



**NEIGHBORHOOD DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS FOR  
VANDALIA BY DEL WEBB**

The Town of Plainfield, Indiana

THIS DECLARATION (hereafter "Declaration") made this 24 day of March, 2016, by PULTE HOMES OF INDIANA, LLC (hereafter "Declarant");

WITNESSETH, that the following facts are true:

Declarant is the owner of certain real estate, located in Hendricks County, Indiana, which is more particularly described in what is attached hereto and incorporated herein by reference as Exhibit "X" (hereafter "Real Estate"), upon which a residential subdivision known as Vandalia by Del Webb (hereafter "Development") will be developed; and

The real estate described in what is attached hereto and incorporated herein by reference as Exhibit "Y" shall hereafter be referred to as the "Additional Real Estate"; and

Declarant desires to subdivide and develop the Real Estate and Declarant may, in the future, desire to subdivide and develop such portions (or all) of the Additional Real Estate as may be made subject to the terms of this Neighborhood Declaration, as hereinafter provided; and

The term "Property" and "Vandalia by Del Webb" shall hereafter mean and refer to the Real Estate together with such portions of the Additional Real Estate as have from time to time been subjected to this Declaration; and

Vandalia by Del Webb is part of a larger parcel of real estate commonly referred to as Vandalia which was established upon the recording of the "Master Declaration of Covenants, Conditions & Restrictions of Vandalia" with the Office of the Recorder of Hendricks County, Indiana on March 28, 2016, as Instrument Number 201606073, which created

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covenants, easements and restrictions which also apply to this Subdivision (hereafter, "Master Declaration").

Vandalia by Del Webb constitutes a "Neighborhood" as referred to in the Master Declaration.

NOW, THEREFORE, the Declarant hereby declares that the Property and all of the Lots (hereafter defined) in the Property, as they are held and shall be held, conveyed, hypothecated, or encumbered, leased, rented, used, occupied, and improved, are subject to the following restrictions, all of which are declared to be in furtherance of a plan of the improvement and sale of the Property and each Lot situated therein, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property as a whole and each of the Lots situated therein. This Neighborhood Declaration shall run with the Property and shall be binding upon the Declarant, its successors and assigns, and upon the parties having or acquiring any interest in the Property or any part or parts thereof subject to these restrictions. The restrictions shall inure to the benefit of the Declarant and its successors in title to the Property or any part or parts thereof.

As of the date of execution hereof, the Property consists solely of the Real Estate. The Owner of any Lots subject to these restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant, a Builder, or a subsequent Owner of such Lot or (ii) the active occupancy of any Lot, shall accept such deed, execute such contract and/or actively occupy such Lot subject to each restriction and agreement herein contained.

Declarant shall have the right, and hereby reserves on to itself the right, at any time, and from time to time, at any time prior to the expiration of the Development Period, to add to the Property and subject to this Neighborhood Declaration all or any part of the Additional Real Estate. Any portion of the Additional Real Estate shall be added to the Property (and therefore and thereby becomes a part of the Property and subject in all respects to this Declaration and all rights, obligations, and privileges herein) when Declarant places of record in Hendricks County, Indiana an instrument so declaring the same to be part of the Property, which supplementary Declaration (hereafter "Supplementary Declaration") may be as part of a subdivision plat for any portion of the Additional Real Estate, or by an amendment or supplement to this Neighborhood Declaration. Such Supplementary Declaration may contain modifications hereto and additional terms, conditions, restrictions, maintenance obligations, and assessments as may be necessary to reflect the different character, if any, of the Additional Real Estate or improvements to be located thereon.

Upon recording of any such instrument on or before the expiration of the Development Period, the real estate described therein shall, for all purposes, thereafter be deemed a part of the Property and the Owners of any Lots within such real estate shall be deemed for all purposes, to have and be subject to all of the rights, duties, privileges, and obligations of Owners of Lots within the Property. No single exercise of Declarant's right and option to add and expand the Property as to any part or parts of the Additional Real Estate, shall preclude Declarant from thereafter from time to time further expanding and adding to the Property to include other

portions of the Additional Real Estate, and such right and option of expansion may be exercised by Declarant from time to time as to all or any portions of the Additional Real Estate so long as such expansion is accomplished on or before the expiration of the Development Period. Such expansion of the Property is entirely at the sole discretion of the Declarant and nothing contained in this Neighborhood Declaration or otherwise shall require Declarant to expand the Property beyond the Real Estate, or to any portions of the Additional Real Estate which Declarant may voluntarily and in its sole discretion from time to time subject to this Declaration.

## **ARTICLE 1** **DEFINITIONS**

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

Section 1.1 Activity Cards: Those certain cards which are issued by the Association in accordance with Section 2.2 and which confer upon the holder rights of access to and use of recreational facilities, the Plainfield Aquatics Center, and other Common Areas within the Property.

Section 1.2 Age-Qualified Occupant: Any individual who is 55 years of age or older and who occupies a Dwelling Unit. The terms “occupy”, “occupies”, or “occupancy” shall mean staying overnight in a particular Dwelling Unit for at least ninety (90) days in a consecutive twelve (12) month period.

Section 1.3 Articles of Incorporation or Articles: The Articles of Incorporation of Vandalia by Del Webb Homeowners Association, Inc., as filed with the Secretary of State of the State of Indiana, as amended from time to time.

Section 1.4 Association: Vandalia by Del Webb Homeowners Association, Inc., an Indiana nonprofit corporation, its successors or assigns. The Association constitutes a “Neighborhood Association” as that term is used in the Master Declaration.

Section 1.5 Base Assessment: Assessments levied on all Dwelling Units subject to assessment under Article 8 to fund Common Expenses for the general benefit of all Dwelling Units.

Section 1.6 Board of Directors or Board: The body responsible for administration of the Association, selected as provided in the By-Laws and serving the same role as a board of directors under Indiana corporate law.

Section 1.7 Builder: Any Person which purchases one or more parcels of land within the Property for subdivision, development, construction of homes and/or resale in the ordinary course of such Person’s business.

Section 1.8 By-Laws: The By-Laws of the Association, as amended from time to time.

Section 1.9 Charges: The Base Assessment, Aquatics Assessment, Benefitted Assessments, any Special Assessment levied by the Association and/or any other charges or amounts which an Owner is required to pay or for which an Owner is liable under this Neighborhood Declaration or the By-Laws.

Section 1.10 Town: The Town of Plainfield, Indiana or its successors.

Section 1.11 Common Area: Those areas (i) designated on current and future Plats as a "Block", "Common Area", or "C.A.", and (ii) any other areas designated by the Declarant for the common use and enjoyment of the residents of the Property. The Common Area shall generally include community wide recreational facilities, open space, detention areas, wetlands, and green areas. The Declarant may from time to time make additional real estate subject to this Declaration as Common Area pursuant to Article 7.

Section 1.12 Common Expenses: The expenses of administration (including management and professional services), operation, maintenance, repair, replacement, landscaping and snow removal of the Common Area; the cost of maintenance, repair and replacement, streetlights, trails, or other improvements which are part of the Common Area; the cost of insurance, water, electricity, telephone, gas and other necessary utility expenses for the Common Area; real estate taxes and assessments levied or assessed against any portion of the Common Area; the cost of, and the expenses incurred for, the maintenance, repair and replacement of personal property acquired and used by the Association in connection with the operation of the Common Area; the cost of maintenance of the landscaping of parkways within or adjoining Common Area, if any, on those portions of dedicated rights of way which are adjacent to the Property; any other expenses designated as Common Expenses by this Neighborhood Declaration; if not specifically charged to the Owners, the cost of waste removal and scavenger services to the Property; and any other expenses lawfully incurred by the Association for the common benefit of all of the Owners.

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

Section 1.14 Declarant: Pulte Homes of Indiana, LLC, an Indiana limited liability company, or any successor, successor-in-title, or assign who takes title to any portion of the Real Estate or the Additional Real Estate for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant.

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

- (a) The end of the Development Period;

(b) The expiration of thirty (30) years from the date of recording hereof; or

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

Section 1.16 Design Guidelines: The written design and construction guidelines and application and review procedures applicable to the Property promulgated and administered pursuant to Article 9.

Section 1.17 Development Area: The real estate described in Exhibit Y hereto with all improvements thereon and rights appurtenant thereto. Exhibit Y is attached hereto for informational purposes only and no covenants, conditions, restrictions, easements, liens or changes shall attach to any part of the real estate described therein, except to the extent that (i) portions thereof are described in Exhibit X and expressly made subject to the provisions of this Declaration as part of the Property, and (ii) portions thereof not described in Exhibit X are annexed and subjected to this Declaration per the terms of Article 8 below.

Section 1.18 Development Period: The period of time commencing upon the recording of this Declaration and ending at such time as Declarant no longer holds or controls title to any portion of the real estate which is legally described in Exhibits X and Y hereto, as Exhibits X and Y may be amended from time to time.

Section 1.19 Dwelling Unit: A Residence as well as the Lot on which the Residence is constructed.

Section 1.20 Governing Documents: A collective term including the Master Declaration, this Neighborhood Declaration, the By-Laws of the Association, the Articles of Incorporation of the Association, the Design Guidelines, and rules or regulations adopted by the Board, as any such documents may be amended from time to time.

Section 1.21 Lot. Any parcel of real estate designated on a Plat and intended as a building pad for the construction of a Residence.

Section 1.22 Home Owner: An Owner other than the Declarant or a Builder.

Section 1.23 Master Plan: Declarant's conceptual land use plan for the development of Vandalia by Del Webb, as it may be amended from time to time, which plan shall include the real estate described in Exhibit X and may include a portion or all of the Development Area and other real estate. Inclusion of real estate on the Master Plan shall not, under any circumstances, obligate Declarant to subject such real estate to this Neighborhood Declaration as part of the Properties, nor shall the exclusion of real estate from the Master Plan bar its later inclusion therein.

Section 1.24 Member: A Person entitled to membership in the Association pursuant to Section 3.2.

Section 1.25 Modifications Committee or MC: The committee established by the Board pursuant to Section 9.2 to review applications for modifications to Dwelling Units.

Section 1.26 Mortgage: A first mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Dwelling Unit. A “Mortgagee” shall refer to a beneficiary or holder of a Mortgage.

Section 1.27 Owner: One (1) or more Persons, which may include the Declarant or a Builder, who hold the record title to a Dwelling Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation.

Section 1.28 Person: A natural person, corporation, partnership, limited liability company, trustee, or any other legal entity.

Section 1.29 Plat: A plat of subdivision for a portion of the Property, which is recorded in the Public Records.

Section 1.30 Property: The real estate described on Exhibit X, as amended from time to time, including such additional real estate as is annexed to this Declaration and added to Exhibit X after the initial recording hereof by a Supplemental Declaration, as provided in Article 7.

Section 1.31 Public Records: The Office of the County Recorder of Hendricks County, Indiana.

Section 1.32 PUD Ordinance: The “Commitments Concerning the Use or Development of Real Estate”, including petition Ordinance #PUD-13-002 entitled “Vandalia PUD, a Proposed Mixed Use Community in the Town of Plainfield”, as finally enacted by the Town of Plainfield Plan Commission. The PUD Ordinance was filed with the Public Records on November 14, 2014, as Instrument Number 201424114. The PUD Ordinance is incorporated herein by reference as if fully set forth.

Section 1.32 Regulated Work: As defined in Section 9.1.

Section 1.33 Residence: Any structure to be constructed on a Lot and intended exclusively for occupancy by a single family together with all appurtenances thereto, including private garage and recreational facilities usual and incidental to the use of a single-family residential lot.

Section 1.34 Resident or Qualified Resident: Any of the following Persons occupying a Dwelling Unit:

(a) Any Age-Qualified Occupant;

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

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

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

Section 1.35 Special Assessment: Assessments levied in accordance with Section 8.5.

Section 1.36 Special Declarant Rights: As defined in Article 8.

Section 1.37 Special Services: As defined in Section 5.3.

Section 1.38 Supplemental Declaration or Supplement: An amendment to this Declaration filed in the Public Records pursuant to Article 7 which subjects additional real estate to this Neighborhood Declaration as part of the Property, identifies any Common Area, and Dwelling Units within the additional real estate, amends Exhibit X to reflect the addition of such real estate and the characterization thereof and/or imposes, expressly or by reference, additional covenants, conditions, restrictions, easements or obligations on the real estate described in such instrument.

