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**DECLARATION OF LADYWOOD GARDENS**  
**HORIZONTAL PROPERTY REGIME**

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MARION COUNTY AUDITOR

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DECLARATION OF  
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TABLE OF CONTENTS

	PAGE NUMBER
RECITALS .....	1
SECTION 1: DEFINITIONS.....	2
SECTION 2: DESCRIPTION OF BUILDINGS.....	4
SECTION 3: LEGAL DESCRIPTION & PERCENTAGE INTEREST .....	4
SECTION 4: DESCRIPTION OF CONDOMINIUM UNITS.....	4
SECTION 5: COMMON AREAS & FACILITIES .....	5
SECTION 6: LIMITED AREAS & FACILITIES.....	6
SECTION 7: OWNERSHIP OF COMMON AREAS.....	6
SECTION 8: ENCROACHMENTS & EASEMENTS .....	6
SECTION 9: REAL ESTATE TAXES .....	7
SECTION 10: UTILITIES.....	7
SECTION 11: ASSOCIATION OF OWNERS.....	7
SECTION 12: USE OF COMMON AREAS .....	8
SECTION 13: MAINTENANCE, DECORATION, REPAIRS & REPLACEMENTS .....	9
SECTION 14: ALTERATIONS, ADDITIONS & IMPROVEMENTS.....	10
SECTION 15: PERCENTAGE INTEREST.....	11
SECTION 16: INSURANCE.....	11
SECTION 17: CASUALTY & RESTORATION; CONDEMNATION; & TERMINATION.....	14
SECTION 18: COVENANTS & RESTRICTIONS.....	18
SECTION 19: SALE, LEASE OR OTHER TRANSFER.....	19

SECTION 20: AMENDMENT OF DECLARATION .....20

SECTION 21: ACCEPTANCE & RATIFICATION .....22

SECTION 22: NEGLIGENCE .....23

SECTION 23: GRANTING OF EASEMENTS .....23

SECTION 24: RIGHTS TO USE OF COMMON AREAS.....23

SECTION 25: INITIAL MANAGEMENT .....24

SECTION 26: COSTS & ATTORNEY’S FEES.....25

SECTION 27: FAILURE TO PAY ASSESSMENTS.....25

SECTION 28: SEVERABILITY CLAUSE .....25

SECTION 29: PRONOUNS .....25

SECTION 30: RELATIONSHIP WITH MASTER COVENANTS .....26

DECLARATION OF  
LADYWOOD GARDENS  
HORIZONTAL PROPERTY REGIME

THIS DECLARATION of Ladywood Gardens Horizontal Property Regime (“Declaration”) is made this 28th day of October, 2005 by Oakfield Development II, L.L.C., an Indiana limited liability company (the “Declarant”).

WITNESSETH:

**WHEREAS**, Declarant is the purchaser of certain real estate and improvements thereon located in Marion County, Indiana, and more particularly described in Exhibit “A” hereto (the “Real Estate”); and

**WHEREAS**, Declarant, by execution of this Declaration, hereby creates a Horizontal Property Regime (the “Regime”) upon the Real Estate, subject to the provisions of the Horizontal Property Law of the State of Indiana (the “Act”) and the terms and conditions of this Declaration.

**NOW, THEREFORE**, Declarant hereby makes this Declaration, and declares that the Real Estate shall be a “Horizontal Property Regime” as provided in the Act, subject to and in accordance with the following terms and conditions:

**SECTION 1. Definitions.** The following terms, as used in this Declaration,

unless the context clearly requires otherwise, shall mean the following:

- (a) "Act" means the Horizontal Property Law of the State of State of Indiana, Acts 1963, Chapter 349, Sections 1 through 31, as amended. The Act is incorporated herein by reference, and identified in Indiana Code Chapter 32-25-1.
- (b) "Association" means Ladywood Gardens Co-owners Association, Inc., an Indiana non-profit corporation, being the Association of the Co-Owners of Ladywood more particularly described in Section 11 hereof.
- (c) "Board of Directors" means the governing body of the Association, being the initial Board of Directors referred to in the By-Laws or the subsequent Board of Directors elected by the Co-Owners in accordance with the By-Laws. The term "Board of Directors," as used herein and in the By-Laws, shall be synonymous with the term "Board of Directors" as used in the Act.
- (d) "Building" means any structure on the Real Estate in which Common Areas, Limited Areas or one or more Condominium Units are located. The Buildings are more particularly described and identified on the Plans and in Section 2 of this Declaration.
- (e) "By-Laws" means the Code of By-Laws of Ladywood Gardens Co-Owners Association, Inc., providing for the administration and management of the Association as required by and in conformity with the provisions of the Act. A true and accurate copy of the By-Laws is attached to this Declaration and incorporated herein by reference.
- (f) "Common Areas" and "Limited Areas" means the common areas, limited common areas and facilities as defined in Sections 5 and 6 of this Declaration.
- (g) "Common Expenses" means expenses of administration of the Association, expenses for the upkeep, maintenance, repair and replacement of the Common Areas and Limited Areas and all other costs and expenses incurred by the Association for the benefit of Common Areas and Limited Areas or for the common benefit of all Owners; provided, however, Common Expenses shall not include any costs of initial construction or initial renovation of any Building or other Property or improvements or any portion of the Tract, nor any costs of repairs covered by any Warranty of Declarant as builder of the Condominium Units, nor to any costs or repairs arising out of construction, renovation or other activities on any portion of the Real Estate.

- (h) "Condominium Units" means any one of the living units constituting Ladywood Gardens, each individual living unit being more particularly described and identified on the Plans and in Sections 3 and 4 of this Declaration. "Condominium Unit" includes the undivided interest in the Common Areas and Limited Areas pertaining to such unit.
- (i) "Co-Owners" means all of the Owners of all of the Condominium Units in the Regime.
- (j) "Declarant" shall mean and refer to Oakfield Development II, L.L.C., an Indiana limited liability company, and any successors and assigns of Declarant, whom Declarant designates in one or more recorded instruments to have the rights of Declarant hereunder, including, but not limited to, any mortgagee acquiring title to any portion of the Property pursuant to the exercise of the rights under, or foreclosure of, a mortgage executed by Declarant.
- (k) "Drainage System" means the storm sewers, subsurface drainage tiles, pipes and structures, and other structures, fixtures, properties, equipment and facilities located in, upon, or under the Common Areas, Easements, or Streets and designed for the purpose of expediting the drainage of surface and subsurface waters from, over and across Ladywood Development.
- (l) "Mortgagee" means the holder, insurer or guarantor of a first mortgage loan on a Condominium Unit.
- (m) "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity or any combination thereof who or which owns the fee simple title to a Condominium Unit; provided, however, persons or entities owning a single Condominium Unit as tenants-in-common, joint tenants, tenants by the entireties, or any form of joint or divided ownership, shall be deemed one Owner for purposes of this Declaration. Persons or entities owning more than one Condominium Unit shall have the status of an Owner for each Condominium Unit owned.
- (n) "Percentage Interest" means that percentage of the total undivided interest accruing to all the Condominium Units which is appurtenant to each Condominium Unit and accrues to the Owner thereof. The formula for determining "Percentage Interest" is set forth in Section 15 hereof.
- (o) "Plans" means the floor and building plans of the Buildings and Condominium Units prepared and certified by Augusta Homes, or its successors or assigns, all of which are incorporated herein by reference. And made a part of the Regime by such references.

- (p) "Property" means the Real Estate and appurtenant easements, the Condominium Units, the Buildings, improvements and property of every kind and nature whatsoever, real, personal or mixed, located upon the Real Estate and used in connection with the operation, use and enjoyment of Ladywood Gardens, but does not include the personal property of the Owners.
- (q) "Ladywood Gardens" means the name by which the Horizontal Property Regime shall be known.
- (r) "Tract" means the Real Estate as herein defined.

SECTION 2. Description of Buildings. There are, or will be built, Buildings containing Condominium Units on the Real Estate as shown on the Plans. As of the date of this Declaration, construction is not complete on the Condominium Units. A description of the Buildings and the Condominium Units contained or to be contained therein is set forth in Exhibit "B" attached hereto and hereby made a part hereof by this reference.

SECTION 3. Legal Description and Percentage Interest. Each Condominium Unit is identified on the Plans by a number. The Legal Description for each Condominium Unit shall consist of the identifying number for such Condominium Units as shown on the Plans, and shall be stated as "Condominium Unit" (with identifying number) in Ladywood Gardens Horizontal Property Regime. The Percentage Interest of each Owner in the Common Areas and Limited Areas as hereinafter defined shall be the same percentage of interest as each Condominium Unit as set forth on Exhibit "B" attached hereto and hereby made a part hereof.

SECTION 4. Description of Condominium Units .

- (a) "Appurtenants." Each Condominium Unit shall consist of all space within the boundaries thereof, as hereinafter defined, and all portions of the Building situated within such boundaries, including, but not limited to, all fixtures, facilities, utilities, equipment, appliances and structural components designed and intended solely and exclusively for the enjoyment, use and benefit of the Condominium Units wherein the same are located, or to which they are attached, but excluding therefrom that designed or intended for the use, benefit, support, safety or enjoyment of any other Condominium Unit or

which may be necessary for the safety, support, maintenance, use and operation of any of the Buildings; or which are normally designed for common use; provided, however, that all fixtures, equipment and appliances designed or intended for the exclusive enjoyment, use and benefit of a Condominium Unit shall constitute a part of such a Condominium Unit, whether or not the same are located within or partly within the boundaries of such Condominium Unit. Also, the interior sides and surface of all doors and interior and exterior or size and frames of all windows in the perimeter walls of the Condominium Unit, whether or not located within or partly within the boundaries of the Condominium Unit, and all interior walls and all floors and ceilings within the boundaries of the Condominium Unit, are considered part of the Condominium Unit.

- (b) **“Boundaries.”** The boundaries of each Condominium Unit shall be as shown on the Plans and shall be measured between the interior unfinished surface of the floors, ceilings and perimeter walls of each Condominium Unit. In the event any horizontal or vertical or other boundary line as shown on the Plans does not coincide with the actual location of the respective wall, floor or ceiling surface of the Condominium Unit because of inexactness of construction, settling after construction or for any other reason, the boundary lines of each Condominium Unit shall be deemed to be and treated for purposes of ownership, occupancy, possession, maintenance, declaration, use and enjoyment, as in accordance with the actual existing construction. In such case, permanent appurtenance easements for exclusive use shall exist in favor of the Owner of each Condominium Unit in and to such space lying outside of the actual boundary lines of the Condominium Unit, but within the appropriate wall, floor or ceiling surfaces of the Condominium Unit.

**SECTION 5. Common Areas And Facilities.** “Common Areas” shall include the following, except to the extent otherwise specifically designated in this Declaration as being within a Condominium Unit or as a Limited Area:

- (a) The Real Estate, excluding the Condominium Units;
- (b) The foundations, columns, girders, beams, supports and exterior surfaces of roofs of the Buildings;
- (c) The yards, sidewalks, parks, pathways, ponds, lakes, trails, interior and exterior driveways, parking areas, entrances and exits;
- (d) Central electricity, gas, water, air conditioning and sanitary sewer mains serving the Buildings unless separately metered to a particular Condominium Unit;
- (e) Exterior lighting fixtures and electrical service lighting to the exterior of the Buildings unless separately metered to a particular Condominium Unit; and

- (f) Pipes, ducts, electrical wiring and conduits and public floors, roofs and exterior permanent walls of the Buildings, except to the extent the same are otherwise classified and defined herein as Limited Areas or as part of a Condominium Unit.

**SECTION 6. Limited Areas and Facilities.** Limited Areas and those

Condominium Units to which use thereof is limited are as follows:

- (a) The front entrance ways, patios, porches and all exterior sides and surfaces of doors and frames surrounding the same on each Condominium Unit shall be limited to the exclusive use of the Condominium Unit to which they appertain.
- (b) Any other areas designated and shown on the Plans as Limited Areas shall be limited to the Condominium Unit or Condominium Units to which they appertain as shown on the Plans.

**SECTION 7. Ownership of Common Areas and Percentage Interest.**

Each Owner shall have an undivided interest in the Common Areas and Limited Areas, as tenants-in-common with all the other Owners, equal to his or her Condominium Units Percentage Interest. The Percentage Interest in the Common Areas applicable to each Condominium Unit shall be determined in accordance with the formula set forth in Section 15 hereof. The Percentage Interest in the Common Areas and Limited Areas presently pertaining to each Condominium Unit is specified in Exhibit "B" hereto. In any computation of Percentage Interests, the figure obtained shall be rounded to the nearest one-thousandth of a percent, and shall be so presented for all purposes of conveyance and for all purposes contemplated under this Declaration.

**SECTION 8. Encroachments, Easements For Common Areas and Ingress and Egress Easements.** If, by reason of the location, the construction, settling or shifting of a Building, any Common Area or Limited Area now encroaches or shall hereafter encroach upon any Condominium Unit, then in such event an easement shall be deemed to exist and run to the Co-Owners and the Association for the maintenance, use and enjoyment of

such Common Area or Limited Area. Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities located in any of the other Condominium Units and serving his Condominium Unit. Each Owner shall have an easement over the Common Areas for the purpose of ingress and egress from his Condominium Unit, and to use all Common Areas wherever located, and such easement shall be perpetual and appurtenant to the Condominium Unit.

SECTION 9. Real Estate Taxes. Real estate taxes are to be separately assessed and taxed to each Condominium Unit as provided in the Act. In the event that for any year real estate taxes are not separately assessed and taxed to each Condominium Unit, but are assessed and taxed on the Property as a whole, then each Owner shall pay his or her proportionate share of such taxes to the extent attributable to the Property in accordance with his respective Percentage Interest.

SECTION 10. Utilities. Each Owner shall pay those utilities which are separately metered to his or her Condominium Unit. Utilities which are not separately metered shall be treated as and paid as a part of the Common Expenses unless otherwise agreed by the majority of the Percentage Interests.

SECTION 11. Association of Owners. Subject to the rights of Declarant reserved in Section 24 hereof, maintenance, repair, upkeep, replacement, administration, management and operation of the Property shall be by the Association. Each Owner of a Condominium Unit shall, automatically upon becoming an Owner of a Condominium Unit, be and become a member of the Association and shall remain a member until such time as his or her ownership ceases. The membership of each Owner shall terminate when such person ceases to be an Owner, and shall be transferred to the new Owner of the Condominium Unit.

The Association shall elect a Board of Directors annually (except for the initial Board of Directors as set forth in the By-Laws) in accordance with and as prescribed by the By-Laws. Each Owner shall be entitled to cast a vote commensurate with the number of Condominium Units owned by that Owner for the election of the Board of Directors, except for the initial Board of Directors. Whether as an original member of the Board of Directors, or as a member thereof appointed by Declarant to fill a vacancy, the initial Board of Directors shall be deemed a member of the Association and an Owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose. A person serving on the initial Board of Directors shall not be deemed or considered a member of the Association nor an Owner of a Condominium Unit for any other purpose unless he is actually an Owner of a Condominium Unit and thereby is a member of the Association. The Board of Directors shall be the governing body of the Association, representing all the Owners in providing for the management, administration, operation, maintenance, repair, replacement and upkeep of the Property exclusive of the Condominium Units.

The Association and any aggrieved Condominium Unit Owner shall have a right of action against any Owner for failure to comply with the provisions of the Declaration, By-Laws or decisions of the Association which are made pursuant to authority granted the Association in such documents. Condominium Unit Owners shall have a similar right of action against the Association.

SECTION 12. Use of Common Areas. The Board of Directors shall adopt rules and regulations concerning maintenance, repairs, use and enjoyment of the Common Areas and Limited Areas as it deems appropriate, and may amend and modify the same from time to time as it deems advisable, necessary or appropriate. The Board of Mangers or their designated agents shall have the right at reasonable times and upon reasonable

prior notice (except in cases of emergency in which case no notice shall be required) to enter into each individual Condominium Unit for the purpose of inspection of the Common Areas and Limited Areas appurtenant thereto and replacement, repair and maintenance of such Common Areas and Limited Areas.

SECTION 13. Maintenance, Decoration, Repairs and Replacements.

(a) Common Areas. The Association will be responsible for the maintenance, repair, decoration, restoration and replacement of the Common Areas. Maintenance, decoration, repairs and replacements of the Common Areas shall be furnished by the Association and the costs thereof shall be part of the Common Expenses. The Association may elect to delegate such duties to a Managing Agent and may enter into a management contract for such purpose, provided that such agent and the terms of such contract are approved by a majority of the vote present or represented at any meeting of the Association. Declarant or an entity affiliated with Declarant may serve as the Managing Agent for the Association so long as Declarant retains control of the Association, and may perform all property management functions on behalf of the Association. Any management contract made or which is deemed to arise between the Association and Declarant (or any affiliate) shall be terminable by the Association without cause and without penalty upon thirty (30) days' written notice at any time after Declarant relinquishes control of the Association. The Board of Directors has the right to adopt such rules and regulations concerning the maintenance, repairs, use and enjoyment of the Common Areas as it deems appropriate, including the appointment of committees to oversee the same. The Board of Directors shall have the exclusive right to determine the outside décor of each Building, including, without limitation, the color and type of paint and other décor pertinent to the exterior of each Building.

(b) Condominium Units. Each Owner shall control and have the right to determine the interior décor of his or her Condominium Unit, but this shall not include the right to make structural changes to the Unit, nor the right to use interior décor which in the discretion of the Board of Directors adversely affects the external appearance of the Condominium Unit, as more particularly set forth in the By-Laws of the Association. No act or omission which constitutes waste shall be committed or suffered in or upon any Condominium Unit, the Common Areas or Limited Areas. Each Owner shall maintain and repair at his or her sole cost and expense all fixtures, appliances, equipment, and other improvements constituting a part of his or her Condominium Unit under Section 4 hereof, and each Owner shall promptly repair any condition or defect existing or occurring in his or her Condominium Unit which, if not repaired, might adversely affect any Condominium Unit, Common Area or Limited Areas. The Board of Directors and the Managing Agent shall have the right at reasonable times and upon reasonable prior notice (except in cases of emergency in which case no notice shall be required) to enter into or on the Condominium Units and Common Areas adjacent to each Condominium Unit to replace, repair and maintain such Common

Areas. In the event that any Owner fails or is unable to maintain or repair any condition or defect for which he or she is responsible, and the Board of Directors or the Managing Agent have a reasonable basis for believing that such condition or defect has caused or threatens to cause immediate and/or substantial harm to any person or to any property outside such Owner's Condominium Unit, the Board of Directors and the Managing Agent shall each have the right to enter such Owner's Condominium Unit to remedy or repair such condition or defect, and any costs or expenses incurred in connection therewith (including attorney's fees) shall be payable by such Owner upon demand by the Board of Directors or the Managing Agent. Nothing herein contained shall be construed to represent a contractual liability to any Owner on the part of the Declarant, the Association or the Board of Directors for maintenance, repair or replacement of any Condominium Unit, Common Areas or Limited Areas, and the liability of the Association the Board of Directors and Managing Agent in this regard shall be limited to damages resulting from gross negligence, recklessness or intentional misconduct, unless otherwise provided in the management contract in the case of the Managing Agent.

SECTION 14. Alterations, Additions and Improvements. No Owner shall make any alterations or additions to, or which would affect, the Common Areas or Limited Areas, without the prior written approval of the Board of Directors. In addition, no Owner shall make any alteration in or to his respective Condominium Unit and within the boundaries thereof which would affect the safety and structural integrity of the Building in which Condominium Unit is located. Declarant reserves the right to change the interior design and arrangement of all Condominium Units and alter the boundaries between Condominium Units so long as Declarant owns the Condominium Units so altered. No change by Declarant under this Section 14 shall increase the number of Condominium Units or change the Percentage Interest applicable to such Condominium Unit. If Declarant shall make any changes in the Condominium Units so authorized, such changes shall be reflected by a supplement to the Plans and such supplement to the Plans need not be approved by the Association or any other Owners.

SECTION 15. Percentage Interest. The Owner of each Condominium Unit shall have a Percentage Interest appurtenant to his Condominium Unit Ownership based upon the number of Condominium Units owned by that Owner divided by the total number of

all of the Condominium Units existing in the Regime at that time in accordance with Ind. Code §32-25-4-3(a)(3) (hereinafter called the "Formula"). In order to determine the Percentage Interests in accordance with the Formula, the total number of the Condominium Units in the Regime shall be taken from the Plans, which are filed herewith, as such Plans may be amended from time to time. This method of calculating Percentage Interest shall result in an equal Percentage Interest to each Condominium Unit. The total Percentage Interests shall at all times equal one hundred percent (100%), or as close to one hundred percent (100%) as is mathematically possible, after taking into account the rounding thereof as required by the Act.

SECTION 16. Insurance.

