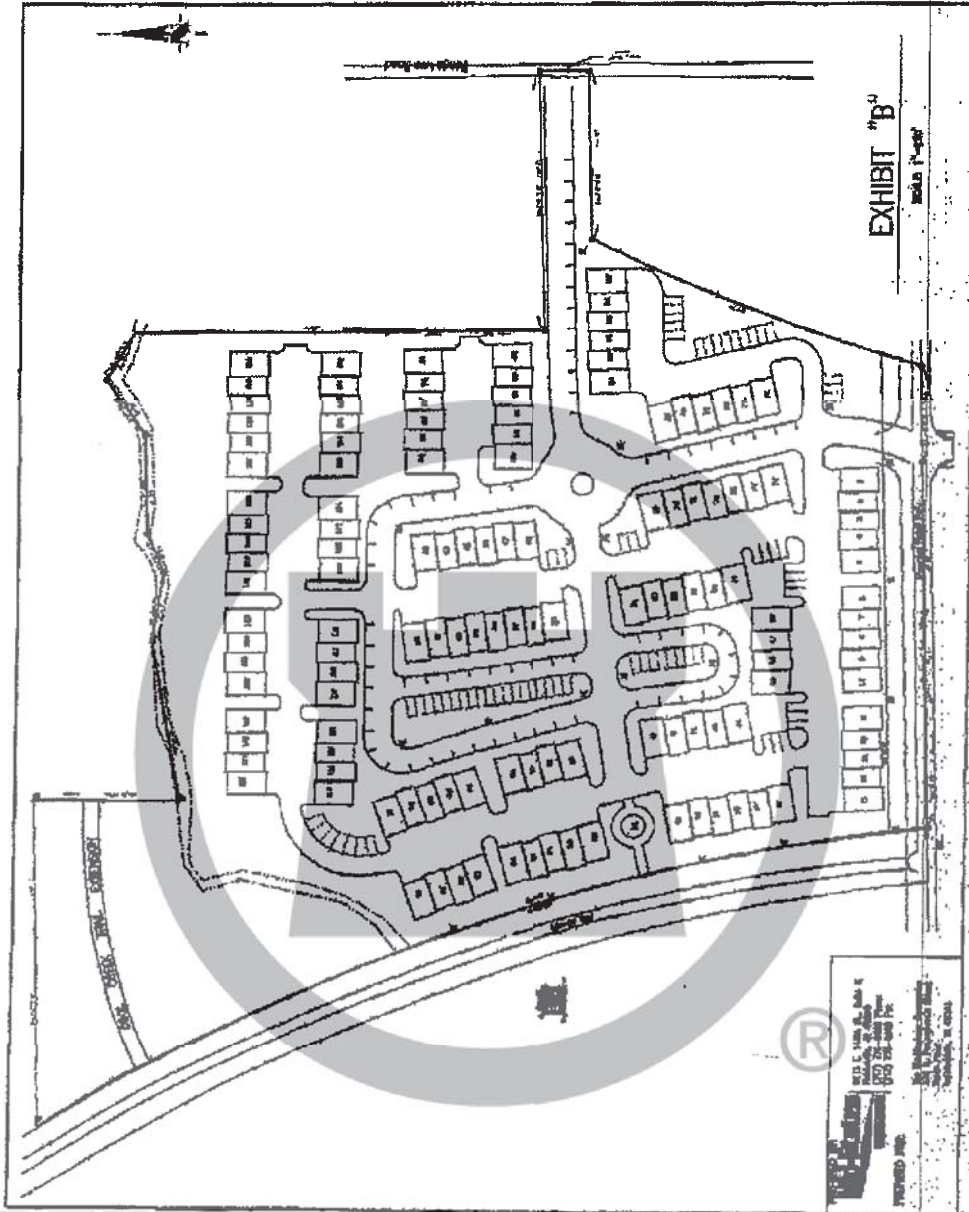
Commencing at the Southeast corner of the Southeast Quarter of Section 24, Township 18 North, Range 3 East in Hamilton County, Indiana; thence South 88 degrees 23 minutes 47 seconds West (assumed bearing) on and along the South line of said Southeast Quarter 307.68 feet to the Southwest corner of real estate conveyed to Tolpygin per deed recorded in the Office of the Hamilton County Recorder as Instrument Number 2002-2496 (Tolpygin parcel) and the POINT OF BEGINNING of this description; thence continuing South 88 degrees 23 minutes 47 seconds West 480.21 feet to a point on the East right-of-way line of the Monon Railroad and the point of curvature of a curve to the left having a radius of 1983.00 feet; thence northwesterly on and along said curve an arc distance of 957.33 feet to the Southwest corner of real estate conveyed to the Carmel Cemetery Association (Cemetery Parcel) per deed recorded in the Office of the Hamilton County Recorder in Deed Book 278, Page 370; thence North 88 degrees 23 minutes 47 seconds East on and along the South line of said Cemetery Parcel 343.14 feet to a point on the West line of The Ritter's H.P.R. recorded in the Office of the Hamilton County Recorder in Plat Cabinet 2, Slide 562; thence South 00 degrees 11 minutes 45 seconds West on said West line 145.77 feet to the Southwest corner of said Ritter's H.P.R.; thence the