First American
Title Insurance Company

Not Just for One Transaction, But for Life

First American Title Insurance Company
Indianapolis Downtown—Corporate
251 E. Ohio Street, Suite 200
Indianapolis, IN 46204
Telephone (317) 684-7556

Subdivision Covenants and Restrictions

The information is provided as a public service only. The information on this site is general in nature, unofficial and is not a valid reference for any legal purposes. The user agrees to hold harmless, protect, indemnify, and forever release First American Title Insurance Company and its officers, directors, agents, and employees, from and against any and all liabilities, losses, damage, expenses and charges, including but not limited to attorneys' fees and expenses of litigation, which may be sustained or incurred by the user under, or arising directly or indirectly out of the use of the information contained in this site.

FILED
FEB 04 2005
LAWRENCE TOWNSHIP ASSESSOR

38

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BERKLEY PLACE

MARTHA A. WOMACKS
MARION COUNTY AUDITOR
64985 FEB -4 P5
DULY ENTERED FOR TAXATION
SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER

DEPT. OF METROPOLITAN DEVELOPMENT
DATE 2-4-05
PE
PE
ADMINISTRATOR

02/04/05 03:23PM MANDA MARTIN MARION CTY RECORDER CAM 84.00 PAGES: 38
Inst # 2005-0018691

plat inst. # 2005-18692

TABLE OF CONTENTS

Page

ARTICLE I - DEFINITIONS 6

Section 1.1 – Association 6
Section 1.2 – Common Area or Common Areas 6
Section 1.3 – Declarant 6
Section 1.4 – Declaration 6
Section 1.5 – Designated Builder 6
Section 1.6 – Dwelling Unit 6
Section 1.7 – Federal Agencies 6
Section 1.8 – Lot 7
Section 1.9 – Member 7
Section 1.10 – Mortgagee 7
Section 1.11 – Owner 7
Section 1.12 – Party Wall 7
Section 1.13 – Plat 7
Section 1.14 – Property 7

ARTICLE II - MEMBERSHIP 8

ARTICLE III - VOTING RIGHTS 8

Section 3.1 – Classes 8
Section 3.2 – Multiple Ownership Interests 8
Section 3.3 – Board of Directors 9

ARTICLE IV - PROPERTY RIGHTS 9

Section 4.1 – Member's Easements of Enjoyment 9
Section 4.2 – Delegation of Use 10

ARTICLE V - ASSESSMENTS 10

Section 5.1 – Creation of the Lien and Personal Obligation for Assessments 10
Section 5.2 – Purpose of Assessment 11
Section 5.3 – Establishment of Annual Assessment 11
Section 5.4 – Basis and Maximum Annual Assessments 11
Section 5.5 – Special Assessments 12
Section 5.6 – Quorum for any Action Authorized Under Sections 5.4 or 5.5 12
Section 5.7 – One Time Assessment 12
Section 5.8 – Rate of Assessment 13
Section 5.9 – Notice of Assessment and Certificate 13
Section 5.10 – Remedies of the Association in the Event of Default 13
Section 5.11 – Subordination of the Lien to Mortgages 13
Section 5.12 – Exempt Property 14

Section 5.13 – Reserves for Replacements 14

ARTICLE VI - RESTRICTIVE COVENANTS 15

Section 6.1 – Residential Use 15
Section 6.2 – Architectural Review Board Approval 15
Section 6.3 – Laundry 15
Section 6.4 – Sight Lines 15
Section 6.5 – Maintenance 15
Section 6.6 – Nuisance 15
Section 6.7 – Signs 15
Section 6.8 – Animals 16
Section 6.9 – Trash Storage 16
Section 6.10 – Antennae Systems 16
Section 6.11 – Painting 16
Section 6.12 – Finished Exteriors 16
Section 6.13 – Fences 16
Section 6.14 – Vehicles 16
Section 6.15 – Commercial Vehicles 17
Section 6.16 – Recreational Vehicles 17
Section 6.17 – Towing 17
Section 6.18 – Garage Usage 17
Section 6.19 – Rental Agreements 17
Section 6.20 – Initial Construction and Marketing 17
Section 6.21 – Holiday and Seasonal Decorations 17
Section 6.22 – Window Boxes 17
Section 6.23 – Dusk to Dawn Coach Lights 17
Section 6.24 – Additional Rules and Regulations 18

ARTICLE VII - ARCHITECTURAL REVIEW BOARD 18

Section 7.1 – Composition 18
Section 7.2 – Method of Selection 18
Section 7.3 – Officers 19
Section 7.4 – Duties 19
Section 7.5 – Failure to Act 19
Section 7.6 – Enforcement 20
Section 7.7 – Appeal 20

ARTICLE VIII - EASEMENTS 20

Section 8.1 – Emergency Easement Rights 20
Section 8.2 – General Easements 20
Section 8.3 – Limitation on General Easement Rights 20
Section 8.4 – Encroachments 20
Section 8.5 – Ingress Egress Easement 20
Section 8.6 – Drainage, Utility and Sewer Easements (DU & SE) 21
Section 8.7 – Water Line Easement 21
Section 8.8 – Reservation of Right to Grant Future Easements 21
Section 8.9 – Bonds and/or Dedication Requirements 21

Section 8.10 – Easements for Corrective Work 21
Section 8.11 – Open Space 22
Section 8.12 – Parking Areas 22
Section 8.13 – Sidewalks 22
Section 8.14 – Private Streets 22

ARTICLE IX - PARKING 22

ARTICLE X - PARTY WALLS 22

Section 10.1 – General Rules of Law to Apply 22
Section 10.2 – Sharing of Repair and Maintenance and Destruction by Fire or Other Casualty 22
Section 10.3 – Repairs for Damage Caused by One Owner 23
Section 10.4 – Other Changes 23
Section 10.5 – Right to Contribution Runs with the Land 23
Section 10.6 – Dispute 23

ARTICLE XI - POWERS AND DUTIES OF THE ASSOCIATION 23

Section 11.1 – Discretionary Powers and Duties 23
Section 11.2 – Mandatory Powers and Duties 25
Section 11.3 – Board Authority to Act 26
Section 11.4 – Compensation 27
Section 11.5 – Non-Liability of Directors, Officers and Board Members 27
Section 11.6 – Indemnity of Directors, Officers and Members of the Architectural Review Committee 27

ARTICLE XII - RIGHTS OF MORTGAGEES 27

Section 12.1 – Veterans Administration 28
Section 12.2 – Federal Housing Authority 28
Section 12.3 – Freddie Mac 29
Section 12.4 – Fannie Mae 30
Section 12.5 – General 31

ARTICLE XIII - GENERAL PROVISIONS 32

Section 13.1 – Enforcement and Declarant's Exemption 32
Section 13.2 – Severability; Headings; Conflict 32
Section 13.3 – Duration 32
Section 13.4 – Material Amendment/Extraordinary Action 33
Section 13.5 – Amendment 34
Section 13.6 – Special Amendment 35
Section 13.7 – Waiver 35
Section 13.8 – Casualty Insurance 35
Section 13.9 – Withdrawable Real Estate 35
Section 13.10 – Management Contracts 36
Section 13.11 – Dissolution 36

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BERKLEY PLACE

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR Berkley Place (the "Declaration") is made as of _____, 2004 by **Berkley Place LLC,** an Indiana limited liability company (the **"Declarant").**

RECITALS:

WHEREAS, the Declarant is, or at the time of recordation of this Declaration will be, the owner of certain real property located in Marion County, Indiana, which is more specifically described in Exhibit A, which is attached hereto and incorporated herein by reference (the **"Property").**

WHEREAS, the Declarant desires to create on the Property a residential community (the **"Community")** which shall have permanent open spaces and other common facilities for the benefit of the residents of the Community.

WHEREAS, the Declarant desires to provide for the preservation of the values of the Community and such other areas as may be subjected to this Declaration, and to provide for the maintenance of the open spaces and other facilities, and, to this end, declare and publish their intent to subject the Property to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, it being intended that they shall run with title to the Property and shall be binding on all persons or entities having or acquiring any right, title or interest in the Property or any part thereof and shall inure to the benefit of each owner thereof.

WHEREAS, the Declarant has deemed it desirable for the efficient preservation of the values of the Community to create an association to be known as Berkley Place Homeowners Association, Inc., an Indiana not-for-profit corporation (the **"Association")** to which shall be delegated and assigned the powers of owning, maintaining and administering the common areas and facilities, administering and enforcing the covenants and restrictions made in and pursuant to this Declaration and collecting and disbursing the assessments and charges hereafter created.

NOW, THEREFORE, the Declarant, for and in consideration of the premises and the covenants contained herein, grants, establishes and conveys to each owner of each Lot (as herein defined), mutual, non-exclusive rights, privileges and easements of enjoyment on equal terms and in common with all other owners of Lots in and to the use of any common areas and facilities; and further, the Declarant declares that the Property shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, reservations, easements, charges and liens hereinafter set forth, which are for the purpose of protecting the value and desirability of, and shall run with, the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their respective successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1.1. **"Association"** shall mean and refer to the Berkley Place Homeowners Association, Inc., an Indiana not-for-profit corporation, its successors and assigns.