(a) The Co-Owners, through the Associations, shall purchase a master casualty insurance policy issued in the name of the Association for the use and benefit of the Owners affording fire and extended coverage insurance insuring the Property in an amount consonant with the full replacement value of the Property and improvements, including the individual Condominium Units, the Common Areas and Limited Areas and facilities, and further including fixtures, building service equipment and common personal property and supplies belonging to the Association. For all Condominium Units which are subject to a first mortgage, the individual Co-Owner must obtain insurance covering the fixtures, equipment and other personal property inside individual Condominium Units if they are secured by a first mortgage. A Certificate of Insurance shall be issued to each Condominium Unit Owner and each Mortgagee upon request and no such policy shall be cancelled or substantially modified without at least thirty (30) days prior written notice to the Association and to each Mortgagee listed as Mortgagee in the policies. The insurance policy must contain the standard mortgage clause and must name the Mortgagee, and its name shall be followed by the phrase "its successors and assigns." The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Board of Managers, the Board may cause full replacement value to be determined by a qualified appraiser. The cost of any appraisal shall be a Common Expense. Insurance coverage set forth herein shall be for the benefit of each Owner, and if applicable, the Mortgagee of each Owner upon the following terms and conditions:

- (i) All proceeds payable as a result of casualty losses sustained, which are covered by insurance purchased by the Association as hereinabove set forth, shall be paid to it or to the Board of

Directors, who shall act as the insurance trustees and hold such proceeds for the benefit of the insured parties. In the event that the Board of Mangers has not posted surety bonds for the faithful performance of its duties as Directors, or if such bonds do not exceed the funds which will come into it hands, and there is damage to a part or all of the Property resulting in a loss, the Board of Directors shall obtain and post a bond for the faithful performance of its duties as insurance trustee in an amount to be determined by the majority of the Owners, but not to exceed one hundred twenty-five percent (125%) of the loss, before the Board of Directors shall be entitled to receive the proceeds of the insurance payable as a result of the loss. The sole duty of the insurance trustee shall be to receive the proceeds as the same are paid and to hold the same in trust for the purpose stated herein, and for the benefit of the Owners and their respective Mortgagees. The proceeds shall be used or disbursed by the Association or Board of Directors as appropriate in accordance with the provisions of this Declaration.

- (ii) The interest of each damaged Owner in the trust fund of insurance proceeds shall be the ration of the direct damage of each damaged Owner to the damages of all Owners directly damaged by any event insured under the master casualty insurance policy.
- (b) The master casualty insurance policy, and “all risk” coverage if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (i) waives its right to subrogation as to any claim against the Association, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (ii) waives any defense based on invalidity arising from the acts or omissions of the individual Condominium Unit Owners that are not under the control of the Association, and providing further, (iii) that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners as hereinafter permitted, and (iv) that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Owners do not elect to restore pursuant to Section 17 of this Declaration.
- (c) The Co-Owners, through the Association, shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time; however, such coverage shall be for at least Two Million Dollars (\$2,000,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence. The comprehensive public liability insurance policy shall cover the Association, the Board of Directors, any committee or organ of the Association or Board of Directors, any Managing Agent appointed or employed by the Association, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to Ladywood Gardens, all Owners of Condominium Units and all other portions of

Ladywood Gardens. Coverage under this policy shall include, without limitation, legal liability of the insureds for the property damage, bodily injuries and deaths of the persons in connection with the operation, maintenance or the use of the Common Areas and Limited Areas, and if available, legal liability arising out of lawsuits related to employment contracts of the Association. No insurance coverage as described hereinabove shall be prejudiced by the act or neglect of an individual Condominium Unit Owner who was not in control of the Owners collectively. The policy described herein shall also provide that it may not be canceled or substantially modified by any party without at least thirty (30) days prior written notice to the Association and to each holder of a first mortgage on any Condominium Unit in the Property which is listed as a scheduled holder of a first mortgage in the insurance policy.

- (d) The Co-Owners, through the Association, shall also obtain any other insurance required by law to be maintained, including, but not limited to, worker's compensation insurance, flood insurance and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including, but not limited to, comprehensive liability insurance on vehicles owned by the Association, officers' and directors' liability policies, contractual and all-written contract insurance, and employer's liability insurance. Insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party, and shall also insure to the benefit of each Owner, the Association, the Board of Mangers and any Managing Agent acting on behalf of the Association.
- (e) Each Owner shall be deemed to have appointed the Board of Mangers to represent each Owner in any proceedings, negotiations, settlements or agreements with the insurance companies to adjust all losses under policies purchased by the Board of Mangers.
- (f) The premiums for all insurance hereinabove described shall be paid by the Association as part of Common Expenses. When any policy of insurance hereinabove described has been obtained by or on behalf of the Association, written notice of the attainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner or Mortgagee whose interest may be affected thereby, which notice shall be furnished by the officer of the Association who is required to send notices of meetings of the Association.
- (g) In no event shall any distribution of proceeds be made by the Board of Directors directly to an Owner where there is a mortgage endorsement on the Certificates of Insurance. In such event any remittance shall be to such Owner and Mortgagee jointly.
- (h) Each Owner shall be solely responsible for, and may obtain, additional insurance as the Owner deems necessary or desirable at the Owner's own expense affording coverage upon his personal property, contents of the Owner's Condominium Unit (including, but not limited to, all floor, ceiling

and wall coverings and fixtures, betterments and improvements installed by the Owner) and the Owner's personal property stored elsewhere on the Property, and for the Owner's personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions of the master casualty insurance policy to be obtained by the Association. Each Owner may obtain casualty insurance at the Owner's own expense upon the Owner's Condominium Unit, but it shall provide that it shall be without contribution as against the casualty insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of the proceeds which would otherwise be payable in the insurance purchased by the Association pursuant to this paragraph, due to proration of insurance purchased by an Owner under this paragraph, the Owner agrees to assign the proceeds of this latter insurance, to the extent of the amount of such reduction, to the Association to be distributed as herein provided. Notwithstanding any other foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured on behalf of the Association, an authorized representative, including any trustee with whom the Association may enter into an insurance trust agreement or any successor to such trustee who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish this purpose. Each Condominium Unit Owner hereby appoints the Association as attorney-in-fact for the purpose of purchasing and maintaining such insurance, and the following additional purposes: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability related thereto; the execution of all documents necessary in connection therewith; and the performance of all other acts necessary to accomplish such purposes.

- (i) All of the insurance described above shall be procured by generally acceptable insurance carriers.

**SECTION 17. Casualty and Restoration; Condemnation; Termination.**

- (a) Except as hereinafter provided, damage to or destruction of any Building due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose; provided, however, repair and reconstruction shall not be compulsory in the event of "complete destruction of all the Buildings" (hereinafter defined) it shall only be done in accordance with provisions hereinafter set forth. As used herein, the term "complete destruction of all the Buildings" means a determination, made by a vote of two-thirds of all Co-Owners at a special meeting of the Association called for the purpose of making such determination, that total destruction of all of the Buildings has occurred. A special meeting of the Association shall be called and held within ninety (90) days after any fire or any other casualty or disaster damaging or destroying any of the Buildings. If such a meeting is not called and held within such ninety (90) day period, or if the determination of whether or not there has been a complete destruction of all the Buildings has not been made

within such ninety (90) day period, then it shall be conclusively presumed that the Co-Owners determined that there was not a complete destruction of all the Buildings, and the Association shall proceed with repair and reconstruction as herein provided.

- (b) If the insurance proceeds, if any, received by the Association as a result of any such fire or any other casualty disaster are not adequate to cover the costs of repair and reconstruction, or in the event there are no insurance proceeds, and if the Property is not to be removed from the Horizontal Property Regime, the costs for restoring and damage, repairing or reconstructing the Building or Buildings so damaged or destroyed (or the costs thereof in excess of the insurance proceeds received, if any) shall be paid by all of the Owners of Condominium Units in proportion to the relation that the Percentage Interest of each Condominium Unit bears to the total Percentage Interest of all Condominium Units. Any amounts payable by the Co-Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein and under the Act.
- (c) For purposes of Subsections (a) and (b) above, repair, reconstruction and restoration shall mean construction or rebuilding of the Condominium Units as near as possible to the same condition as they existed immediately prior to the damage or destruction and with the same type of architecture.
- (d) If, under Subsection (a) above, it is determined by the Co-Owners at the special meeting of the Association referred to therein that there has been a complete destruction of all the Buildings, the Co-Owners shall, at such same special meeting, vote to determine whether or not such complete destruction of all the Buildings shall be repaired and reconstructed. The Buildings shall not be reconstructed or repaired if it is the determination of the Co-Owners at said special meeting that there has been a complete destruction of all the Buildings, unless by a vote of two-thirds of all the Co-Owners a decision is made to rebuild, reconstruct and repair the Buildings. If two-thirds of all of the Co-Owners vote and decide that the Buildings are to be rebuilt, reconstructed and repaired, insurance proceeds, if any, received by the Association shall be applied and any excess of construction costs over insurance proceeds, if any received by the Association shall be contributed and paid as hereinabove provided in Subsections (a) and (b).
- (e) If, in the case of the complete destruction of all of the Buildings, less than two-thirds of all of the Co-Owners vote in favor of rebuilding, reconstruction and repair of the Buildings, the Buildings shall not be rebuilt, reconstructed and repaired, and, in such event, the Property shall be deemed and considered as to be removed from the provisions of the Act under Ind. Code §32-25-8-10 and in accordance with Ind. Code §32-25-8-16 of the Act:
  - (i) The property shall be deemed to be owned in common by the Condominium Unit Owners;

- (ii) The undivided interest in the Property owned in common which shall appertain to each Condominium Unit Owner shall be the percentage of undivided interest previously owned by such Owner in the Common Areas and facilities;
  - (iii) Any liens affecting the Condominium Units shall be deemed to be transferred in accordance with the existing priorities to the percentage of the undivided interest of the Condominium Unit Owner in the Property; and
  - (iv) The Property shall be subject to an action for partition at the suit of any Condominium Unit Owner, in which event the net proceeds of sale, together with the net proceeds of insurance on the Property, if any, shall be considered as one fund and shall be divided among all Condominium Unit Owners in a percentage equal to the percentage of undivided interest owned by each Owner of the Property after first paying out of the respective shares of Condominium Unit Owners to the extent sufficient for the purpose, all liens on the undivided interest in the Property owned by each Condominium Unit Owner.
- (f) Immediately after a fire or other casualty or disaster causing damage to any Property for which the Board of Mangers or Association has the responsibility of maintenance and repair, the Board of Directors shall obtain reliable and detailed estimates of the cost to place the damaged Property in condition as good as that before the casualty. Such costs may include professional fees and premiums for bonds as the Board of Mangers desires.
- (g) The proceeds of insurance collected on account of any such casualty, and the sums received by the Board of Directors from collections of assessments against Owners on account of such casualty, shall constitute a construction fund which shall be disbursed, if the Building is to be reconstructed and repaired, in payment of the costs of reconstruction and repair in the following manner:
- (i) if the amount of the estimated cost of reconstruction repair is less than Five Thousand Dollars (\$5,000.00), then the construction fund shall be disbursed in payment of such costs upon order of the Board of Directors; provided, however, upon request of any Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner hereinafter provided in the following Subsection (ii).
  - (ii) If the estimated costs of reconstruction and repair of the Building or other improvement is more than Five Thousand Dollars (\$5,000.00), then the construction fund shall be disbursed in payment of such costs upon approval of an architect qualified to practice in Indiana and employed by the Board of Directors to

supervise such work, payment to be made from time to time as the work progresses. The architect shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors, materialmen, the architect or other persons who have rendered services or furnished materials in connection with the work, and (1) that the sums requested by them in payment are justly due and owing and that said sums do not exceed the value of the services or materials furnished; (2) that there is no other outstanding indebtedness known to the architect for services and materials described; and (3) that the costs estimated by the architect for the work remaining to be done subsequent to the date of such certificate, do not exceed the amount of the construction fund remaining after payment of the sum requested.

- (h) Encroachments upon or in favor of Condominium Units which may be created as a result of reconstruction or repair shall not constitute a claim or basis of a proceeding or action by the Owner upon which property such encroachment exists, provided that such reconstruction was either substantially in accordance with the Plans or as the Building was originally constructed, and the encroachments shall be allowed to continue in existence for so long as the Building stands.
- (i) In the event there is any surplus of monies in the construction fund or the reconstruction or repair of the damage has been fully completed and all costs paid, the excess sums may be retained by the Board of Directors as a reserve or may be used in the maintenance or operation of the Common Areas; or, in the discretion of the Board of Directors, it may be distributed to the Owners in the Buildings affected and their Mortgagees who are the beneficial Owners of the fund. The action of the Board of Directors in proceeding to repair reconstruction damage shall not constitute a waiver of any rights against an Owner for committing willful or malicious damage.
- (j) In the event of the condemnation of all or any part of the Common Areas or all or any part of the Building(s), Condominium Unit(s) or lot(s), the Board of Directors is hereby authorized to negotiate with the condemning authority and/or to contest an award made for the appropriation of such Common Areas, Buildings or Condominium Units. For the purpose of such negotiation and/or contest of such award to the Board of Directors as to Buildings and Condominium Units and lots, the Board of Directors is hereby declared to be the agent and attorney-in-fact of any Owners affected by the condemnation. This appointment of the Board of Mangers shall be deemed coupled with an interest and shall be irrevocable. Nothing contained herein, however, shall preclude any Owner from asserting any rights or claims to compensation which can not be legally asserted by the Board of Mangers.

Awards for the taking of all or part of a Building, Condominium Unit or lot shall be collected by the Board of Directors and distributed to the affected Owner(s). To the

extent possible, negotiated awards or awards resulting from a contest shall specify the allocation of the award among the Owner(s) affected. In the event that an Owner does not agree with the distribution of an award, said Owner shall be entitled to have the dispute settled by arbitration. The protesting Owner shall appoint one arbitrator, the Board of Managers acting as agent for all other affected Owners shall appoint one arbitrator, and the two appointed arbitrators shall appoint a third arbitrator. The majority decision of the arbitrators shall be binding on all Owners and shall be enforceable in a court of competent jurisdiction.

SECTION 18. Covenants and Restrictions. The covenants and restrictions applicable to the use and enjoyment of the Condominium Units and the Common Areas and Limited Areas are set forth in the By-Laws, including the limitation that each of the Condominium Units shall be limited to residential use. These covenants and restrictions are for the mutual benefit and protections of the present and future Owner or Owners. Present or future Owners or the Association shall be entitled to injunctive relief against any violation or attempted violation of these provisions and shall be entitled to damages for any injuries resulting from any violations thereof, but there shall be no right of reversion or forfeiture of title resulting from such violation.

Notwithstanding anything to the contrary contained herein or in the By-Laws, including but not limited to, any covenants and restrictions set forth in the By-Laws, Declarant shall have, until the applicable date as defined in Article III of the By-Laws, the right to use and maintain any Condominium Unit owned by Declarant, such other portions of the Property (other than individual Condominium Units owned by persons other than Declarant) and any portions of the additional Real Estate not then part of the Regime, all of such number and size and at such locations as Declarant in its sole discretion may determine and as Declarant may deem advisable or necessary in its sole

discretion to aid in the construction, reconstruction or rehabilitation of Condominium Units and sale of Condominium Units or for the conducting of any business or activity attendant thereto, including, but not limited to, model sales offices, management offices and business offices. At no time shall any facility so used or maintained by Declarant be or become part of the Common Areas, unless so designated by Declarant, and Declarant shall have the right to remove the same from the property at any time.

**SECTION 19. Sale, Lease or Other Transfer of Condominium Unit By Owner.**

For the purpose of maintaining the congenial and residential character of Ladywood Gardens, and for the protection of the Owners with regard to ensuring financially responsible residents, the lease of any Condominium Unit by an Owner shall be subject to the following conditions and restrictions:

- (a) **Lease.** No Owner shall lease his or her Condominium Unit or enter into any other rental or letting agreement for his or her Condominium Unit for a term of less than one hundred eighty (180) days. In any event, Owner shall use a lease form which has been approved by the Board of Directors, and a copy of such lease shall be provided by Owner to the Board of Directors promptly after execution thereof.
- (b) **Sale.** The Association shall have no right of first refusal to purchase any Condominium Unit which an Owner wishes to sell and an Owner may sell his or her Condominium Unit free of any such restriction.

**SECTION 20. Amendment of Declaration.** Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

- (a) **Notice.** Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting at which the proposed amendment is considered, including any annual meetings.
- (b) **Resolution.** A resolution to adopt a proposed amendment may be proposed by the Board of Mangers or Owners having in the aggregate at least a majority of the Percentage Interest.

- (c) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws.
- (d) Adoption. Any proposed Material Amendment (as hereinafter defined) to this Declaration must be approved by a vote of not less than two-thirds of the Owners. In the event any Condominium Unit is subject to a first mortgage, the Mortgagee (hereinafter referred to as "Eligible Mortgagee") shall be notified of the meeting and the proposed Material Amendment in the same manner as an Owner if the Eligible Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the By-Laws, and any proposed Material Amendment must be approved by a vote of not less than a majority of the Eligible Mortgagees. An Eligible Mortgagee who receives a written request to approve amendments and does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request. A change to any of the following shall be deemed to be a Material Amendment:
- (i) Voting rights;
  - (ii) Assessments, assessment liens or subordination of assessment liens;
  - (iii) Reserves for maintenance, repair and replacement of Common Areas;
  - (iv) Responsibility for maintenance and repair;
  - (v) Reallocation of interests in Common Areas or Limited Areas, or rights to their use;
  - (vi) Boundaries of any Condominium Unit;
  - (vii) Convertibility of Condominium Units into Common Areas or vice versa;
  - (viii) Expansion or contraction of the Property, or the addition, annexation or withdrawal of property to or from the Property;
  - (ix) Insurance or fidelity bonds;
  - (x) Leasing of Condominium Units;
  - (xi) Imposition of any restrictions on a Condominium Unit Owner's right to sell or transfer his or her Condominium Unit;
  - (xii) A decision by the Association to establish self-management when a professional management agent had been required previously by an Eligible Mortgagee;

- (xiii) Restoration or repair of the Property (after a hazard damage or partial condemnation) in a manner other than that specified in the Declaration;
  - (xiv) Any action to terminate the legal status of the Property after substantial destruction or condemnation occurs; or
  - (xv) Any provision that expressly benefits mortgage holders, insurers or guarantors.
- (e) Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Association, or the Declarant, if required, and shall be recorded in the Office of the Recorder of Marion County, Indiana, and such amendment shall not become effective until so recorded.
- (f) Amendments By Declarant Only. Notwithstanding any other provision of this Declaration, the Declarant shall have the right acting alone and without the consent or approval of the Co-Owners, the Association, the Board of Directors, any Mortgagees or any other persons, to amend or supplement this Declaration, the By-Laws or other documents from time to time if (i) such amendment or supplement is necessary to conform this Declaration to the Act, as amended from time to time; (ii) such amendment or supplement is made to comply with requirements of 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 or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities; (iii) to induce any such agencies or entities to make, purchase, sell, insure or guarantee first mortgages; or (iv) if such amendment or supplement is made to correct clerical or typographical errors. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make or consent to any amendments described in this Section 20 on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage or other instrument affecting a Condominium Unit and acceptance thereof shall be deemed to be grant and acknowledgment of, and a consent to the reservation of, the power of the Declarant to vote in favor of, make, execute and record any such amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Section 20 shall terminate at such time as Declarant no longer holds or controls title to any part or portion of the Real Estate.
- (g) Additional Restrictions On Amendments .
- (1) The consent of Owners of Condominium Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of the eligible holders of first mortgages on Condominium Units to which at

least sixty-seven percent (67%) of the votes of the Condominium Units subject to a mortgage appertain shall be required to terminate the Condominium Regime for reasons other than substantial destruction or condemnation of the Property.

- (2) As used in this Section, the term "eligible holder" shall mean a holder, insurer or guarantor of a first mortgage on the Condominium Unit who has requested notice in accordance with the By-Laws.

SECTION 21. Acceptance and Ratification. All present and future Owners, mortgages, tenants and occupants of the Condominium Units shall be subject to and shall comply with the provisions of this Declaration, the Act, the By-Laws appended hereto, and the rules and regulations as adopted by the Board of Directors as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Condominium Unit shall constitute an agreement that the provisions of this Declaration, the Act, the By-Laws and rules and regulations as each may be amended or supplemented from time to time are accepted and ratified by each such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any person having at any time any interest or estate in a Condominium Unit or the Property as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All persons, corporations, partnerships, trusts, associations or other legal entities who may occupy, use, enjoy or control a Condominium Unit or any part of the Property in any manner shall be subject to the Declaration, the Act, the By-Laws and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

SECTION 22. Negligence. Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by the Owner's own negligence or by that of any member of the Owner's family, their guests, employees, agents or

lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Association. An Owner shall pay the amount of any increase in insurance premiums occasioned by such Owner's use, misuse, occupancy or abandonment of the Owner's Condominium Unit or its appurtenants or of the Common Areas or Limited Areas.

SECTION 23. Granting of Easements. The Board of Directors of the Association is granted the authority to grant easements to utility companies (excluding transportation companies) upon such terms and conditions and for such consideration as it deems appropriate.