following six (6) calls on and along the South line of said Ritter's H.P.R. 1.) North 79 degrees 59 minutes 29 seconds East 170.0 feet; 2.) South 81 degrees 08 minutes 47 seconds East 71.41 feet; 3.) North 67 degrees 57 minutes 12 seconds East 44.54 feet; 4.) North 88 degrees 12 minutes 49 seconds East 101.88 feet; 5.) North 57 degrees 13 minutes 24 seconds East 69.78 feet; 6.) South 60 degrees 35 minutes 56 seconds East 33.18 feet; thence South 00 degrees 21 minutes 44 seconds East 409.53 feet to the Southwest corner of real estate conveyed to Leppert & Hensley Mortuary Crematory, Inc. (Mortuary Parcel) per deed recorded in the Office of the Hamilton County Recorder as Instrument Number 2002-61980; thence North 88 degrees 23 minutes 47 seconds East on and along the South line of said Mortuary Parcel 270.10 feet to a point on the East line of said Southeast Quarter; thence South 00 degrees 21 minutes 44 seconds East on and along said East line 50.00 feet; thence South 88 degrees 23 minutes 47 seconds West 175.87 feet to a point on the Northwest corner of real estate conveyed to P.S.I. per deed recorded in the Office of the Hamilton County Recorder as Deed Record 231, Page 168 and the point of curvature of a curve to the left having a radius of 1903.08; thence southerly on and along said curve an arc distance of 358.64 feet to the POINT OF BEGINNING, containing in all 12.21 acres, more or less.