Section 1.2. **"Common Area"** or **"Common Areas"** shall mean and refer to all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Members, and shall include all of the Property which is shown on such Plat and/or as described herein, and which is not part of a Lot. No part of the Common Area shall be dedicated to the public. The Common Area within the Property shall be what is identified on the Plat as Common Area "A" and shall comprise four components; namely:

(a) private streets comprising the streets identified on the Plat as (the "Private Street");

(b) concrete sidewalks located adjacent to the Private Street and in areas between buildings and adjacent to buildings (the "Sidewalks");

(c) areas specifically identified as parking areas, located adjacent to Private Street and between buildings (the "Parking Areas"). Parking Areas are further described and defined in Article IX below; and

(d) open space, which shall include all parts of the Common Area not occupied by the Private Street, Sidewalks, and the Parking Areas (the "Open Space").

Section 1.3. **"Declarant"** shall mean and refer to Berkley Place LLC, an Indiana limited liability company, and its successors or assigns to whom Berkley Place LLC, an Indiana limited liability company, assigns any or all of its rights as Declarant pursuant to this Declaration by assignment recorded in the Office of the Recorder of Marion County, Indiana.

Section 1.4. **"Declaration"** shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Berkley Place, which is to be recorded in the Office of the Recorder of Marion County, Indiana.

Section 1.5. **"Designated Builder"** shall mean and refer, during such period as such designation by the Declarant may continue, any person or entity engaged in the construction of more than one Dwelling Unit who is designated by Declarant as a Designated Builder. Declarant may make and revoke any such designation at any time and from time to time.

Section 1.6. **"Dwelling Unit"** shall mean and refer to any improvement to the Property intended for any type of independent ownership for use and occupancy as a residence by a single household and shall, unless otherwise specified, include within its meaning (by way of illustration but not limitation) townhouses and detached homes.

Section 1.7. **"Federal Agencies"** shall mean (by way of illustration but not limitation) the Federal Housing Authority, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Veterans Administration or any other governmental agency.

Section 1.8. **"Lot"** shall mean and refer to any discrete plot of land created by and shown on a Plat upon which a Dwelling Unit is intended to be constructed in accordance with applicable zoning ordinances; provided, however, that where a Dwelling Unit (i) is separated from an adjacent Dwelling Unit by a Party Wall, or (ii) shares a Party Wall with an adjacent Dwelling Unit, the center line of such Party Wall and its vertical extensions shall constitute the common boundary line (lot line) between adjacent Lots, and the closure of the boundary lines of such adjacent Lots shall be accomplished by extending perpendicular lines from the horizontal extremities of such Party Wall to the closest boundary line or lines for such Lots as shown on any Plat or any part thereof, provided, further, that where any exterior wall of a Dwelling Unit is not a Party Wall, but extends outside the boundary lines (lot lines) of any Lot (as shown on any such Plat or part thereof) upon which such Dwelling Unit is primarily located, the boundary lines of such Lot shall be deemed extended to include all of the ground area occupied by such Dwelling Unit. It is the intent hereof that, in any and all events in which a boundary line as shown on any Plat or part thereof does not coincide with the actual location of the respective wall of the Dwelling Unit because of inexactness of construction, settling after construction, or for any other reason, this Declaration and any Plat or any part thereof shall be interpreted and construed so that all ground area underlying and lying beneath a Dwelling Unit shall be and constitute part of the Lot upon which such Dwelling Unit is primarily located to the end that all of such ground area shall be subject to fee simple ownership by the Owner of such Dwelling Unit; to the extent necessary to accomplish and implement such intention, interpretation and construction, the boundary lines of the Lots shall be determined in accordance with the foregoing definitional provisions and boundary lines as so determined shall supersede the boundary lines for Lots shown on any Plat or part thereof.

Section 1.9. **"Member"** shall mean and refer to every person or entity who holds a membership in the Association, as more particularly set forth in Article II below.

Section 1.10. **"Mortgagee"** shall mean and refer to any person or entity secured by a first mortgage or first deed of trust on any Lot or the Common Area who has notified the Association of this fact in writing. An **"Eligible Mortgagee"** shall be a Mortgagee who has given notice to the Association of its interest and requested all rights afforded Eligible Mortgagees under Article XII.

Section 1.11. **"Owner"** shall mean and refer to the record owner, whether one (1) or more persons or entities, of the fee simple title to any Lot, including a contract seller but excluding those holding such interest in a Lot solely by virtue of a contract to purchase a Lot or as security for the performance of an obligation. If more than one (1) person or entity is the record owner of a Lot, the term Owner as used herein shall mean and refer to such owners collectively, so that there shall be only one (1) Owner of each Lot.

Section 1.12. **"Party Wall"** shall mean and refer to each wall which is built as part of the original construction of the Dwelling Units upon the Property and placed on the dividing line between Lots. Party Walls are further described and defined in Article 10 below.

Section 1.13. **"Plat"** shall mean and refer to a final plat or an "as-built" subdivision plat, of all or part of the Property, recorded with the Recorder of Marion County, Indiana.

Section 1.14. **"Property"** shall mean and refer to that certain real property located in Marion County, Indiana, which is more specifically described in Exhibit A, which is attached hereto and incorporated herein by reference as the same may be duly subdivided and platted, and any additions thereto which, from time to time, may be subjected to the covenants, conditions, restrictions,

reservations, easements, charges and liens of this Declaration.

ARTICLE II

MEMBERSHIP

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

ARTICLE III

VOTING RIGHTS

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

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

Class B: The Class B Member shall be the Declarant. A Class B Member shall be entitled to three (3) votes for each Lot in which it holds the interest required for membership pursuant to Article II herein. The Declarant's Class B membership interest shall be converted to and shall become a Class A membership interest with one (1) vote for each Lot in which it holds an interest upon the happening of any of the following events, whichever occurs first:

(a) within four (4) months after the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) seven (7) years from the date of recordation of this Declaration; or

(c) sixty (60) days after both (i) the Declarant abandons construction and (ii) any Designated Builder abandons construction. For purposes hereof, the "abandonment of construction" shall not be deemed to have occurred unless and until there is no evidence of continuing construction and no new dwelling construction has been initiated for a period of eighteen (18) months.

Section 3.2. **Multiple Ownership Interests**. If more than one (1) person or entity holds an ownership interest in any Lot, the vote for such Lot shall be exercised as the owners of the Lot among themselves determine and may be exercised by any one (1) of the people or entities holding such ownership interest, unless any objection or protest by any other holder of such ownership interest is made prior to the completion of a vote, in which case the vote for such membership interest shall not be counted, but the Member whose vote is in dispute shall be counted as present at the meeting for quorum purposes if the protest is lodged at such meeting. In no event shall more than one (1) vote be cast with respect to any Lot.

Section 3.3. **Board of Directors**. The Board of Directors shall be appointed and/or elected

as prescribed by the Association's Articles and Bylaws. The Board of Directors shall manage the affairs of the Association.

ARTICLE IV

PROPERTY RIGHTS

Section 4.1. **Member's Easements of Enjoyment**. Every Member shall have a right and easement of enjoyment in and to the Common Areas, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to:

(a) the right of the Association to limit the number of guests of Members on the Common Area or to make any part of the Common Area available to occupants of adjacent real estate or members of the general public;

(b) the right of the Association to adopt and enforce rules and regulations governing the use of the Common Area and the personal conduct of Owners, occupants and guests thereon, including, without limitation, the imposition of fines for the violation thereof;

(c) the right of the Association to suspend the voting rights, the right to run for office within the Association, and rights of a Member to the use of any nonessential services offered by the Association, to the extent that access and the provision of utilities to the Lot through the Common Area are not precluded, for any period during which any assessment against such Member's Lot remains unpaid or for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

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

(e) the right of the Association to grant, with or without payment to the Association, licenses, rights-of-way and easements through or over any portion of the Common Area;

(f) the right of the Association to lease the Common Area, provided however that such lease(s) must:

(i) be only to non-profit organizations;

(ii) prohibit assignment and subleasing;

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

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

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

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

(h) all rights reserved by the Declarant in Article VIII hereof; and

(i) the right of the Declarant to erect, maintain and operate real estate sales and construction offices, displays, signs and other facilities for sales, marketing and construction purposes.

The Association, acting through its board of directors (the **"Board of Directors"),** may exercise these rights without the need for any approval from any Member, Mortgagee or any Federal Agency, unless provided otherwise in this Declaration.