SECTION 24. Reservation of Rights to Use the Common Areas. Declarant shall have, and hereby reserves, an easement over, across, upon, along, in, through and under the Common Areas and, to the extent necessary, the Limited Areas, for the purposes of installing, maintaining, repairing, replacing, relocating and otherwise servicing utility equipment, facilities and installations to serve the Property, to provide access to and ingress and egress to and from the Property, to make improvements to and within the Property, and to provide for the rendering of public and quasi-public services to the Property. The foregoing easement shall be a transferable easement and Declarant may at any time and from time to time grant similar easements, rights or privileges to other persons and parties for the same purposes. By way of example, but not in limitation of the generality of the foregoing, Declarant, and others to whom Declarant may grant such similar easement, easements or rights or privileges, may so use the Common Areas and, to the extent necessary, the Limited Areas, to supply utility services to the Property and any portions of the Regime which are not part of the Property and to permit public and quasi public vehicles, including, but not limited to, police, fire and other emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery

vehicles, and their personnel to enter upon and use the streets, the Common Areas, and to the extent necessary, the Limited Areas of Ladywood Gardens in the performance of their duties.

SECTION 25. Initial Management. As set forth in the By-Laws, the initial Board of Directors shall consist of persons selected by Declarant. Prior to the Applicable Date, as defined in the By-Laws, all contracts or leases including any management agreement entered into by the Board of Mangers shall provide a right of termination without cause or penalty, at any time after the Applicable Date upon no more than sixty (60) days notice to the other party. The Board of Directors has entered or will hereafter enter into a management agreement with Revel and Underwood (the "Managing Agent") under which the Managing Agent will provide supervision, fiscal and general management and maintenance of the Common Areas, and, to the extent the same is not otherwise the responsibility of Owners of individual Condominium Units, the Limited Areas, and, in general, perform all the duties and obligations of the Association. Any Management Agreement is or will be subject to termination by Declarant at any time prior to the expiration of its term, in which event the Association shall upon and thereafter resume performance of all of its duties and obligations and functions. Notwithstanding anything to the contrary contained herein, so long as the Management Agreement remains in effect, Declarant shall have, and Declarant hereby reserves to itself, the exclusive right to oversee the Managing Agent and if necessary manage the Property and to perform all the functions of the Association.

SECTION 26. Costs and Attorneys' Fees. In any proceeding arising because of failure of an Owner to make any payments required by this Declaration, the By-Laws or the Act, or to comply with any provision of the Declaration, the Act, the By-Laws or the rules and regulations adopted pursuant thereto as each may be amended from time to

time, the Association shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with the default or failure.

**SECTION 27. Failure of Owner to Pay Assessments.**

- (a) No Owner may become exempt from liability for contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or Limited Areas or by abandonment of the Owner's Condominium Unit. Each Owner shall be personally liable for the payment of all assessments by the Association.
- (b) Upon failure by any Owner to make any payment of assessment on the date when due, the lien against the Owner's Condominium Unit may be foreclosed against as provided for by Section 5.06 of the By-Laws and applicable law. Any lien for assessments becoming payable after the recordation of a first mortgage on Owner's Condominium Unit shall be subordinate to the first mortgage on the Owner's Condominium Unit as more fully set forth in Section 5.06(b) of the By-Laws.

**SECTION 28. Severability Clause.** The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, or by the By-Laws filed herewith, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration or the attached By-Laws.

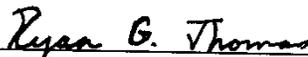
**SECTION 29. Pronouns.** Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include the masculine, feminine and neuter genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

**SECTION 30. Relationship with Master Covenants.** The Property shall remain subject to, and entitled to the benefits from, the Master Declaration for The Estates at Ladywood Development ("Master Declaration"), including, without limitation, membership interest in the Association established pursuant to the Master Declaration and subject the architectural standards, use restrictions/covenants and regulations and assessments set forth under the Master Declaration. However, all terms and conditions set forth in this Declaration made necessary by the Act shall supercede any provisions in

the Master Declaration to the contrary, and no amendment or lapse of the Master Declaration shall affect any provisions of this Declaration made necessary by the Act. The private roads and streets within and located on the Property shall be Common Areas with ownership of such streets to be governed by the terms of this Declaration. Private streets and roads outside of the Property, but located within the Ladywood Development, will be owned and managed by the Association established under the Master Declaration. All Assessments payable by an Owner of a Condominium Unit under the Master Declaration shall pass through to the Association for use by the Association as permitted hereunder, except for the portion of the Assessment necessary for management and maintenance of private streets.

IN WITNESSETH WHEREOF, the undersigned has caused this Declaration to be executed the date and year first above written.

By: Oakfield Development II, L.L.C.

  
\_\_\_\_\_  
Ryan G. Thomas, President

STATE OF INDIANA    )  
                                  ) SS:  
COUNTY OF MARION )

Subscribed and sworn to before me, a Notary Public in and for said County and State, personally appeared Ryan G. Thomas, President of Oakfield Development II, L.L.C., who first having been sworn upon his oath, states the foregoing statements are true and accurate, this 28<sup>th</sup> day of October, 2005.

Brian C. Fritts

Notary Public

Brian C. Fritts

Printed

County of Residence:

Marion County

My Commission Expires:

June 22, 2012



KD\_IM-597137\_4.DOC

**Exhibit A**  
**Legal Description**

## MULTI-FAMILY HORIZONTAL PROPERTY REGIME BOUNDARY

A PART OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 16 NORTH, RANGE 4 EAST, SECOND PRINCIPAL MERIDIAN, WASHINGTON TOWNSHIP, MARION COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID QUARTER SECTION; THENCE SOUTH 89 DEGREES 23 MINUTES 54 SECONDS WEST (ASSUMED BEARING) 797.87 FEET ALONG THE SOUTH LINE OF SAID QUARTER SECTION TO A RAILROAD SPIKE AT THE SOUTHWEST CORNER OF THE 9.836-ACRE TRACT OF LAND DESCRIBED IN INSTRUMENT NUMBER 2002-78169 IN THE OFFICE OF THE RECORDER OF SAID MARION COUNTY; THE FOLLOWING FIVE (5) COURSES ARE ALONG THE SOUTHWESTERN LINE OF SAID 9.836-ACRE TRACT; THENCE (1) NORTH 53 DEGREES 48 MINUTES 05 SECONDS WEST 110.30 FEET TO A RAILROAD SPIKE; THENCE (2) NORTH 30 DEGREES 51 MINUTES 05 SECONDS WEST 190.75 FEET TO A RAILROAD SPIKE; THENCE (3) NORTH 32 DEGREES 35 MINUTES 06 SECONDS WEST 194.55 FEET TO A RAILROAD SPIKE; THENCE (4) NORTH 47 DEGREES 34 MINUTES 06 SECONDS WEST 328.15 FEET TO A 5/8 INCH REBAR WITH YELLOW CAP ON THE EAST LINE OF THE WEST HALF OF SAID NORTHEAST QUARTER; THENCE (5) NORTH 00 DEGREES 03 MINUTES 56 SECONDS EAST 23.35 FEET ALONG SAID EAST LINE TO A RAILROAD SPIKE AND THE POINT OF BEGINNING OF THIS DESCRIPTION, WHICH POINT IS THE SOUTHEAST CORNER OF THE 3.00-ACRE TRACT OF LAND DESCRIBED IN INSTRUMENT NUMBER 2004-0198119 IN SAID RECORDER'S OFFICE; THENCE NORTH 40 DEGREES 16 MINUTES 56 SECONDS WEST 55.11 FEET; THENCE NORTH 23 DEGREES 23 MINUTES 50 SECONDS WEST 30.89 FEET; THENCE NORTHWESTERLY 49.63 FEET ALONG AN ARC TO THE LEFT AND HAVING A RADIUS OF 161.98 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF NORTH 32 DEGREES 10 MINUTES 27 SECONDS WEST AND A LENGTH OF 49.44 FEET; THENCE NORTH 40 DEGREES 57 MINUTES 00 SECONDS WEST 169.87 FEET; THENCE NORTHWESTERLY 14.47 FEET ALONG AN ARC TO THE RIGHT AND HAVING A RADIUS OF 38.00 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF NORTH 30 DEGREES 02 MINUTES 19 SECONDS WEST AND A LENGTH OF 14.39 FEET; THENCE NORTH 48 DEGREES 44 MINUTES 40 SECONDS EAST 236.35 FEET; THENCE NORTHEASTERLY 17.80 FEET ALONG AN ARC TO THE RIGHT AND HAVING A RADIUS OF 266.56 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF NORTH 60 DEGREES 54 MINUTES 43 SECONDS EAST AND A LENGTH OF 17.80 FEET TO SAID EAST LINE OF THE WEST HALF; THENCE SOUTH 00 DEGREES 03 MINUTES 56 SECONDS WEST 11.31 FEET ALONG SAID EAST LINE TO THE SOUTHERN BOUNDARY OF MILLERSVILLE ROAD PER PLANS FOR PROJECT U.S.-467(1), DATED 1960; THENCE ALONG SAID BOUNDARY NORTHEASTERLY 186.98 FEET ALONG AN ARC TO THE RIGHT AND HAVING A RADIUS OF 256.56 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF NORTH 82 DEGREES 32 MINUTES 50 SECONDS EAST AND A LENGTH OF 182.87 FEET; THENCE SOUTH 69 DEGREES 50 MINUTES 17 SECONDS EAST 97.26 FEET ALONG SAID BOUNDARY; THENCE SOUTH 33 DEGREES 17 MINUTES 40 SECONDS EAST 110.78 FEET ALONG SAID BOUNDARY TO THE SOUTHWESTERN BOUNDARY OF EMERSON AVENUE PER SAID PROJECT; THENCE ALONG SAID BOUNDARY SOUTHEASTERLY 334.68 FEET ALONG AN ARC TO THE LEFT AND HAVING A RADIUS OF 711.62 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF SOUTH 29 DEGREES 42 MINUTES 25 SECONDS EAST AND A LENGTH OF 331.61 FEET TO THE NORTHWESTERN LINE OF REAL ESTATE KNOWN AS LADYWOOD ESTATES HORIZONTAL PROPERTY REGIME RECORDED AS INSTRUMENT NUMBER 2002-020078169, THE FOLLOWING SIX COURSES BEING ALONG SAID NORTHWESTERN LINE; THENCE (1) SOUTH 51 DEGREES 44 MINUTES 25 SECONDS WEST 76.13 FEET; THENCE (2) SOUTH 31 DEGREES 56 MINUTES 25 SECONDS WEST 67.65 FEET; THENCE (3) SOUTH 63 DEGREES 55 MINUTES 10 SECONDS WEST 46.65 FEET; THENCE (4) SOUTH 46 DEGREES 51 MINUTES 55 SECONDS WEST 39.35 FEET; THENCE (5) NORTH 61 DEGREES 58 MINUTES 10 SECONDS WEST 291.57 FEET; THENCE (6) NORTH 48 DEGREES 37 MINUTES 18 SECONDS WEST 99.42 FEET TO SAID EAST LINE OF THE WEST HALF OF THE NORTHEAST QUARTER; THENCE SOUTH 00 DEGREES 03 MINUTES 56 SECONDS WEST 66.54 FEET ALONG SAID LINE TO THE POINT OF BEGINNING. CONTAINING 5.140 ACRES, MORE OR LESS.

### ALSO INCLUDING:

A PART OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 16 NORTH, RANGE 4 EAST, SECOND PRINCIPAL MERIDIAN, WASHINGTON TOWNSHIP, MARION COUNTY, INDIANA, AND BEING A PART OF THE 9.836-ACRE TRACT OF LAND CONVEYED TO LADYWOOD ESTATES HORIZONTAL PROPERTY REGIME, RECORDED IN INSTRUMENT NUMBER 2002-020078169, IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID QUARTER SECTION; THENCE SOUTH 89 DEGREES 23 MINUTES 54 SECONDS WEST (ASSUMED BEARING) 797.87 FEET ALONG THE SOUTH LINE OF SAID QUARTER SECTION TO A RAILROAD SPIKE MARKING THE SOUTHWEST CORNER OF SAID 9.836-ACRE TRACT; THENCE NORTH 53 DEGREES 48 MINUTES 05 SECONDS WEST 110.30 FEET ALONG A SOUTHWESTERN LINE OF SAID 9.836-ACRE TRACT TO A RAILROAD SPIKE; THENCE NORTH 30 DEGREES 51 MINUTES 05 SECONDS WEST 190.75 FEET ALONG A SOUTHWESTERN LINE OF SAID 9.836-ACRE TRACT TO A RAILROAD SPIKE; THENCE NORTH 32 DEGREES 35 MINUTES 06 SECONDS WEST 194.55 FEET ALONG A SOUTHWESTERN LINE OF SAID 9.836-ACRE TRACT TO A RAILROAD SPIKE MARKING THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE NORTH 47 DEGREES 34 MINUTES 06 SECONDS WEST 328.15 FEET ALONG A SOUTHWESTERN LINE OF SAID 9.836-ACRE TRACT TO A 5/8-INCH REBAR WITH YELLOW CAP MARKING THE WEST LINE OF THE EAST HALF OF SAID QUARTER SECTION; THENCE NORTH 00 DEGREES 03 MINUTES 56 SECONDS EAST 89.89 FEET ALONG SAID WEST LINE TO A MAGNAIL; THENCE SOUTH 48 DEGREES 37 MINUTES 18 SECONDS EAST 99.42 FEET ALONG A NORTHEASTERN LINE OF SAID 9.836-ACRE TRACT TO 5/8-INCH REBAR WITH YELLOW CAP; THENCE SOUTH 61 DEGREES 58 MINUTES 10 SECONDS EAST 291.57 FEET ALONG A NORTHEASTERN LINE OF SAID 9.836-ACRE TRACT TO A 5/8-INCH REBAR WITH YELLOW CAP; THENCE NORTH 46 DEGREES 51 MINUTES 55 SECONDS EAST 39.35 FEET ALONG A NORTHWESTERN LINE OF SAID 9.836-ACRE TRACT TO A 5/8-INCH REBAR WITH YELLOW CAP; THENCE NORTH 63 DEGREES 55 MINUTES 10 SECONDS EAST 46.65 FEET ALONG A NORTHWESTERN LINE OF SAID 9.836-ACRE TRACT TO A 5/8-INCH REBAR WITH YELLOW CAP; THENCE SOUTH 45 DEGREES 49 MINUTES 04 SECONDS WEST 223.79 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.841 ACRES, MORE OR LESS.

SUBJECT TO ALL EASEMENTS, RIGHTS OF WAY, COVENANTS AND RESTRICTIONS OF RECORD.

**Exhibit B**

**By-Laws**

**CODE OF BYLAWS**  
**OF**  
**LADYWOOD GARDENS CO-OWNERS ASSOCIATION, INC.**

**ARTICLE I**

**Identification and Applicability**

**Section 1.1. Identification and Adoption.** These Bylaws are adopted simultaneously with the execution of a certain Declaration of Ladywood Gardens Horizontal Property Regime, to which these Bylaws are attached and of which they are made a part. The Declaration is incorporated herein by reference and all of the covenants, conditions rights, restrictions, and liabilities therein contained shall apply to and govern the interpretation of these Bylaws. The definitions and terms as defined and used in the Declaration shall have the same meanings in these Bylaws, and reference is hereby made to the definitions in Section 1 of the Declaration. The provisions of these Bylaws shall apply to the Property and to the administration and conduct of the affairs of the Association.

**Section 1.2. Individual Application.** All of the Owners, tenants, their guests and invitees, or any other person who might now or hereafter use or occupy a Condominium Unit or any part of the Property shall be subject to the rules, restrictions, terms and conditions set forth in the Declaration, these Bylaws, and the Act, as the same may be amended from time to time.

**ARTICLE II**

**Membership**

**Section 2.1. Members.** As provided in the Articles of Incorporation, members of Ladywood Gardens Co-Owners Association, Inc. (the "Corporation") shall be each person who is the record owner of fee simple title to a Condominium Unit. The members are also referred to herein as an "Owner" or the "Co-Owners."

**Section 2.2. Membership Certificates.** The Corporation will not have membership certificates unless otherwise authorized by the Board of Directors. The form of any such certificate, if authorized, shall be prescribed by the Board of Directors.

**Section 2.3. Duration of Membership; Resignation.** Membership in the Corporation terminates automatically once a person ceases to be record owner of a fee simple title to a Condominium Unit. All rights and privileges of an Owner in the Corporation shall cease on the termination of membership.

## ARTICLE III

### Meetings of Members

**Section 3.1. Purpose of Meetings.** At least annually and at such other times as may be necessary or appropriate, a meeting of the Co-Owners shall be held for the purpose of electing the Board of Directors, approving the annual budget, providing for the collection of Common Expenses, and for such other purposes as may be required by the Declaration, these Bylaws, or the Act.

**Section 3.2. Annual Meeting.** The annual meeting of the Co-Owners shall be held on the fourth Thursday in January of each year, or at such other time as may be designated by the Board of Directors. Annual meetings of the Co-Owners should be held within the earlier of six (6) months after the close of the fiscal year or fifteen (15) months after the Corporation's last annual meeting. The failure to hold an annual or regular meeting at a time stated in or fixed in accordance with these Bylaws does not affect the validity of any corporate action or work any forfeiture or dissolution of the Corporation. Annual membership meetings shall be held at the place specified in the notice of the meeting; otherwise, such meeting shall be held at the Corporation's principal office. At the annual meeting of Co-Owners, the President and the Treasurer, or their designees, shall report on the activities and financial condition, respectively, of the Corporation. At each annual meeting, the Co-Owners shall appoint the Board of Directors of the Association in accordance with the provisions of these Bylaws and transact such other business as may properly come before the meeting.

**Section 3.3. Regular Meetings.** The Corporation may hold regular membership meetings at times stated in or fixed by a resolution of the Board of Directors. Regular membership meetings shall be held at the place specified in the notice of the meeting; otherwise, such meetings shall be held at the Corporation's principal office.

**Section 3.4. Special Meetings.** Special meetings of the Co-Owners may be called by resolution of the Board of Directors or by a petition in writing signed, dated and delivered by any Owner. Such petition or petitions must demand a special meeting and describe the purpose for which the meeting is to be held. Special membership meetings shall be held at the place specified in the notice of meeting; otherwise, such meetings shall be held at the Corporation's principal office. The resolution or petition shall be presented to the President or Secretary of the Association and shall state the purpose for which the meeting is to be called. No business shall be transacted at a special meeting except as stated in the petition or resolution.

**Section 3.5. Participation.** An Owner may participate in an annual, a regular or a special meeting of the Co-Owners by or through the use of any means of communication by which all Co-Owners participating may simultaneously hear each other during the meeting. An Owner participating by this means is considered to be present in person at the meeting.

**Section 3.6. Notice and Place of Meetings.** All meetings of the Co-Owners of the Association shall be held at such location within the State of Indiana as may be designated by the Board of Directors. Written notice stating the place, date and time of any meeting of the Co-Owners and, in the case of a special meeting or when otherwise required by law, a description of

the purpose or purposes for which such meeting is called, shall be delivered or mailed (first class or registered) by the Secretary of the Corporation to each Owner of record entitled to vote at such meeting and, if applicable, to any Mortgagee, at such address as appears on the records of the Corporation, at least fourteen (14) but not more than sixty (60) days before the date of such meeting, on being notified of the place, date and time thereof by the officers or persons calling the meeting. If at any meeting an amendment to the Declaration or these Bylaws is to be considered, the notice of such meeting shall describe the nature of such proposed amendment. The notice shall be mailed by first-class U. S. Mail, postage prepaid, or delivered to the Co-Owners at their respective addresses as the same shall appear upon the records of the Association, and by U.S. Certified Mail, Return Receipt Requested to the Mortgagees at their respective addresses as they shall appear on the records of the Association.

Section 3.7. Waiver of Notice. Notice of any meeting may be waived in writing by any Owner before or after the date and time of the meeting, if the waiver is signed by the Owner and delivered to the Corporation for inclusion in the minutes or filing with the Corporation's records. An Owner's attendance at a meeting, either in person or by proxy, (a) waives objection to lack of notice or defective notice of the meeting, unless the Owner at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, and (b) waives any valid objection to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice, unless the Owner objects to considering the matter when the matter is presented.

Section 3.8. Voting Rights.

- (a) Number of Votes. Each Owner shall be entitled to cast its vote, as set forth in Section 11 of the Declaration, on each matter coming before the meeting.
- (b) Multiple Owners. When the Owner of a Condominium Unit constitutes more than one person or entity, or is a partnership, there shall be only one voting representative entitled to cast the vote allocable to that Condominium Unit. At the time of acquisition of title to a Condominium Unit by a multiple Owner or a partnership, those persons constituting such Owner or the partners shall file with the Secretary of the Association an irrevocable proxy appointing one of such persons or partners as the voting representatives for such Condominium Unit, which shall remain in effect until such appointed representative relinquishes such appointment in writing, becomes incompetent, dies, or such appointment is otherwise rescinded by order of a court of competent jurisdiction. Such appointed voting representative may grant a proxy to another to vote in his place at a particular meeting or meetings pursuant to Section 3.10, which shall constitute relinquishment of his right to act as voting representative for the Condominium Unit at such meeting or meetings.
- (c) Voting by Corporation or Trust. Where a corporation or trust is an Owner or is otherwise entitled to vote, the trustees may cast the vote on behalf of the trust, and the agent or other representative of the corporation duly empowered by the board of directors of such corporation shall cast the vote to which the corporation is entitled.

Section 3.9. Date of Determination of Voting Rights. The Board of Directors may fix a record date to determine the Co-Owners entitled to notice of a members' meeting, to demand a special meeting, to vote or to take any other action; provided, however, that the record date may not exceed seventy (70) days prior to the meeting or action requiring a determination of the Co-Owners. In the absence of action by the Board of Directors to fix a record date as herein provided, the record date shall be the date of the meeting or action requiring a determination of the Co-Owners.