- Subject to the Right-of-way of 136<sup>th</sup> Street
- Subject to the Right-of-way of Range Line Road
- Subject to the Right-of-way of the Monon Railroad.
- Subject to the Right-of-way of the Follett & Morrow Legal Drain Easement.
- Subject to all legal easements, rights-of-way, covenants, and restrictions.

\*Note: This description has been prepared based upon instructions from the client and limited field observations by Mid-States Engineering, LLC. A boundary survey has not been performed by Mid-States Engineering, LLC on the above described area per Indiana Survey Standards as defined in Title 865, Article 1, Rule 12 of the Indiana Administrative Code. In no event will Mid-States Engineering, LLC, its employees, agents, and/or assigns be liable for any damages arising out of the furnishing and/or use of this description.

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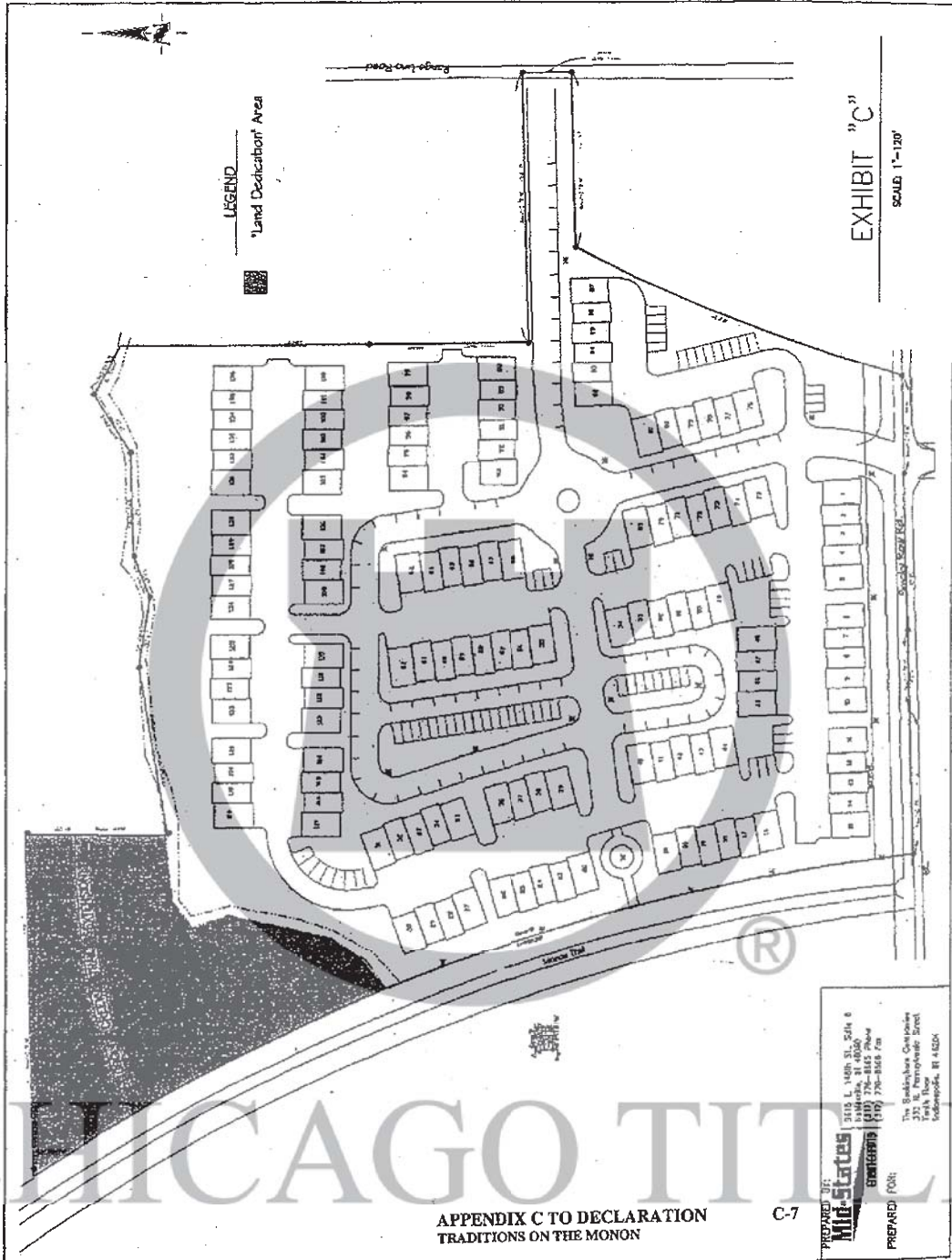




CHICAGO TITLE

APPENDIX C TO DECLARATION  
TRADITIONS ON THE MONON

C-6



Sponsor: Councilor Rattermann

ORDINANCE NO. Z-464-04

AN ORDINANCE OF THE COMMON COUNCIL OF THE  
CITY OF CARMEL, INDIANA  
ESTABLISHING THE  
Traditions on the Monon  
PLANNED UNIT DEVELOPMENT DISTRICT

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

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

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

**Section 1**     **Applicability of Ordinance**

**Section 1.1**     The Official Zoning Map of the City of Carmel and Clay Township, a part of the Carmel/Clay Zoning Ordinance, is hereby changed to designate the land described in Exhibit "A" (the "Real Estate"), as a Planned Unit Development District to be known as the Traditions on the Monon.

**Section 1.2**     Development in the District shall be governed entirely by (i) the provisions of this Traditions on the Monon Ordinance and its exhibits, and (ii) those provisions of the Carmel/Clay Zoning Ordinance specifically referenced in this Traditions on the Monon Ordinance. In the event of a conflict between this Traditions on the Monon Ordinance and the Carmel/Clay Zoning Ordinance or the Sign Ordinance, the provisions of this Traditions on the Monon Ordinance shall apply.