Section 4.2. **Delegation of Use**. Any Member may delegate its right of enjoyment to the Common Area and facilities to the members of its immediate household, its tenants or contract purchasers who reside on the Member's Lot. However, by accepting a deed to such Lot, every Owner covenants that should the Owner desire to rent its Lot, the rental agreement shall contain specific conditions which require the tenant to abide by all Association covenants, rules and regulations, and any Owner desiring to rent a Lot further covenants that the tenant will be provided a complete set of all Association covenants, rules and regulations.

ARTICLE V

ASSESSMENTS

Section 5.1. **Creation of the Lien and Personal Obligation for Assessments**. The Declarant covenants, for each Lot owned, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other instrument of conveyance, is deemed to covenant and agree to pay to the Association: (i) Annual Assessments (as hereinafter defined), (ii) Special Assessments (as hereinafter defined), and any other amounts as may be provided for hereunder to be due from any Owner in connection with his, her or its ownership of a Lot in the Community. Such assessments are to be established and collected as hereinafter provided.

The Association's Annual Assessments and Special Assessments, together with interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on each applicable Owner's Lot and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment fell due and shall not be the personal obligation of a successor in interest unless expressly assumed by such successor. The Annual Assessments and Special Assessments, when assessed upon resolution of the Board of Directors for each year, shall become a lien on the Lot in the amount of the entire Annual Assessment or Special Assessment, but shall be payable in equal installments, collected on a monthly, bi-monthly, quarterly, semi-annual or annual basis, as determined by the Board of Directors.

Section 5.2. **Purpose of Assessment**. The assessments levied by the Association shall be used for the following purposes:

(a) the improvement, maintenance, and repair of all Common Areas including the Private Street, the Sidewalks, the Parking Areas, and the Open Space;

(b) the maintenance, repair, irrigation, and fertilizing of all landscaping located within the Common Area including, without limitation, trees, lawns, shrubbery, and other plantings;

(c) to fulfill the duties of the Association specified in Article XI below; and

(d) to carry out such other purposes as the Board of Directors may, in its sole discretion, determine to be appropriate.

Section 5.3. **Establishment of Annual Assessment**.

(a) The Association must levy in each of its fiscal years an annual assessment (the **"Annual Assessment"**), against each Lot. The amount of such Annual Assessment shall be established by the Board of Directors, subject to the limitations imposed by Section 5.4, below, and written notice of such shall be sent to every Owner at least thirty (30) days in advance of the commencement of each Annual Assessment period. The Annual Assessment shall become applicable as to all Lots (as shown on a recorded subdivision plat) on the first day of the month following the first conveyance of a Lot to an Owner who is not the Declarant or a Designated Builder. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year.

(b) The amount of the Annual Assessment shall be determined by the Board of Directors according to its estimate of the cost of providing services or rights of use which are common to all of the Lots.

Section 5.4. **Basis and Maximum Annual Assessment**. Until January 1 of the year immediately following conveyance of the first Lot to an Owner other than the Declarant, the maximum Annual Assessment shall be One Thousand Two Hundred Dollars ($1,200.00).

(a) From and after January 1 of the year immediately following the first conveyance of a Lot to an Owner other than the Declarant, the maximum Annual Assessment shall increase, effective January 1 of each year, without the need for a vote of the Members, by

an amount equal to (i) the anticipated increase in costs of insurance, taxes, snow removal, recycling, trash and waste removal, plus (ii) an amount equal the amount of the prior years Annual Assessment times ten percent, (10%).

(b) The Board of Directors may determine not to increase the maximum Annual Assessment to the full extent of the automatic increase provided by subparagraph (a) of this Section, in which case the Board of Directors may determine to increase the Annual Assessment by any lesser amount.

(c) From and after January I of the year immediately following the first conveyance of a Lot to an Owner other than the Declarant, the maximum Annual Assessment may be increased above that established by subparagraph (a) annually, provided that, to be effective, any such change shall have the assent of more than fitly percent (50%) of the votes of each class of Members who are entitled to vote and who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present, written notice of which (setting forth the purpose of the meeting) shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

Section 5.5. **Special Assessments**. In addition to the Annual Assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvements upon the Common Area, including the fixtures and personal property related thereto, or for any other specified purpose (the "Special Assessment"). Any such Special Assessment shall be levied against all of the Lots which benefit from the construction, reconstruction, repair or replacement of capital improvements giving rise to the Special Assessment, pro rata according to each Lots benefit, as reasonably determined by the Board of Directors, which determination shall be final. The amount of the Special Assessment shall be the same for each Lot . To be effective, any such assessment shall have the assent of more than two-thirds (2/3) of the votes of each class of Members who are entitled to vote and who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present, written notice of which setting forth the purpose of the meeting having been sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

Section 5.6. **Quorum for any Action Authorized Under Sections 5.4 or 5.5**. At the first calling of a meeting under Section 5.4 or Section 5.5 of this Article, the presence at the meeting of Members or proxies entitled to cast sixty percent (60%) of all the votes of each class of Members shall constitute a quorum. If the required quorum does not exist at any such meeting, another meeting may be called subject to the notice requirements set forth in Section 5.4 and Section 5.5 and to applicable law, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 5.7. **One Time Assessment**. Upon the closing of the initial conveyance of a Lot to an Owner other than the Declarant or a Designated Builder, the purchaser of such Lot shall pay to the Association, in addition to any other amounts then owed or due to the Association, as a contribution towards it working capital and startup fund, an amount of One Hundred Dollars ($100.00), which payment shall be non-refundable and shall not be considered as an advance payment of any other assessment or other charge otherwise owed the Association with respect to such Lot. Such working capital and startup funds shall be held and used by the Association for payment of, or reimbursement to Declarant for advances made to pay expenses of the Association for the early period of the operation of

the Association and the Property, to enable the Association to have cash available to meet unforeseen expenditures, or to acquire addition equipment or services deemed necessary by the Board of Directors.

Section 5.8. **Rate of Assessment**. The Annual Assessment shall be fixed at a uniform rate and due and owing for all Lots, except for unoccupied Lots owned by the Declarant or a Designated Builder, and the Special Assessments shall be fixed at a uniform rate and due and owing for all Lots, except for unoccupied Lots owned by the Declarant or a Designated Builder.

Section 5.9. **Notice of Assessment and Certificate**. Written notice of the Annual Assessments and any Special Assessments shall be sent to every Member. The due dates for payment of the Annual Assessments and any Special Assessments shall be established by the Board of Directors. The Association shall, upon demand at any time, furnish a certificate in writing signed by an officer or authorized agent of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 5.10. **Remedies of the Association in the Event of Default**. If any assessment pursuant to this Declaration is not paid within thirty (30) days after its due date, the assessment shall bear interest from the date of delinquency at the rate charged by the Internal Revenue Service on delinquent taxes. In addition, in its discretion, the Association may:

(a) impose a penalty or late charge as previously established by rule;

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

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

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

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

Section 5.11. **Subordination of the Lien to Mortgages**. The lien for the assessments provided for herein shall be subordinate to the lien of any properly recorded first mortgage or deed of trust encumbering a Lot. Notwithstanding anything contained in this Section 5.11 or elsewhere in this Declaration, any sale or transfer of a Lot to a Mortgagee pursuant to a foreclosure of its

mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid assessments (or periodic installments, if applicable) which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior Owner from personal liability therefore. No such sale, transfer or conveyance shall relieve the Lot, or the purchaser thereof at such foreclosure sale, or the grantee in the event of conveyance in lieu thereof, from liability for any assessments (or periodic installments of such assessments, if applicable) thereafter becoming due or from the lien for such assessments.

Section 5.12. **Exempt Property.** The following property subject to this Declaration shall be exempt from the assessments created herein: (a) all property dedicated to and accepted by a local public authority; and (b) the Common Area; however, no developed or undeveloped Lot, land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 5.13. **Reserves for Replacements**. The Association shall establish and maintain a reserve fund for the maintenance, repair and replacement of the Common Area and improvements located thereon by the allocation and payment to such reserve fund of an amount to be designated from time to time by the Board of Directors, which reserve fund shall be sufficient, in the sole opinion of the Board of Directors, to accommodate such future maintenance, repair and replacement and which shall be a component of the Annual Assessment. Such fund shall be conclusively deemed to be a common expense of the Association and may be deposited with any banking institution, the accounts of which are insured by any state or by any agency of the United States of America or may, in the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. The reserve for replacement of the Common Area may be expended only for the purpose of effecting the replacement of the Common Area, major repairs to, replacement and maintenance of any improvements within the Common Area, including but not limited to sidewalks, parking areas, landscape improvements, street or common area lighting, streets or roadways developed as a part of the Property, equipment replacement, and for start-up expenses and operating contingencies of a nonrecurring nature relating to the Common Area. The Association may establish such other reserves for such other purposes as the Board of Directors may from time to time considered to be necessary or appropriate. The proportional interest of any Member in any such reserves shall be considered an appurtenance of the Member's Lot and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot.