Section 1.39 Voting Member: As defined in Section 3.3.

## **ARTICLE 2**

### **PROPERTY RIGHTS**

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

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

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

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

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

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

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

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

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

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

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

(k) The requirement that access to and use of recreational facilities within the Property as well as the Plainfield Aquatics Center shall be subject to the presentation of an Activity Card (or its equivalent) issued by the Association for such purpose; and

(l) The rights of the Declarant hereunder.

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

Section 2.2 Activity Cards. The Declarant and, after the Applicable Date, the Association, shall allocate Activity Cards to Qualified Residents and others based upon such terms, policies and conditions as the Declarant and, thereafter, the Board of Directors of the Association, shall deem appropriate. Activity Cards (or their equivalents) shall entitle the bearer to use all recreational facilities within Vandalia by Del Webb and the Plainfield Aquatics Center, subject to the payment of admission fees or other use fees charged to Qualified Residents holding Activity Cards.

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

Section 2.4 Condemnation: In the case of a taking or condemnation by competent authority of any part of the Common Area owned by the Association, the proceeds awarded in such condemnation shall be paid first to satisfy any indebtedness secured by a mortgage or other lien encumbering such portion of the Common Area, and the balance shall be paid to the Association. The proceeds, if any, paid to the Association, together with any reserve being held for such part of the Common Area, shall be used first to restore or replace any improvements taken or condemned, and the balance, if any, shall, in the discretion of the Board, either (i) be distributed to the Owners



who have the right to use such Common Area and their respective Mortgagees, as their interests may appear, in equal shares, or (ii) be used for the mutual benefit of such Owners, as determined by the Board in its reasonable discretion; provided, however, that during the Development Period any such action shall be consented to by the Declarant.

Section 2.5 Age Restriction: Vandalia by Del Webb is intended to provide housing primarily for persons 55 years of age or older, subject to the rights reserved to Declarant in Section 13.9. The Property shall be operated as an age restricted community in compliance with all applicable state and federal laws. No person under 19 years of age shall stay overnight in any Dwelling Unit for more than ninety (90) days in any consecutive twelve (12) month period. Subject to Section 13.09, each Dwelling Unit, if occupied, shall be occupied by at least one (1) individual 55 years of age or older; provided, however, that once a Dwelling Unit is occupied by an Age-Qualified Occupant, other Qualified Residents of that Dwelling Unit may continue to occupy the Dwelling Unit, regardless of the termination of the Age-Qualified Occupant's occupancy. Notwithstanding the above, at all times, at least eighty percent (80%) of the Dwelling Units within the Property shall be occupied by at least one (1) individual 55 years of age or older. The Board shall establish, and may amend or revise, policies and procedures, from time to time, as necessary to maintain its status as an age restricted community under state or federal law. The provisions of this Section may be enforced by the Association by an action in law or in equity, including, without limitation, an injunction requiring specific performance hereunder.

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

### **ARTICLE 3** **MEMBERSHIP AND VOTING RIGHTS**

Section 3.1 Function of Association: The Association shall be the entity responsible for management, maintenance, operation and control of the Common Area; the primary entity responsible for compliance with and enforcement of the Governing Documents; and, to the extent provided for in Article 9, shall be responsible for administering, monitoring compliance with, and

enforcing the Design Guidelines. The Association shall perform its functions in accordance with the Governing Documents and the laws of the State of Indiana.

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

Section 3.3 Voting:

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

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

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

Section 3.5 Means of Communication. To avoid the costs of paper, postage and handling that would otherwise be incurred when distributing documents or information to Owners by regular mail, and also to be more efficient in transmitting information that Owners can receive even when out of town, the Association will, to the extent possible, make Association matters available online through the Association's website and/or via email or similar means, including but not limited to:

- (A) Notices of Annual or Special Meetings
- (B) Proxies and Ballots
- (C) Proposed and finalized Annual Budgets
- (D) Nominees for the Board of Directors for an upcoming election
- (E) List of current members of the Board of Directors
- (F) Recorded copy of this Declaration and all amendments thereto
- (G) The By-Laws and Articles of Incorporation and all amendments thereto
- (H) The Design Guidelines
- (I) Architectural Control Request for Change form
- (J) Rules and Regulations adopted by the Board of Directors
- (K) Name of the Association's property management company
- (L) Invoices, statements or coupon booklets for payment of Assessments
- (M) Voting through a secure website or equivalent
- (N) Payment of Assessments through a secure website or equivalent

In lieu of the above, any Owner can choose to receive documents by regular mail by notifying the Association in writing.

**ARTICLE 4**  
**RIGHTS AND OBLIGATIONS OF THE**  
**ASSOCIATION/VARIOUS DISCLOSURES AND DISCLAIMERS**

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

Section 4.2 Personal Property and Real Property for Common Use: The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant and its designees may convey to the Association improved or unimproved real estate, or interests in real estate, personal property and leasehold and other property interests, regardless of whether such real estate is Common Area. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions of record or as set forth in the deed or other instrument transferring such property to the Association. Upon written request of

Declarant, the Association shall reconvey to Declarant any unimproved portions of the Property originally conveyed to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

**Section 4.3 Rulemaking and Enforcement:**

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

(b) **Enforcement.** If permitted under Indiana law, the Board, or the covenants compliance committee, if any, established pursuant to the By-Laws, may impose sanctions for violations of the Governing Documents, after notice and a hearing in accordance with procedures adopted by the Board of Directors. The Board shall establish a range of penalties for violations of the Governing Documents, with violations of the Neighborhood Declaration, unsafe conduct, and harassment or intentionally malicious conduct treated more severely than other violations. Such sanctions may include, without limitation:

(i) imposing a graduated range of reasonable monetary fines which, until paid, shall constitute a lien upon the violator's Dwelling Unit. In the event that any Resident, guest or invitee of a Dwelling Unit violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; provided, however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board;

(ii) suspending an Owner's right to vote;

(iii) suspending any Person's right to use any recreational facilities within the Common Area; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Dwelling Unit;

(iv) suspending any services provided by the Association to an Owner or the Owner's Dwelling Unit if the Owner is delinquent in paying any assessment or other Charge owed to the Association; and

(v) levying Benefitted Assessments to cover costs incurred in bringing a Dwelling Unit into compliance in accordance with Section 8.6(b).

In addition, the Board may elect to enforce any provision of the Governing Documents by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations in accordance with any applicable ordinance or requiring immediate abatement of violating activity) or by suit at law or in equity to enjoin any violation or to recover

monetary damages, or both, without the necessity of compliance with the procedures set forth in the By-Laws.

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

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

(i) the Association's position is not strong enough to justify taking any or further action;

(ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(iv) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

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

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

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

**Section 4.5 Governmental, Educational, and Religious Interests:** During the Development Period, the Declarant may designate sites within the Property for government, education or religious activities and interests, including without limitation, fire, police, and utility facilities, schools and educational facilities, houses of worship, parks and other public facilities. The sites may include Common Area in which case the Association shall take whatever action is required

with respect to such site to permit such use, including dedication or conveyance of the site, if so directed by Declarant.

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

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

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

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

The Association, the managing agent, or the Declarant shall not in any way be considered insurers or guarantors of security within the Property. None of the foregoing shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, entry gate, patrol, burglar alarm system or other security system or measures, including

any mechanism or system for limiting access to the Property, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform all Residents, tenants, guests, and invitees of the Owner's Dwelling Units that the Association, its Board of Directors and committees, the Declarant, and the managing agent are not insurers or guarantors of security within the Property. Each Owner and all Residents, tenants, guests, and invitees of the Owner's Dwelling Unit assume all risks for loss or damage to persons, to Dwelling Units, and to the contents of Dwelling Units and further acknowledge that the Association, its Board and committees, the managing agent, and the Declarant have made no representations or warranties, nor has any Owner, or any Resident, tenant, guest, or invitee of any Dwelling Unit relied upon any representations or warranties, expressed or implied, relative to any entry gate, patrolling of the Property, any fire protection system, burglar alarm system, or other security systems recommended or installed or any security measures undertaken within the Property.

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

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

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

Each Owner (by virtue of his or her acceptance of title to his or her Dwelling Unit) and each other Person having an interest in or lien upon, or making any use of, any portion of the Property (by virtue of accepting such interest or lien or making such use) shall be bound by this Section and shall be deemed to have waived any and all rights, claims, demands and causes of action against the Association, the managing agent, and the Declarant, their directors, officers,

committee members, employees, agents, contractors, subcontractors, successors and assigns arising from or connected with any matter for which the liability has been disclaimed.

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

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

**Section 4.11 View Impairment:** Neither the Declarant nor the Association guarantees or represents that any view from any Dwelling Unit will be preserved without impairment. Neither the Declarant nor the Association shall have the obligation to relocate, prune, or thin trees or other landscaping except as set forth in Article 5. The owner of any real estate which is not part of the Property shall have the right to make alterations, additions or improvements to such owner's real estate in its sole and absolute discretion, including, without limitation, to add trees and other landscaping to the open space from time to time subject to applicable law. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

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

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

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



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

## **ARTICLE 5** **MAINTENANCE**

Section 5.1 Association's Responsibility: The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

- (a) all Common Areas and all improvements located thereon including, without limitation, all buildings, clubhouses, trails, water features, lighting, and landscaping;
- (b) all perimeter walls or fences constructed by the Declarant, regardless of whether such wall or fence is located on the Common Area, a Dwelling Unit, or a Lot;
- (c) if, and to the extent, required under applicable Town ordinances, landscaping, street lights and signage within public rights-of-way abutting the Property;
- (d) landscaping and other flora within any public and private utility easements and scenic easements within the Common Area, subject to the terms of any easement agreement relating thereto;
- (e) any additional property included within the Common Area as may be required under the terms of this Neighborhood Declaration, any Supplemental Declaration, any Plat, or any contract or agreement for maintenance thereof entered into by, or which is binding upon, the Association;
- (f) any property or facility owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members and identified by written notice from the Declarant to the Association until the Declarant revokes such privilege by written notice to the Association;
- (g) mailboxes installed by Declarant;
- (h) any landscaping and other flora located on a Dwelling Unit or Lot, including, but not limited to (i) grass cutting, (ii) lawn fertilizing, (iii) mulching of all landscape beds once a year, and (iv) maintenance of landscaping;

(i) removal of snow, which has accumulated beyond two (2) inches in depth from streets, driveways and front walkways on a Dwelling Unit; and

(j) all trails and other improvements installed by the Declarant.

(k) Pursuant to the requirements of the PUD Ordinance, the Association shall be responsible for snow removal from the streets, sidewalks and driveways throughout the Del Webb neighborhood, as well as the maintenance, upkeep and replacement of mailboxes, the maintenance of street trees located within the street rights-of-way, and leaf removal from the streets, sidewalks and driveways. The Association shall further be responsible for all electricity costs associated with operation of street lights within the neighborhood.

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

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

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

Section 5.2 Owner's Responsibility: Each Owner shall maintain his or her Dwelling Unit and all other improvements comprising the Dwelling Unit in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association hereunder or pursuant to a Supplemental Declaration. Without limiting the foregoing, the Board may require an Owner to water portions of the Owner's Lot, at the Owner's expense.