Section 3.10. Voting by Proxy. An Owner entitled to vote at any meeting of the Co-Owners may vote either in person or by proxy. An Owner may appoint a proxy to vote or otherwise act for the Owner by signing an appointment form personally or by a duly authorized attorney-in-fact of such Owner. (For purposes of this Section, a copy of a signed proxy that has been telecopied shall be deemed "signed" by the Owner.) An appointment of a proxy is valid for eleven (11) months, unless a longer or shorter period is specified in the appointment form. No proxy shall vote at any meeting of the Co-Owners unless the appointment form designating such proxy shall have been filed with the Secretary or other officer or agent authorized to tabulate votes.

Section 3.11. Quorum. Except where otherwise expressly provided in the Declaration, these Bylaws or the Act, the presence of twenty percent (20%) of all Owners at a regular or special meeting of the Board of Managers shall constitute a quorum for the transaction of business.

Section 3.12. Voting List. The Corporation shall keep at all times, at the Corporation's principal office, a complete and accurate list of all members entitled to vote. After fixing a record date for notice of a meeting, the Corporation shall prepare a list of the names of the Corporation's members who are entitled to notice of the members' meeting. The list must show the address and number of votes each Owner is entitled to vote at the meeting. Subject to the limitations described below, the list of members must be available for inspection by an Owner for the purpose of communication with other Owners concerning the meeting, beginning five (5) business days before the date of the meeting for which the list was prepared and continuing through the meeting, at the Corporation's principal office or at the place identified in the meeting notice where the meeting will be held, and the list must be available for inspection at any time during the meeting or any adjournment thereof. Subject to the limitations described below, an Owner may also inspect and copy, at any reasonable time and reasonable location specified by the Corporation, the Corporation's membership list if the member gives the Corporation written notice at least five (5) days before the member desires to inspect and copy the same; provided, however, the following conditions must exist:

- (a) the Owner's demand must be in good faith and for a proper purpose,
- (b) the Owner must describe with reasonable particularity the purpose of the inspection, and
- (c) the membership list must be directly connected with the purpose.

Notwithstanding the foregoing, the Corporation in any event may refuse to provide names or identifying information relating to contributors.

**Section 3.13. Conduct of Meetings.** The Chairman of the meeting shall be the President of the Association. He shall call the meeting to order at the duly designated time, and business will be conducted in the following order:

- (a) **Reading of Minutes.** The Secretary shall read the minutes of the last annual meeting and the minutes of any special meeting held subsequent thereto.
- (b) **Treasurer's Report.** The Treasurer shall report to the Co-Owners concerning the financial condition of the Association and answer relevant questions of the Owners concerning the Common Expenses and financial report for the prior year and the proposed budget for the current year.
- (c) **Budget.** The proposed budget for the current calendar year shall be presented to the Co-Owners for approval or amendment.
- (d) **Election of Board of Directors.**
  - (i) **Initial Directors.** The initial Directors shall be selected by the Declarant and shall serve, at the election of the Declarant, from the date upon which the Declaration is recorded in the Marion County, Indiana, public records until ninety (90) days after all of the Condominium Units have been sold and conveyed, or until such time as their successors are duly elected and qualified.
  - (ii) **Election, Term and Qualification.** Except as provided above, the Directors shall be elected at the annual meeting of the Association and those persons who receive the highest number of votes shall be deemed to have been elected. The size of the Board of Directors may be increased or decreased from time to time upon the affirmative vote of 75% of all Owners. Each Director shall hold office for the period for which elected or until his death, resignation, retirement, removal, disqualification or his successor is elected and qualifies.
- (e) **Other Business.** Other business may be brought before the meeting only upon a written request submitted to the Secretary of the Association at least ten (10) days prior to the date of the meeting; provided, however, that such written request may be waived at the meeting if agreed by a majority of votes of the Owners present at the meeting (provided a quorum exists).
- (f) **Committee Reports.** Reports of committees designated to supervise and advise on the respective segments of maintenance and operations assigned by the Board of Directors shall be presented.
- (g) **Adjournment.** Upon completion of all business before the Association, the President, upon the motion of any Owner, may adjourn the meeting; provided, however, that no annual meeting shall be adjourned until a budget is approved by the Co-Owners for the upcoming year.

**Section 3.14. Action by Written Ballot.** Any action that may be taken at an annual, a regular or a special meeting of the Co-Owners may be taken without a meeting if the Corporation delivers a written ballot to every member entitled to vote on the matter. The ballot must set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot is valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and when the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting. A solicitation for votes by written ballot must indicate the number of responses needed to meet the quorum requirements, state the percentage of approvals necessary to approve each matter other than the election of directors, and specify the time by which a ballot must be received by the Corporation to be counted. A written ballot may not be revoked once received by the Corporation.

**Section 3.15. Action by Consent.** Any action required or permitted to be taken at a meeting of the Co-Owners may be taken without a meeting if the action is approved by the Co-Owners holding at least eighty percent (80%) of the votes entitled to be cast on the action. The action must be evidenced by at least one (1) written consent which describes the action taken, is signed by the Co-Owners representing at least eighty percent (80%) of the votes entitled to be cast on the action, and is delivered to the Corporation for inclusion in the minutes or filing with the Corporation's records. Requests for written consents must be delivered to all the Co-Owners entitled to vote. Action taken by written consent is effective when the last member necessary to meet the eighty percent (80%) requirement signs the consent, unless a prior or subsequent effective date is specified in the consent.

## **ARTICLE IV**

### **Board of Directors**

**Section 4.1. Duties and Qualifications.** The business and affairs of the Corporation shall be governed and managed by the Board of Directors.

**Section 4.2. Number, Term, and Appointment.** The Board of Directors shall consist of five (5) directors to be appointed by majority vote of the Owners after the Applicable Date present at the annual meeting. Each director shall serve for a term of one (1) year. Despite the expiration of a director's term, the director continues to serve until a successor is appointed and qualifies, or until there is a decrease in the number of directors.

**Section 4.3. Vacancies.** A vacancy occurring in the Board of Directors may be filled by a majority of the remaining Directors, even if less than a quorum; but a vacancy created by an increase in the authorized number of Directors shall be filled only by election at an annual meeting or a special meeting of Condominium Unit Owners called for that purpose. Voting members may elect a Director at any time to fill any vacancy not filled by the remaining Directors.

**Section 4.4. Removal.** Directors may be removed from office with or without cause by the affirmative vote of the Condominium Unit Owners having a majority of the total votes

entitled to vote at an election of Directors. However, unless the entire Board is removed, an individual Director may be removed if the number of Condominium Unit Owners voting against the removal would be sufficient to elect a Director if such Condominium Unit Owners voted cumulatively at an annual election. If any Directors are so removed, new Directors may be elected at the same meeting.

**Section 4.5. Duties of the Board of Directors.** The Board of Directors shall perform or cause to be performed, when and to the extent deemed necessary or appropriate in the Board's business judgment or in order to ensure compliance with the terms or requirements of Declarant's financing (equity or debt) then in place, or with the requirements of any local, state or federal law, rule, ordinance, or governmental entity which would then apply to the Declarant, the Property, any Condominium Unit or the Association, the following:

- (a) Repair and replacement of the Common Areas;
- (b) Procuring of utilities, removal of garbage and waste, and snow removal from the Common Areas;
- (c) Landscaping, painting, decorating, and furnishing of the Common Areas, the exterior of the Buildings and walls;
- (d) Surfacing, paving, and maintaining streets, parking areas, garages, and sidewalks, and the regulation of the use thereof;
- (e) Assessment and collection from the Owners of the Owner's pro-rata share of the Common Expenses;
- (f) Preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered;
- (g) Preparing and delivering annually to the Co-Owners a full accounting of all receipts and expenses incurred during each year, which accounting shall be delivered to each Owner simultaneously with delivery of the annual budget;
- (h) Keeping a current, accurate, and detailed record of receipts and expenditures affecting the Property, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an Owner at any time during normal business hours;
- (i) Procuring and maintaining in force all insurance coverage required by the Declaration to be maintained for the whole Development as specified by the Declaration.

**Section 4.6. Powers of the Board of Directors.** The Board of Directors shall have such powers as are reasonably necessary or appropriate to accomplish the performance of their duties. These powers include, but are not limited to, the power:

- (a) To employ a professional managing agent or real estate management company (either being hereinafter referred to as "Managing Agent") to assist the Board in performing its duties;
- (b) To purchase for the benefit of the Co-Owners such equipment, materials, labor, and services as may be necessary in the judgment of the Board of Directors;
- (c) To procure for the benefit of the Owners fire and extended coverage insurance covering the Buildings and the Property to the full insurable value thereof, to procure public liability and property damage insurance and Workmen's Compensation insurance, if necessary, and to procure all such other insurance as is required or permitted under the Declaration, for the benefit of the Owners and the Association;
- (d) To employ legal counsel, architects, contractors, accountants, and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Association;
- (e) To include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;
- (f) To open and maintain a bank account or accounts in the name of the Association; and
- (g) To adopt, revise, amend, and alter from time to time reasonable rules and regulations with respect to use, occupancy, operation, and enjoyment of the Property; provided that the Board shall give written notice to the Co-Owners of such rules and any revision, amendment, or alteration thereof.

**Section 4.7. Limitations on Board Action.**

- (a) After the tenure of the initial Board of Directors, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than Five Thousand Dollars (\$5,000.00), unless the prior approval of a majority of Owners present or represented at any meeting is obtained (provided a quorum is present), except in the following cases:
  - (1) Supervision and management of the replacement or restoration of any portion of the Common Areas damaged or destroyed by fire or other casualty, where the cost thereof is payable out of insurance proceeds actually received; and
  - (2) Proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Co-Owners at the annual meeting.
- (b) The Board shall not have the authority to require the Association or either Owner to take an action which would be prohibited by the terms of local, state or federal

law, rule, or ordinance which would then apply to the Declarant, the Property, any Condominium Unit or the Association.

Section 4.8. Compensation. No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority of Owners.

Section 4.9. Annual Meetings. Unless the Board of Directors determines otherwise, the Board of Directors shall meet on the fourth Thursday of January each year, at a place specified by the Board of Directors, for the purpose of election of officers of the Corporation and consideration of any other business which may be brought before the meeting. No notice shall be necessary for the holding of an annual meeting.

Section 4.10. Other Meetings. Regular meetings of the Board of Directors may be held pursuant to a resolution of the Board to such effect, and shall be held whenever convenient for the Board of Directors. Unless otherwise provided by the Board of Directors, regular meetings shall be held at the Corporation's principal office. The Secretary shall give notice of regular meetings to each director personally or by U.S. mail at least five (5) days prior to the date of such meeting. Special meetings of the Board of Directors may be held upon the call of the President or any two (2) members of the Board of Directors. The person or persons calling such meeting shall give written notice thereof to the Secretary, who shall provide notice specifying the date, time, place and purpose or purposes of the meeting to each director either personally or by mail at least three (3) days prior to the date of the meeting. Oral notice is authorized. A director may waive any required notice of an annual, regular or special meeting. The waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or Corporate records. A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director at the beginning of the meeting, or promptly upon the director's arrival, objects to holding the meeting or transacting business at the meeting and does not vote for or assent to action taken at the meeting.

Section 4.11. Participation. A director may participate in an annual, a regular or a special meeting of the Board of Directors by or through the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating by this means is considered to be present in person at the meeting.

Section 4.12. Quorum; Voting. Three-fifths (3/5) of the directors in office when action is taken shall be necessary to constitute a quorum for the transaction of any business at a meeting of the Board of Directors. If a quorum is present when a vote is taken, the affirmative vote of a majority of the directors present when the act is taken shall be the act of the Board of Directors, unless the act of a greater number is required by law, the Articles of Incorporation or these Bylaws; provided.

Section 4.13. Action by Consent. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if the action is taken by all directors. The action must be evidenced by at least one (1) written consent describing the action to be taken, signed by each director and included in the minutes or filed with the corporate records reflecting the action taken. Action taken under this Section is effective when the last director signs the consent, unless the consent specifies a prior or subsequent effective date.

Section 4.14. Other Committees. The Board of Directors may from time to time create and appoint standing, special or other committees to undertake studies, make recommendations and carry on functions for the purpose of efficiently accomplishing the purposes of the Corporation. Committees, to the extent specified by the Board of Directors, may exercise the powers, functions or authority of the Board of Directors, except where prohibited by law; provided, however, that if a committee is to exercise board powers, functions, or authority, (a) all the persons serving on the committee must be directors or officers, (b) there must be at least two (2) persons on the committee, and (c) the creation of the committee and the appointment of its members shall be by a majority of all directors in office when the action is taken.

## **ARTICLE V**

### **Officers**

Section 5.1. Officers and Qualifications Therefor. The principal officers of the Association shall be the President, Vice-President, Secretary and Treasurer, all of whom shall be elected by the Board. The Directors may appoint an Assistant Treasurer and an Assistant Secretary and such other officers as in their judgment may be necessary. Any two or more offices may be held by the same person, except that the duties of the President and Secretary shall not be performed by the same person.

Section 5.2. Election and Terms of Office. The officers of the Association shall be elected annually by the Board at the first meeting of the Board following each election thereof and shall hold office for a term of one (1) year and until a successor shall be duly elected and qualified, or until resignation, removal or death.

Section 5.3. Vacancies. Whenever any vacancies shall occur in any of the offices of the Corporation for any reason, the same may be filled by the Board of Directors, and any officer so elected shall hold office until the expiration of the term of the officer causing the vacancy and until the officer's successor shall be duly elected and qualified.

Section 5.4. Removal. Any officer of the Corporation may be removed, with or without cause, at any time upon the majority recommendation of the Board of Directors and the affirmative vote of a majority of the Owners.

Section 5.5. Compensation. The officers of the Corporation shall receive no compensation for their services in such offices.

## **ARTICLE VI**

### **Powers and Duties of Officers**

Section 6.1. President. The President shall be elected from among the directors and shall be the Chief Executive Officer of the Association. The President, if present, shall preside at all meetings of the members and the Board of Directors. At each annual meeting of the

members, the President or the President's designee shall report on the activities of the Corporation. Subject to the general control of the Board of Directors, the President shall manage and supervise all of the affairs of the Corporation and shall perform all of the usual duties of the chief executive officer of a corporation.

Section 6.2. Vice President. The Vice-President shall be elected from among the Directors and shall perform all duties incumbent upon the President during the absence or disability of the President. The Vice-President shall also perform such other duties as these Bylaws may prescribe or as shall, from time to time, be imposed upon him by the Board or by the President.

Section 6.3. Secretary. The Secretary shall be elected from among the Owners or Directors. The Secretary shall attend all meetings of the members and of the Board of Directors, and prepare, keep, or cause to be kept, a true and complete record and minutes of the proceedings of such meetings, and shall perform a like duty, when required, for all committees appointed by the Board of Directors. If required, the Secretary shall attest the execution by the Corporation of deeds, leases, agreements and other official documents. The Secretary shall attend to the giving and serving of all notices of the Corporation required by these Bylaws, shall have custody of the books (except books of account) and records of the Corporation, shall be responsible for authenticating records of the Corporation, and in general shall perform all duties pertaining to the office of Secretary and such other duties as these Bylaws, the Board of Directors, or an officer authorized by the Board may prescribe.

Section 6.4. Treasurer. The Treasurer shall be elected from among the Owners or Directors. The Treasurer shall keep correct and complete records of account, showing accurately at all times the financial condition of the Corporation. The Treasurer shall have charge and custody of, and be responsible for, all funds, notes, securities and other valuables which may from time to time come into the possession of the Corporation and shall deposit, or cause to be deposited, all funds of the Corporation with such depositories as the Board of Directors shall designate. At each annual meeting of the members, the Treasurer, or the Treasurer's designee, shall report on the financial condition of the Corporation. The Treasurer, or the Treasurer's designee, shall furnish, at meetings of the Board of Directors or whenever requested, a statement of the financial condition of the Corporation, and in general shall perform all duties pertaining to the office of Treasurer.

Section 6.5. Assistant Officers. The Board of Directors may from time to time designate and elect assistant officers who shall have such powers and duties as the officers whom they are elected to assist shall specify and delegate to them, and such other powers and duties as these Bylaws or the Board of Directors may prescribe. An Assistant Secretary may, in the absence or disability of the Secretary, attest the execution of all documents by the Corporation.

## ARTICLE VII

### Additional Rights and Duties of Board

Section 7.1. Right of Entry. An Owner of a Condominium Unit or a tenant or an occupant of part of a Condominium Unit shall be deemed to have granted the right of entry to its Condominium Unit or part of a Condominium Unit respectively, to the Board, the Managing Agent, or any person authorized by the Board in case of any emergency, in order to remedy any circumstance threatening its Condominium Unit or part of a Condominium Unit respectively, the Building in which it is located, or any person, whether the Owner or tenant is present at the time or not. Any Owner or tenant shall permit persons authorized by the Board to perform any work, when required, to enter his Condominium Unit or part of a Condominium Unit for the purpose of performing installations, alterations, or repairs to the mechanical or electrical facilities or equipment, or to make structural repairs, provided that requests for entry are made in advance and that such entry is at a time convenient to the Owner. In case of emergencies, such right or entry shall be immediate.

Section 7.2. Right of Board to Adopt Rules and Regulations. The Board may promulgate such reasonable rules and regulations regarding the operation of the Property as the Board may deem desirable, including, but not limited to, the use of the Common Areas. Such rules as are adopted may be repealed or amended by a vote of a majority of the Board. The Board shall cause copies of all such rules and regulations, including any amendments or repeals thereof, to be delivered or mailed promptly to all Owners at least fifteen (15) days prior to the effective date thereof. Any rule or regulation promulgated by the Board shall be properly and consistently enforced by the Board.

## ARTICLE VIII

### Procedures for Assessments

Section 8.1. Annual Accounting. Annually, after the close of each calendar year and prior to the date for notice of the annual meeting of the Association, the Board of Directors shall cause to be prepared and furnished to each Owner a financial statement by an independent Certified Public Accountant, which statement shall show all receipts and expenses received, incurred, and paid by the Association during the preceding calendar year.

Section 8.2. Proposed Annual Budget. Annually, on or before the date for notice of the annual meeting of the Association, the Board of Directors shall cause to be prepared a proposed annual budget for the ensuing calendar year estimating the total amount of the Common Expenses for the ensuing year, and furnish a copy of such proposed budget to each Owner prior to the annual meeting. The proposed annual budget shall be submitted to the Co-Owners at the annual meeting of the Association for adoption, and if so adopted, shall be the basis for the Regular Assessments (as defined in Section 8.3) for the ensuing calendar year. At the annual meeting of the Co-Owners, the proposed annual budget may be approved in whole or in part, or may be amended in whole or in part, by a majority of the vote present or represented at the

meeting (provided that a quorum is present); provided, however, that in no event shall the annual meeting of the Co-Owners be adjourned until an annual budget is approved at such meeting.

**Section 8.3. Regular Assessments.** The annual budget as adopted shall, based on the estimated cash requirement for the Common Expenses in the ensuing year as set forth in said budget, contain a proposed assessment against each Condominium Unit based on the Percentage Interest of each Condominium Unit times the total amount of said budget (herein called the "Regular Assessment"). The Regular Assessment against each Condominium Unit shall be paid in twelve (12) equal monthly installments, commencing on the first day of the January immediately following adoption and continuing on the first day of each calendar month thereafter. Payment of the monthly installments of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors; provided, however, that any Condominium Owner may elect to pay monthly Assessments in advance. The Regular Assessment for each year shall become a lien on each separate Condominium Unit as of the date of the adoption of the annual budget. Each Condominium Unit Owner shall pay to the Association a Regular Assessment based on the Percentage Interest for each Condominium Unit for payment of the regular Common Expenses provided for in the annual budget, including expenses for maintenance and repair of the Common Areas, necessary insurance costs, reserve funds for replacements and maintenance, costs of operation of the community activities and facilities of the Association, and for any other necessary or appropriate expenses for maintenance and operation of the Development.

**Section 8.4. Special Assessments.** In addition to the Assessments authorized above, the Association may levy such special Assessments as may be necessary for the purpose of defraying, in whole or in part: (1) the cost of any construction, reconstruction, repair or replacement of a capital improvement, including fixtures and personal property related thereto, and (2) the expense of any other contingencies or events not provided for in the annual budget or the reserves and working capital of the Association; provided that no special Assessments shall be levied without the assent of a majority of the Condominium Unit Votes cast at a meeting duly called for this purpose. Each Owner shall pay to the Association a special Assessment based on his Percentage Interest times total sum approved to meet the costs and expenses as heretofore provided. The Association may, in connection with the levy of any special Assessment, specify that the same shall be payable in installments and specify the due dates thereof.

**Section 8.5. Adjustments.** In the event that the approved budget and Regular Assessments plus the reserves and working capital of the Association prove insufficient to meet the Association's actual expenses in any year, such deficiencies may be corrected through one or more Special Assessments. In the event the approved and Regular Assessments exceed actual expenses in any year, such surplus shall be retained and used to offset expenses in the next year(s) or returned to the Co-Owners in proportion to their percentage interests, as the Board of Directors shall elect.