**Section 1.3**     Any capitalized term not defined herein shall have the meaning as set forth in the Carmel/Clay Zoning Ordinance in effect on the date of the enactment of this Traditions on the Monon Ordinance.

**Section 2**    **Permitted Uses**

Permitted uses are townhomes, condominiums and/or multi-family dwelling units.

**Section 3**    **Accessory Buildings and Uses**

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

**Section 4**    **Communication Equipment**. Cell towers shall not be permitted. Home satellite dishes shall be permitted.

**Section 5**    **Platting**

The platting of the Real Estate into smaller tracts shall be permitted, so long as the proposed plat complies with the area requirements set forth below in Section 6, and the creation of a new property line within the Real Estate shall not impose or establish new development standards beyond those specified below in Section 6 for the entirety of the Real Estate. However, the development of any parcel shall conform to the requirements of Section 13 below, and all other applicable requirements contained in this Traditions on the Monon Ordinance.

**Section 6**    **Height and Area Requirements**

**Section 6.1**    **Maximum Building Height**: The maximum Building Height is thirty-eight (38) feet.

**Section 6.2**    **Minimum Building Set Back**: The minimum Set Back from the perimeter boundary line of the Real Estate contiguous with Smokey Row Road shall be fifteen (15) feet, and along the north property line of the Real Estate the minimum Set Back shall be ten (10) feet, along the west property line of the Real Estate the minimum Set Back shall be ten (10) feet, and along the east property line of the Real Estate, the Minimum Set Back shall be ten (10) feet.

**Section 6.3**    **Minimum Building Separation**. The minimum building distance between Buildings, measured from the exterior face of the foundation, shall be ten (10) feet.

**Section 6.4**    **Density**. There shall be a maximum of one-hundred and forty (140) units on approximately 12.21 acres.

**Section 6.5**    **Square Footage of Townhome Units**. The minimum square footage for an individual Townhome unit shall be one thousand four hundred (1,400) square feet, exclusive of any garages.



**Section 7. Conceptual Building Types**

**Section 7.1 Architectural Design Requirements:**

- A. **Roof design:** All roofs, except for open porch roofs, shall have a minimum slope of 12 horizontal to 8 vertical.
- B. **Building rendering and elevations:** Attached hereto and incorporated herein by reference as **Exhibit "B"** are conceptual building renderings of the Buildings to be constructed upon the Real Estate. All Buildings constructed upon the Real Estate shall include Masonry as the primary building materials, excluding but not limited to doors, soffits, trim, windows, gables and roofs.

**Section 8 Landscaping**

Attached hereto and incorporated herein by reference as **Exhibit "C"** is the conceptual landscape plan (hereafter "Conceptual Landscape Plan").

**Section 8.1 Planting Standards.** Landscaping shall be integrated with other functional and ornamental site design elements, where appropriate, such as hardscape materials, paths, sidewalks, or any water features. Deciduous trees planted to satisfy the landscaping requirements of this Ordinance shall have at least a two and one-half inch (2-1/2") Caliper and seven foot (7') height at the time of planting, unless otherwise specified herein or otherwise indicated on the Conceptual Landscape Plan. Evergreen trees shall be a minimum of six feet (6') in height at the time of planting. Shrubs shall be two (2) feet in height at the time of planting. All trees, shrubs and ground covers shall be planted according to accepted horticultural standards. Landscaping materials shall be appropriate to local growing and climatic conditions. Plant suitability, maintenance and compatibility with site construction features are critical factors that should be considered. Plantings should be designed with repetition, structured patterns, and complementary textures and colors, and should reinforce the overall character of the area.

**Section 8.2 Maintenance.** It shall be the responsibility of the owners and their agents to insure proper maintenance of project landscaping approved in accordance with this Traditions on the Monon Ordinance. This is to include, but is not limited to, irrigation and mulching of planting areas, replacing dead, diseased, or overgrown plantings with identical varieties or a suitable substitute, and keeping the area free of refuse, debris, rank vegetation and weeds.