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

In addition to any other enforcement rights, if an Owner fails to perform properly his or her maintenance responsibility, the Association shall have the right to come upon such Owner's Dwelling Unit and perform such maintenance responsibilities and assess all costs incurred as a

Benefitted Assessment in accordance with Section 8.6. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

Section 5.3 Special Services / Bulk Service Agreement:

(a) To the extent provided for in a Supplemental Declaration or by action of the Board, from time to time, the Association may furnish "Special Services" to a Dwelling Unit or a group or groups of Dwelling Units. The cost of furnishing a Special Service shall be assessed to the benefitted owner as a Benefitted Assessment under Section 8.8; however, at least once during each year, each Owner shall be given the right to choose not to receive any Special Service which would otherwise be furnished to the Owner's Dwelling Unit, in which case the Owner shall not be charged for the Special Service and the Owner shall be responsible for furnishing the Special Service to the Owner's Dwelling Unit at the Owner's sole cost and expense. The Association may also, by Board action and without a vote by the Members, discontinue providing a Special Service. If the Association is required to furnish a Special Service to a Dwelling Unit, but if a portion of the Dwelling Unit with respect to which the Special Service is to be furnished is obstructed with temporary or permanent improvements, personal property or other obstructions which make it difficult or impractical for the Association's agent or contractor to furnish the Special Service, the Association shall not be required to furnish the Special Service and, in such case, the Owner shall be responsible for furnishing the Special Service to such portion of the Dwelling Unit at the Owner's sole cost and expense, so that the appearance of such portion of the Dwelling Unit is similar to that of those portions where the Special Services are furnished by the Association.

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

Section 5.4 Standard of Performance: Maintenance, as used in this Article, shall include, without limitation, repair and replacement as needed, as well as such other duties, which may include irrigation, as the Board may determine necessary or appropriate to satisfy the Community-Wide Standard. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants, as determined by the Board.

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

Notwithstanding anything to the contrary contained herein, none of the Association, any Owner, or the managing agent shall be liable for property damage or personal injury occurring on, or arising out of, the condition of property which it does not own unless, and only to the extent that, it has been negligent in the performance of its maintenance responsibilities.

Section 5.5 Alterations, Additions or Improvements: Alterations, additions or improvements to the Common Area may be made only pursuant to action of the Board. The cost of any such alterations, additions or improvements to Common Area shall be charged to all Owners of Dwelling Units in equal amounts for each Dwelling Unit. However, any proposed alteration, addition or improvement to Common Area which would result in a charge to a Dwelling Unit of more than five hundred dollars (\$500) per year for each Owner unless: (1) the Board holds at least two (2) Association meetings of the Members concerning the proposed expenditure; and (2) the expenditure is approved by the affirmative vote of at least two-thirds (2/3) of the Owners. The Board shall give notice of the first such Association meeting to each member of the Association at least ten (10) calendar days before the date the meeting occurs. The cost of an alteration, addition or improvement made pursuant to this Section shall be paid either from reserves or by way of a special assessment, all as more fully provided in Article 8 hereof.

## **ARTICLE 6**

### **INSURANCE AND CASUALTY LOSSES**

#### Section 6.1 Association Insurance:

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

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

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

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

(iv) Directors’ and officers’ liability coverage;

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

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

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

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

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 6.1(a). In the event of an insured loss, the deductible shall be treated as a Common Expense. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one (1) or more Owners or Residents, or their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible as a Benefitted Assessment against such Owner(s) and their Dwelling Units pursuant to Article 8.

All insurance coverage obtained by the Board shall:

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

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

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

(iv) contain an inflation guard endorsement;

(v) include an agreed amount endorsement, if the policy contains a co-insurance clause;

(vi) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Area or membership in the Association;

(vii) provide a waiver of subrogation under the policy against each Owner and each Resident;

(viii) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one (1) or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and

(ix) include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one (1) or more individual Owners, unless such Owner is acting within the scope of its authority on behalf of the Association.

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

(i) a waiver of subrogation as to any claims against the directors, committee members, officers, employees, and the Association's manager, the Owners, Residents and their respective tenants, servants, agents, and guests;

(ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(iv) an endorsement requiring at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(v) a cross liability provision; and

(vi) a provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Damage and Destruction. Immediately after damage or destruction to all or any part of the Property covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

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

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

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

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

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

Each Owner further covenants and agrees that if the Owner is required to carry property insurance for his or her Dwelling Unit, in the event of damage to or destruction of structures on or comprising his Dwelling Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 9, regardless of whether the insurance proceeds are sufficient to pay the cost of such work. Alternatively, the Owner shall clear the Dwelling Unit and maintain the Dwelling Unit in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

## **ARTICLE 7**

### **ANNEXATION AND WITHDRAWAL OF PROPERTY**

Section 7.1 Annexation: During the Development Period, the Declarant may unilaterally subject to the provisions of this Declaration as part of the Property any or all portion or portions of the Development Area, as amended from time to time. The Declarant reserves the right, but shall not be obligated, to amend Exhibit Y to add thereto additional real estate which is adjacent

to the Development Area or separated from such real estate by a dedicated right of way, or other real estate which is dedicated to or owned by a governmental entity. Any portion of the Development Area, which is not made part of the Property, may be developed and used for any purposes not prohibited by law, including, without limitation, a commercial development or as a residential development, which is not part of Vandalia by Del Webb.

Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the real estate described in Exhibits X or Y and that such transfer is memorialized in a written instrument executed by Declarant and filed in the Public Records. Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any or all portion or portions of the Development Area, or any other real estate in the vicinity of Vandalia by Del Webb owned by Declarant or an affiliate of the Declarant in any manner whatsoever.

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

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

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

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



## **ARTICLE 8**

### **ASSESSMENTS**

**Section 8.1 Creation of Assessments:** The Association may levy assessments against each Dwelling Unit for Association expenses as the Board may specifically authorize from time to time. There shall be three (3) types of assessments: (a) Base Assessments to fund Common Expenses for the general benefit of all Dwelling Units; (b) Aquatic Center Assessments; (c) Special Assessments; and (d) Benefited Assessments. Whenever the term “Charge” or “Charges” is used in this Declaration, it shall mean all of the types of assessments. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Property, is deemed to covenant and agree to pay these Charges.

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

The Association shall, upon request by an Owner, furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid and any delinquent amount. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee up to and including \$150.00 for the issuance of such certificate.

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

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

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

(b) the amount of all actual expenditures incurred by the Association during the fiscal year, including any reserve contributions for such year, but excluding all non-cash

expenses such as depreciation or amortization, all expenditures and reserve contributions for making additional capital improvements or purchasing additional capital assets, and all expenditures made from reserve funds.

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

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

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

Section 8.3 Computation of Base Assessment: Not less than sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget covering the Common Expenses estimated to be incurred during the coming year. The budget shall include a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 8.4, but shall not include expenses incurred during the Declarant Control Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs.

The Base Assessment shall also include the "Neighborhood Assessment" as described in the Master Declaration and which is applicable to Vandalia by Del Webb. This Neighborhood Assessment shall prorated equally among all of the Dwelling Units in Vandalia by Del Webb, regardless of the size of the Dwelling Unit.

The Base Assessment shall be levied against the Dwelling Units subject to assessment based upon the size of the Dwelling Units. There shall be two (2) rates of the Base Assessment: one for the 54' wide Lots, and the other for the 47' wide Lots. Collectively, the Base Assessment shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including contributions to reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Dwelling Units subject to assessment on the first day of the fiscal year for which the budget is prepared and the number of Dwelling Units reasonably anticipated to become subject to assessment during the fiscal year.

During the Development Control Period, without any approval or vote by the Members, the Board of Directors shall fix the amount of the Base Assessment in advance of the effective date of such assessment. Written notice of Base Assessments and such other assessments as the Board of Directors shall deem appropriate shall be sent to every Owner subject thereto. During the Development Control Period, the Board shall be entitled to increase the Base Assessment for that year if it should determine that the estimate or current assessment is insufficient for that year, provided that the Board shall give at least thirty (30) days advance notice thereof to the Owners.

After the expiration of the Development Control Period, the annual budget must reflect the estimated revenues and expenses for the budget year, and the estimated surplus or deficit as of the end of the current budget year. The Association shall provide each Owner with: (1) a copy of the proposed annual budget; or (2) written notice that a copy of the proposed annual budget is available upon request at no charge to the Owner. At the same time, the Association shall provide each Owner with a written notice of the amount of any increase or decrease in the Base Assessment paid by the Owners for both rates (based upon the width of the Lots) that would occur if the proposed annual budget is approved. After all of the foregoing take place, the Association shall hold a meeting pursuant to the following paragraph.

After the expiration of the Development Control Period, and subject to the following paragraph, the Association budget must be approved at a meeting of the members by a majority of the Members of the Association in attendance at a meeting called and conducted in accordance with the requirements of this Declaration, the Articles of Incorporation and the By-Laws. For purposes of this meeting, a Member is considered to be in attendance at the meeting if the Member attends: (1) in person; (2) by proxy; or (3) by any other means allowed under Indiana law or under this Declaration, the Articles of Incorporation or the By-Laws.

If the number of Members in attendance at the meeting held under the paragraph above does not constitute a quorum as defined in the By-Laws of the Association, the Board may adopt an annual budget for the Association for the ensuing year in an amount that does not exceed one hundred ten percent (110%) of the amount of the last approved Association annual budget.

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

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

judgment in determining an adequate amount of reserves, the amount of the reserve fund shall be considered adequate.

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

Section 8.5 Aquatic Center Assessments: In addition to the Base Assessments, the Board of Directors or Declarant shall levy an aquatic center assessment to pay for the mandatory membership fees of the Plainfield Aquatic Center. All residents (not just Owners) within Vandalia by Del Webb shall be mandatory members of the Aquatic Center by virtue of the agreement between the Declarant, the Association, and the Town of Plainfield. Per that agreement, during the first ten years (commencing on the date of occupancy of the first Dwelling Unit that is not a model), the cost for membership for residents who are 55 years of age or older will be 50% of the published "senior rate" for the Plainfield Aquatic Center. Presently, the Aquatic Center has a rate structure applicable to: (a) legally married, senior couples who shall pay 50% of the published senior married couples rate; (b) two or more non-married, senior residents living in the same Dwelling Unit who shall each pay 50% of the published senior individual rate; and (c) one single senior resident of a Dwelling Unit who shall pay 50% of the published senior individual rate. Residents of a Dwelling Unit who are less than 55 years of age will also be mandatory members of the Aquatic Center, subject to the rates established by the Aquatic Center. Thus, the Aquatic Center Assessment shall vary from Dwelling Unit to Dwelling Unit, depending upon the number and ages of the residents of each Dwelling Unit. Each Owner shall be responsible to notify the Association whenever there is a change in resident age category or the number of residents residing in the Owner's Dwelling Unit. The Town will remit one invoice per quarter to the Association for the full amount of fees payable by the Owners and residents within Vandalia by Del Webb, and the Association will remit payment directly to the Aquatic Center. Such amounts shall thus be over and above, and in addition to, the Base Assessment, payable by all applicable Owners. The legal Owner of record of a Dwelling Unit shall be responsible for, and must remit to the Association, the full amount of the Aquatic Center Assessments attributable to the residents of such Owner's Dwelling Unit, regardless of whether any non-owner resident of that Dwelling Unit reimburses said Owner. So long as a resident maintains his or her primary residency within Vandalia by Del Webb (i.e., more than 180 days in a one year period), such resident shall be liable for the full amount of the Aquatic Center Assessment. Likewise, if a Owner list their Dwelling Unit for sale and moves out, the Owner is still liable for payment of the full amount of the Aquatic Center Assessment. Notwithstanding the foregoing, the Declarant, the Association and the Town reserve the right to terminate said agreement at any time, without penalty, upon sixty (60) days written notice.

Section 8.6 Special Assessments: In addition to the Base Assessments and the Aquatics Assessments, the Board of Directors or Declarant may levy a special assessment payable at two different rates (depending upon the size of the Dwelling Unit in the manner described above in Section 8.3) for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain or for operating deficits which the Association may from time to time incur, provided, however, that after the expiration of the Development Control Period, such assessment shall have

the assenting vote of more than fifty percent (50%) of the total possible votes that may be cast by all Members of the Association. The votes shall be cast either in proxy or in person at a meeting duly called for such purpose. Written notices for such meetings shall be sent and voting quorums required as set forth in the By-Laws of the Association. The Declarant shall not be liable for paying any special assessments under this Section 8.6.