**Section 8.6. Temporary Budget and Assessments.** If for any reason an annual budget and the annual Assessments for any year have not been determined as of the beginning of such year, the budget and Assessments in effect during the preceding year shall continue in effect until such time as the annual budget and annual Assessments are determined in accordance with the Declaration and these Bylaws; provided, however, that said preceding budget and Assessments

may be increased by up to fifteen percent (15%) as the Board of Directors may deem necessary in said temporary budget and Assessments.

Section 8.7. Status of Funds Collected by Association. All funds collected pursuant to hereunder shall be held and expended by the Association solely for the purposes designated herein, and, except for any special Assessments that may be levied hereunder against less than all of the Owners, and except for such adjustments as may be required to reflect delinquent or prepaid assessments, shall be deemed to be held for the use, benefit, and account of all of the Owners for the payment of Common Expenses in accordance with the Owners' respective Percentage Interests.

## **ARTICLE IX**

### **Notices and Mortgages**

Section 9.1. Notice to Association. Any Owner who places a first mortgage lien upon his Condominium Unit or the Mortgagee thereof shall notify the Secretary of the Association and provide the name and address of the Mortgagee. A record of such Mortgagee and name required to be given to the Mortgagee pursuant to the terms of the Declaration or these Bylaws shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgages and the name and address of the Mortgagee are furnished to the Secretary, either by Owner or by the Mortgagee, no notice to any Mortgagee as may be otherwise required by the Declaration or these Bylaws shall be required, and no Mortgagee shall be entitled to vote on any matter on which he otherwise may be entitled to vote by virtue of the Declaration or Bylaws or proxy granted to such Mortgagee in connection with the mortgage.

Section 9.2. Notice of Assessments. Upon ten (10) days written notice to the Association and the payment of a reasonable fee, the Association shall deliver to any Owner, Mortgagee, prospective Mortgagee, title insurance company, purchaser or other prospective transferee of a Condominium Unit, a written statement setting forth the amount of all unpaid assessments, if any, with respect to the subject Condominium Unit, together with the amount of the current assessments for Common Expenses and the date(s) such assessments become due and payable. Any such written statement shall be binding upon the Association in favor of any person relying thereon in good faith.

Section 9.3. Financial Statements. The Association, upon the request of any Mortgagee, shall provide to said Mortgagee the most recent financial statement prepared on behalf of the Association pursuant to these Bylaws.

Section 9.4. Notices to Mortgagees. The Association shall promptly provide to any Mortgagee of whom the Association has been provided notice under these Bylaws of any of the following:

- (a) Any condemnation or casualty loss that affects either a material portion of the Regime or the Condominium Unit securing its mortgage;

- (b) Any delinquency in the payment of Regular or Special Assessments owed by the Owner of any Condominium Unit on which said holder, insurer, or guarantor holds a mortgage, if said delinquency continues for more than sixty (60) days;
- (c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and,
- (d) Any proposed action that requires the consent of a specified percentage of Mortgagees.

Section 9.5. Availability of Information. The Association shall keep and shall make available to prospective purchasers of Condominium Units, upon request at reasonable business hours, copies of the Declaration, Bylaws, current rules and regulations, if any, and the most recent financial statement of the Association.

## ARTICLE X

### Miscellaneous

Section 10.1. Corporate Seal. The Corporation may, but need not, have a corporate seal. The form of any such corporate seal may be specified in a resolution of the Board of Directors. A corporate seal, however, shall not be required for any purpose, and its absence shall not invalidate any document or action.

Section 10.2. Execution of Contracts and Other Documents. Unless otherwise ordered by the Board of Directors, all written contracts and other documents entered into by the Corporation shall be executed on behalf of the Corporation by the President or Vice President and, if required, attested by the Secretary or an assistant secretary.

Section 10.3. Fiscal Year. The fiscal year of the Corporation shall begin on January 1 of each year and end on the immediately following December 31.

## ARTICLE XI

### Amendments

Except as otherwise provided herein, these Bylaws may be modified or amended by the vote of 75% of all Condominium Unit Owners at a meeting of the Association duly held for such purpose; provided, however, these Bylaws may not be amended without the consent in writing of Declarant, so long as Declarant shall be the Owner of one or more Condominium Units. No such amendment shall become operative unless and until the same is set forth in an amendment to the Declaration and duly recorded in the office of the Recorder for Marion County, Indiana; provided, however, that the Board of Directors shall give written notice to all holders of mortgages on Condominium Units of such amendment at least thirty (30) days prior to the effective date of such amendment.

IM-602124\_3.DOC

**Exhibit C**  
**Master Site Plan**

**Exhibit C**

**Master Site Plan**

A true and accurate copy of the Master Site Plan was filed in the Marion County Recorder's Office on November 3, 2005, as Instrument No. 2005-0181861.

**Exhibit D**

**Plans and Specifications**



**LADYWOOD VILLAS**  
**GENERAL SPECIFICATIONS**

These General Specifications cover labor and material necessary for the construction of a residence for:

\_\_\_\_\_ hereafter referred to as (The Customer) and by **The Augusta**

**Group, LLC** hereafter referred to as (The Builder) in accordance with the plans submitted herewith at:

Address: \_\_\_\_\_

Lot # \_\_\_\_\_ in \_\_\_\_\_ Community.

**These general specifications are the property of The Builder and may not be used or altered without The Builder's written permission.**

The general conditions herein set forth shall apply to any contract given under these General Specifications and shall be binding upon The Customer, The Builder and the Builder's subcontractors. The Plan, elevations, sections, and detail drawings, together with these General Specifications, are to form the basis of the contract, and where The Plan and specifications differ, The Plan shall govern.

The Builder reserves the right to update The Plan, to clarify construction details and to change The Plan according to state, county and municipal code changes and requirements.

The Builder reserves the right to install alternate materials, without customer approval, due to supplier contractual changes, availability of materials, and local municipal requirements. All product alternates will be of equivalent quality, standards and function.

**MODEL HOME DISCLAIMER**

Our Models are an example of the type of homes that The Augusta Group builds. The Augusta Group, LLC makes no representation that your home shall be an exact replica of our Models, since our models often include some available options, at an additional cost.

Additionally, from time to time, necessary changes shall be made on specifications and plans including the placement of various items i.e., cabinet door swings, structural improvements, and changes necessary because of building code requirements and changes.

**Because your new home will not be identical to our Model, please review your plans and specifications carefully. Your new home shall be built according to the specifications and plans that you are signing, not to what you may have seen in our Models.**

\_\_\_\_\_  
Customer Initials

Customer Initials: \_\_\_\_\_



**LADYWOOD VILLAS**  
**GENERAL SPECIFICATIONS**

**EXCAVATING AND GRADING**

The Builder shall do all necessary excavation to the elevation shown on The Plan. Additional labor and/or materials necessary by reason of deficiencies in soil conditions requiring extra excavation not foreseeable until after excavation is completed, will be paid for by The Builder. The hauling away of excess dirt, if any, will be the responsibility of The Builder. Final grading shall be done by The Builder.

**FOUNDATIONS, CONCRETE FLOORS & STOOPS**

Concrete footings for walls and piers shall be of sizes shown on The Plan or as required by the governing county or Municipality. Compressive strength of concrete shall be as code requires.

Concrete Floors are to be an average of three and one-half (3 ½) inches thick, to be poured with a steel trowel finish. Stoops to be constructed as indicated on The Plan and to be poured with a light, broom finish and pitched for drainage. The Builder WILL NOT be responsible for normal shrinkage cracks that may occur. Compressive strength of concrete shall be per building code requirements.

**SLAB**

Footing Size	12"x24" Frost Footings 2500 PSI Concrete
Support for Garage Slab	Poured Concrete Wall
Garage Floor Slope	4"
Garage Floor Weather lip	Standard
Notched Foundation Wall For Door	Standard
Divided Garage Door Foundation	Pour Through Slab
Slab Control Joints	Saw Cut As Required
Vapor Barrier Under Slab	6 Mil. Visqueen
Garage Floor Control Joints	1" deep every 10'

**UNFINISHED BASEMENT**

Walk Out Areas	Step Down foundation to follow grade w/ frame walls above
Walkout Basement Windows	Per Plan to match rest of home
Footing Size	16W"x8"D Footings 2500 PSI Concrete
Poured Wall	8' or 9' Per Plan
Waterproofing	Mar-Flex 5000 Membrane w/ Drain and Dry Board
Perimeter Drain Tile	4" perforated pipe to sump pump
Basement Floor	4" Concrete Slab over gravel
Egress Basement Window and Well	48"x48" white vinyl slider window with Mar-Flex 44110 (Sandstone color) 1 piece polyethylene window well w/ integrated stairway
Non-Egress Basement Window and Well	32"x16" white vinyl slider window with corrugated steel window well

**WALKS AND DRIVEWAYS**

The width and length of the sidewalk from the driveway to the front steps shall be per The Plan; consisting of concrete averaging three and one-half (3 ½) inches thick and 3' wide. The driveway from the street to the garage floor shall be concrete 3 ½" – 4" thick by sixteen (16) feet in width.

**GIRDERS AND COLUMNS**

Girders, columns and bearing walls on Main Level, Crawlspace and Basement to be as shown on The Plan.



**LADYWOOD VILLAS**  
**GENERAL SPECIFICATIONS**

**WOOD FRAMING**

All necessary labor and carpentry work shall be done in substantial conformity with The Plan and specifications or any variations, changes, or amendments thereof that have been approved in writing by the contracting parties.

Other framing material shall be: bridging, headers, corner bracing, nailing, caulking, and furring to be in accordance with standard building practices, local codes, and ordinances.

Joist Size & Grade	Engineered I Joist – Size per engineering
Sill Plate Spec & Anchor System	Treated 2 x 4 Bolts or Anchor Straps
Exterior Wall Framing	2x4 or 2x6 Per Plan 16" O.C.
Exterior Wall Sheathing	7/16" OSB or Green Guard w/ Tyvek House Wrap
Corner Bracing	Plywood/OSB, Structural Composite or Metal Corner Bracing
Band Board	Per Plan / Per Engineer
Interior Wall Framing	2x4 or 2x6 Per Plan 16" O.C.
Floor Sheathing	Concrete slab main floor, 3/4" T&G on 2nd floor and/or bsmt/crawl
Structural Beams	Laminated Wood Per Plan
Steel Beams	Sized per engineer calculation if needed
Roof Sheathing	7/16" O.S.B. w/ clips
Roof System	Pre-Engineered Truss
Roof Pitch	Per Plan
Roof Overhang, Front, Back, Side	12" Per Plan
Stairs	Carpet Box
1st Floor Ceiling Height	9' or Per Plan

**EXTERIOR DOORS & WINDOWS**

**WINDOWS**

Materials	Insulated Low-E Vinyl w/ drywall wrap and wood sill
Manufacturer	Silver Line or Equivalent
Model	2900 Single Hung or Equivalent
Color	White
Grids	Internal, Front Windows only
Screens	All Operating Windows

The Builder will construction clean windows only when the home is completed.

**ENTRY DOOR**

Front Door	Insulated Steel 6-Panel or Equivalent
Sidelights	Per Plan
Transom	Per Plan
Threshold	Adjustable Aluminum
Weatherstrip	Yes
Front Door Deadbolt	Kwikset Polished Brass or Equivalent
Front Door hardware	Kwikset Chelsea Polished Brass or Equivalent
Peephole	Yes

**GARAGE/HOUSE ENTRY DOOR**

Type	Insulated steel 6-panel or equivalent
------	---------------------------------------



**LADYWOOD VILLAS**  
**GENERAL SPECIFICATIONS**

Threshold	Adjustable Aluminum
Weatherstrip	Yes
Hardware	Kwikset Saxton Polished Brass or equiv

**PATIO DOORS**

Type	Per Plan - Silver Line Vinyl Sliding Door or 15 light steel swing door
Threshold	Standard
Screens	Included
Transom	Per Plan
Hardware	White Locking Handle

**OVERHEAD GARAGE DOOR**

Size	16 x 7
Type	Non-Insulated Steel Raised Panel with windows Per Plan
Finish	Pre-finished Sandstone
OPTIONAL Garage Door Opener	Liftmaster 1/2 HP Chain Drive w/ two remotes
Locking Mechanism	Inside Only (no key lock from outside)

**ATTIC ACCESS**

Attic access will be furnished in locations per plan and per local code requirements (in garage or inside of home). Size will be 22 ½" x 30". The Builder will not install disappearing stairwell.

**EXTERIOR FINISH MATERIALS**

Exterior wall surfacing, siding, trim, fascia material, soffit and brick shall be per development requirements and/or per Plan. All front railings and/or columns if shown on The Plan, shall be pre-primed rough sawn cedar or equivalent.

**EXTERIOR TRIM/SIDING MATERIALS**

Siding	Heartland Ultra Premium Vinyl Siding – Clay
Soffit	Vinyl
Fascia/Gutter Board	1x6 Smart Trim Composite or equal
Frieze Board	1x4 (exposed) Smart Trim Composite or equal
Rake	1x4 Smart Trim Composite
Band Board	Per Plan
Window Head, Sill and Jamb	Per Plan
Entry Door Trim	Per Plan
Porch Columns/Railings	Per Plan
Porch Ceiling	4 x 8 Beadboard Sheet material
Garage Door Trim	2 x 8 Cedar
Gable End Louvers	Vinyl Per Plan
Bay Window Trim	Per Plan
Shutters	Vinyl Per Plan



**LADYWOOD VILLAS**  
**GENERAL SPECIFICATIONS**

**ROOF/GUTTERS**

Shingles	GAF 25 Year, 3-Tab or Equivalent
Selection	Weathered Gray
Felt	30#
Venting	Lomanco 865 or equiv
Gutters	5" Pre-finished Aluminum – Clay
Downspouts	2x3 Pre-finished Aluminum -Clay

**BRICK/STONE**

Location	Per Print
Manufacturer/Name/Style	General Shale Arcadia
Joint Type	Tooled
Lintels	Primed Steel
Address Stone	No

**EXTERIOR PAINT**

Exterior Trim and Siding	ICI Dulux Ultra Hide Durus Exterior Acrylic Flat Masonry – ICI Heartland Clay
Garage Doors	Pre Finished Sandstone
Exterior Doors	ICI Dulux Professional Exterior 100% Acrylic Semi Gloss – ICI Zanzibar Coast
Exterior Caulking	Where 2 Non-like Materials Meet

Exterior trim shall have 1 coat exterior paint in material and color as specified above. Exterior doors shall have 1 coat of semi gloss exterior paint in material as specified above, color as selected by customer.

**HEATING/COOLING**

System shall be installed according to the requirements of the National Society of Heating and Ventilating Engineers, and in all cases will conform to local ordinances. The appropriate size of all equipment will be determined based on contractor load calculations.

Furnace Type	Carrier 58MCA060-1-12
Furnace Efficiency	90% Gas
Air Conditioning	Carrier 13 SEER 38ETG w/ Puron
Thermostat	Honeywell TH5110 Digital Non-Programmable
1st Floor Supply Ducts	Insulated Ductboard and Flex Duct
1st Floor Returns	Insulated Ductboard and Flex Duct
2nd Floor Supply Runs	Insulated Ductboard and Flex Duct
2nd Floor Returns	Insulated Ductboard and Flex Duct
Bath Fans	Vented To Outside
Range Fan	Recirculating
Dryer Vent	Vented to Outside
Energy Star Testing	Blower Door Test

Customer Initials: \_\_\_\_\_



**LADYWOOD VILLAS**  
**GENERAL SPECIFICATIONS**

**PLUMBING**

All plumbing shall be properly installed according to local codes and ordinances and thoroughly tested. Hot and cold water connections shall be made with bathtub/shower lavatories, kitchen sink and laundry box. Shut off valves shall be located under all sinks and water closets. Water and Sewer connections shall be made with water and sewer mains at the street. Plumbing line for gas to dryer and range, if selected, shall be installed to local codes.

Plumbing fixtures and specifications are as follows:

Utilities	<u>City Sewer, Water and Natural Gas Hookups</u>
Toilets	<u>Mansfield 130 Round Front or Equivalent</u>
Bath Tubs	<u>Aqua Glass 326032 Fiberglass Tub/Shower or Equivalent</u>
Full Bath Sinks	<u>Cultured Marble with Integrated sink, sized Per Plan</u>
Powder Room Sinks	<u>Per Plan - Alto Pedestal 290 or Cultured Marble with Integrated sink</u>
Kitchen Sinks	<u>Sterling PRO33226 Stainless Steel 6 1/2" deep</u>
Utility Sink	<u>Optional - Mustee 18W Wall Mount</u>
Kitchen Faucet	<u>Delta 400 Chrome w/ spray</u>
Vanity Sinks Faucet	<u>Delta 520 Chrome w/ chrome lever handle</u>
Bath Tub/Shower Faucet	<u>Delta 1343 Chrome w/ chrome handle</u>
Bath Shower Stall Faucet	<u>Delta 1323 Chrome w/ chrome handle</u>
Soaking Tub Faucet	<u>Delta 2730 Chrome w/ crystal knobs</u>
Washer Connections	<u>Hot and Cold Supply w/ drain</u>
Gas Lines to gas appliances	<u>Corrugated Stainless Steel Tubing (CSST)</u>
Water Heater Type/Capacity	<u>Bradford-White 40 gallon gas M4 Series</u>
Hose Bibbs	<u>2 Frost Protected</u>
Supply Lines	<u>Vanguard Vanex PEX or equivalent</u>
Drain/Vent Lines	<u>PVC</u>
Ice Maker Line	<u>Box With Shut-off</u>
Rough In Water Softener	<u>Optional - Bypass to Kitchen and Hose Bibbs</u>
Garbage Disposal	<u>In Sink Erator 1/3 Horsepower</u>

**ELECTRICAL**

All electrical work will comply with the local codes and ordinances.

Service Location	<u>Underground service to house, circuit panel in garage</u>
Service Size	<u>200 amp</u>
Switches	<u>White single pole</u>
Outlets	<u>White, Located per code requirements, GFI located per code requirements</u>
Telephone	<u>Three (3) locations to be determined by owner at BRINKS Consultation Meeting. One (1) additional phone location is included in the Optional Finished Basement packages. Wiring for phone is CAT5e.</u>
Cable TV	<u>Three (3) locations to be determined by owner at BRINKS Consultation Meeting. One (1) additional cable location is included in the Optional Finished Basement packages. Wiring for cable is QS-RG6 coaxial cable.</u>



**LADYWOOD VILLAS  
GENERAL SPECIFICATIONS**

**LIGHT FIXTURES**

Entry	QM 3074-66 or Recessed Can Lights Per Plan
Kitchen	2 light Fluorescent CRE CLDC2341, 1 recessed can over sink
Nook/Kitchen Island	QM 6303-15-66
Dining Room	QM 6007-5-2
Living Room	Per Plan - Ceiling Fan Rough In w/ 2 switches standard
Powder Room	DF 415 Strip Light (size dependent on vanity width) and ceiling exhaust fan
All Bathrooms	DF 415 Strip Light (size dependent on vanity width) and ceiling exhaust fan/light w/ 2 switches
Master Bedroom	QM 3074-66 (size dependent on size of room/hallway)
Secondary Bedrooms/Study	QM 3074-66 (size dependent on size of room/hallway)
Finished Bonus Rooms/Hallways	QM 3074-66 (size dependent on size of room/hallway)
Walk-in Closets	Per Plan - Quorum 3012-8-6
Laundry Room	2 light basic fluorescent fixture - NLT-234
Garage	Porcelain Keyless Fixture With Switch
Unfinished Basement/Unfinished Storage Areas	Porcelain Keyless Fixture Per Plan
Finished Basement	Per Plan - QM 3074-66 or Recessed Can Fixtures
Optional Fireplace	2 Eyeball Can Lights

**EXTERIOR FIXTURES**

Front Coach Light	Per Plan - DF 1101-BK
Rear Patio/Service Door Light	Per Plan - DF 1161-BK
Porch Light	Per Plan - QM 3080-7-15
Yard Post Light	Yes - DF 1106-BK w/ photo cell
Security Flood Light	Optional
Exterior Outlets	2 Weather Proof GFI per plan
Garage Outlets	1 on common living wall of garage of each unit
Security	Brinks® Functional system with keypad, siren, power module and contacts on Entry Door, Patio Doors and Garage Entry Door (up to 4 doors).
Doorbell	Yes, 1 button at Entry door, chime inside home

All phone and cable locations will be home run to central location and to exterior of home for hook-up by applicable utility. Phone and cable service connections and fees shall be the responsibility of The Customer.

**INSULATION**

Exterior wall insulation shall consist of R-18. Common garage walls shall consist of R-13. Ceilings shall have an average of R-38 blown insulation or the equivalent in batts. Garage ceilings shall be uninsulated, unless Bonus Room is above. If Bonus Room is added above garage, garage ceiling will be insulated per code. Unfinished basement walls shall have no additional insulation. Crawlspace and Finished Basement walls shall consist of R-10. Other insulation shall consist of R-13 fiberglass friction fit in rim joists. Foundation walls shall be insulated to meet local code requirements.