ARTICLE VI

RESTRICTIVE COVENANTS

Section 6.1. **Residential Use**. The Property shall be used exclusively for residential purposes except as provided in Section 6.19 hereof. The Declarant reserves the right, pursuant to a recorded subdivision or re-subdivision plat, to alter, amend, and change any Lot line or subdivision plan or plat. No building shall be erected, altered, placed or permitted to remain on any Lot other than one Dwelling Unit and appurtenant structures, approved by the Association and appropriate Local Governing Authorities, for use solely by the occupant of the Dwelling Unit.

Section 6.2. **Architectural Review Board Approval**. No Structure (as herein defined) or addition to a Structure shall be erected, placed, painted, altered or externally modified or improved on any Lot until the plans and specifications, including design, elevation, material, shape, height, color and texture, and a site plan showing the location of all improvements with grading modifications, shall be filed with and approved in writing by the Architectural Review Board, and, if required, by appropriate Local Governing Authorities and, where required, appropriate construction permits obtained. As used herein, the term **"Structure"** shall include, but not be limited to, any building or portion thereof, including, without limitation, walls, decks, patios, stairs, windows, window boxes, doors, fences, play equipment, greenhouses, skylights, address markers, mail boxes, name plates, flag poles, lawn ornaments, trees, hedges, shrubbery, solar panels, satellite dishes, antennae, shutters, awnings, fences, pools, hot-tubs, pavement, walkways, driveways, garages and/or garage doors, or appurtenances to any of the aforementioned.

Section 6.3. **Laundry**. No clothing, laundry or wash shall be aired or dried on any portion of the Property within public view.

Section 6.4. **Sight Lines**. No fence, wall, tree, hedge or shrub shall be maintained in such a manner as to obstruct sight lines for vehicular traffic.

Section 6.5. **Maintenance**. Other than as specifically and expressly set forth in Section 11.1 below, an Owner shall, at all times, maintain its Dwelling Unit and all appurtenances thereto in good repair and in a state of neat appearance from all exterior vantage points. Prior to landscaping any Lot (other than perennial flowers within approved flower beds), the Owner of such Lot must submit a written landscape plan to the Architectural Review Board for its review and approval or disapproval. The Owner shall not be permitted to remove any trees or shrubs on the Lot without the approval of the Architectural Review Board, except as may be ordered by Local Governing Authorities or by the Architectural Review Board to maintain proper sight lines. No approval for removal of any trees or shrubs will be granted by the Architectural Review Board unless appropriate provisions are made for replacing the removed trees or shrubs.

Section 6.6. **Nuisance**. No noxious or offensive activity shall be carried on upon the Property, nor shall anything be done or placed thereon which is or may become an annoyance or nuisance to the neighborhood. No exterior lighting on a Lot shall be directed outside the boundaries of the Lot.

Section 6.7. **Signs**. The only signs permitted on the Property shall be customary home and address signs and real estate sale or lease signs which have received the prior written approval of the Architectural Review Board ("Permitted Signs"). No more than one (1) Permitted Sign shall be displayed to public view on any Lot and must be less than or equal to two (2) square feet in total

surface area and may not be illuminated. All Permitted Signs advertising the property for sale or rent shall be removed within three (3) days from the date of the conveyance of the Lot or of the execution of the lease agreement, as applicable.

Section 6.8. **Animals**. No domesticated or wild animal shall be kept or maintained on any Lot, except for common household pets such as dogs and cats which may be kept or maintained, provided that they are not kept, bred or maintained for commercial purposes and do not create a nuisance or annoyance to surrounding Lots or the neighborhood and are kept in compliance with applicable laws and ordinances of the Local Governing Authority. Pets will not be permitted outside of a Dwelling Unit unless on a leash and any Owner walking a pet within the Community or on any Common Area will immediately clean up any solid animal waste and properly dispose of the same. Law enforcement and animal control personnel shall have the right to enter the Property to enforce local animal control ordinances.

Section 6.9. **Trash Storage**. Trash shall be collected and stored in trash receptacles only and not solely in plastic bags. Trash and garbage receptacles shall not be permitted to remain in public view and shall remain inside of each Owner's garage except on days of trash collection, except those receptacles designed for trash accumulation located in the Common Area. No accumulation or storage of litter, new or used building materials, or trash of any kind shall be permitted on the exterior of any Dwelling Unit.

Section 6.10. **Antennae Systems**. To the extent not inconsistent with federal law, exterior television and other antennae, including satellite dishes, are prohibited, unless approved in writing by the Architectural Review Board. The Architectural Review Board shall adopt rules for the installation of such antennae and/or satellite systems, which rules shall require that antennae and satellite dishes be placed as inconspicuously as possible and only when fully screened from public view on the rear and above the eave line of any Dwelling Unit. Satellite dishes will not exceed 18 inches in diameter. It is the intent of this provision that the Architectural Review Board shall be able to strictly regulate exterior antennae and satellite dishes to the fullest extent of the law and should any regulations adopted herein or by the Architectural Review Board conflict with federal law, such rules as do not conflict with federal law shall remain in full force and effect.

Section 6.11. **Painting**. No person shall paint the exterior of any building, or portion thereof, a color different than the original color of said building or portion thereof without the proposed color having been first approved in writing by the Architectural Review Board and the Association. All Dwelling Units in the Community will, at all times, be painted in a uniform color, without variation.

Section 6.12. **Finished Exteriors**. The exteriors of all Structures, including, without limitation, walls, doors, windows and roofs, shall be kept in good maintenance and repair. No Structure shall be permitted to stand with its exterior in an unfinished condition for longer than six (6) months after the commencement of construction. In the event of fire, windstorm or other damage, the exterior of a Structure shall not be permitted to remain in a damaged condition for longer than three (3) months, unless expressly excepted by the Board in writing. Absent approval from the Architectural Review Board to the contrary, all maintained, repaired, or replaced roofs and other structure exterior shall be the same color and texture as the original roof and other structure exterior.

Section 6.13. **Fences**. Except for any fencing installed by the Developer on any Lot or in any Common Areas, no fence or similar enclosure shall be erected or built on any Lot.

Section 6.14. **Vehicles**. No inoperable, junk, unregistered or unlicensed vehicle shall be kept

on the Property. No portion of the Property shall be used for the repair of a vehicle.

Section 6.15. **Commercial Vehicles**. No commercial or industrial vehicle, such as but not limited to moving vans, trucks, tractors, trailers, vans, wreckers, tow trucks, hearses and buses, shall be regularly or habitually parked or parked overnight on the Property, except upon the prior written approval of the Architectural Review Board.

Section 6.16. **Recreational Vehicles**. No recreational vehicles or equipment, such as but not limited to boats, boating equipment, jet-skis, wave runners, travel trailers, camping vehicles or camping equipment shall be parked on the Property without the prior, written approval of the Architectural Review Board, as to location, size, screening and other relevant criteria. The Association shall not be required to provide a storage area for these vehicles.

Section 6.17. **Towing**. The Board of Directors shall have the right to tow any vehicle parked or kept in violation of the covenants contained within this Article, upon twenty-four (24) hours' notice and at the vehicle owner's sole expense.

Section 6.18. **Garage Usage**. Any conversion of any garage that will preclude the parking of vehicles within that garage is prohibited. Owner's shall keep their garages at all times in a manner that will permit the usage of such garage for parking of passenger automobiles, vans and/or trucks.

Section 6.19. **Rental Agreements**. Any rental agreement for a Dwelling Unit must be for an initial period of at least six (6) months, must be in writing and must be subject to the rules and regulations set forth in this Declaration and in the other Association documents. Every such rental agreement must include a provision stating that any failure by the tenant, its household members or guests, to comply with the terms of this Declaration shall be a default under the rental agreement, and the Owner shall be responsible for enforcing that provision.

Section 6.20. **Initial Construction and Marketing**. The Declarant or its assigns, or any Designated Builder, may, during its construction and/or sales period, erect, maintain and operate real estate sales and construction offices, model homes, displays, signs and special lighting on any part of the Property and on or in any building or Structure now or hereafter erected thereon and shall not be bound by the provisions of this Article to the extent application thereof would delay, hinder or increase the cost of construction and/or marketing of Dwelling Units for sale in the Community.

Section 6.21. **Holiday and Seasonal Decorations**. Any holiday or seasonal decorations or ornamentation that is placed on the exterior of a Dwelling Unit or Structure, or that is otherwise visible from the exterior of such Dwelling Unit or Structure, shall be first approved by the Architectural Review Board.

Section 6.22. **Window Boxes**. No window boxes containing flowers or any other vegetation shall be erected or attached to any Dwelling Unit.

Section 6.23. **Dusk to Dawn Coach Lights**. Each Owner shall maintain any and all coach lights installed as a part of the initial construction of each Dwelling Unit in good order, condition and repair, including, without limitation, any necessary repairs or maintenance as may be required for the effective operation of all "dusk to dawn" photocell switches and replacement of light bulbs so that those coach lights remain continuously operational from dusk to dawn.