**Section 8.7 Benefitted Assessments:** The Board may levy “Benefitted Assessments” against particular Dwelling Units for expenses incurred or to be incurred by the Association, as follows:

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

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

**Section 8.8 Creation of Lien and Personal Obligation:** The Declarant for each Dwelling Unit hereby covenants, and each Owner of a Dwelling Unit by acceptance of a deed therefor (whether or not it shall be so expressed in any such deed or other conveyance) shall be and is deemed to covenant and hereby agrees to pay to the Association all Charges made with respect to the Owner or the Owner’s Dwelling Unit. Each Charge, together with interest thereon, late charges, and reasonable costs of collection (including attorney’s fees), if any, as hereinafter provided, shall be a continuing lien upon the Dwelling Unit against which such Charge is made and also shall be the personal obligation of the Owner of the Dwelling Unit at the time when the Charge becomes due. The lien or personal obligation created under this Section shall be in favor of and shall be enforceable by the Association.

**Section 8.9 Effect of Nonpayment of Assessments; Remedies of the Association.** Except for Declarant and its designated successors or any Builder, no Owner may exempt himself or herself from paying Charges or any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Areas, by non-use of the Aquatic Center, or by abandonment of the Dwelling Unit or Lot belonging to such Owner. Except for Declarant and its designated successors or any Builder, each Owner shall be personally liable for the payment of all applicable Charges. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Charges when due, the lien for such assessment on the Owner’s Dwelling Unit and Lot may be foreclosed by the Board for and on behalf of the Association as provided by law. Upon the failure of an Owner to make payments of any Charges within ten (10) days after such are due, the Board, in its discretion, may:

- (i) Impose a late charge, which will be considered an addition to the assessment, in an amount to be determined by the Board;
- (ii) Suspend such Owner's right to use the Common Areas within the Development;
- (iii) Suspend such Owner's right (and the right of any other residents within such Owner's Dwelling Unit) to use the Plainfield Aquatics Center; and
- (iv) Suspend such Owner's right to vote if the Owner is more than six (6) months delinquent.

In any action to foreclose the lien for any Charges, the Owner and any occupant of the Dwelling Unit shall be jointly and severally liable for the payment to the Association of reasonable rental for such Dwelling Unit, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Dwelling Unit and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid Charges. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Charges without foreclosing or waiving the lien securing the same. In connection with any effort to collect or in any action to recover any Charge, regardless of whether litigation is initiated, the Board, for and on behalf of the Association, shall be entitled to recover from the Owner of the Dwelling Unit, not only the delinquent Charges, but also all late charges imposed, all court costs, all costs of collection, charges, fees and expenses incurred by the Association with respect to such collection effort or action, including but not limited to charges, costs, fees or other expenses incurred by the Association to a managing agent (if any) for administering, monitoring or processing delinquent Owners' accounts, and reasonable attorney's fees. The Association need not accept any tender or a partial payment of any Charge, or any installment of any Charge, and all costs, expenses, charges and attorney fees attributable thereto, and any acceptance of any such tender shall not be deemed to be a waiver of the Association's right to demand and receive full payments thereafter. In addition, the Board shall have the power to adopt by Board resolution additional rules and regulations or delinquency procedures.

Section 8.10 Lien for Charges Subordinated to Mortgages: The lien for a Charge, provided for in Section 8.8, shall be subordinate to a Mortgage on the Dwelling Unit which was recorded prior to the date that the lien for any such Charge attached. Except as hereinafter provided, the lien for Charges shall not be affected by any sale or transfer of a Dwelling Unit. Where title to a Dwelling Unit is transferred pursuant to a decree of foreclosure of the Mortgage or by deed or assignment in lieu of foreclosure of the Mortgage, such transfer of title shall extinguish the lien for unpaid Charges, which became due prior to the date of the transfer of title. However, the transferee of the Dwelling Unit shall be personally liable for his or her share of the Charges with respect to which a lien against his or her Dwelling Unit has been extinguished pursuant to the preceding sentence where such Charges are reallocated among all the Owners pursuant to a subsequently adopted annual or revised Base Assessment, Aquatic Center Assessment, Benefitted Assessment, Special Assessment, and non-payment thereof shall result in a lien against the transferee's Dwelling Unit, as provided in this Article.

Section 8.11 Date of Commencement of Assessments: The obligation to pay assessments shall commence as to each Dwelling Unit on the first day of the month following: (a) the month in which the Dwelling Unit is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base Assessment levied on each Dwelling Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Dwelling Unit.

Section 8.12 Failure to Assess: Failure of the Board to fix assessment amounts or rates or to post, deliver or mail each Owner an assessment notice shall not be deemed to be a waiver, modification, or release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments, the Aquatic Center Assessments, and Benefitted Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

Section 8.13 Exempt Property: Any property dedicated to and accepted by any governmental authority or public utility shall be exempt from payment of Base Assessments, Aquatic Center Assessments, Benefitted Assessments and Special Assessments. In addition, the Declarant and/or the Association shall have the right, but not the obligation, to grant exemptions to certain Persons qualifying for Section 501(c) status under the Internal Revenue Code so long as such Persons own property subject to this Declaration for purposes listed in Section 501(c).

Section 8.14 Resale Fee:

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

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

(c) Purpose. Resale Fees shall be used for purposes which the Association Board deems beneficial to meet the general operating needs of the Association. By way of example and not limitation, Resale Fees may be used to assist the Association or one or more tax-exempt entities in funding operating and maintenance costs for recreational

facilities, common areas open space preservation and all other funding needs for operating the Association.

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

(i) by or to the Developer;

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

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

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

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

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

Section 8.15 New Member Fee: As an additional funding source to cover administrative costs of membership transfer, the Association shall collect a "New Member Fee" of three hundred fifty dollars (\$350.00) upon each transfer of title by Declarant to a purchaser for value of a Dwelling Unit. The New Member Fee shall be paid at the closing of the transfer of title and shall be secured by the Association's lien for assessments. The New Member Fee shall not be considered as advance payment of any other assessments or Charges.

Section 8.16 Approval of Certain Contracts; Meeting; Vote by the Members. The Board may not enter into any contract that would result in a Special Assessment or the increase in the existing Base Assessment payable by the affected Owner in the amount of more than five hundred dollars (\$500) per year for each affected Owner unless: (1) the Board holds at least two (2) Association meetings of the Owners concerning the contract; and (2) the contract is approved by the affirmative vote of at least two-thirds (2/3) of the affected Owners. The Board shall give notice of the first such Association meeting to each member of the Association at least ten (10) calendar days before the date the meeting occurs.

The provisions in this Section do not apply to a contract entered into by a Board that would resolve, settle, or otherwise satisfy an act of enforcement against the Association for violating a state or local law.



Section 8.17 Borrowing Money; Approval by the Members. The Association may not borrow money during any calendar year on behalf of the Association in an amount that exceeds the greater of:

- (1) five thousand dollars (\$5,000) during any calendar year; or
- (2) if the Association operated under an annual budget in the previous calendar year, an amount equal to at least ten percent (10%) of the previous annual budget of the Association;

unless borrowing the money is approved by the affirmative vote of a majority of the members of the Association voting under this provision. A vote held under this provision must be conducted by paper ballot. The Association shall distribute paper ballots to persons eligible to vote at least thirty (30) days before the date the votes are to be opened and counted. Votes cast under this provision shall be opened and counted at a public meeting held by the Association. None of the provisions and requirements in this Section shall apply to money borrowed by the Association that is needed to: (a) resolve, settle, or otherwise satisfy an act of enforcement against the Association for violating a state or local law; or (b) address an emergency that affects the public health, safety, or welfare.

## **ARTICLE 9** **ARCHITECTURAL STANDARDS**

Section 9.1 General: For purposes hereof, “Regulated Work” shall consist of and include excavating, filling, grading, installation or alteration of landscaping, construction of a building, driveway, walkway, fence, porch, patio, deck, balcony, sign or other advertising or promotional devices or any other temporary or permanent improvement to any portion of the Property or any modification, alteration, major repair, renovation, addition or removal of or to any of the foregoing which is visible from outside of a Dwelling Unit. Regulated Work shall not include repainting the exterior of a structure in accordance with the originally approved color scheme or rebuilding of a damaged Dwelling Unit in accordance with originally approved plans and specifications. Regulated Work shall also not include work done by the Declarant during the Development Period.

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

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

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

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

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

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

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

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

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

#### Section 9.4 Submission of Plans and Specifications:

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

(b) In reviewing each submission, the Reviewing Entity may consider whatever factors it deems relevant. The Declarant or the MC, as applicable, may require relocation of native plants within the construction site or the installation of an irrigation system for the landscaping including the natural plant life on the Dwelling Unit as a condition of approval of any submission.

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

(c) If construction does not commence on a project for which Plans have been approved within one hundred twenty (120) days of such approval, such approval shall be deemed withdrawn,

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

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

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

Section 9.6 Variance: The Reviewing Entity may authorize, in writing, variances from its guidelines and procedures, but only: (a) in accordance with duly adopted rules and regulations, (b) when unique circumstances dictate, such as unusual topography, natural obstructions, hardship or aesthetic or environmental considerations, and (c) when construction in accordance with the variance would be consistent with the purposes of the Declaration and compatible with existing and anticipated uses of adjoining properties. Inability to obtain, or the terms of, any governmental approval, or the terms of any financing shall not be considered a hardship warranting a variance. Notwithstanding the above, during the Development Period, the MC may not authorize variances without the written consent of the Declarant.

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

Declarant, the Association, the Board, any committee, or member of any of the foregoing shall not be held liable for soil conditions, drainage or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition or quality of work of any contractor or its subcontractors, employees or agents, whether or not Declarant has approved or featured such contractor as a builder in Vandalia by Del

Webb ; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Dwelling Unit.

Furthermore, the MC shall review the elevations ONLY of any proposed Dwelling Unit or other improvements such that the MC shall not be liable for any alleged deficiencies concerning the height or placement of any improvements. Thus, the Declarant, the Association, the Association, and the MC shall not be responsible for anything related to height, setbacks, grade, finished floor or other elevations, drainage, or home position upon a Lot. The Town and applicable building ordinances shall control such matters.

In all matters, the Declarant, the Board, the MC, and the members of each shall be defended and indemnified by the Association as provided in Section 4.6.

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

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

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

The Association shall be primarily responsible for enforcement of this Article 9. If, however, in the discretion of the Declarant, the Association fails to take appropriate enforcement

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

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

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

Section 10.1 Signs: No sign shall be erected within the Property without the written consent of the Board, except those required by law, including posters, circulars and billboards; provided, one (1) "for sale" (but not "for rent" or "for lease") sign of a design and size prescribed by Declarant or, after the end of the Development Period, the MC may be displayed on a Dwelling Unit being offered for sale if approved pursuant to Article 9. If permission is granted to any Person to erect a sign within the Property, the Declarant or MC, as applicable, shall have the right to restrict the size, color, lettering, and placement of such sign. The Declarant shall have the right to erect signs as they, in their discretion, deem appropriate, including, without limitation, "for sale", entry and directional signs.

Section 10.2 Vehicles and Parking: Only normal passenger vehicles are permitted to be parked within the Property. Normal passenger vehicles include automobiles, vans, motorcycles, mini-bikes, sport utility vehicles, and trucks with a maximum load capacity of one ton or less. Boats or other watercraft, campers, recreational vehicles, trailers of any kind, temporary storage units, dumpsters, buses, mobile homes, commercial or business trucks or vans, or any other vehicles other than normal passenger vehicles shall not be permitted to be parked or stored anywhere within the Property, unless they are:

- (A) parked or stored completely enclosed within the Owner's garage; or
- (B) parked or stored upon the Owner's Lot for no more than two (2) weeks per year total; or
- (C) the Owner receives the Board of Directors' approval upon a showing of extenuating circumstances. The Board's approval may include such conditions as deemed appropriate by the Board of Directors.

Commercial vehicles are vehicles, regardless of size, on which commercial lettering or equipment is visible and is being used for commercial purposes. No junk or disabled vehicle or other vehicle on which current registration plates are not displayed shall be kept in the Property, except as may be completely enclosed within a garage. No repair work shall be done within the

Property on any vehicles, including passenger vehicles, except as may be completely enclosed within a garage.