Exterior Walls	R-13 Kraft-back Batt
Common Garage Walls	R-13 Kraft-back Batt
Overhangs	R-30 blown cellulose/fiberglass or batt equivalent
Ceilings	R-38 blown cellulose/fiberglass or batt equivalent
Garage Ceilings	Uninsulated, unless Bonus Room above

Customer Initials: \_\_\_\_\_



**LADYWOOD VILLAS  
GENERAL SPECIFICATIONS**

Crawlspace Walls  
Basement Walls  
Eave Baffles  
Infiltration Caulk  
Sill Sealer  
Floor Joist @ Perimeter

2" foam insulation board  
R-10 if Unfinished - - R-13 batts added if Optional Finish is selected  
Standard  
Approved Fire Caulk  
Standard  
R-13

**DRYWALL**

Interior Walls  
Interior Ceilings  
Sloped Ceilings @ Stairs  
Garage Walls  
Garage Ceilings  
  
Optional Finished Garage

1/2" drywall, Smooth finish  
5/8" drywall, textured finish  
Textured  
1/2" Drywall, sanded, 5/8" sanded at fire rated wall between units  
5/8" Drywall, sanded, no finish  
Smooth finish walls with textured ceiling, insulation, and paint on walls and ceiling

**MILLWORK**

Please note: if optional stained mantle is selected, variation of final finish stain color will happen due to species of material and wood grain.

**INTERIOR TRIM**

Base  
Door Casing  
Window Sill  
Finger Jointed  
Primed  
Stained Trim and Doors  
Crown Moulding  
Chair Rail  
Picture Moulding  
Built-ins  
  
Breakfast Bar  
Wall Caps  
1/2 wall at Stairs  
OPTIONAL Stair Railing/Spindles  
Wall Handrail  
Hardware

3" Pre-Primed MDF or Pre-Primed Finger-joint  
2 1/4" Pre-Primed MDF or Pre-Primed Finger-joint  
Pre-Primed MDF w/ apron below  
Yes, if solid wood  
Yes  
Optional - Oak  
Optional  
Optional  
Optional  
Optional  
46" High wall with laminate countertops  
42" High wall with Solid Surface countertops  
Per Plan - Painted wood cap  
42" with painted wood cap  
Oak w/ stain finish  
Oak w/ stain finish  
Brass wall brackets on wall handrail

**INTERIOR DOORS**

Type  
Stain Grade Type  
Hardware  
Door Stops  
By-Pass Hardware

6-panel wood grain hollow-core painted  
6 panel oak  
Kwikset Saxton polished brass or equiv  
Hinge Stop/Heavy Spring  
Thumb Pull



**LADYWOOD VILLAS**  
**GENERAL SPECIFICATIONS**

The Builder will furnish all door hardware. All interior doors will have passage hardware. All bath and bedroom doors shall have a privacy lock.

Customer Initials: \_\_\_\_\_



**LADYWOOD VILLAS**  
**GENERAL SPECIFICATIONS**

**CABINET / VANITY TOPS**

Kitchen cabinets and vanities shall be of the layout as noted on The Plan.

**CABINETRY**

**Powder Room**

Countertop	Bruce or Equivalent – Builder Standard Selections
Backsplash	Cultured Marble with integrated sink
Hardware	4"
	Optional

**Secondary/Basement Bathrooms**

Countertop	Bruce or Equivalent – Builder Standard Selections
Backsplash	Cultured Marble with integrated sink
Hardware	4"
	Optional

**Master Bathroom**

Countertop	“Raised Height “ (approx. 34”)Bruce or Equivalent – Builder Standard Selections
Backsplash	Cultured Marble with integrated sink
Hardware	4"
	Optional

**Kitchen**

Countertop	Bruce or Equivalent w/ 36" Wall cabinets– Builder Standard Selections
Edge	Laminate
Hardware	No-Drip Edge or Square Edge Per Plan
Wall Cabinet Crown Moulding	Optional
	Optional

**PAINTING**

All interior walls shall have 2 coats of flat latex interior paint in color and material as specified below. Interior Trim and interior doors shall have 2 coats of semi gloss latex interior paint in color and material as specified below. Common Garage walls and garage ceilings shall be sanded drywall w/ no paint. Interior Ceilings shall have 1 coat of flat latex interior paint in color and material as specified below.

Interior Walls	ICI Dulux Ultra Hide Latex Flat Interior – Antique White
Interior Ceilings	ICI Dulux Ultra Hide Latex Flat Interior – Antique White
Interior Trim	ICI Dulux Ultra Hide Latex Semi-Gloss Interior Wall and Trim Enamel – White On White
Interior Doors	ICI Dulux Ultra Hide Latex Semi-Gloss Interior Wall and Trim Enamel – White On White



**LADYWOOD VILLAS**  
**GENERAL SPECIFICATIONS**

**FLOORING**

Entry	Per Plan – Mannington Jumpstart Resilient
Kitchen/Nook	Per Plan - Mannington Jumpstart Resilient
Bathrooms and Laundry	Per Plan – Mannington Jumpstart Resilient
Dining Room	Per Plan – Shaw Seaside Heights 25 oz.
Living/Great/Family Room/Basement	Per Plan – Shaw Seaside Heights 25 oz.
Bedrooms (incl. Bsmt BR) /Study/Bedroom	
Closets	Per Plan – Shaw Seaside Heights 25 oz.
Sunroom	Per Plan – Shaw Seaside Heights 25 oz.
Stairs	Per Plan – Shaw Seaside Heights 25 oz.
Carpet Padding	1/2 6# Rebond

Flooring in closets will be the same as the adjacent room or area.

**CLOSET SHELVING**

Pantry (where applicable)	5--12" White Ventilated
Linen	5--12" White Ventilated
All Bedrooms	1--12" White Ventilated
Coat/Broom Closet (where applicable)	1--12" White Ventilated
Laundry (Closet and over W/D)	1--12" White Ventilated

**BATH ACCESSORIES AND MIRRORS**

Unless noted otherwise below, standard mirrors are 36" high plate glass mirrors with polished edges. Width is to be approximately 2" shorter than vanity width.

**POWDER ROOM**

Towel Ring	1 Maxwell Chrome
T.P. Holder	1 Maxwell Chrome
Mirror	24"x36" Oval mirror or standard mirror per Plan if vanity.

**SECONDARY BATHROOMS**

Towel Bar/Towel Ring	1 Maxwell Chrome Towel Bar, 1 Maxwell Chrome Towel Ring
T.P. Holder	1 Maxwell Chrome
Shower Curtain Rod	Chrome
Mirror	Standard per Plan

**MASTER BATH**

Towel Bar/Towel Ring	1 Maxwell Chrome Towel Bar, 1 Maxwell Chrome Towel Ring for each sink bowl
T.P. Holder	1 Maxwell Chrome
Shower Curtain Rod	Chrome
Shower Enclosure	Optional
Mirror	Standard per Plan



**LADYWOOD VILLAS**  
**GENERAL SPECIFICATIONS**

**APPLIANCES**

The Builder will supply the following appliances:

Range	GE 30" Self Clean Electric
Hood Vent	Recirculating 3 speed w/ light
Dishwasher	GE 4 cycle, 2 level
Optional Microwave	GE Recirculating Microwave/Hood vent combo
Refrigerator	Optional
Washer	Optional
Dryer	Optional

The Builder will not install any appliances not purchased from The Builder.

**FIREPLACE**

Optional Fireplace shall be a direct-vent gas unit complete with glass front and ceramic logs. The standard finish will be a 6" x 12" ceramic tile surround and 12" x 12" hearth with a white painted mantle or a painted Benchmark Cabinet surround. 2 eyeball can lights will be installed on ceiling above fireplace. Marble surround and hearth are optional.

Type	OPTIONAL - Majestic 36" Direct Vent (36BDVR) with fixed glass panel on front
Mantel	Benchmark Cabinet (no tile).

**EXTERIOR FEATURES**

Landscape Package	8 18" Shrubs, 1 2" yard tree
Sod/Seed Yard	Sod in Front yard and side yards, hydroseed rear yard
Front Leadwalk	Concrete 3' Wide Broom Finish
Driveway	Concrete 16' Wide Broom Finish
Uncovered Patio	8'x7'4" Concrete w/ broom finish
Mailbox	Medium Mailbox on 4"x4" Cedar "Gothic" post w/ paper holder (1 box per unit, 4 boxes on 1 post per building)
House Numbers	Yes - 3" Black Numbers
Splashblocks	PVC
Community Sidewalks	Concrete Per Community
Fence	Optional- Vinyl 5' solid privacy w/ 1' lattice on top (6' tall total)
Irrigation System	Standard, Front and Sides only

Customer Initials: \_\_\_\_\_



**LADYWOOD VILLAS**  
**GENERAL SPECIFICATIONS**

**ACCEPTANCE AND APPROVAL**

We, the undersigned, have read and do hereby accept and approve these General Specifications. There are no other understandings, representations or agreements, oral or written, relative to the subject matter of these specifications between the parties or The Builder's Representatives.

\_\_\_\_\_ Date: \_\_\_\_\_  
Customer

\_\_\_\_\_ Date: \_\_\_\_\_  
Customer

**THE AUGUSTA GROUP, LLC**  
9567 Valparaiso Court  
Indianapolis, Indiana 46268

By: \_\_\_\_\_ / \_\_\_\_\_ Date: \_\_\_\_\_  
Title

**The Augusta Group, LLC © Copyright.**  
**All floor plans and elevations are the exclusive property of The Augusta Group, LLC**  
**Copyright infringement could result in legal prosecution under Federal copyright law.**

**Customer Initials:** \_\_\_\_\_

BILLIE L. CREAUX  
MARION COUNTY AUDITOR

963409 MAY 20 08

DECLARATION OF ACCEPTANCE  
SUBJECT TO FINAL ACCEPTANCE  
FOR TRANSFER

Re-Recording To Add Auditor STAMP &  
DMD STAMP

63

X-REF# 2008-55405

**DECLARATION OF LADYWOOD GARDENS**  
**HORIZONTAL PROPERTY REGIME**

**Filed and Recorded in the Marion County Recorder's Office on**  
**December 13, 2005**

12/13/05 02:40PM NAWBA MARTIN MARION CTY RECORDER JRC 134.00 PAGES: 63

Inst # 2005-0204168

5/20/2008 11:25 Julie Voorhies MARION COUNTY RECORDER NLM 0 PAGES: 63  
Inst # 2008-0055406

Approved 12 / 13 / 2005  
Washington Township Assessor  
By: DEREK  
Real Estate Deputy



DECLARATION OF  
LADYWOOD GARDENS HORIZONTAL PROPERTY REGIME

TABLE OF CONTENTS

	PAGE NUMBER
RECITALS .....	1
SECTION 1: DEFINITIONS.....	2
SECTION 2: DESCRIPTION OF BUILDINGS.....	4
SECTION 3: LEGAL DESCRIPTION & PERCENTAGE INTEREST .....	4
SECTION 4: DESCRIPTION OF CONDOMINIUM UNITS.....	4
SECTION 5: COMMON AREAS & FACILITIES .....	5
SECTION 6: LIMITED AREAS & FACILITIES.....	6
SECTION 7: OWNERSHIP OF COMMON AREAS.....	6
SECTION 8: ENCROACHMENTS & EASEMENTS .....	6
SECTION 9: REAL ESTATE TAXES .....	7
SECTION 10: UTILITIES.....	7
SECTION 11: ASSOCIATION OF OWNERS.....	7
SECTION 12: USE OF COMMON AREAS .....	8
SECTION 13: MAINTENANCE, DECORATION, REPAIRS & REPLACEMENTS .....	9
SECTION 14: ALTERATIONS, ADDITIONS & IMPROVEMENTS.....	10
SECTION 15: PERCENTAGE INTEREST.....	11
SECTION 16: INSURANCE.....	11
SECTION 17: CASUALTY & RESTORATION; CONDEMNATION; & TERMINATION.....	14
SECTION 18: COVENANTS & RESTRICTIONS.....	18
SECTION 19: SALE, LEASE OR OTHER TRANSFER.....	19

SECTION 20: AMENDMENT OF DECLARATION.....20  
SECTION 21: ACCEPTANCE & RATIFICATION .....22  
SECTION 22: NEGLIGENCE .....23  
SECTION 23: GRANTING OF EASEMENTS .....23  
SECTION 24: RIGHTS TO USE OF COMMON AREAS.....23  
SECTION 25: INITIAL MANAGEMENT .....24  
SECTION 26: COSTS & ATTORNEY'S FEES.....25  
SECTION 27: FAILURE TO PAY ASSESSMENTS.....25  
SECTION 28: SEVERABILITY CLAUSE .....25  
SECTION 29: PRONOUNS .....25  
SECTION 30: RELATIONSHIP WITH MASTER COVENANTS .....26

DECLARATION OF  
LADYWOOD GARDENS  
HORIZONTAL PROPERTY REGIME

THIS DECLARATION of Ladywood Gardens Horizontal Property Regime (“Declaration”) is made this 13 day of December, 2005 by Oakfield Development II, L.L.C., an Indiana limited liability company (the “Declarant”).

WITNESSETH:

**WHEREAS**, Declarant is the purchaser of certain real estate and improvements thereon located in Marion County, Indiana, and more particularly described in Exhibit “A” hereto (the “Real Estate”); and

**WHEREAS**, Declarant, by execution of this Declaration, hereby creates a Horizontal Property Regime (the “Regime”) upon the Real Estate, subject to the provisions of the Horizontal Property Law of the State of Indiana (the “Act”) and the terms and conditions of this Declaration.

**NOW, THEREFORE**, Declarant hereby makes this Declaration, and declares that the Real Estate shall be a “Horizontal Property Regime” as provided in the Act, subject to and in accordance with the following terms and conditions:

**SECTION 1. Definitions.** The following terms, as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

- (a) "Act" means the Horizontal Property Law of the State of State of Indiana, Acts 1963, Chapter 349, Sections 1 through 31, as amended. The Act is incorporated herein by reference, and identified in Indiana Code Chapter 32-25-1.
- (b) "Association" means Ladywood Gardens Co-owners Association, Inc., an Indiana non-profit corporation, being the Association of the Co-Owners of Ladywood more particularly described in Section 11 hereof.
- (c) "Board of Directors" means the governing body of the Association, being the initial Board of Directors referred to in the By-Laws or the subsequent Board of Directors elected by the Co-Owners in accordance with the By-Laws. The term "Board of Directors," as used herein and in the By-Laws, shall be synonymous with the term "Board of Directors" as used in the Act.
- (d) "Building" means any structure on the Real Estate in which Common Areas, Limited Areas or one or more Condominium Units are located. The Buildings are more particularly described and identified on the Plans and in Section 2 of this Declaration.
- (e) "By-Laws" means the Code of By-Laws of Ladywood Gardens Co-Owners Association, Inc., providing for the administration and management of the Association as required by and in conformity with the provisions of the Act. A true and accurate copy of the By-Laws is attached to this Declaration and incorporated herein by reference.
- (f) "Common Areas" and "Limited Areas" means the common areas, limited common areas and facilities as defined in Sections 5 and 6 of this Declaration.
- (g) "Common Expenses" means expenses of administration of the Association, expenses for the upkeep, maintenance, repair and replacement of the Common Areas and Limited Areas and all other costs and expenses incurred by the Association for the benefit of Common Areas and Limited Areas or for the common benefit of all Owners; provided, however, Common Expenses shall not include any costs of initial construction or initial renovation of any Building or other Property or improvements or any portion of the Tract, nor any costs of repairs covered by any Warranty of Declarant as builder of the Condominium Units, nor to any costs or repairs arising out of construction, renovation or other activities on any portion of the Real Estate.

- (h) "Condominium Units" means any one of the living units constituting Ladywood Gardens, each individual living unit being more particularly described and identified on the Plans and in Sections 3 and 4 of this Declaration. "Condominium Unit" includes the undivided interest in the Common Areas and Limited Areas pertaining to such unit.
- (i) "Co-Owners" means all of the Owners of all of the Condominium Units in the Regime.
- (j) "Declarant" shall mean and refer to Oakfield Development II, L.L.C., an Indiana limited liability company, and any successors and assigns of Declarant, whom Declarant designates in one or more recorded instruments to have the rights of Declarant hereunder, including, but not limited to, any mortgagee acquiring title to any portion of the Property pursuant to the exercise of the rights under, or foreclosure of, a mortgage executed by Declarant.
- (k) "Drainage System" means the storm sewers, subsurface drainage tiles, pipes and structures, and other structures, fixtures, properties, equipment and facilities located in, upon, or under the Common Areas, Easements, or Streets and designed for the purpose of expediting the drainage of surface and subsurface waters from, over and across Ladywood Development.
- (l) "Mortgagee" means the holder, insurer or guarantor of a first mortgage loan on a Condominium Unit.
- (m) "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity or any combination thereof who or which owns the fee simple title to a Condominium Unit; provided, however, persons or entities owning a single Condominium Unit as tenants-in-common, joint tenants, tenants by the entireties, or any form of joint or divided ownership, shall be deemed one Owner for purposes of this Declaration. Persons or entities owning more than one Condominium Unit shall have the status of an Owner for each Condominium Unit owned.
- (n) "Percentage Interest" means that percentage of the total undivided interest accruing to all the Condominium Units which is appurtenant to each Condominium Unit and accrues to the Owner thereof. The formula for determining "Percentage Interest" is set forth in Section 15 hereof.
- (o) "Plans" means the floor and building plans of the Buildings and Condominium Units prepared and certified by Augusta Homes, or its successors or assigns, all of which are incorporated herein by reference. And made a part of the Regime by such references.

(p) "Property" means the Real Estate and appurtenant easements, the Condominium Units, the Buildings, improvements and property of every kind and nature whatsoever, real, personal or mixed, located upon the Real Estate and used in connection with the operation, use and enjoyment of Ladywood Gardens, but does not include the personal property of the Owners.

(q) "Ladywood Gardens" means the name by which the Horizontal Property Regime shall be known.

(r) "Tract" means the Real Estate as herein defined.

**SECTION 2. Description of Buildings.** There are, or will be built, Buildings containing Condominium Units on the Real Estate as shown on the Plans. As of the date of this Declaration, construction is not complete on the Condominium Units. A description of the Buildings and the Condominium Units contained or to be contained therein is set forth in Exhibit "B" attached hereto and hereby made a part hereof by this reference.

**SECTION 3. Legal Description and Percentage Interest.** Each Condominium Unit is identified on the Plans by a number. The Legal Description for each Condominium Unit shall consist of the identifying number for such Condominium Units as shown on the Plans, and shall be stated as "Condominium Unit" (with identifying number) in Ladywood Gardens Horizontal Property Regime. The Percentage Interest of each Owner in the Common Areas and Limited Areas as hereinafter defined shall be the same percentage of interest as each Condominium Unit as set forth on Exhibit "B" attached hereto and hereby made a part hereof.

**SECTION 4. Description of Condominium Units.**

(a) "Appurtenants." Each Condominium Unit shall consist of all space within the boundaries thereof, as hereinafter defined, and all portions of the Building situated within such boundaries, including, but not limited to, all fixtures, facilities, utilities, equipment, appliances and structural components designed and intended solely and exclusively for the enjoyment, use and benefit of the Condominium Units wherein the same are located, or to which they are attached, but excluding therefrom that designed or intended for the use, benefit, support, safety or enjoyment of any other Condominium Unit or

which may be necessary for the safety, support, maintenance, use and operation of any of the Buildings; or which are normally designed for common use; provided, however, that all fixtures, equipment and appliances designed or intended for the exclusive enjoyment, use and benefit of a Condominium Unit shall constitute a part of such a Condominium Unit, whether or not the same are located within or partly within the boundaries of such Condominium Unit. Also, the interior sides and surface of all doors and interior and exterior or size and frames of all windows in the perimeter walls of the Condominium Unit, whether or not located within or partly within the boundaries of the Condominium Unit, and all interior walls and all floors and ceilings within the boundaries of the Condominium Unit, are considered part of the Condominium Unit.

- (b) "Boundaries." The boundaries of each Condominium Unit shall be as shown on the Plans and shall be measured between the interior unfinished surface of the floors, ceilings and perimeter walls of each Condominium Unit. In the event any horizontal or vertical or other boundary line as shown on the Plans does not coincide with the actual location of the respective wall, floor or ceiling surface of the Condominium Unit because of inexactness of construction, settling after construction or for any other reason, the boundary lines of each Condominium Unit shall be deemed to be and treated for purposes of ownership, occupancy, possession, maintenance, declaration, use and enjoyment, as in accordance with the actual existing construction. In such case, permanent appurtenance easements for exclusive use shall exist in favor of the Owner of each Condominium Unit in and to such space lying outside of the actual boundary lines of the Condominium Unit, but within the appropriate wall, floor or ceiling surfaces of the Condominium Unit.

SECTION 5. Common Areas And Facilities. "Common Areas" shall include the following, except to the extent otherwise specifically designated in this Declaration as being within a Condominium Unit or as a Limited Area:

- (a) The Real Estate, excluding the Condominium Units;
- (b) The foundations, columns, girders, beams, supports and exterior surfaces of roofs of the Buildings;
- (c) The yards, sidewalks, parks, pathways, ponds, lakes, trails, interior and exterior driveways, parking areas, entrances and exits;
- (d) Central electricity, gas, water, air conditioning and sanitary sewer mains serving the Buildings unless separately metered to a particular Condominium Unit;
- (e) Exterior lighting fixtures and electrical service lighting to the exterior of the Buildings unless separately metered to a particular Condominium Unit; and

- (f) Pipes, ducts, electrical wiring and conduits and public floors, roofs and exterior permanent walls of the Buildings, except to the extent the same are otherwise classified and defined herein as Limited Areas or as part of a Condominium Unit.