Section 6.24. **Additional Rules and Regulations**. The Association shall have the authority to adopt such rules and regulations regarding this Article as it may from time to time consider necessary or appropriate.

ARTICLE VII

ARCHITECTURAL REVIEW BOARD

Section 7.1. **The Architectural Review Board**. As used herein, the term **"Architectural Review Board"** will mean and refer to a group of individuals who will administer the duties described in Section 7.4, below. During the Committee Period, as herein defined, the Architectural Review Board will consist of two (2) committees: (i) the **"New Construction Committee"** and the **"Modification and Change Committee."** Upon expiration of the Committee Period, these committees will be dissolved and the Architectural Review Board will not be divided into committees. For purposes of this Declaration, the term **"Committee Period"** will mean and refer to the period of time during which the Declarant owns at least one (1) Lot in the Development.

Nothing contained in this Declaration or in the Articles of Incorporation or By-Laws of the Association will prohibit an individual from serving on both committees simultaneously, however, membership on any one committee will not entitle any individual to also be a member of the other committee. Likewise, nothing contained herein will require the appointment of an individual to either such committee simply because that individual is also a member of the other committee described herein.

The New Construction Committee shall consist of three (3) members who are appointed by the Declarant. The Modification and Change Committee shall consist of a number of members equivalent to the number of members of the Board of Directors of the Association and will consist of the individuals who are members of the Board of Directors of the Association. Upon expiration of the Committee Period and dissolution of the New Construction Committee and the Modification and Change Committee, the rights and responsibilities of each such committee hereunder will simply be administered by the Architectural Review Board. Upon expiration of the Committee Period, the individuals who are members of the Board of Directors of the Association will automatically become members of the Architectural Review Board, without the need for any previous member of either committee to submit any type of resignation or acknowledgement of the termination of such committee. The term of membership for any member of the Architectural Review Board will be coterminous with the term of that individual's membership on the Board of Directors.

Section 7.2. **Removal and Vacancies**. Members of the New Construction Committee may be removed by the Declarant at any time, with or without cause. The Declarant will fill any vacancies on the New Construction Committee in the same manner that it has the right to initially appoint members of the New Construction Committee, in its sole discretion. Individuals who are members of the Modification and Change Committee may only be removed from that committee to the extent that such individual is removed or otherwise ceases to be a member of the Board of Directors of the Association. After the Committee Period, individuals who are members of the Architectural Review Board may only be removed from that board to the extent that such individual is removed or otherwise ceases to be a member of the Board of Directors of the Association. Appointments to fill vacancies in unexpired terms (during the Committee Period) on the Modification and Change Committee or (after the Committee Period) on the Architectural Review Board, shall be made in the same manner as members are appointed or elected to the Board of Directors of the Association.

Section 7.3. **Officers**. At the first meeting of the Modification and Change Committee of the Architectural Review Board following each annual meeting of Members, the Modification and Change Committee shall elect from among themselves a chairperson, a vice-chairperson and a secretary who shall perform the usual duties of their respective offices.

Section 7.4. **Duties**. The Committees of the Architectural Review Board shall regulate the external design and appearance of the Property and the external design, appearance and location of the improvements thereon in such a manner so as to preserve and enhance property values and to maintain harmonious relationships among Structures and the natural vegetation and topography in the Community. During the Committee Period, the New Construction Committee shall regulate all initial construction, development or improvements on the Property and the Modification and Change Committee shall regulate all modifications and changes to existing improvements on the Property. In furtherance thereof, the Architectural Review Board (acting through the designated committees during the Committee Period and of its own accord after the Committee Period) shall:

(a) review and approve or disapprove written applications of Owners for proposed alterations or additions to Lots;

(b) periodically inspect the Property for compliance with adopted, written architectural standards and approved plans for alteration;

(c) adopt and publish architectural standards subject to the confirmation of the Board of Directors;

(d) adopt procedures for the exercise of its duties; and

(e) maintain complete and accurate records of all actions taken by the Architectural Review Board.

No request for approval by the Architectural Review Board or any committee thereof will be reviewed or otherwise considered unless submitted in writing by the Owner requesting such approval. Approval by the Architectural Review Board of a correctly filed application shall not be deemed to be an approval by Local Governing Authorities nor a waiver of the applicant's obligation to obtain any required approvals from any such Local Governing Authorities or to otherwise comply with applicable local ordinances. No approval of the Architectural Review Board or any committee thereof shall be effective unless in writing and signed by the members of the Architectural Review Board or applicable committee whose approval is required hereunder.

Section 7.5. **Failure to Act**. Failure of the Architectural Review Board, any committee thereof or the Board of Directors to respond to any request for approval, enforce the architectural standards contained in this Declaration or to notify an Owner of noncompliance with architectural standards or approved plans for any period of time shall not constitute a waiver by the Architectural Review Board or the Board of Directors of any provision of this Declaration requiring such approval hereunder or otherwise prevent the Architectural Review Board or the Board of Directors from enforcing this Declaration at any later date.

Section 7.6. **Enforcement**. Any exterior addition, change or alteration made without a written application to, and approval of, the Architectural Review Board shall be deemed to be in violation of this Declaration and may be required by the Board of Directors to be restored to its original condition at the offending Owner's sole cost and expense.

Section 7.7. **Appeal**. Any aggrieved party may appeal a decision of the Architectural Review Board to the Board of Directors by giving written notice of such appeal to the Association or any director within twenty (20) days of the adverse ruling.

ARTICLE VIII

EASEMENTS AND OTHER AREAS

Section 8.1. **Emergency Easement Rights**. The Declarant hereby grants a blanket easement to the Association, its directors, officers, agents and employees, to any manager employed by or on behalf of the Association, and to all police, fire, ambulance personnel and all similar persons, to enter upon the Property in the exercise of the functions provided for by this Declaration, Articles of Incorporation, By-Laws and rules of the Association, and in the event of emergencies and in the performance of governmental functions.

Section 8.2. **General Easements**. The Declarant hereby reserves unto itself and its assigns, any governmental or municipal agency, and any public or private utility, a general easement upon all Lots for the installation, maintenance, repair, and use of any drainage, utility, and sewer lines or infrastructure so as to permit the installation, maintenance, repair, and use of all electrical, telephone, water, gas, sanitary and storm sewer and other utility services, including all necessary lines, pipes, wires, cables, ducts, antenna, and other facilities to serve any Dwelling Unit constructed on the Property. This general easement shall be on all areas of a Lot not occupied by a Dwelling Unit, with the exception of areas covered by chimneys or patios. This general easement shall not be exercised, after the conveyance of any Lot, in a manner that (i) unreasonably or adversely affects any Dwelling Unit or portion thereof located upon such Lot, or (ii) unreasonably restricts the right of ingress and egress to such Lot.

Section 8.3. **Limitation on General Easement Rights**. When not an emergency situation or a governmental function, the rights accompanying the easements provided for in Section 8.1 of this Article shall be exercised only during reasonable daylight hours and then, whenever practicable, only after advance notice to, any Owner or tenant directly affected.

Section 8.4. **Encroachments**. If any improvement on the Property now or hereafter encroaches on any other portion of the Property by reason of (a) the original construction thereof by the Declarant or its assigns, which shall include, but not be limited to, any party wall or driveway which encroaches over a Lot's boundary line and any drainage of storm water from roofs and gutters, (b) deviations within normal construction tolerances in the maintenance, repair, replacement or reconstruction of any improvement, or (c) the settling or shifting of any land or improvement, an easement is hereby granted to the extent of any such encroachment for the period of time the encroachment exists. The owner of the encroaching improvement shall also have an easement for the limited purpose of maintenance of the encroaching improvement. This easement does not relieve any Owner or any other person from liability for such Owner's or other person's negligence or willful misconduct.

Section 8.5. **Ingress Egress Easement**. The Declarant and its agents and employees, and

any Designated Builder and its agents and employees, shall have a right of ingress and egress, as required for construction on and development of the Property and otherwise over (i) Common Areas and (ii) portions of any Lots not occupied by a Dwelling Unit; provided, however, that any person or entity exercising such easement rights upon a Lot shall promptly repair any resulting damage so that the Lot is restored to the condition in which it existed immediately prior to the exercise of such easement rights.

Section 8.6. **Drainage, Utility and Sewer Easements (DU & SE)**. Any Drainage, Utility and Sewer Easement (DU & SE) shown on any Plat are created to provide (i) paths and courses for area and local storm drainage, either over land or in adequate underground conduit, to serve the Property and adjoining ground and/or other drainage infrastructure systems and (ii) for the use by public and private utilities and local governments and their agencies having jurisdiction over any storm and sanitary waste disposal system which may be designed to serve the Property and adjoining lands, for the purpose of the installation and maintenance of sanitary and storm sewers and (iii) utility easements for the use of the Declarant, the Association, the Owners, and any municipal or private utility companies for the installation and maintenance of mains, ducts, poles, lines, wires and other utility facilities and infrastructure.