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

Section 10.4 Animals and Pets: No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other customary household pets in reasonable numbers may be kept subject to rules and regulations adopted by the Board of Directors and provided that they are not kept, bred, or maintained for any commercial purpose. The owners of such permitted pets shall confine them to their respective Lots such that they will not be a nuisance. Owners of dogs shall so control or confine them so as to avoid barking which will annoy or disturb adjoining Owners. There shall be no "tie outs", exterior dog runs, crates, houses or cages for pets of any kind allowed on the Lot. An Owner shall be fully liable for any injury or damage to persons or property, including the Common Areas, caused by his or her pet. All pets not confined by fences (or approved invisible pet containment) within the Lot, shall be on leashes when walked. The Owner shall be responsible for the cleaning of any Common Area or within the Lot made dirty by his or her pet's excrement, and shall be fully liable for the expenses of any cleaning not performed by the Owner. Any pet which, in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from the Property upon ten (10) days' written notice from the Board to the respective Owner. The appropriate governmental authorities shall have an easement across the Property to enforce local animal control laws and ordinances..

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

Section 10.6 Unsightly or Unkempt Conditions: All portions of a Lot and Dwelling Unit outside of enclosed structures shall be kept in a clean and tidy condition at all times. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Dwelling Unit so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other portion of the Property. No other nuisance shall be permitted to exist or operate upon any Dwelling Unit so as to be offensive or detrimental to any other portion of the Property. No activities shall be conducted upon or adjacent to any Dwelling Unit or within improvements constructed thereon which are or might be unsafe or hazardous to any Person or property. No open fires shall be lighted or permitted on the Property, except in a barbecue unit while attended and in use for cooking purposes or within a safe and well designed

interior fireplace. No composting shall be permitted at any time. No Owner shall engage in any activity which materially disturbs or destroys the vegetation, wildlife, or air quality within the Property or which result in unreasonable levels of sound or light pollution.

Section 10.7 Antennae: Per the PUD Ordinance, satellite dishes of no more than two (2) feet in diameter are the only exterior antennae permitted. However, no such satellite dish shall be erected, used or maintained outdoors and above ground, whether attached to a building or otherwise, on any part of the Property, including Lots, without the written approval of the Committee, which approval shall not be unreasonably withheld; provided, however, that any such device may be installed and maintained on any Lot without the necessity of such written approval if: (a) it is not visible from the neighboring Lots, streets or Common Area; or (b) the device is virtually indistinguishable from structures, devices, or improvements, such as heat pumps, air-conditioning units, barbecue grills, patio furniture, and garden equipment, which are not prohibited by these covenants or the rules and regulations of the Association, or (c) it is a satellite dish one (1) meter (approximately 39”) or less in diameter and not affixed to the roof of a residence; or (d) if prohibition of the installation, use, and maintenance of such device is specifically preempted and superseded by applicable governmental authority.

Declarant and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus (of any size) for a master antenna, cable, or other communication system for the benefit of all or any portion of Vandalia by Del Webb , should any master system or systems require such exterior apparatus.

Section 10.8 Fences and Dog Runs: No wall, dog run, animal pen, or fence of any kind shall be constructed on any Lot, except as approved in accordance with Article 9.

Section 10.9 Exterior Lighting: Except for seasonal holiday decorative lights, which may be displayed between November 15 and January 15 only, all exterior lights must be approved in accordance with Article 9 of this Declaration.

Section 10.10 Temporary Structures: Tents, shacks, or other structures of a temporary nature shall not be permitted on any Lot, except as approved in accordance with Article 9 or as may be authorized by the Declarant during initial construction within the Property. Temporary structures used during the construction or repair of a Dwelling Unit or other improvements shall be removed immediately after the completion of construction or repair.

Section 10.11 Storage: Storage of furniture, fixtures, appliances, machinery, equipment or other goods and chattels not in active use on the Common Area, or on any portion of a Dwelling Unit which is visible from outside the Dwelling Unit shall not be permitted, except as approved in accordance with Article 9. Any and all forms of detached outbuildings or accessory buildings, including but not limited to, mini-barns, sheds, storage sheds, animal quarters, and play houses on any Lot, are prohibited, unless the same are necessary or incident to the Declarant’s or Builder’s business or activities upon the Property.



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

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

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

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

Section 10.15 Business Use: No Lot or Lots shall be used by an Owner, other than a Builder or Declarant, for any purpose other than as a single-family residence, except that a home occupation, which satisfies the following definition as well as all requirements of the applicable zoning ordinance, may be permitted: any use conducted entirely within the Residence and participated in solely by a member of the immediate family residing in said Residence, which use is clearly incidental and secondary to the use of the Residence for dwelling purposes and does not change the character thereof and in connection with which there is: (a) no sign or display that will indicate from the exterior that the Residence is being utilized in whole or in part for any purpose other than that of a dwelling; (b) no commodity sold upon the premises; (c) no person is employed other than a member of the immediate family residing in the Residence; (d) such office or business generates no significant number of visits or unreasonable parking usage (both as determined by the Board of Directors) by clients, customers or other persons related to the business; and (e) no manufacture or assembly operations are conducted. Provided however, that in no event shall the following or similar activities be conducted or considered to be a permitted Home Occupation:

child day care, barber shop, styling salon, animal hospital, or any form of animal care or treatment such as dog trimming, or any other similar activities.

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

The leasing of a Dwelling Unit shall not be considered a business or trade within the meaning of this subsection. "Leasing", for purposes of this Declaration, is defined as regular, exclusive occupancy of a Dwelling Unit by any person other than the Owner, for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. Dwelling Units may be leased only in their entirety. No fraction or portion may be leased. There shall be no subleasing of Dwelling Units or assignment of leases unless prior written approval is obtained from the Board. All leases shall be in writing. A copy of each executed lease by an Owner which identifies the tenant (but which may have the rental amount deleted) shall be provided to the Board of Directors by the Owner within thirty (30) days after execution.

No transient tenants may be accommodated in a Dwelling Unit, and all leases shall be for an initial term of no less than six (6) months, except with the prior written consent of the Board.

Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Dwelling Unit Owner within ten (10) days of execution of the lease. All leases shall be made expressly subject and subordinate in all respects to the terms of this Declaration, the By-Laws, and any rules and regulations promulgated by the Board of Directors, as amended, to the same extent as if the tenant were an Owner and a member of the Association; and shall provide for direct action by the Association and/or any Owner against the tenant with or without joinder of the Owner of such Lot. If such provision is not in the lease, it will be deemed to be in such lease. The Owner shall supply copies of such legal documents to the tenants prior to the effective date of the lease. The Board may adopt additional reasonable rules regulating leasing and subleasing.

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

Section 10.17 Trash Containers and Collection: No garbage or trash shall be placed or kept on any Dwelling Unit, except in covered containers of a type, size and style which are approved in accordance with Article 9 or as required by the applicable governing jurisdiction and, if applicable, the private collection contractor. In no event shall such containers be maintained so as to be visible from outside the Dwelling Unit unless they are being made available for collection and then only for the shortest time reasonably necessary to effect such collection. Trash in approved containers shall be set out no more than 24 hours prior to anticipated removal by the refuse provider. Containers shall be placed back in the garage within 24 hours of collection by the refuse provider and shall not be visible any other time. All rubbish, trash, or garbage shall be removed from the Dwelling Units and shall not be allowed to accumulate thereon. No outdoor incinerators or compost piles shall be kept or maintained on any Lot.

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

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

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

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

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

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

Section 10.24 Irrigation/Wells: No sprinkler or irrigation system of any type which would draw water from creeks, streams, rivers, lakes, ponds, wetlands, canals or other ground or surface waters within the Property shall be installed, constructed or operated within the Property unless installed by the Declarant or the Association. All sprinkler and irrigation systems shall be subject to approval in accordance with Article 9 of this Declaration. Private wells are prohibited on the Property. The provisions of this Section shall not apply to wells or irrigation systems installed by Declarant or the Town.

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

Section 10.26 Air Conditioning Units: Except as may be permitted by the Board or its designee, no window air conditioning units or window fans may be installed in any Unit.

Section 10.27 Artificial Vegetation, Exterior Sculpture, and Similar Items: No artificial vegetation shall be permitted on the exterior of any portion of the Property. Exterior sculpture, fountains, flags, and similar items must be approved in accordance with Article 9 of this Declaration or be in compliance with rules and regulations adopted by the Board of Directors.

Section 10.28 Notice of PUD Ordinance: Notice is hereby given of the PUD Ordinance and other laws or codes that may be relevant to the Associations' operations and administration which are deemed to be incorporated herein by this reference.

Section 10.29 Stormwater Effects: The development of the Property has been planned with several stormwater detention basins that are generally designated for open space and recreational uses. Portions of the Common Area and adjacent areas may be within the regulated flood plain as determined in accordance with Federal Emergency Management Agency guidelines. During and after storm events, certain portions of the Common Area such as detention basins and walking trails may be inundated and unavailable for recreational use.

Section 10.30 Exterior Lights. Except on Lots on which there is maintained a sales office or model home by the Declarant or a Builder, no exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Dwelling Unit.

Section 10.31 Electric Bug Killers. Electric bug killers, "zappers", and other similar devices shall not be installed at a location or locations which result in the operation thereof becoming a nuisance or annoyance to other Owners, and shall be operated only when outside activities require the use thereof and not continuously.

Section 10.32 Vacant Lots. It shall be the duty and obligation of the Owner of a vacant Lot to maintain such Lot and mow the lawn thereof. Declarant and the Association shall have the right, but not the duty, to enter upon each vacant Lot and to maintain the appearance thereof by cutting weeds, mowing grass, trimming trees, removing debris, installing erosion control devices, and performing any other act reasonable under the circumstances. The Owner shall be responsible for payment of all such expenses upon demand and the Declarant or the Association, as the case may be, shall have a lien on such Lot for the payment of such expenses, together with attorneys fees and all other costs and expenses of litigation and collection which may be incurred in connection therewith.

Section 10.33 Awnings. Except on Lots on which there is maintained a sales office or model home by the Declarant or a Builder, no awnings or patio covers will be permitted anywhere on the Property unless approved in advance by the MC or in compliance with the Design Guidelines. All approved awnings and patio covers must be kept in good repair and attractive in appearance.

Section 10.34 HVAC Units. No heat pumps, air conditioning units or gas meters will be installed in the front of the Residence.

Section 10.35 Solar Panels. No solar panels shall be permitted on any Dwelling Unit or upon any Lot unless approved in advance by the MC.

Section 10.36 Shingles. Pursuant to the requirements of the PUD Ordinance, all Residences must have 25 year shingles.

Section 10.37 Overhangs. Pursuant to the requirements of the PUD Ordinance, all Residences must have a minimum of 12” roof overhangs, or 8”overhangs if brick is provided to the ridge line. Overhangs must be on all elevations.

Section 10.38 Parking Restrictions. Pursuant to the requirements of the PUD Ordinance, in addition to the vehicle and parking restrictions described above in Section 10.2, overnight parking is restricted to guest parking and may not occur for three (3) consecutive days. Resident parking is limited to the driveways and garages.

Section 10.39 Mailboxes. All mailboxes and posts will initially be installed by the Declarant or a Builder. Mailboxes shall be standard as to size, location, post, design, height, material, composition and colors. After initial installation, the Association shall maintain, repair and replace the mailboxes and posts as part of the common expenses of the Association. No Owner shall be permitted to remove or alter the mailbox and post associated with such Owner’s Lot.

Notwithstanding the above, if a “cluster” mailbox or mail station is required by applicable regulatory authorities, such system shall negate the above paragraph and the Association shall perform the necessary maintenance, repair and replacement as part of the common expenses of the Association.

Section 10.40 Aquatic Center Rules. All Owners and residents shall at all times comply with the rules and regulations established by the Plainfield Aquatic Center.

Section 10.41 Golf Carts. There is a Town of Plainfield Ordinance (Ordinance No. 19-2015) governing the use and operation of golf carts on certain streets and roadways within the Town’s jurisdiction. The Board, at its sole discretion, may permit the use and operation of golf carts throughout the community. However, to the extent that the use and operation of golf carts are permitted, Owners shall be subject to the Plainfield Ordinance and any amendments or changes thereto, as well as any other state or local regulations or laws that apply to the use of golf carts.

## **ARTICLE 11** **EASEMENTS**

Section 11.1 Easements of Encroachment: The Declarant reserves to itself and grants to the Association and to each Dwelling Unit reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Dwelling Unit and any adjacent Common Area and between adjacent Dwelling Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in

accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

Section 11.2 Easements for Drainage and Utilities:

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

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

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

(b) There is hereby reserved to the Declarant during the Development Period, the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any real estate described on Exhibits X or Y.