**SECTION 6. Limited Areas and Facilities.** Limited Areas and those

Condominium Units to which use thereof is limited are as follows:

- (a) The front entrance ways, patios, porches and all exterior sides and surfaces of doors and frames surrounding the same on each Condominium Unit shall be limited to the exclusive use of the Condominium Unit to which they appertain.
- (b) Any other areas designated and shown on the Plans as Limited Areas shall be limited to the Condominium Unit or Condominium Units to which they appertain as shown on the Plans.

**SECTION 7. Ownership of Common Areas and Percentage Interest.**

Each Owner shall have an undivided interest in the Common Areas and Limited Areas, as tenants-in-common with all the other Owners, equal to his or her Condominium Units Percentage Interest. The Percentage Interest in the Common Areas applicable to each Condominium Unit shall be determined in accordance with the formula set forth in Section 15 hereof. The Percentage Interest in the Common Areas and Limited Areas presently pertaining to each Condominium Unit is specified in Exhibit "B" hereto. In any computation of Percentage Interests, the figure obtained shall be rounded to the nearest one-thousandth of a percent, and shall be so presented for all purposes of conveyance and for all purposes contemplated under this Declaration.

**SECTION 8. Encroachments, Easements For Common Areas and Ingress and Egress Easements.** If, by reason of the location, the construction, settling or shifting of a Building, any Common Area or Limited Area now encroaches or shall hereafter encroach upon any Condominium Unit, then in such event an easement shall be deemed to exist and run to the Co-Owners and the Association for the maintenance, use and enjoyment of

such Common Area or Limited Area. Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities located in any of the other Condominium Units and serving his Condominium Unit. Each Owner shall have an easement over the Common Areas for the purpose of ingress and egress from his Condominium Unit, and to use all Common Areas wherever located, and such easement shall be perpetual and appurtenant to the Condominium Unit.

SECTION 9. Real Estate Taxes. Real estate taxes are to be separately assessed and taxed to each Condominium Unit as provided in the Act. In the event that for any year real estate taxes are not separately assessed and taxed to each Condominium Unit, but are assessed and taxed on the Property as a whole, then each Owner shall pay his or her proportionate share of such taxes to the extent attributable to the Property in accordance with his respective Percentage Interest.

SECTION 10. Utilities. Each Owner shall pay those utilities which are separately metered to his or her Condominium Unit. Utilities which are not separately metered shall be treated as and paid as a part of the Common Expenses unless otherwise agreed by the majority of the Percentage Interests.

SECTION 11. Association of Owners. Subject to the rights of Declarant reserved in Section 24 hereof, maintenance, repair, upkeep, replacement, administration, management and operation of the Property shall be by the Association. Each Owner of a Condominium Unit shall, automatically upon becoming an Owner of a Condominium Unit, be and become a member of the Association and shall remain a member until such time as his or her ownership ceases. The membership of each Owner shall terminate when such person ceases to be an Owner, and shall be transferred to the new Owner of the Condominium Unit.

The Association shall elect a Board of Directors annually (except for the initial Board of Directors as set forth in the By-Laws) in accordance with and as prescribed by the By-Laws. Each Owner shall be entitled to cast a vote commensurate with the number of Condominium Units owned by that Owner for the election of the Board of Directors, except for the initial Board of Directors. Whether as an original member of the Board of Directors, or as a member thereof appointed by Declarant to fill a vacancy, the initial Board of Directors shall be deemed a member of the Association and an Owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose. A person serving on the initial Board of Directors shall not be deemed or considered a member of the Association nor an Owner of a Condominium Unit for any other purpose unless he is actually an Owner of a Condominium Unit and thereby is a member of the Association. The Board of Directors shall be the governing body of the Association, representing all the Owners in providing for the management, administration, operation, maintenance, repair, replacement and upkeep of the Property exclusive of the Condominium Units.

The Association and any aggrieved Condominium Unit Owner shall have a right of action against any Owner for failure to comply with the provisions of the Declaration, By-Laws or decisions of the Association which are made pursuant to authority granted the Association in such documents. Condominium Unit Owners shall have a similar right of action against the Association.

SECTION 12. Use of Common Areas. The Board of Directors shall adopt rules and regulations concerning maintenance, repairs, use and enjoyment of the Common Areas and Limited Areas as it deems appropriate, and may amend and modify the same from time to time as it deems advisable, necessary or appropriate. The Board of Managers or their designated agents shall have the right at reasonable times and upon reasonable

prior notice (except in cases of emergency in which case no notice shall be required) to enter into each individual Condominium Unit for the purpose of inspection of the Common Areas and Limited Areas appurtenant thereto and replacement, repair and maintenance of such Common Areas and Limited Areas.

**SECTION 13. Maintenance, Decoration, Repairs and Replacements.**

(a) **Common Areas.** The Association will be responsible for the maintenance, repair, decoration, restoration and replacement of the Common Areas. Maintenance, decoration, repairs and replacements of the Common Areas shall be furnished by the Association and the costs thereof shall be part of the Common Expenses. The Association may elect to delegate such duties to a Managing Agent and may enter into a management contract for such purpose, provided that such agent and the terms of such contract are approved by a majority of the vote present or represented at any meeting of the Association. Declarant or an entity affiliated with Declarant may serve as the Managing Agent for the Association so long as Declarant retains control of the Association, and may perform all property management functions on behalf of the Association. Any management contract made or which is deemed to arise between the Association and Declarant (or any affiliate) shall be terminable by the Association without cause and without penalty upon thirty (30) days' written notice at any time after Declarant relinquishes control of the Association. The Board of Directors has the right to adopt such rules and regulations concerning the maintenance, repairs, use and enjoyment of the Common Areas as it deems appropriate, including the appointment of committees to oversee the same. The Board of Directors shall have the exclusive right to determine the outside décor of each Building, including, without limitation, the color and type of paint and other décor pertinent to the exterior of each Building.

(b) **Condominium Units.** Each Owner shall control and have the right to determine the interior décor of his or her Condominium Unit, but this shall not include the right to make structural changes to the Unit, nor the right to use interior décor which in the discretion of the Board of Directors adversely affects the external appearance of the Condominium Unit, as more particularly set forth in the By-Laws of the Association. No act or omission which constitutes waste shall be committed or suffered in or upon any Condominium Unit, the Common Areas or Limited Areas. Each Owner shall maintain and repair at his or her sole cost and expense all fixtures, appliances, equipment, and other improvements constituting a part of his or her Condominium Unit under Section 4 hereof, and each Owner shall promptly repair any condition or defect existing or occurring in his or her Condominium Unit which, if not repaired, might adversely affect any Condominium Unit, Common Area or Limited Areas. The Board of Directors and the Managing Agent shall have the right at reasonable times and upon reasonable prior notice (except in cases of emergency in which case no notice shall be required) to enter into or on the Condominium Units and Common Areas adjacent to each Condominium Unit to replace, repair and maintain such Common

Areas. In the event that any Owner fails or is unable to maintain or repair any condition or defect for which he or she is responsible, and the Board of Directors or the Managing Agent have a reasonable basis for believing that such condition or defect has caused or threatens to cause immediate and/or substantial harm to any person or to any property outside such Owner's Condominium Unit, the Board of Directors and the Managing Agent shall each have the right to enter such Owner's Condominium Unit to remedy or repair such condition or defect, and any costs or expenses incurred in connection therewith (including attorney's fees) shall be payable by such Owner upon demand by the Board of Directors or the Managing Agent. Nothing herein contained shall be construed to represent a contractual liability to any Owner on the part of the Declarant, the Association or the Board of Directors for maintenance, repair or replacement of any Condominium Unit, Common Areas or Limited Areas, and the liability of the Association the Board of Directors and Managing Agent in this regard shall be limited to damages resulting from gross negligence, recklessness or intentional misconduct, unless otherwise provided in the management contract in the case of the Managing Agent.

SECTION 14. Alterations, Additions and Improvements. No Owner shall make any alterations or additions to, or which would affect, the Common Areas or Limited Areas, without the prior written approval of the Board of Directors. In addition, no Owner shall make any alteration in or to his respective Condominium Unit and within the boundaries thereof which would affect the safety and structural integrity of the Building in which Condominium Unit is located. Declarant reserves the right to change the interior design and arrangement of all Condominium Units and alter the boundaries between Condominium Units so long as Declarant owns the Condominium Units so altered. No change by Declarant under this Section 14 shall increase the number of Condominium Units or change the Percentage Interest applicable to such Condominium Unit. If Declarant shall make any changes in the Condominium Units so authorized, such changes shall be reflected by a supplement to the Plans and such supplement to the Plans need not be approved by the Association or any other Owners.

SECTION 15. Percentage Interest. The Owner of each Condominium Unit shall have a Percentage Interest appurtenant to his Condominium Unit Ownership based upon the number of Condominium Units owned by that Owner divided by the total number of

all of the Condominium Units existing in the Regime at that time in accordance with Ind. Code §32-25-4-3(a)(3) (hereinafter called the "Formula"). In order to determine the Percentage Interests in accordance with the Formula, the total number of the Condominium Units in the Regime shall be taken from the Plans, which are filed herewith, as such Plans may be amended from time to time. This method of calculating Percentage Interest shall result in an equal Percentage Interest to each Condominium Unit. The total Percentage Interests shall at all times equal one hundred percent (100%), or as close to one hundred percent (100%) as is mathematically possible, after taking into account the rounding thereof as required by the Act.

**SECTION 16. Insurance.**

(a) The Co-Owners, through the Associations, shall purchase a master casualty insurance policy issued in the name of the Association for the use and benefit of the Owners affording fire and extended coverage insurance insuring the Property in an amount consonant with the full replacement value of the Property and improvements, including the individual Condominium Units, the Common Areas and Limited Areas and facilities, and further including fixtures, building service equipment and common personal property and supplies belonging to the Association. For all Condominium Units which are subject to a first mortgage, the individual Co-Owner must obtain insurance covering the fixtures, equipment and other personal property inside individual Condominium Units if they are secured by a first mortgage. A Certificate of Insurance shall be issued to each Condominium Unit Owner and each Mortgagee upon request and no such policy shall be cancelled or substantially modified without at least thirty (30) days prior written notice to the Association and to each Mortgagee listed as Mortgagee in the policies. The insurance policy must contain the standard mortgage clause and must name the Mortgagee, and its name shall be followed by the phrase "its successors and assigns." The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Board of Managers, the Board may cause full replacement value to be determined by a qualified appraiser. The cost of any appraisal shall be a Common Expense. Insurance coverage set forth herein shall be for the benefit of each Owner, and if applicable, the Mortgagee of each Owner upon the following terms and conditions:

- (i) All proceeds payable as a result of casualty losses sustained, which are covered by insurance purchased by the Association as hereinabove set forth, shall be paid to it or to the Board of

Directors, who shall act as the insurance trustees and hold such proceeds for the benefit of the insured parties. In the event that the Board of Mangers has not posted surety bonds for the faithful performance of its duties as Directors, or if such bonds do not exceed the funds which will come into it hands, and there is damage to a part or all of the Property resulting in a loss, the Board of Directors shall obtain and post a bond for the faithful performance of its duties as insurance trustee in an amount to be determined by the majority of the Owners, but not to exceed one hundred twenty-five percent (125%) of the loss, before the Board of Directors shall be entitled to receive the proceeds of the insurance payable as a result of the loss. The sole duty of the insurance trustee shall be to receive the proceeds as the same are paid and to hold the same in trust for the purpose stated herein, and for the benefit of the Owners and their respective Mortgagees. The proceeds shall be used or disbursed by the Association or Board of Directors as appropriate in accordance with the provisions of this Declaration.

- (ii) The interest of each damaged Owner in the trust fund of insurance proceeds shall be the ration of the direct damage of each damaged Owner to the damages of all Owners directly damaged by any event insured under the master casualty insurance policy.
- (b) The master casualty insurance policy, and "all risk" coverage if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (i) waives its right to subrogation as to any claim against the Association, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (ii) waives any defense based on invalidity arising from the acts or omissions of the individual Condominium Unit Owners that are not under the control of the Association, and providing further, (iii) that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners as hereinafter permitted, and (iv) that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Owners do not elect to restore pursuant to Section 17 of this Declaration.
- (c) The Co-Owners, through the Association, shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time; however, such coverage shall be for at least Two Million Dollars (\$2,000,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence. The comprehensive public liability insurance policy shall cover the Association, the Board of Directors, any committee or organ of the Association or Board of Directors, any Managing Agent appointed or employed by the Association, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to Ladywood Gardens, all Owners of Condominium Units and all other portions of

Ladywood Gardens. Coverage under this policy shall include, without limitation, legal liability of the insureds for the property damage, bodily injuries and deaths of the persons in connection with the operation, maintenance or the use of the Common Areas and Limited Areas, and if available, legal liability arising out of lawsuits related to employment contracts of the Association. No insurance coverage as described hereinabove shall be prejudiced by the act or neglect of an individual Condominium Unit Owner who was not in control of the Owners collectively. The policy described herein shall also provide that it may not be canceled or substantially modified by any party without at least thirty (30) days prior written notice to the Association and to each holder of a first mortgage on any Condominium Unit in the Property which is listed as a scheduled holder of a first mortgage in the insurance policy.

- (d) The Co-Owners, through the Association, shall also obtain any other insurance required by law to be maintained, including, but not limited to, worker's compensation insurance, flood insurance and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including, but not limited to, comprehensive liability insurance on vehicles owned by the Association, officers' and directors' liability policies, contractual and all-written contract insurance, and employer's liability insurance. Insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party, and shall also insure to the benefit of each Owner, the Association, the Board of Mangers and any Managing Agent acting on behalf of the Association.
- (e) Each Owner shall be deemed to have appointed the Board of Mangers to represent each Owner in any proceedings, negotiations, settlements or agreements with the insurance companies to adjust all losses under policies purchased by the Board of Mangers.
- (f) The premiums for all insurance hereinabove described shall be paid by the Association as part of Common Expenses. When any policy of insurance hereinabove described has been obtained by or on behalf of the Association, written notice of the attainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner or Mortgagee whose interest may be affected thereby, which notice shall be furnished by the officer of the Association who is required to send notices of meetings of the Association.
- (g) In no event shall any distribution of proceeds be made by the Board of Directors directly to an Owner where there is a mortgage endorsement on the Certificates of Insurance. In such event any remittance shall be to such Owner and Mortgagee jointly.
- (h) Each Owner shall be solely responsible for, and may obtain, additional insurance as the Owner deems necessary or desirable at the Owner's own expense affording coverage upon his personal property, contents of the Owner's Condominium Unit (including, but not limited to, all floor, ceiling

and wall coverings and fixtures, betterments and improvements installed by the Owner) and the Owner's personal property stored elsewhere on the Property, and for the Owner's personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions of the master casualty insurance policy to be obtained by the Association. Each Owner may obtain casualty insurance at the Owner's own expense upon the Owner's Condominium Unit, but it shall provide that it shall be without contribution as against the casualty insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of the proceeds which would otherwise be payable in the insurance purchased by the Association pursuant to this paragraph, due to proration of insurance purchased by an Owner under this paragraph, the Owner agrees to assign the proceeds of this latter insurance, to the extent of the amount of such reduction, to the Association to be distributed as herein provided. Notwithstanding any other foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured on behalf of the Association, an authorized representative, including any trustee with whom the Association may enter into an insurance trust agreement or any successor to such trustee who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish this purpose. Each Condominium Unit Owner hereby appoints the Association as attorney-in-fact for the purpose of purchasing and maintaining such insurance, and the following additional purposes: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability related thereto; the execution of all documents necessary in connection therewith; and the performance of all other acts necessary to accomplish such purposes.

- (i) All of the insurance described above shall be procured by generally acceptable insurance carriers.

**SECTION 17. Casualty and Restoration; Condemnation; Termination.**

- (a) Except as hereinafter provided, damage to or destruction of any Building due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose; provided, however, repair and reconstruction shall not be compulsory in the event of "complete destruction of all the Buildings" (hereinafter defined) it shall only be done in accordance with provisions hereinafter set forth. As used herein, the term "complete destruction of all the Buildings" means a determination, made by a vote of two-thirds of all Co-Owners at a special meeting of the Association called for the purpose of making such determination, that total destruction of all of the Buildings has occurred. A special meeting of the Association shall be called and held within ninety (90) days after any fire or any other casualty or disaster damaging or destroying any of the Buildings. If such a meeting is not called and held within such ninety (90) day period, or if the determination of whether or not there has been a complete destruction of all the Buildings has not been made

within such ninety (90) day period, then it shall be conclusively presumed that the Co-Owners determined that there was not a complete destruction of all the Buildings, and the Association shall proceed with repair and reconstruction as herein provided.

- (b) If the insurance proceeds, if any, received by the Association as a result of any such fire or any other casualty disaster are not adequate to cover the costs of repair and reconstruction, or in the event there are no insurance proceeds, and if the Property is not to be removed from the Horizontal Property Regime, the costs for restoring and damage, repairing or reconstructing the Building or Buildings so damaged or destroyed (or the costs thereof in excess of the insurance proceeds received, if any) shall be paid by all of the Owners of Condominium Units in proportion to the relation that the Percentage Interest of each Condominium Unit bears to the total Percentage Interest of all Condominium Units. Any amounts payable by the Co-Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein and under the Act.
- (c) For purposes of Subsections (a) and (b) above, repair, reconstruction and restoration shall mean construction or rebuilding of the Condominium Units as near as possible to the same condition as they existed immediately prior to the damage or destruction and with the same type of architecture.
- (d) If, under Subsection (a) above, it is determined by the Co-Owners at the special meeting of the Association referred to therein that there has been a complete destruction of all the Buildings, the Co-Owners shall, at such same special meeting, vote to determine whether or not such complete destruction of all the Buildings shall be repaired and reconstructed. The Buildings shall not be reconstructed or repaired if it is the determination of the Co-Owners at said special meeting that there has been a complete destruction of all the Buildings, unless by a vote of two-thirds of all the Co-Owners a decision is made to rebuild, reconstruct and repair the Buildings. If two-thirds of all of the Co-Owners vote and decide that the Buildings are to be rebuilt, reconstructed and repaired, insurance proceeds, if any, received by the Association shall be applied and any excess of construction costs over insurance proceeds, if any received by the Association shall be contributed and paid as hereinabove provided in Subsections (a) and (b).
- (e) If, in the case of the complete destruction of all of the Buildings, less than two-thirds of all of the Co-Owners vote in favor of rebuilding, reconstruction and repair of the Buildings, the Buildings shall not be rebuilt, reconstructed and repaired, and, in such event, the Property shall be deemed and considered as to be removed from the provisions of the Act under Ind. Code §32-25-8-10 and in accordance with Ind. Code §32-25-8-16 of the Act:
  - (i) The property shall be deemed to be owned in common by the Condominium Unit Owners;

- (ii) The undivided interest in the Property owned in common which shall appertain to each Condominium Unit Owner shall be the percentage of undivided interest previously owned by such Owner in the Common Areas and facilities;
  - (iii) Any liens affecting the Condominium Units shall be deemed to be transferred in accordance with the existing priorities to the percentage of the undivided interest of the Condominium Unit Owner in the Property; and
  - (iv) The Property shall be subject to an action for partition at the suit of any Condominium Unit Owner, in which event the net proceeds of sale, together with the net proceeds of insurance on the Property, if any, shall be considered as one fund and shall be divided among all Condominium Unit Owners in a percentage equal to the percentage of undivided interest owned by each Owner of the Property after first paying out of the respective shares of Condominium Unit Owners to the extent sufficient for the purpose, all liens on the undivided interest in the Property owned by each Condominium Unit Owner.
- (f) Immediately after a fire or other casualty or disaster causing damage to any Property for which the Board of Managers or Association has the responsibility of maintenance and repair, the Board of Directors shall obtain reliable and detailed estimates of the cost to place the damaged Property in condition as good as that before the casualty. Such costs may include professional fees and premiums for bonds as the Board of Managers desires.
- (g) The proceeds of insurance collected on account of any such casualty, and the sums received by the Board of Directors from collections of assessments against Owners on account of such casualty, shall constitute a construction fund which shall be disbursed, if the Building is to be reconstructed and repaired, in payment of the costs of reconstruction and repair in the following manner:
- (i) if the amount of the estimated cost of reconstruction repair is less than Five Thousand Dollars (\$5,000.00), then the construction fund shall be disbursed in payment of such costs upon order of the Board of Directors; provided, however, upon request of any Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner hereinafter provided in the following Subsection (ii).
  - (ii) If the estimated costs of reconstruction and repair of the Building or other improvement is more than Five Thousand Dollars (\$5,000.00), then the construction fund shall be disbursed in payment of such costs upon approval of an architect qualified to practice in Indiana and employed by the Board of Directors to

supervise such work, payment to be made from time to time as the work progresses. The architect shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors, materialmen, the architect or other persons who have rendered services or furnished materials in connection with the work, and (1) that the sums requested by them in payment are justly due and owing and that said sums do not exceed the value of the services or materials furnished; (2) that there is no other outstanding indebtedness known to the architect for services and materials described; and (3) that the costs estimated by the architect for the work remaining to be done subsequent to the date of such certificate, do not exceed the amount of the construction fund remaining after payment of the sum requested.