Section 8.7. **Water Line Easement**. The Water Line Easement (Water Line ESMT) shown on any Plat is a non-exclusive easement for the installation, maintenance, and repair of a water line and infrastructure, and for use as a water line. The Water Line Easement is reserved for the Indianapolis Water Company, its agents, and the Declarant and the Declarant's assigns, and is hereby dedicated to the Indianapolis Water Company.

Section 8.8. **Reservation of Right to Grant Future Easements**. There is reserved to the Declarant a right to grant non-exclusive easements over any Lot or Common Area for the purposes of installing, repairing and/or maintaining utility lines of any sort, including but not limited to storm drains and drainage swales, sanitary sewers, gas lines, electric lines and cables, water lines, telephone lines, telecommunication lines and cables, and the like, and for any purpose necessary for the Declarant or its assigns to obtain the release of any bonds posted with a municipality, governmental agency or regulatory agency, and non-exclusive easements over the Common Area to any municipal agency or private entity for any other purpose consistent with the "open space" designation thereof. This right to grant easements shall automatically expire as to any Lot or Common Area seven (7) years from the date of submission of such Lot or Common Area to this Declaration.

Section 8.9. **Bonds and/or Dedication Requirements**. There is reserved to the Declarant an easement and the right to grant and reserve easements or to vacate or terminate easements across all Lots and Common Area as may be required by any governmental agency or authority or utility in connection with the release of improvement bonds or the acceptance of public streets for state maintenance with respect to the Property.

Section 8.10. **Easements for Corrective Work**. There is reserved to the Declarant a non-exclusive easement over all Lots and the Common Area for the purposes of (i) correcting, repairing or maintaining any drainage, drainage infrastructure, utility infrastructure, grading or regrading, maintenance, landscaping, (ii) mowing, (iii) erecting street intersection signs, directional signs, temporary promotional signs, entrance features, lights and wall features, and (iv) executing any of the powers, rights, or duties granted to or imposed on the Association herein. This easement shall automatically expire as to any Lot seven (7) years from the date of submission of such Lot to this Declaration.

Section 8.11. **Open Space**. The Open Space portions of the Common Area are not dedicated to the public and are not for use by the general public; instead, the Open Space portions of the Common Area are to be used exclusively by Owners and their family members, guests, invitees, and lessees.

Section 8.12. **Parking Areas**. Parking Areas are not dedicated to the public and are not to be used by the general public; instead, Parking Areas are to be used exclusively by Owners and their family members, guests, invitees, and lessees for the parking of motor vehicles.

Section 8.13. **Sidewalks**. That portion of the Common Area occupied by Sidewalks is hereby reserved for use by not only the Owners and their family members, guests, invitees, and lessees, but the general public, as well, for pedestrian purposes in the manner in which sidewalks are typically used.

Section 8.14. **Private Street.** The surface of that portion of the Common Area occupied by Private Street is reserved not only for the use for Owners and their family members, guests and invitees, but also for the use by the general public, for vehicular ingress and egress in the manner in which streets are customarily used.

ARTICLE IX

PARKING

Parking of any type of vehicle in any Common Area is prohibited in areas other than areas specifically identified as parking areas, adjacent to Private Street within Common Areas. Parallel parking within internal private streets within Common Areas is prohibited. The Board of Directors may promulgate such rules and regulations as it deems appropriate to regulate the use of any Common Areas to permit temporary parking for purposes of loading and unloading passengers and materials. Those rules and regulations may include the towing of any vehicles parked in violation of this Declaration, with no notice of towing required and at the vehicle owner's sole expense. Temporary parking of vehicles on adjacent public rights-of-way will be subject to applicable limitations and fees imposed by the Local Governing Authorities.

ARTICLE X

PARTY WALLS

Section 10.1. **General Rules of Law to Apply**. Each wall which is built as a part of the original construction of the Dwelling Units upon the Property and placed on the dividing line between Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 10.2. **Sharing of Repair and Maintenance and Destruction by Fire or Other Casualty**. If any such party wall is damaged or destroyed by fire or other casualty or by some cause other than the act of one of the adjoining Owners, its agents, family, household or guests (including ordinary wear and tear and deterioration from lapse of time), then in such event both such adjoining Owners shall proceed forthwith to rebuild or repair the structural components of such wall, sharing equally the cost thereof, and each individual Owner shall proceed forthwith to rebuild or repair the

non-structural components of such wall in proportion to their respective uses of the party wall. Any and all such reconstruction and/or repairs shall be completed immediately to the extent that the failure to commence and/or complete such reconstruction and/or repairs would result in an immediate risk to human health and/or safety. All other reconstruction and/or repairs shall be completed within three (3) months following the casualty or other event that damaged or destroyed such party wall, unless a longer period of time is approved of by the Association. If the damage is of such a nature that it has resulted, or will (if left uncorrected) result in damage or destruction of such party wall, the reconstruction and/or repairs will be completed within a reasonable time, not exceeding six (6) months following the initial discovery of the condition. Any and all such reconstruction and/or repair shall be made in compliance with all requirements of Local Governing Authorities and otherwise in compliance with all applicable laws, to the same or better condition as existed prior to such damage or destruction.

Section 10.3. **Repairs for Damage Caused by One Owner**. If any such party wall is damaged or destroyed through the act of one or more adjoining Owners, or their respective agents, families, households or guests (collectively the "Offending Parties"), whether or not such act is negligent or otherwise culpable, so as to deprive another adjoining Owner of the full use and enjoyment of the wall, then the Owner(s) of the Dwelling Unit(s) from whence the Offending Parties committed the act that caused the damage or destruction, shall forthwith proceed to rebuild and repair the same, in the manner required under Section 10.2, above, without cost to the adjoining Owner.

Section 10.4. **Other Changes**. In addition to meeting the other requirements of these restrictive covenants and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild its Dwelling Unit in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of the adjoining Owner, whose consent shall not be unreasonably withheld. If the adjoining Owner has not responded in writing to the requesting Owner within twenty-one (21) days of its receipt of any such written request, given by registered or certified mail, return receipt requested, such consent of the adjoining Owner shall be deemed received.

Section 10.5. **Right to Contribution Runs with the Land**. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 10.6. **Dispute**. In the event of a dispute between Owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of the cost thereof, then upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board of Directors, who shall decide the dispute.

ARTICLE XI

POWERS AND DUTIES OF THE ASSOCIATION

Section 11.1. **Discretionary Powers and Duties**. The Association shall have the following powers and duties which may be exercised in its discretion:

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

(b) to provide such light as the Association may deem advisable on streets and the Common Area and to maintain any and all improvements, Structures or facilities which may exist or be erected from time to time on the Common Area;

(c) to use the Common Area and any improvements, Structures or facilities erected thereon, subject to the general rules and regulations established and prescribed by the Association and subject to the establishment of charges for their use;

(d) to mow and re-sow or re-seed or re-sod lawn areas and fertilize lawn areas within the Common Areas;

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

(f) to exercise all rights, responsibilities and control over any easements which the Association may from time to time acquire, including but not limited to those easements specifically reserved to the Association in the Article VIII herein;

(g) to create, grant and convey easements and licenses upon, across, over and under all Common Area, including but not limited to easements for the installation, replacement, repair and maintenance of utility lines serving the Property;

(h) to employ counsel and institute and prosecute such suits as the Association may deem necessary or advisable, and to defend suits brought against the Association;

(i) to retain as an independent contractor or employee a manager of the Association and such other employees or independent contractors as the Board deems necessary, and to prescribe the duties of employees and scope of services of independent contractors;

(j) to enter on any Lot to perform emergency repairs or to do other work reasonably necessary for the proper maintenance or protection of the Property, including without limitation (i) maintenance and repairs of all storm water drainage infrastructure, including without limitation retaining walls, and (ii) all utility repairs, and erosion control repairs.

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

(l) to re-subdivide and/or adjust the boundary lines of the Common Area but only to the extent such re-subdivision or adjustment does not contravene the requirements of zoning and other ordinances applicable to the Property;

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

(n) to declare the office of a member of the Board of Directors vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors.