Section 11.3 Easements to Serve Additional Property: During the Development Period, the Declarant hereby reserves for itself and its duly authorized agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the Development Area, whether or not such real estate is made part of the Property. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic

connected with development of such real estate. Declarant further agrees that if the easement is exercised for permanent access to such real estate and such real estate or any portion thereof benefiting from such easement is not made subject to this Declaration, the Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along any roadway providing access to such real estate.

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

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

Section 11.6 Easements for Maintenance and Enforcement: The Declarant hereby grants to the Association and its authorized agents, a perpetual easement and right to enter all portions of the Property, including each Lot and Dwelling Unit to (a) perform its maintenance responsibilities under Article 5, and (b) make inspections to ensure compliance with the Governing Documents. Except in emergencies, entry into a structure on a Dwelling Unit shall be only during reasonable hours and after notice to and permission from the Owner. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Association at its expense.

The Declarant grants to the Association an easement and the right to enter a Dwelling Unit to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Governing Documents. All costs incurred, including reasonable attorneys' fees, shall be assessed against the violator as a Benefitted Assessment.

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

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

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

Section 11.10 Landscaping Easement Granted to the Master Association. It is desirable to assure the uniformity of appearance of the grass and landscaping that are visible from Vandalia Boulevard. To achieve that goal, the Master Association shall mow the grass and maintain and replace landscape features such as trees, shrubs, mulch, and other plantings that are not only within the Vandalia Boulevard right-of-way pursuant to the terms of the Master Declaration, but also on and within some portions of the Common Areas that are shown on the Plats of the Neighborhoods that comprise the entire Vandalia community, including Vandalia by Del Webb. Thus, the Master Association will provide such services on some portions of the Common Area parcels that belong to the Vandalia by Del Webb Association. It is the intent of this provision that if, by way of example, a mound is located such that it roughly runs parallel to Vandalia Boulevard, the Master Association will maintain that portion which runs from the street curb up to the top or crest of the mound and then down to the bottom (or "toe") of the rear of the mound. The applicable Neighborhood Association (in this case, the Vandalia by Del Webb Association) will then maintain the remaining portion of its Common Area that is "beyond", or further than, that point.

The Boards of Directors of the Master Association and the Vandalia by Del Webb Association shall attempt to mutually agree upon the line of demarcation (or boundaries) of the exact areas to be maintained by each association. If the Boards cannot agree, the decision by the Board of Directors of the Master Association shall control.

There is hereby reserved a blanket, non-exclusive easement over the Common Areas of Vandalia by Del Webb in favor of the Master Association and its agents to perform the work and achieve the purposes of this provision. All expenses incurred by the Master Association pursuant



to this Section 3.3 shall be deemed to be general common expenses of the Master Association, in combination with the expenses incurred by the Master Association with respect to the other Neighborhoods that comprise the entire Vandalia community.

The Master Association agrees to indemnify, defend, and hold harmless the Vandalia by Del Webb Association and its directors, officers, members, and its managing agent from and against any and all loss, liability, and/or damage, including reasonable attorney's fees and legal costs, due to injury (including death) to any person or damage to any property that may occur or be alleged to have occurred as a result, directly or indirectly, from the performance of the Master Association's work performed under this Section, and from any material or equipment furnished in connection therewith, or from the negligence, acts, omissions or willful misconduct of the Master Association or its agents, servants, employees, representatives and subcontractors, regardless of whether such injury or damage is caused in part by the contributory negligence or acts or omissions of the Vandalia by Del Webb Association, its manager, or any of their officers, directors, agents or employees. The Master Association further agrees that it will indemnify and hold the Vandalia by Del Webb Association harmless from any and all liability to third parties occasioned, injured, or affected by the Master Association's performance or non-performance of the work described in this Section.

The provisions of this Section 11.10 shall control over any conflicting provisions contained in this Neighborhood Declaration of Covenants, Conditions & Restrictions for Vandalia by Del Webb or the Plats for Vandalia by Del Webb.

Section 11.11 Lake Maintenance Easement Reserved to Master Association. The Del Webb Neighborhood Association shall be responsible for the upkeep, maintenance and repair of the Lake Areas within Del Webb. Notwithstanding the Del Webb Association's responsibility for maintenance of the Lake Areas, Declarant hereby declares, creates, grants and conveys a blanket lake maintenance easement over the Vandalia by Del Webb Property as a nonexclusive easement for the use of Declarant of the Master Association during the Development Period of the Master Association and as a nonexclusive, perpetual easement for the use of the Master Association for access to and management, maintenance and control of the Lake Areas within Vandalia by Del Webb and for the installation, maintenance, repair and removal of improvements therein or thereon. However, the Declarant of the Master Association and, subsequently, the Master Association shall only exercise such rights if the Declarant of the Master Association or the Board of Directors of the Master Association determines, in its sole discretion, that the Vandalia by Del Webb Association is not fulfilling its duties with respect to a Lake Area within the Vandalia by Del Webb Neighborhood, or that the condition of such a Lake or Lake Area is detrimental to the Vandalia community as a whole. In the event that the Del Webb Association shall fail to properly maintain the Lake Areas, or if any problem or condition shall exist in the Lake or Lake Areas that would be, in the opinion of the Declarant or the Master Association, detrimental to the Vandalia community as a whole, the Declarant or the Master Association shall have the right, but not the obligation, by and through its agents or employees or contractors, to perform such maintenance, repairs or other acts as may be reasonably necessary to correct such issues or problems. The cost incurred by the Declarant or Master Association in performing such repairs or work shall be assessed to the Del Webb Association. The Del Webb Association shall reimburse the Declarant or the Master Association within thirty (30) days of the date on which the Del Webb Association

is invoiced by the Declarant or the Master Association. Prior to exercising any authority to maintain or repair the Lake or Lake Areas granted in this Section 11.11, the Declarant or the Master Association shall provide written notice to the Del Webb Association of its intent to exercise such authority. If the Del Webb Association fails to adequately address the issues affecting the Lake or Lake Areas to the satisfaction of the Declarant or the Master Association within ten (10) days of the date on which said notice of intent is sent, the Declarant or Master Association may proceed with commencement of the work or repairs as authorized by this Section 11.11.

## **ARTICLE 12**

### **MORTGAGEE PROVISIONS**

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

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

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

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

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

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

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

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

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

### **ARTICLE 13** **SPECIAL DECLARANT RIGHTS**

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

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

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

(ii) To add or withdraw real property from the terms of this Declaration as provided in Article 7;

(iii) To maintain sales offices, management offices, signs advertising on the property described on Exhibits X and Y, as set forth in this Section 13.3;

(iv) To use easements through the Common Area for the purpose of making improvements within the real property described on Exhibits X and Y, as set forth in Section 13.4;

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

(vi) To exercise architectural controls, as set forth in Article 9; and

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

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

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

the Declarant is no longer vested with or in control of title to any portion of the Development Area.

Section 13.2 Transfer of Special Declarant Rights:

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

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

Section 13.3 Models, Sales Offices and Management Offices: During the Development Period and for the period of twelve (12) months thereafter, the Declarant and Builders authorized by Declarant may maintain and carry on upon any Dwelling Unit owned by Declarant or a Builder or any portion of the Common Area such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Dwelling Units or other real estate, including, but not limited to, business offices, signs, model units, marketing trails, and sales offices. The Declarant and authorized Builders shall have easements for access to and use of such facilities. Except as provided below, the Declarant's or Builder's right to use the Common Area for purposes stated in this paragraph shall not be exclusive and shall not unreasonably interfere with use of such Common Area by Owners. Without limiting the foregoing, Declarant shall have the right and power, within its sole discretion, to (i) construct such temporary or permanent improvements, or to do such acts or other things in, on, or to the Property as the Declarant may, from time to time, determine to be necessary or advisable, (ii) construct and maintain model homes, sales or leasing offices, parking areas, advertising signs, lighting and banners, or other promotional facilities at such locations and in such forms as the Declarant may deem advisable and to use such model homes (including model homes which are sold by and leased back to the Declarant), sales or leasing offices or other facilities for the purpose of selling or leasing Dwelling Units on the Property or at other properties in the general location of the Property which are being offered for sale by the Declarant or any of its affiliates, without the payment of any fee or charge whatsoever to the Association. Declarant, its agents, prospective purchasers and tenants, shall have the right of ingress, egress and parking in and through, and the right to use and enjoy the Common Area, at any and all reasonable times without fee or charge. The Declarant shall have the right and power to lease any Dwelling Unit owned by it to any person or entity, which it deems appropriate in its sole discretion and it need not comply with the provisions of Section 10.15.

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

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

**Section 13.6 Master Planned Community:** Each Owner, by accepting title to a Dwelling Unit and becoming an Owner, and each other Person, by acquiring any interest in the Property, acknowledges awareness that Vandalia by Del Webb is part of a master planned community, the development of which is likely to extend over several years, and agrees not to protest or otherwise object to (a) zoning or changes in zoning or to uses of, or changes in density of, the Property during the Development Period, or (b) changes in any conceptual or master plan for the Property, including, but not limited to, the Master Plan.

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

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

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

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

(d) Impacts the ability of the Declarant, its successors, assigns and/or affiliates, to carry out to completion its development plans and related construction activities for Vandalia by Del Webb, as such plans are expressed in the Master Plan, as such may be amended and updated from time to time. Policies, rules or procedures affecting the provisions of existing easements established by the Declarant and limiting the establishment by the Declarant of easements necessary to complete Vandalia by Del Webb shall be expressly included in this provision. Easements that may be established by the

Declarant shall include but shall not be limited to easements for development, construction and landscaping activities and utilities; or

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

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

Section 13.8 Right to Use Common Area: During the Development Period, the Declarant shall have the right to use all Common Area, including recreational facilities, for up to eight (8) days each year to sponsor special events for charitable, philanthropic, political, or marketing purposes as determined by the Declarant in its sole discretion. Any event described in this Section 13.8 shall be subject to the following conditions:

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

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

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

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

Section 13.9 Sales By Declarant: Notwithstanding the restriction set forth in Section 2.5, Declarant reserves the right to sell Dwelling Units to Persons who are 55 years of age or older, inclusive years of age; provided, such sales shall not affect Vandalia by Del Webb's compliance with all applicable state and federal laws under which the Property may be developed and operated as an age-restricted community.

## **ARTICLE 14**

### **DISPUTE RESOLUTION AND REMEDIES**

Section 14.1 Delay or Failure to Enforce. No delay or failure on the part of the Declarant, the Association, an Owner or any other aggrieved party to invoke any available remedy with respect to a violation of any one or more of covenants, conditions, and restrictions in this Declaration or of the rules and regulations of the Association shall be held to be a waiver

by that party or an estoppel of that party of any right available to such party upon the occurrence, reoccurrence or continuation of such violation or violations of this Declaration or the rules.

**Section 14.2 Enforcement in General; Costs and Attorneys' Fees; Indemnification.**  
Subject to the requirements and provisions of the By-Laws concerning "Grievance Resolution Procedures", the Declarant, Association, and any Owner shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the Plats, and any rules and regulations adopted by the Board of Directors of the Association.

If the Declarant, Association, or any Owner is successful in any proceeding, whether at law or in equity, brought to enforce any restriction, covenant, limitation, easement, condition, reservation, lien or charge now or hereinafter imposed by the provisions of this Declaration, the rules and regulations, the limitations, easements and approvals appended to and made a part of the plats of the Development, it shall be entitled to recover from the party against whom the proceeding was brought all of the reasonable attorneys' fees and related costs and expenses it incurred in such proceeding. In the event the Association is a prevailing party in such action, the amount of such attorneys' fees and costs shall be a Benefited Assessment with respect to the Dwelling Unit(s) involved in the action.

The right to enforce these provisions by injunction, together with the right to cause the removal by due process of law, any structure or part thereof erected without proper approval or maintained in violation hereof, is hereby reserved to the Declarant, the Association and to the Owners of the Lots and Dwelling Units in this development and to their heirs, successors, and assigns.