**Section 8.3 Building Base Landscaping.** The building base landscaping around the buildings shall include a minimum of twelve (12) shrubs. Additionally, there shall be a minimum of two (2) shade trees per unit between the unit and the sidewalk, if the necessary area for planting is available. If a shade tree can not be planted between the unit and the sidewalk, that shade tree will be planted at an alternate location on the site.

Section 8.4 Perimeter Planting/Buffer Yard. The perimeter planting and buffer yard planting shall be in accordance with Section 26.04 Perimeter Buffering Requirements of the Zoning Ordinance.

Section 8.5 Interior Plantings. Adjacent to any entry drive, for each one hundred (100) linear foot increment, there shall be a minimum of three (3) shade trees, two (2) ornamental trees and ten (10) shrubs. For any common areas adjacent to a parking area, plantings shall be in accordance with Section 26.04 Perimeter Buffering Requirements of the Zoning Ordinance.

Section 8.6 Tree Conservation. Existing trees as identified on the Conceptual Landscape Plan as "Tree Conservation Area" shall not be removed from the Real Estate except as follows:

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

Section 9 Lighting Requirements

- A. Front of Townhome lighting: Each Townhome shall have one (1) light fixture near the door.
- B. Rear of Townhome lighting: Each Townhome shall have a minimum of one (1) light fixture on the rear of each unit, however the light position(s) shall be consistent among all units.
- C. Street Lighting: Street lighting shall be provided near intersections of streets and alleyways and along the Monon Trail and 136<sup>th</sup> Street.
- D. Light Fixture Renderings: Attached as Exhibit "D" and Exhibit "E", respectively, and referred to herein as the Conceptual Wall Mounted Luminaries and Conceptual Pole Mounted Luminaries are renderings which depict the acceptable types of wall and pole mounted luminaries for the District.

Section 10 Signs and Entry Way Wall

Section 10.1. Ground Signs and Entry Wall.

- A. Type: At each entrance to the development, adjacent to both Smokey Row Road and Rangeline Road, Two (2) Ground/Entryway Signs shall be permitted, as is conceptually depicted on Exhibit "F", which is attached

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hereto and incorporated herein by reference. One (1) entry wall is also permitted, not to exceed fifteen (15) feet in length, as depicted on what is attached hereto and incorporated herein by reference as Exhibit "F".

- B. Maximum Sign Area: Twenty-four (24) square feet each.
- C. Illumination of Sign: External.
- D. Sign Permit: Required.
- E. Fees: Required.

**Section 11** **Parking**

Section 11.1 Minimum Parking: Each Townhome shall contain a two (2) car garage and, in addition, there shall be guest parking provided within on-street parking spaces and other spaces to be provided on the site, as depicted on the Conceptual Plan and incorporated herein by reference as Exhibit "G".

**Section 12** **Homeowners Association and Declaration of Covenants**

Section 12.1 Declaration of Covenants and Homeowners Association: The Developer shall prepare and record a Declaration of Covenants which shall also contain various provisions regarding the Real Estate as determined by the Developer, including, without limitation, provisions for mandatory assessments and maintenance of common areas. The Declaration of Covenants will also provide for the establishment of a Homeowners Association in which membership shall be mandatory.

**Section 13** **Approval Process**

Section 13.1 Approval or Denial of the Primary Plat/Development Plan.

- A. Exhibit "G", which is attached hereto and incorporated herein by reference, shall serve as the Conceptual Plan (the "CP"). However, the CP does not constitute the approved Development Plan and primary plat for the Real Estate, nor does it constitute the approved architecture, design, lighting and landscaping for the Real Estate and the improvements thereon, considered in connection with the Traditions on the Monon Ordinance. Traditions on the Monon shall require further (i) ADLS approval and (ii) Development Plan/primary plat approval. The Final Development Plan approval procedures are set forth below in this Section 13. If there is a Substantial Alteration in the approved ADLS and Development Plan/primary plat, review and approval of the amended plans shall be made by the Commission, or a Committee thereof, pursuant to the Commission's rules of procedure. Minor Alterations may be approved by the Director.