Section 11.2. **Mandatory Powers and Duties**. The Association shall exercise the following powers, rights and duties:

(a) to accept title to the Common Area and to hold and administer the Common Area for the benefit and enjoyment of the Owners and occupiers of Lots, and to cause the Common Area and facilities to be maintained in accordance with the standards adopted by the Board of Directors;

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

(c) after the termination of the Class B membership, to obtain and maintain without interruption liability coverage for any claim against a director or officer for the exercise of its duties and fidelity coverage against dishonest acts on the part of directors, officers, trustees, managers, employees or agents responsible for handling funds collected and held for the benefit of the Association. The fidelity bond shall cover the maximum funds that

will be in the custody of the Association or its management agent at any time while the bond is in place. The fidelity bond coverage shall be in an amount as may be determined to be reasonably prudent by the Board of Directors;

(d) to obtain and maintain without interruption a comprehensive coverage of public liability and hazard insurance covering the Common Area, private streets and access easements (AE) existing on the Property or shown on any Plat, and other easements of which the Association is a beneficiary, if available at reasonable cost. Such insurance policy shall contain a severability of interest clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. The scope of coverage shall include all coverage in kinds and amounts commonly obtained with regard to projects similar in construction, location and use as determined by the Board of Directors. Further, the public liability insurance must provide coverage of at least $1,000,000.00 for bodily injury and property damage for any single occurrence;

(e) to provide for the maintenance and repair of any and all (i) Common Areas and improvements which may exist or be erected from time to time on the Common Area, including but not limited to street lights (including the payment of utility costs therefor), recreational facilities, entrance features, entrance ways, entrance areas, stormwater management facilities, including sand filters, retaining walls and sound walls, (ii) easement areas of which the Association is the beneficiary and for which it has the maintenance responsibility, (iii) any Private Street or access easements (AE) existing on the Property or shown on any Plat; (iv) facilities, including but not limited to fences and signs authorized by the Association and erected on any easements granted to the Association, and (v) street lights that may be constructed within the rights-of-way of any public streets within or adjacent to the Property, including those, if any, required to be maintained by Local Governing Authorities (including the payment of utility costs therefor);

(f) to arrange for plowing and/or removal of snow from (i) private streets located within Common Areas, (ii) community walkways located within Common Areas, and (iii) driveways located upon Lots. It shall be each Owner's responsibility, however, to remove snow from the walkway extending from the community walkways to the front door of the Owner's Dwelling Unit;

(g) to mow, trim, and fertilize grass located on each Lot; provided, however, that the Association shall not be required to maintain, replace, irrigate, or fertilize any flowers, plants, trees, shrubs, or any landscaping other than grass;

(h) to paint all wood exterior trim, but shall not be responsible for any other maintenance of the exterior of a Dwelling Unit;

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

(j) to maintain its corporate status.

Section 11.3. **Board Authority to Act**. Unless otherwise specifically provided in the Association's documents, all rights, powers, easements, obligations and duties of the Association may be performed by the Board of Directors. Notwithstanding anything to the contrary contained herein, any rules or regulations which are promulgated by the Board may be repealed or amended by a majority vote of the Members cast, in person or by proxy, at a meeting convened for such purpose

in accordance with the By-Laws.

Section 11.4. **Compensation**. No director or officer of the Association shall receive compensation for services as such director or officer except to the extent expressly authorized by a majority vote of the Class A Members.

Section 11.5. **Non-liability of Directors, Officers and Board Members**. The directors and officers of the Association and members of the Architectural Review Board shall not be liable to the Owners or any other persons for any error or mistake of judgment in carrying out their duties and responsibilities as directors or officers of the Association or members of the Architectural Review Board, except for their own individual willful misconduct or gross negligence. It is intended that the directors and officers of the Association and members of the Architectural Review Board shall have no personal liability with respect to any contract made by them on behalf of the Association except in their capacity as Owners.

Section 11.6. **Indemnity of Directors and Officers and Members of the Architectural Review Board**. The Association shall indemnify, hold harmless and defend any person, his or her heirs, assigns and legal representatives (collectively, the **"Indemnitee"**) made or threatened to be made a party to any action, suit or proceeding by reason of the fact that he or she is or was a director or officer of the Association or member of the Architectural Review Board, against all costs and expenses, including attorneys fees, actually and reasonable incurred by the Indemnitee in connection with the defense of such action, suit or proceeding, or in connection with any appeal thereof, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Indemnitee is guilty of gross negligence or willful misconduct in the performance of his or her duties. The Association shall also reimburse any such Indemnitee for the reasonable costs of settlement of or for any judgment rendered in any action, suit or proceeding, unless it shall be adjudged in such action, suit or proceeding that such Indemnitee was guilty of gross negligence or willful misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against an Indemnitee, no director or officer or member of the Architectural Review Board shall be considered or deemed to be guilty of or liable for gross negligence or willful misconduct in the performance of his or her duties where, acting in good faith, such director, officer or member of the Architectural Review Board relied on the books and records of the Association or statements or advice made by or prepared by any managing agent of the Association or any director or officer of the Association, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service, unless such director or officer had actual knowledge of the falsity or incorrectness thereof; nor shall a director be deemed guilty of gross negligence or willful misconduct by virtue of the fact that he or she failed or neglected to attend a meeting or meetings of the Board of Directors of the Association. The costs and expenses incurred by an Indemnitee in defending any action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Indemnitee to repay the amount paid by the Association if it shall ultimately be determined that the Indemnitee is not entitled to indemnification or reimbursement as provided in this Section.

ARTICLE XII

RIGHTS OF MORTGAGEES

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

Section 12.1. **Veterans Administration**. If any of the Lots are security for a loan guaranteed by the Veteran's Administration (the "VA") and if there is a Class B Member:

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

(b) Eligible Mortgagees shall have the following rights:

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

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

(iii) notice of any extraordinary Action of the Association;

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

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

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

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

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

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

Section 12.2. **Federal Housing Authority**. If any of the Lots are security for a loan insured by Federal Housing Authority (the **"FHA")** and if there is a Class B Member, the following actions will require the prior approval of the FHA:

(a) annexation of additional properties;

(b) mergers, consolidations and dissolution of the Association;

(c) mortgaging or conveyance of the Common Area; and

(d) amendment of this Declaration.

Section 12.3. **Freddie Mac**. Assuming that Mortgagees may securitize pools of mortgages, including mortgages on Lots and/or Dwelling Units in the Community, with the Federal Home Loan Mortgage Corporation (a/k/a **"Freddie Mac"),** the following requirements shall apply to all Lots and Dwelling Units in the Community:

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

(i) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area. The re-subdivision and/or adjustment of boundary lines of the Common Area and the granting of easements by the Association shall not be deemed a transfer or subdivision within the meaning of this clause;

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

(iii) by act or omission waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Dwelling Units and their appurtenances, the exterior maintenance of Dwelling Units and their appurtenances, the maintenance of the Common Area, common fences and driveways, and the upkeep of lawns and plantings in the Property;

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

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

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

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

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

Section 12.4. **Fannie Mae**. Assuming that Mortgagees may secure funding for mortgage loans by selling mortgage loans, including mortgages on Lots and/or Dwelling Units in the Community, to the Federal National Mortgage Association (a/k/a **"Fannie Mae"),** the following requirements shall apply to all Lots and Dwelling Units in the Community:

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

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

(ii) any default in the performance of any obligation under this Declaration or related Association documents by the Owner of a Lot that is the security for the indebtedness due the Mortgagee which is not cured within sixty (60) days after the Owner's receipt of notice of the default;

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

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

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

(i) voting rights of any Member;

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

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

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

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

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

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

(viii) insurance or fidelity bonds;

(ix) leasing of Dwelling Units;

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

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

(xii) restoration or repair of the Property after a hazard damage or partial condemnation;

(xiii) any provisions that are for the express benefit of Mortgagees; and

(xiv) termination of the legal status of the Association after substantial destruction or condemnation of the subdivision occurs.

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

Section 12.5. **General**.

(a) **Condemnation**. In the event that there is a condemnation or destruction of the Common Area or other Association property, to the extent practicable, condemnation or insurance proceeds shall be used to repair or replace the condemned or destroyed property.

(b) **Unpaid Assessments**. Any Mortgagee, who obtains title to a Lot pursuant to the remedies provided in its mortgage or deed of trust or foreclosure of the mortgage or deed of trust or deed in lieu of foreclosure, will not be liable for such Lot's unpaid dues or charges which accrue prior to the acquisition of title to the Lot by the Mortgagee.

(c) **Books and Records**. A Mortgagee shall have the right to examine and copy at its expense the **books** and records of the Association during normal business hours and upon reasonable notice to the Association.

(d) **Notice**. As set forth in this Article, Mortgagees shall have the right, upon request, to receive notice of (a) the decision of the Owners to abandon or terminate the Planned Unit Development (as defined by Fannie Mae); (b) any material amendment to the Declaration, the By-Laws or the Articles of Incorporation; and (c) if professional management has been required by a Mortgagee, the decision of the Association to terminate such professional management and assume self-management.

(e) **Excess Proceeds**. Should there be excess insurance or condemnation proceeds after the renovation, repair or reconstruction called for herein, such excess proceeds may be

distributed equally to the Owners, apportioned equally by Lot; subject, however, to the priority of a Mortgagee with regard to the proceeds applicable to the Lot securing said Mortgagee and in accordance with Indiana law.

(f) **Audited Financial Statement**. The Association must provide an audited financial statement for the preceding fiscal year to a Mortgagee upon its written request.

(g) **Termination**. Eligible Mortgagees representing at least sixty-seven percent (67%) of the votes of the mortgaged Lots must consent to the termination of the legal status of the Association for reasons other than substantial destruction or condemnation of the Property.