Notwithstanding the above, no Owner may claim, collect, or recover attorney fees against the Declarant, the Association, the MC, or from any officer, director, employee, agent, or other authorized agent of the Declarant, arising from any failure or alleged failure to comply with any provision of this Declaration, or of the Plat Covenants, or of any action taken or omission of any alleged duty or responsibility of any of the above with regard to the planning, development or operation of Vandalia by Del Webb, or the operation of the Association during the Development Control Period.

Further, in the event that an action or omission of any Owner, home builder, or other contractor or agent, or any other person coming onto Vandalia by Del Webb (referred to herein as an "Indemnifying Party"), results in a claim against the Declarant, the Association, the Committee, or from any officer, director, employee, agent, or other authorized agent of any of the above (collectively referred to herein as the "Indemnified Parties") entities results in any suit or claim against any of the Indemnified Parties, the Indemnifying Party shall indemnify and hold the Indemnified Parties harmless from any action or omission, whether based on contract, tort, or any other claim, theory or basis of recovery, including attorney fees, costs for expert witnesses and consultants, and other costs of litigation; and whether such Indemnifying Party is wholly or partially at fault.

**ARTICLE 15**  
**OTHER HOMEOWNERS ASSOCIATIONS**

Section 15.1 In General: The Vandalia by Del Webb Homeowners Association, Inc. is a “Neighborhood Association” as that term is used in the Master Declaration. That Master Declaration provides for the establishment of the Vandalia Owners Association, Inc. which is referred to in the Master Declaration as the “Master Association”. The Master Association is responsible for, among other things, maintaining certain portions of Vandalia Boulevard. The Declarant anticipates, but cannot guarantee, that there will be other Neighborhoods (and thus additional Neighborhood Associations) as well as commercial parcels that will be subjected to the terms of the Master Association.

Section 15.2 Relationship of the Association: The Vandalia by Del Webb Homeowners Association, Inc. is separate and apart from the Master Association. The terms and conditions of the Master Declaration are incorporated herein by this reference, as well as the By-Laws and rules and regulations of the Master Association.

**ARTICLE 16**  
**GENERAL PROVISIONS**

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

If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue until twenty-one (21) years after the death of the last survivor of the now-living descendants of Elizabeth II, Queen of England.

Section 16.2 Amendment: Prior to the conveyance of the first Dwelling Unit to an Owner, Declarant may unilaterally amend this Declaration. After the conveyance of any Dwelling Unit to a Home Owner, other than amendments which may be executed unilaterally by the Declarant during the Development Period in the exercise of its Development Rights, or amendments executed by the Association, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of sixty-seven percent (67%) of the total vote in the Association, and the consent of the Declarant during the Development Period.

During the Development Period, the Declarant may unilaterally amend this Declaration if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Dwelling Units; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including,



for example, the Fannie Mae or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on the Dwelling Units; (iv) to enable any reputable private insurance company to insure mortgage loans on the Dwelling Units; (v) to satisfy the requirements of any local, state or federal governmental agency for the development, marketing, and sale of Dwelling Units (vi) to correct errors, or resolve inconsistencies or ambiguities in this Declaration or any Exhibit hereto or any Supplemental Declaration; (vii) to amend Exhibit Y to include additional real estate.

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

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

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

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

Section 16.3 Severability: Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications. No delay or failure by any person to enforce any of the restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that person of the right to do so thereafter, or as estoppel of that person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the restrictions.

Section 16.4 Cumulative Effect; Conflict: The provisions of this Declaration shall be cumulative with any additional covenants and restrictions provided for in any Supplemental Declaration, and the Association may, but shall not be required to, enforce such additional covenants and restrictions. Nothing herein shall preclude any Supplemental Declaration or other recorded covenants and restrictions applicable to any portion of the Property from containing additional restrictions or provisions, which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

Section 16.5 Use of the Words "Vandalia by Del Webb": No Person shall use the words "Vandalia by Del Webb" or any derivative in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the terms "Vandalia by Del Webb"

in printed or promotional matter where such term is used solely to specify that particular property is located within Vandalia by Del Webb and the Association shall be entitled to use the words "Vandalia by Del Webb" in its name.

Section 16.6 Del Webb Marks: Any use by the Association of names, marks or symbols of Del Webb Corporation or any of its affiliates (collectively "Del Webb Marks") shall inure to the benefit of Del Webb Corporation and shall be subject to Del Webb Corporation's periodic review for quality control. The Association shall enter into license agreements with Del Webb Corporation, terminable with or without cause and in a form specified by the Dell Webb Corporation in its sole discretion, with respect to permissive use of certain Del Webb Marks. The Association shall not use any Del Webb Mark without Del Webb Corporation's prior written consent.

Section 16.7 Compliance: Every Owner and Resident of any Dwelling Unit shall comply with this Declaration, the By-Laws, and the rules of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, by the Association or, in a proper case, by any aggrieved Owner(s), subject, however, to the provisions of Article XIV.

Section 16.8 Notice of Sale or Transfer of Title: Any Owner desiring to sell or otherwise transfer title to his or her Dwelling Unit shall give the Board at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Dwelling Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

Section 16.9 Attorneys' Fees: In the event of an action instituted to enforce any of the provisions contained in the Governing Documents, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs, including administrative and lien fees, of such suit. In the event the Association is a prevailing party in such action, the amount of such attorneys' fees and costs shall be a Benefitted Assessment with respect to the Dwelling Unit(s) involved in the action.

Section 16.10 Waiver of Implied Warranty and Other Warranties: Indiana courts have held that every contract for the construction of a new home in Indiana carries with it a warranty that when completed, the home will be free of defects and will be fit for its intended use as a home. The courts have also held that this "Implied Warranty of Habitability" does not have to be in writing to be a part of the contract and that it covers not only structural and mechanical defects such as may be found in the foundation, roof, masonry, heating, electrical and plumbing, but it also covers any defect in workmanship which may not easily be seen by the buyer. However, the courts have also held that a seller-builder and buyer may agree in writing that the Implied Warranty of Habitability is not included as a part of their particular contract. Each buyer of a Dwelling Unit from Declarant agreed in the purchase contract that the Declarant has excluded and disclaimed the Implied Warranty of Habitability and all other implied warranties, whether created judicially, statutorily or by common law, including the implied warranty of fitness for a particular purpose.

Such exclusion and disclaimer shall apply to and bind any subsequent Owner of a Dwelling Unit and, accordingly, no Owner of a Dwelling Unit shall be able to assert a claim against Declarant for a breach of the Implied Warranty of Habitability or any other implied warranty.

Section 16.11 Notices: Any notice required to be sent to any Owner under the provisions of this Declaration or the By-Laws shall be deemed to have been properly sent if (i) mailed, postage prepared, to his or its last known address as it appears on the records of the Association at the time of such mailing, (ii) transmitted by facsimile or e-mail to his or its facsimile number or e-mail address as either appears on the records of the Association at the time of such transmittal, or (iii) when personally delivered to his or its Dwelling Unit. The date of mailing, or the date of transmission if the notice is sent by facsimile or e-mail, shall be deemed the date of service.

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This Neighborhood Declaration of Covenants, Conditions and Restrictions for Vandalia by Del Webb was made as of this 24 day of March, 2016.

Pulte Homes of Indiana, LLC, by:

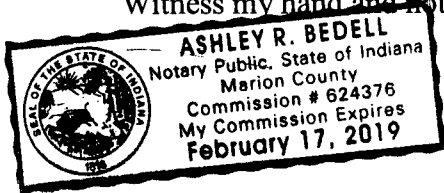
[Handwritten Signature]  
\_\_\_\_\_  
Signature

Matthew D. Whmeyer V.P. of Land Dev.  
Printed Name & Title

STATE OF INDIANA        )  
  ) SS:  
COUNTY OF HAMILTON )

Before me, a notary public, in and for said County and State, personally appeared Matthew D. Whmeyer the VP of Land Development for Pulte Homes of Indiana, LLC, who acknowledged execution of the within and foregoing for and on behalf of said limited liability company.

Witness my hand and notarial seal this 24 day of March, 2016



Ashley Bedell  
\_\_\_\_\_  
Notary Public - Signature

Ashley Bedell  
\_\_\_\_\_  
Printed

My Commission Expires:  
2-17-2019

Residence County: Marion

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

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

**EXHIBIT X**

**Legal Description of "Real Estate"**

**Vandalia by Del Webb, Section One**

That portion of the Northeast Quarter of Section 32 and Northwest Quarter of Section 33, all in Township 15 North, Range 1 East of the Second Principal Meridian in the Town of Plainfield, Hendricks County, Indiana, described as follows:

The basis of bearings is per a record survey recorded as Instrument Number 200730499 in the Office of the Recorder of Hendricks County, Indiana.

BEGINNING at a Hendricks County Surveyor's disk found marking the southwest corner of said Northwest Quarter; thence North 88 degrees 25 minutes 32 seconds East along the south line thereof 1,048.45 feet ; thence North 09 degrees 58 minutes 43 seconds West 625.77 feet; thence North 00 degrees 07 minutes 47 seconds West 389.01 feet; thence North 10 degrees 38 minutes 09 seconds East 126.06 feet to the southern right of way of Vandalia Boulevard as recorded as Instrument Number 201514277 in said recorder's office and also being the beginning of a nontangent curve to the left having a radius of 715.00 feet, a central angle of 16 degrees 59 minutes 55 seconds, and a radius point that bears South 16 degrees 15 minutes 01 seconds West; thence follow said southern right of way for the following three (3) calls: 1) thence along said curve 212.13 to a point that bears North 00 degrees 44 minutes 54 seconds West from said radius point; 2) thence South 89 degrees 15 minutes 06 seconds West 164.01 feet to a tangent curve to the right having a radius of 625.00 feet, a central angle of 55 degrees 16 minutes 35 seconds, and a radius point that bears North 00 degrees 44 minutes 54 seconds West; 3) thence along said curve 602.97 feet to a point that bears South 54 degrees 31 minutes 41 seconds West from said radius point; thence South 48 degrees 33 minutes 31 seconds West 811.92 feet to a nontangent curve to the left having a radius of 1,435.00 feet, a central angle of 05 degrees 11 minutes 32 seconds, and a radius point that bears North 51 degrees 09 minutes 17 seconds East; thence along said curve 130.04 feet to a point that bears South 45 degrees 57 minutes 44 seconds West from said radius point; thence North 48 degrees 33 minutes 31 seconds East 170.20 feet; thence South 45 degrees 26 minutes 30 seconds East 46.57 feet; thence South 47 degrees 34 minutes 30 seconds East 47.63 feet; thence South 49 degrees 43 minutes 57 seconds East 47.63 feet; thence South 51 degrees 53 minutes 24 seconds East 47.63 feet; thence South 54 degrees 02 minutes 52 seconds East 47.63 feet; thence South 56 degrees 12 minutes 19 seconds East 47.63 feet; thence South 58 degrees 21 minutes 46 seconds East 47.63 feet; thence South 60 degrees 27 minutes 05 seconds East 44.59 feet; thence South 62 degrees 41 minutes 54 seconds East 54.63 feet; thence South 65 degrees 00 minutes 52 seconds East 47.63 feet; thence South 67 degrees 10 minutes 19 seconds East 47.63 feet; thence South 69 degrees 19 minutes 46 seconds East 47.63 feet; thence South 70 degrees 58 minutes 26 seconds East 24.97 feet; thence South 72 degrees 03 minutes 09 seconds East 22.66 feet; thence South 73 degrees 38 minutes 41 seconds East 47.63 feet; thence South 75 degrees 48 minutes 08 seconds East 47.63 feet; thence South 77 degrees 57 minutes 35 seconds East 47.63 feet; thence South 79 degrees 55 minutes 43 seconds East 39.30 feet; thence South 81 degrees 05 minutes 49 seconds East 12.28 feet; thence South 82 degrees 32 minutes 36 seconds East 51.58 feet; thence South 84 degrees 47 minutes 26 seconds East 47.63 feet; thence

South 86 degrees 56 minutes 53 seconds East 47.63 feet; thence South 01 degrees 58 minutes 24 seconds West 170.00 feet to a nontangent curve to the left having a radius of 1,435.00 feet, a central angle of 00 degrees 38 minutes 51 seconds, and a radius point that bears North 01 degree 58 minutes 24 seconds East; thence along said curve 16.22 feet to a point that bears South 01 degree 19 minutes 33 seconds West from said radius point; thence South 01 degrees 19 minutes 33 seconds West 120.00 feet; thence North 87 degrees 36 minutes 40 seconds West 57.71 feet; thence North 85 degrees 29 minutes 04 seconds West 57.71 feet; thence North 83 degrees 16 minutes 46 seconds West 61.98 feet; thence North 80 degrees 59 minutes 44 seconds West 61.99 feet; thence North 78 degrees 47 minutes 25 seconds West 57.71 feet; thence North 76 degrees 39 minutes 50 seconds West 57.71 feet; thence North 74 degrees 32 minutes 14 seconds West 57.71 feet; thence North 72 degrees 19 minutes 56 seconds West 61.98 feet; thence North 70 degrees 02 minutes 53 seconds West 61.98 feet; thence North 67 degrees 50 minutes 35 seconds West 57.71 feet; thence North 65 degrees 43 minutes 00 seconds West 57.71 feet; thence North 63 degrees 30 minutes 41 seconds West 61.98 feet; thence North 61 degrees 13 minutes 39 seconds West 61.98 feet; thence North 59 degrees 01 minutes 20 seconds West 57.71 feet; thence North 56 degrees 53 minutes 45 seconds West 57.71 feet; thence North 54 degrees 46 minutes 10 seconds West 57.71 feet; thence North 52 degrees 38 minutes 34 seconds West 50.87 feet; thence South 01 degrees 29 minutes 52 seconds East 530.62 feet to the former north right of way line of the former T.H.I.&E. Traction Company; thence North 88 degrees 30 minutes 08 seconds East along said north line 366.07 feet to the east line of said Northeast Quarter and the southwest corner of the land of Walter and Brenda Martin as described in Deed Record 262, page 285 in said county records (the following four (4) courses are along the west, north, east, and south lines of said land); 1) thence North 00 degrees 33 minutes 28 seconds West along said east line 149.86 feet; 2) thence North 88 degrees 48 minutes 21 seconds East 272.17 feet; 3) thence South 01 degree 47 minutes 03 seconds West 148.29 feet to the north line of said former Traction Company right of way; 4) thence South 88 degrees 25 minutes 32 seconds West along said north line 266.13 feet to said east line of the Northeast Quarter; thence South 00 degrees 33 minutes 28 seconds East along said east line 66.01 feet to the POINT OF BEGINNING, and containing 30.180 acres of land, more or less.

## EXHIBIT Y

### Legal Description of the “Additional Real Estate” or “Development Area” of Vandalia by Del Webb

That portion of the Northeast Quarter of Section 32 and Northwest Quarter of Section 33, all in Township 15 North, Range 1 East of the Second Principal Meridian in the Town of Plainfield, Hendricks County, Indiana, described as follows:

The basis of bearings is per a record survey recorded as Instrument Number 200730499 in the Office of the Recorder of Hendricks County, Indiana.

BEGINNING at a Hendricks County Surveyor's disk found marking the southwest corner of said Northwest Quarter; thence North 88 degrees 25 minutes 32 seconds East along the south line thereof 1,048.45 feet ; thence North 09 degrees 58 minutes 43 seconds West 625.77 feet; thence North 00 degrees 07 minutes 47 seconds West 389.01 feet; thence North 10 degrees 38 minutes 09 seconds East 126.06 feet to the southern line of the land of the Town of Plainfield as described in Instrument Number 201514277 in said county records, being Vandalia Boulevard, and the beginning of a curve to the left having a radius of 715.00 feet and a central angle of 16 degrees 59 minutes 55 seconds, the radius point of which bears South 16 degrees 15 minutes 01 second West (the following four (4) courses are along the southerly and westerly lines of said land); 1) thence westerly along the arc of said curve 212.13; 2) thence South 89 degrees 15 minutes 06 seconds West 164.01 feet to a tangent curve to the right having a radius of 625.00 feet and a central angle of 55 degrees 16 minutes 35 seconds 3) thence westerly, northwesterly and northerly along the arc of said curve 966.97 feet; 4) thence North 02 degrees 06 minutes 10 seconds West 379.22 feet to the former south line of the Consolidated Rail Corporation, now being the land of the Town of Plainfield as described in Instrument Number 200407396 in said county records; thence South 74 degrees 50 minutes 40 seconds West along said south line 2748.50 feet to the west line of said Northeast Quarter of Section 32; thence South 00 degrees 48 minutes 41 seconds East along said west line 1278.33 feet to the north right of way line of the abandoned T.H.I. & E. Traction Company and the beginning of a curve to the left having a radius of 1869.00 feet and a central angle of 24 degrees 50 minutes 26 seconds, the radius point of which bears North 23 degrees 20 minutes 34 seconds East; thence easterly along said north line 810.30 feet; thence North 88 degrees 30 minutes 08 seconds East along said north line 1903.48 feet to the west line of said Northwest Quarter of Section 33, said point being the southwest corner of the land of Clay-Clifton Farms, Inc., as described in Instrument Number 201514462 in said county records (the following four (4) courses are along the west, north, east, and south lines of said land); 1) thence North 00 degrees 33 minutes 28 seconds West along said east line 149.86 feet; 2) thence North 88 degrees 48 minutes 21 seconds East 272.17 feet; 3) thence South 01 degree 47 minutes 03 seconds West 148.29 feet to the north line of said former Traction Company right of way; 4) thence South 88 degrees 25 minutes 32 seconds West along said north line 266.13 feet to said west line of the Northwest Quarter; thence South 00 degrees 33 minutes 28 seconds East along said west line 66.01 feet to the POINT OF BEGINNING, containing 135.607 acres, more or less.

EXCEPT FOR:

*Vandalia – Del Webb, Section 1*

That portion of the Northeast Quarter of Section 32 and Northwest Quarter of Section 33, all in Township 15 North, Range 1 East of the Second Principal Meridian in the Town of Plainfield, Hendricks County, Indiana, described as follows:

The basis of bearings is per a record survey recorded as Instrument Number 200730499 in the Office of the Recorder of Hendricks County, Indiana.

BEGINNING at a Hendricks County Surveyor's disk found marking the southwest corner of said Northwest Quarter; thence North 88 degrees 25 minutes 32 seconds East along the south line thereof 1,048.45 feet ; thence North 09 degrees 58 minutes 43 seconds West 625.77 feet; thence North 00 degrees 07 minutes 47 seconds West 389.01 feet; thence North 10 degrees 38 minutes 09 seconds East 126.06 feet to the southern right of way of Vandalia Boulevard as recorded as Instrument Number 201514277 in said recorder's office and also being the beginning of a nontangent curve to the left having a radius of 715.00 feet, a central angle of 16 degrees 59 minutes 55 seconds, and a radius point that bears South 16 degrees 15 minutes 01 seconds West; thence follow said southern right of way for the following three (3) calls: 1) thence along said curve 212.13 to a point that bears North 00 degrees 44 minutes 54 seconds West from said radius point; 2) thence South 89 degrees 15 minutes 06 seconds West 164.01 feet to a tangent curve to the right having a radius of 625.00 feet, a central angle of 55 degrees 16 minutes 35 seconds, and a radius point that bears North 00 degrees 44 minutes 54 seconds West; 3) thence along said curve 602.97 feet to a point that bears South 54 degrees 31 minutes 41 seconds West from said radius point; thence South 48 degrees 33 minutes 31 seconds West 811.92 feet to a nontangent curve to the left having a radius of 1,435.00 feet, a central angle of 05 degrees 11 minutes 32 seconds, and a radius point that bears North 51 degrees 09 minutes 17 seconds East; thence along said curve 130.04 feet to a point that bears South 45 degrees 57 minutes 44 seconds West from said radius point; thence North 48 degrees 33 minutes 31 seconds East 170.20 feet; thence South 45 degrees 26 minutes 30 seconds East 46.57 feet; thence South 47 degrees 34 minutes 30 seconds East 47.63 feet; thence South 49 degrees 43 minutes 57 seconds East 47.63 feet; thence South 51 degrees 53 minutes 24 seconds East 47.63 feet; thence South 54 degrees 02 minutes 52 seconds East 47.63 feet; thence South 56 degrees 12 minutes 19 seconds East 47.63 feet; thence South 58 degrees 21 minutes 46 seconds East 47.63 feet; thence South 60 degrees 27 minutes 05 seconds East 44.59 feet; thence South 62 degrees 41 minutes 54 seconds East 54.63 feet; thence South 65 degrees 00 minutes 52 seconds East 47.63 feet; thence South 67 degrees 10 minutes 19 seconds East 47.63 feet; thence South 69 degrees 19 minutes 46 seconds East 47.63 feet; thence South 70 degrees 58 minutes 26 seconds East 24.97 feet; thence South 72 degrees 03 minutes 09 seconds East 22.66 feet; thence South 73 degrees 38 minutes 41 seconds East 47.63 feet; thence South 75 degrees 48 minutes 08 seconds East 47.63 feet; thence South 77 degrees 57 minutes 35 seconds East 47.63 feet; thence South 79 degrees 55 minutes 43 seconds East 39.30 feet; thence South 81 degrees 05



minutes 49 seconds East 12.28 feet; thence South 82 degrees 32 minutes 36 seconds East 51.58 feet; thence South 84 degrees 47 minutes 26 seconds East 47.63 feet; thence South 86 degrees 56 minutes 53 seconds East 47.63 feet; thence South 01 degrees 58 minutes 24 seconds West 170.00 feet to a nontangent curve to the left having a radius of 1,435.00 feet, a central angle of 00 degrees 38 minutes 51 seconds, and a radius point that bears North 01 degree 58 minutes 24 seconds East; thence along said curve 16.22 feet to a point that bears South 01 degree 19 minutes 33 seconds West from said radius point; thence South 01 degrees 19 minutes 33 seconds West 120.00 feet; thence North 87 degrees 36 minutes 40 seconds West 57.71 feet; thence North 85 degrees 29 minutes 04 seconds West 57.71 feet; thence North 83 degrees 16 minutes 46 seconds West 61.98 feet; thence North 80 degrees 59 minutes 44 seconds West 61.99 feet; thence North 78 degrees 47 minutes 25 seconds West 57.71 feet; thence North 76 degrees 39 minutes 50 seconds West 57.71 feet; thence North 74 degrees 32 minutes 14 seconds West 57.71 feet; thence North 72 degrees 19 minutes 56 seconds West 61.98 feet; thence North 70 degrees 02 minutes 53 seconds West 61.98 feet; thence North 67 degrees 50 minutes 35 seconds West 57.71 feet; thence North 65 degrees 43 minutes 00 seconds West 57.71 feet; thence North 63 degrees 30 minutes 41 seconds West 61.98 feet; thence North 61 degrees 13 minutes 39 seconds West 61.98 feet; thence North 59 degrees 01 minutes 20 seconds West 57.71 feet; thence North 56 degrees 53 minutes 45 seconds West 57.71 feet; thence North 54 degrees 46 minutes 10 seconds West 57.71 feet; thence North 52 degrees 38 minutes 34 seconds West 50.87 feet; thence South 01 degrees 29 minutes 52 seconds East 530.62 feet to the former north right of way line of the former T.H.I.&E. Traction Company; thence North 88 degrees 30 minutes 08 seconds East along said north line 366.07 feet to the east line of said Northeast Quarter and the southwest corner of the land of Walter and Brenda Martin as described in Deed Record 262, page 285 in said county records (the following four (4) courses are along the west, north, east, and south lines of said land); 1) thence North 00 degrees 33 minutes 28 seconds West along said east line 149.86 feet; 2) thence North 88 degrees 48 minutes 21 seconds East 272.17 feet; 3) thence South 01 degree 47 minutes 03 seconds West 148.29 feet to the north line of said former Traction Company right of way; 4) thence South 88 degrees 25 minutes 32 seconds West along said north line 266.13 feet to said east line of the Northeast Quarter; thence South 00 degrees 33 minutes 28 seconds East along said east line 66.01 feet to the POINT OF BEGINNING, and containing 30.180 acres of land, more or less.