(h) **Damage to Common Area**. The Association shall cause the immediate repair, reconstruction or renovation of any damage to the Common Area unless a decision not to repair, reconstruct or renovate is approved by a majority of the Mortgagees.

ARTICLE XIII

GENERAL PROVISIONS

Section 13.1. **Enforcement and Declarant's Exemption**. The Association or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens and charges now or hereafter imposed by the provisions of this Declaration or other Association documents unless such right is specifically limited. Failure by the Association or by any Owner to enforce any right, provision, covenant or condition which may be granted by this Declaration shall not constitute a waiver of the right of the Association or an Owner to enforce such right, provision, covenant or condition in the future. All rights, remedies and privileges granted to the Association or any Owner pursuant to any term, provision, covenant or condition of the Declaration shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies nor shall it preclude the party exercising the same from exercising such privileges as may be granted to such party by this Declaration or at law or in equity.

Notwithstanding anything in this Declaration to the contrary, (i) the Declarant and any Designated Builder reserves a right to carry on construction, development, and sales activities, to place equipment, machinery, supplies and signs, construct and maintain models or other structures, and park vehicles of prospective or actual purchasers, lessees, or employees and personnel of the Declarant, on any part of the Property owned by the Declarant, a Designated Builder, or the Association and (ii) none of the terms, conditions, provisions, and restrictions set forth in this Declaration shall be construed, in any manner, to limit any activity of the Declarant or a Designated Builder in the construction, development, and sales activities pertaining to the Property.

Section 13.2. **Severability; Headings; Conflict**. Invalidation of any one of the provisions of this Declaration by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect. Titles of paragraphs are for convenience only and are not intended to limit or expand the covenants, rights or obligations expressed therein. In the case of any conflict between the Articles of Incorporation and this Declaration, the Declaration shall control; in the case of any conflict between this Declaration and the By-Laws, this Declaration shall control.

Section 13.3. **Duration**. The covenants and restrictions of this Declaration shall run with and

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

Section 13.4. **Material Amendment/Extraordinary Action**.

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

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

(i) assessment basis or assessment liens;

(ii) any method of imposing or determining any charges to be levied against individual Owners;

(iii) reserves for maintenance, repair or replacement of common area improvements;

(iv) maintenance obligations;

(v) allocation of rights to use Common Areas except as provided in Article III and Article IV herein;

(vi) any scheme of regulation or enforcement of standards for maintenance, architectural design or exterior appearance of improvements on Lots;

(vii) reduction of insurance requirements;

(viii) restoration or repair of common area improvements;

(ix) the annexation or withdrawal of land to or from the Property other than annexation or withdrawal of those properties referred to in this Article XIII;

(x) voting rights;

(xi) restrictions affecting leasing or sale of a Lot; or

(xii) any provision which is for the express benefit of Mortgagees.

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

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

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

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

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

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

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

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

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

(i) termination of this Declaration or the termination of the project;

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

(iii) conveyance of all Common Areas.

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

Section 13.5. **Amendment**. Amendments other than Material Amendments or

Extraordinary Actions shall be approved by at least sixty-seven percent (67%) of the votes entitled to be cast by all Members present and voting, in person or by proxy, at any duly called and conveyed meeting, or in writing by Members entitled to cast at least sixty-seven percent (67%) of the total authorized votes of all Members.

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

Section 13.6. **Special Amendment**. Notwithstanding anything herein to the contrary, the Declarant may unilaterally amend this Declaration for any reason prior to the first conveyance of a Lot to an Owner other than the Declarant and/or a Designated Builder and thereafter may make any amendment required by any of the Federal Agencies or by the Local Governing Authorities, as a condition of the approval of this Declaration, by the execution and recordation of such amendment following notice to all Members.

Section 13.7. **Waiver**. The Declarant, as the present most interested party in maintaining the high quality of development which by these covenants is sought to be assured for the Property, hereby expressly reserves unto itself (so long as these restrictions are in effect), the unqualified right to waive or alter from time to time such of the herein contained restrictions as it may deem best, as to any one or more of the Lots, which waiver or alteration shall be evidenced by the mutual written consent of the Declarant and the then-Owner of the Lot as to which some or all of said restrictions are to be waived or altered; such written consent to be duly acknowledged and recorded in the Office of the Recorder of Marion County, Indiana.

Section 13.8. **Casualty Insurance**. Notwithstanding anything to the contrary contained in this Declaration, each and every Owner shall maintain a casualty insurance policy affording fire and extended coverage insurance insuring the Dwelling Unit in an amount equal to the full replacement value of the improvements which in whole or in part, comprise the Dwelling Unit, including, without limitations any Party Walls. Each Owner of each Lot and/or Dwelling Unit, (regardless of whether or not its ownership is encumbered or is to be encumbered by a mortgage, deed of trust or similar indenture) will furnish to the Association, at or prior to the closing of its acquisition of that Lot or Dwelling Unit, a certificate of insurance, in form and content acceptable to the Association, evidencing the insurance coverage described herein. Each such Owner shall, prior to the expiration of the term of any such insurance policy, procure and deliver to the Association a renewal or replacement policy in form and content acceptable to the Association. If any such Owner fails to provide evidence of such coverage satisfactory to the Association, the Association will have the right, but no obligation, to procure such coverage at the expense of the applicable Owner, and the cost of procuring such insurance will be assessed to that Owner as a Special Assessment and shall be immediately due and payable upon demand.

Section 13.9. **Withdrawable Real Estate**.

(a) The Declarant shall have the unilateral right, without the consent of the Class A Members or any Mortgagee, to execute and record an amendment to this Declaration withdrawing any portion of the Property on which Dwelling Units have not been constructed; provided, however, that not more than five (5) years have lapsed since the date of the recordation of this Declaration.

(b) Upon the dedication or the conveyance to any public entity or authority of any

portion of the Property for public street purposes, this Declaration shall no longer be applicable to the land so dedicated or conveyed.

Section 13.10. **Management Contracts**. For such time as the Declarant has Class B membership status, the Declarant shall have the right to enter- into professional management contracts on behalf of the Association for the management of the Property for terms not to exceed one (1) year; provided, however, that the Association shall have the right to terminate such contracts, with or without cause, upon thirty (30) days' written notice to the other party and without payment of a termination fee.

Section 13.11. **Dissolution**. The Association may be dissolved with the assent given in writing and signed by at least two-thirds (2/3) of each class of Members and in accordance with Article 13 of the Act. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association, both real and personal, shall be offered to an appropriate public agency to be devoted to purposes and uses that would most nearly reflect the purposes and uses to which they were required to be devoted by the Association. In the event that such offer of dedication is refused, such assets shall be then offered to be granted, conveyed or assigned to any non-profit corporation, trust or other organization devoted to similar purposes and in accordance with Indiana law. Any such dedication or transfer of the Common Area shall not be in conflict with then-governing zoning ordinances or the designation of the Common Area as "open space".

WITNESS the following signatures:

BERKLEY PLACE LLC
an Indiana limited liability company

By: _____
J. Brian Mann, Manager

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared J. Brian Mann, by me known be the President of Berkley Place LLC, an Indiana limited liability company, who acknowledged the execution of the foregoing "Declaration of Covenants, Conditions and Restrictions for Berkley Place" on behalf of said corporation.

Witness my hand and Notarial Seal this 1 day of February, 2004.

My Commission Expires:

_____

Lynn M. Ryan
Notary Public

LYNN M RYAN
NOTARY PUBLIC STATE OF INDIANA
MARION COUNTY
MY COMMISSION EXP. DEC. 20,2009

My County of Residence:

_____

_____
Printed Signature

This instrument was prepared by and after recording return to:

Mann Properties LLP
8653 Bash Street
Indianapolis, IN 46256

EXHIBIT "A"

LEGAL DESCRIPTION

Berkley Place

Part of the West Half of the Northwest Quarter of Section 14, Township 17 North, Range 4 East of the Second Principal Meridian in Marion County, Indiana, described as follows:

Commencing at a Harrison monument at the Northeast corner of said West Half Quarter Section; thence South 00 degrees 02 minutes 37 seconds East (bearings based on the Indiana State Plane Coordinate System) along the East line of said West Half Quarter Section a distance of 540.21 feet to the Point of Beginning; thence North 89 degrees 52 minutes 32 seconds West parallel with the North line of said Half Quarter Section a distance of 613.67 feet; thence South 00 degrees 02 minutes 37 seconds East parallel to the East line of said Half Quarter Section a distance of 783.86 feet to the North line of Hearthstone, Section One, recorded as Instrument number 840921349 in the office of the Marion County Recorder; thence South 89 degrees 51 minutes 16 seconds East along the North line of said Hearthstone a distance of 613.67 feet to the East line of said Half Quarter Section; thence North 00 degrees 02 minutes 37 seconds West along the East line of said Half Quarter Section a distance of 784.09 feet to the Point of Beginning. Containing 11.045 acres, more or less.