- (h) Encroachments upon or in favor of Condominium Units which may be created as a result of reconstruction or repair shall not constitute a claim or basis of a proceeding or action by the Owner upon which property such encroachment exists, provided that such reconstruction was either substantially in accordance with the Plans or as the Building was originally constructed, and the encroachments shall be allowed to continue in existence for so long as the Building stands.
- (i) In the event there is any surplus of monies in the construction fund or the reconstruction or repair of the damage has been fully completed and all costs paid, the excess sums may be retained by the Board of Directors as a reserve or may be used in the maintenance or operation of the Common Areas; or, in the discretion of the Board of Directors, it may be distributed to the Owners in the Buildings affected and their Mortgagees who are the beneficial Owners of the fund. The action of the Board of Directors in proceeding to repair reconstruction damage shall not constitute a waiver of any rights against an Owner for committing willful or malicious damage.
- (j) In the event of the condemnation of all or any part of the Common Areas or all or any part of the Building(s), Condominium Unit(s) or lot(s), the Board of Directors is hereby authorized to negotiate with the condemning authority and/or to contest an award made for the appropriation of such Common Areas, Buildings or Condominium Units. For the purpose of such negotiation and/or contest of such award to the Board of Directors as to Buildings and Condominium Units and lots, the Board of Directors is hereby declared to be the agent and attorney-in-fact of any Owners affected by the condemnation. This appointment of the Board of Managers shall be deemed coupled with an interest and shall be irrevocable. Nothing contained herein, however, shall preclude any Owner from asserting any rights or claims to compensation which can not be legally asserted by the Board of Managers.

Awards for the taking of all or part of a Building, Condominium Unit or lot shall be collected by the Board of Directors and distributed to the affected Owner(s). To the

extent possible, negotiated awards or awards resulting from a contest shall specify the allocation of the award among the Owner(s) affected. In the event that an Owner does not agree with the distribution of an award, said Owner shall be entitled to have the dispute settled by arbitration. The protesting Owner shall appoint one arbitrator, the Board of Mangers acting as agent for all other affected Owners shall appoint one arbitrator, and the two appointed arbitrators shall appoint a third arbitrator. The majority decision of the arbitrators shall be binding on all Owners and shall be enforceable in a court of competent jurisdiction.

SECTION 18. Covenants and Restrictions. The covenants and restrictions applicable to the use and enjoyment of the Condominium Units and the Common Areas and Limited Areas are set forth in the By-Laws, including the limitation that each of the Condominium Units shall be limited to residential use. These covenants and restrictions are for the mutual benefit and protections of the present and future Owner or Owners. Present or future Owners or the Association shall be entitled to injunctive relief against any violation or attempted violation of these provisions and shall be entitled to damages for any injuries resulting from any violations thereof, but there shall be no right of reversion or forfeiture of title resulting from such violation.

Notwithstanding anything to the contrary contained herein or in the By-Laws, including but not limited to, any covenants and restrictions set forth in the By-Laws, Declarant shall have, until the applicable date as defined in Article III of the By-Laws, the right to use and maintain any Condominium Unit owned by Declarant, such other portions of the Property (other than individual Condominium Units owned by persons other than Declarant) and any portions of the additional Real Estate not then part of the Regime, all of such number and size and at such locations as Declarant in its sole discretion may determine and as Declarant may deem advisable or necessary in its sole

discretion to aid in the construction, reconstruction or rehabilitation of Condominium Units and sale of Condominium Units or for the conducting of any business or activity attendant thereto, including, but not limited to, model sales offices, management offices and business offices. At no time shall any facility so used or maintained by Declarant be or become part of the Common Areas, unless so designated by Declarant, and Declarant shall have the right to remove the same from the property at any time.

SECTION 19. Sale, Lease or Other Transfer of Condominium Unit By Owner.

For the purpose of maintaining the congenial and residential character of Ladywood Gardens, and for the protection of the Owners with regard to ensuring financially responsible residents, the lease of any Condominium Unit by an Owner shall be subject to the following conditions and restrictions:

- (a) Lease. No Owner shall lease his or her Condominium Unit or enter into any other rental or letting agreement for his or her Condominium Unit for a term of less than one hundred eighty (180) days. In any event, Owner shall use a lease form which has been approved by the Board of Directors, and a copy of such lease shall be provided by Owner to the Board of Directors promptly after execution thereof.
- (b) Sale. The Association shall have no right of first refusal to purchase any Condominium Unit which an Owner wishes to sell and an Owner may sell his or her Condominium Unit free of any such restriction.

SECTION 20. Amendment of Declaration. Except as otherwise provided in this

Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

- (a) Notice. Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting at which the proposed amendment is considered, including any annual meetings.
- (b) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Mangers or Owners having in the aggregate at least a majority of the Percentage Interest.

(c) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws.

(d) Adoption. Any proposed Material Amendment (as hereinafter defined) to this Declaration must be approved by a vote of not less than two-thirds of the Owners. In the event any Condominium Unit is subject to a first mortgage, the Mortgagee (hereinafter referred to as "Eligible Mortgagee") shall be notified of the meeting and the proposed Material Amendment in the same manner as an Owner if the Eligible Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the By-Laws, and any proposed Material Amendment must be approved by a vote of not less than a majority of the Eligible Mortgagees. An Eligible Mortgagee who receives a written request to approve amendments and does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request. A change to any of the following shall be deemed to be a Material Amendment:

- (i) Voting rights;
- (ii) Assessments, assessment liens or subordination of assessment liens;
- (iii) Reserves for maintenance, repair and replacement of Common Areas;
- (iv) Responsibility for maintenance and repair;
- (v) Reallocation of interests in Common Areas or Limited Areas, or rights to their use;
- (vi) Boundaries of any Condominium Unit;
- (vii) Convertibility of Condominium Units into Common Areas or vice versa;
- (viii) Expansion or contraction of the Property, or the addition, annexation or withdrawal of property to or from the Property;
- (ix) Insurance or fidelity bonds;
- (x) Leasing of Condominium Units;
- (xi) Imposition of any restrictions on a Condominium Unit Owner's right to sell or transfer his or her Condominium Unit;
- (xii) A decision by the Association to establish self-management when a professional management agent had been required previously by an Eligible Mortgagee;

- (xiii) Restoration or repair of the Property (after a hazard damage or partial condemnation) in a manner other than that specified in the Declaration;
  - (xiv) Any action to terminate the legal status of the Property after substantial destruction or condemnation occurs; or
  - (xv) Any provision that expressly benefits mortgage holders, insurers or guarantors.
- (e) **Recording.** Each amendment to the Declaration shall be executed by the President and Secretary of the Association, or the Declarant, if required, and shall be recorded in the Office of the Recorder of Marion County, Indiana, and such amendment shall not become effective until so recorded.
- (f) **Amendments By Declarant Only.** Notwithstanding any other provision of this Declaration, the Declarant shall have the right acting alone and without the consent or approval of the Co-Owners, the Association, the Board of Directors, any Mortgagees or any other persons, to amend or supplement this Declaration, the By-Laws or other documents from time to time if (i) such amendment or supplement is necessary to conform this Declaration to the Act, as amended from time to time; (ii) such amendment or supplement is made to comply with requirements of 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 or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities; (iii) to induce any such agencies or entities to make, purchase, sell, insure or guarantee first mortgages; or (iv) if such amendment or supplement is made to correct clerical or typographical errors. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make or consent to any amendments described in this Section 20 on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage or other instrument affecting a Condominium Unit and acceptance thereof shall be deemed to be grant and acknowledgment of, and a consent to the reservation of, the power of the Declarant to vote in favor of, make, execute and record any such amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Section 20 shall terminate at such time as Declarant no longer holds or controls title to any part or portion of the Real Estate.
- (g) **Additional Restrictions On Amendments .**
- (1) The consent of Owners of Condominium Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of the eligible holders of first mortgages on Condominium Units to which at

least sixty-seven percent (67%) of the votes of the Condominium Units subject to a mortgage appertain shall be required to terminate the Condominium Regime for reasons other than substantial destruction or condemnation of the Property.

- (2) As used in this Section, the term "eligible holder" shall mean a holder, insurer or guarantor of a first mortgage on the Condominium Unit who has requested notice in accordance with the By-Laws.

SECTION 21. Acceptance and Ratification. All present and future Owners, mortgages, tenants and occupants of the Condominium Units shall be subject to and shall comply with the provisions of this Declaration, the Act, the By-Laws appended hereto, and the rules and regulations as adopted by the Board of Directors as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Condominium Unit shall constitute an agreement that the provisions of this Declaration, the Act, the By-Laws and rules and regulations as each may be amended or supplemented from time to time are accepted and ratified by each such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any person having at any time any interest or estate in a Condominium Unit or the Property as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All persons, corporations, partnerships, trusts, associations or other legal entities who may occupy, use, enjoy or control a Condominium Unit or any part of the Property in any manner shall be subject to the Declaration, the Act, the By-Laws and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

SECTION 22. Negligence. Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by the Owner's own negligence or by that of any member of the Owner's family, their guests, employees, agents or

lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Association. An Owner shall pay the amount of any increase in insurance premiums occasioned by such Owner's use, misuse, occupancy or abandonment of the Owner's Condominium Unit or its appurtenants or of the Common Areas or Limited Areas.

SECTION 23. Granting of Easements. The Board of Directors of the Association is granted the authority to grant easements to utility companies (excluding transportation companies) upon such terms and conditions and for such consideration as it deems appropriate.

SECTION 24. Reservation of Rights to Use the Common Areas. Declarant shall have, and hereby reserves, an easement over, across, upon, along, in, through and under the Common Areas and, to the extent necessary, the Limited Areas, for the purposes of installing, maintaining, repairing, replacing, relocating and otherwise servicing utility equipment, facilities and installations to serve the Property, to provide access to and ingress and egress to and from the Property, to make improvements to and within the Property, and to provide for the rendering of public and quasi-public services to the Property. The foregoing easement shall be a transferable easement and Declarant may at any time and from time to time grant similar easements, rights or privileges to other persons and parties for the same purposes. By way of example, but not in limitation of the generality of the foregoing, Declarant, and others to whom Declarant may grant such similar easement, easements or rights or privileges, may so use the Common Areas and, to the extent necessary, the Limited Areas, to supply utility services to the Property and any portions of the Regime which are not part of the Property and to permit public and quasi public vehicles, including, but not limited to, police, fire and other emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery

vehicles, and their personnel to enter upon and use the streets, the Common Areas, and to the extent necessary, the Limited Areas of Ladywood Gardens in the performance of their duties.

SECTION 25. Initial Management. As set forth in the By-Laws, the initial Board of Directors shall consist of persons selected by Declarant. Prior to the Applicable Date, as defined in the By-Laws, all contracts or leases including any management agreement entered into by the Board of Mangers shall provide a right of termination without cause or penalty, at any time after the Applicable Date upon no more than sixty (60) days notice to the other party. The Board of Directors has entered or will hereafter enter into a management agreement with Revel and Underwood (the "Managing Agent") under which the Managing Agent will provide supervision, fiscal and general management and maintenance of the Common Areas, and, to the extent the same is not otherwise the responsibility of Owners of individual Condominium Units, the Limited Areas, and, in general, perform all the duties and obligations of the Association. Any Management Agreement is or will be subject to termination by Declarant at any time prior to the expiration of its term, in which event the Association shall upon and thereafter resume performance of all of its duties and obligations and functions. Notwithstanding anything to the contrary contained herein, so long as the Management Agreement remains in effect, Declarant shall have, and Declarant hereby reserves to itself, the exclusive right to oversee the Managing Agent and if necessary manage the Property and to perform all the functions of the Association.

SECTION 26. Costs and Attorneys' Fees. In any proceeding arising because of failure of an Owner to make any payments required by this Declaration, the By-Laws or the Act, or to comply with any provision of the Declaration, the Act, the By-Laws or the rules and regulations adopted pursuant thereto as each may be amended from time to

time, the Association shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with the default or failure.

**SECTION 27. Failure of Owner to Pay Assessments.**

- (a) No Owner may become exempt from liability for contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or Limited Areas or by abandonment of the Owner's Condominium Unit. Each Owner shall be personally liable for the payment of all assessments by the Association.
- (b) Upon failure by any Owner to make any payment of assessment on the date when due, the lien against the Owner's Condominium Unit may be foreclosed against as provided for by Section 5.06 of the By-Laws and applicable law. Any lien for assessments becoming payable after the recordation of a first mortgage on Owner's Condominium Unit shall be subordinate to the first mortgage on the Owner's Condominium Unit as more fully set forth in Section 5.06(b) of the By-Laws.

**SECTION 28. Severability Clause.** The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, or by the By-Laws filed herewith, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration or the attached By-Laws.

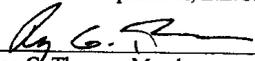
**SECTION 29. Pronouns.** Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include the masculine, feminine and neuter genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

**SECTION 30. Relationship with Master Covenants.** The Property shall remain subject to, and entitled to the benefits from, the Master Declaration for The Estates at Ladywood Development ("Master Declaration"), including, without limitation, membership interest in the Association established pursuant to the Master Declaration and subject the architectural standards, use restrictions/covenants and regulations and assessments set forth under the Master Declaration. However, all terms and conditions set forth in this Declaration made necessary by the Act shall supercede any provisions in

the Master Declaration to the contrary, and no amendment or lapse of the Master Declaration shall affect any provisions of this Declaration made necessary by the Act. The private roads and streets within and located on the Property shall be Common Areas with ownership of such streets to be governed by the terms of this Declaration. Private streets and roads outside of the Property, but located within the Ladywood Development, will be owned and managed by the Association established under the Master Declaration. All Assessments payable by an Owner of a Condominium Unit under the Master Declaration shall pass through to the Association for use by the Association as permitted hereunder, except for the portion of the Assessment necessary for management and maintenance of private streets.

IN WITNESSETH WHEREOF, the undersigned has caused this Declaration to be executed the date and year first above written.

By: Oakfield Development II, L.L.C.

  
\_\_\_\_\_  
Ryan G. Thomas, Member

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

Subscribed and sworn to before me, a Notary Public in and for said County and State, personally appeared Ryan G. Thomas, President of Oakfield Development II, L.L.C., who first having been sworn upon his oath, states the foregoing statements are true and accurate, this 13<sup>th</sup> day of December, 2005.

Brian C. Fritts  
Notary Public  
Brian C. Fritts  
Printed  
County of Residence:  
Marion

My Commission Expires:  
June 22, 2012

KD\_IM-597137\_4.DOC

**Exhibit A**  
**Legal Description**

**MULTI-FAMILY HORIZONTAL PROPERTY REGIME BOUNDARY**

A PART OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 16 NORTH, RANGE 4 EAST, SECOND PRINCIPAL MERIDIAN, WASHINGTON TOWNSHIP, MARION COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID QUARTER SECTION; THENCE SOUTH 89 DEGREES 23 MINUTES 54 SECONDS WEST (ASSUMED BEARING) 797.87 FEET ALONG THE SOUTH LINE OF SAID QUARTER SECTION TO A RAILROAD SPIKE AT THE SOUTHWEST CORNER OF THE 9.836-ACRE TRACT OF LAND DESCRIBED IN INSTRUMENT NUMBER 2002-78169 IN THE OFFICE OF THE RECORDER OF SAID MARION COUNTY; THE FOLLOWING FIVE (5) COURSES ARE ALONG THE SOUTHWESTERN LINE OF SAID 9.836-ACRE TRACT; THENCE (1) NORTH 53 DEGREES 48 MINUTES 05 SECONDS WEST 110.30 FEET TO A RAILROAD SPIKE; THENCE (2) NORTH 30 DEGREES 51 MINUTES 05 SECONDS WEST 190.75 FEET TO A RAILROAD SPIKE; THENCE (3) NORTH 32 DEGREES 35 MINUTES 06 SECONDS WEST 194.55 FEET TO A RAILROAD SPIKE; THENCE (4) NORTH 47 DEGREES 34 MINUTES 06 SECONDS WEST 328.15 FEET TO A 5/8 INCH REBAR WITH YELLOW CAP ON THE EAST LINE OF THE WEST HALF OF SAID NORTHEAST QUARTER; THENCE (5) NORTH 00 DEGREES 03 MINUTES 56 SECONDS EAST 23.35 FEET ALONG SAID EAST LINE TO A RAILROAD SPIKE AND THE POINT OF BEGINNING OF THIS DESCRIPTION, WHICH POINT IS THE SOUTHEAST CORNER OF THE 3.00-ACRE TRACT OF LAND DESCRIBED IN INSTRUMENT NUMBER 2004-0198119 IN SAID RECORDER'S OFFICE; THENCE NORTH 40 DEGREES 16 MINUTES 56 SECONDS WEST 55.11 FEET; THENCE NORTH 23 DEGREES 23 MINUTES 50 SECONDS WEST 30.89 FEET; THENCE NORTHWESTERLY 49.63 FEET ALONG AN ARC TO THE LEFT AND HAVING A RADIUS OF 161.98 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF NORTH 32 DEGREES 10 MINUTES 27 SECONDS WEST AND A LENGTH OF 49.44 FEET; THENCE NORTH 40 DEGREES 57 MINUTES 00 SECONDS WEST 169.87 FEET; THENCE NORTHWESTERLY 14.47 FEET ALONG AN ARC TO THE RIGHT AND HAVING A RADIUS OF 38.00 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF NORTH 30 DEGREES 02 MINUTES 19 SECONDS WEST AND A LENGTH OF 14.39 FEET; THENCE NORTH 48 DEGREES 44 MINUTES 40 SECONDS EAST 236.35 FEET; THENCE NORTHEASTERLY 17.80 FEET ALONG AN ARC TO THE RIGHT AND HAVING A RADIUS OF 266.56 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF NORTH 60 DEGREES 54 MINUTES 43 SECONDS EAST AND A LENGTH OF 17.80 FEET TO SAID EAST LINE OF THE WEST HALF; THENCE SOUTH 00 DEGREES 03 MINUTES 56 SECONDS WEST 11.31 FEET ALONG SAID EAST LINE TO THE SOUTHERN BOUNDARY OF MALLERSVILLE ROAD PER PLANS FOR PROJECT U.S. -467(1), DATED 1960; THENCE ALONG SAID BOUNDARY NORTHEASTERLY 186.98 FEET ALONG AN ARC TO THE RIGHT AND HAVING A RADIUS OF 256.56 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF NORTH 82 DEGREES 32 MINUTES 50 SECONDS EAST AND A LENGTH OF 182.87 FEET; THENCE SOUTH 69 DEGREES 50 MINUTES 17 SECONDS EAST 97.26 FEET ALONG SAID BOUNDARY; THENCE SOUTH 33 DEGREES 17 MINUTES 40 SECONDS EAST 110.78 FEET ALONG SAID BOUNDARY TO THE SOUTHWESTERN BOUNDARY OF EMERSON AVENUE PER SAID PROJECT; THENCE ALONG SAID BOUNDARY SOUTHEASTERLY 334.68 FEET ALONG AN ARC TO THE LEFT AND HAVING A RADIUS OF 711.62 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF SOUTH 29 DEGREES 42 MINUTES 25 SECONDS EAST AND A LENGTH OF 331.61 FEET TO THE NORTHWESTERN LINE OF REAL ESTATE KNOWN AS LADYWOOD ESTATES HORIZONTAL PROPERTY REGIME RECORDED AS INSTRUMENT NUMBER 2002-020078169, THE FOLLOWING SIX COURSES BEING ALONG SAID NORTHWESTERN LINE; THENCE (1) SOUTH 51 DEGREES 44 MINUTES 25 SECONDS WEST 76.13 FEET; THENCE (2) SOUTH 31 DEGREES 56 MINUTES 25 SECONDS WEST 67.65 FEET; THENCE (3) SOUTH 63 DEGREES 55 MINUTES 10 SECONDS WEST 46.65 FEET; THENCE (4) SOUTH 46 DEGREES 51 MINUTES 55 SECONDS WEST 39.35 FEET; THENCE (5) NORTH 61 DEGREES 58 MINUTES 10 SECONDS WEST 291.57 FEET; THENCE (6) NORTH 48 DEGREES 37 MINUTES 18 SECONDS WEST 99.42 FEET TO SAID EAST LINE OF THE WEST HALF OF THE NORTHEAST QUARTER; THENCE SOUTH 00 DEGREES 03 MINUTES 56 SECONDS WEST 66.54 FEET ALONG SAID LINE TO THE POINT OF BEGINNING. CONTAINING 5.140 ACRES, MORE OR LESS.

**ALSO INCLUDING:**

A PART OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 16 NORTH, RANGE 4 EAST, SECOND PRINCIPAL MERIDIAN, WASHINGTON TOWNSHIP, MARION COUNTY, INDIANA, AND BEING A PART OF THE 9.836-ACRE TRACT OF LAND CONVEYED TO LADYWOOD ESTATES HORIZONTAL PROPERTY REGIME, RECORDED IN INSTRUMENT NUMBER 2002-020078169, IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID QUARTER SECTION; THENCE SOUTH 89 DEGREES 23 MINUTES 54 SECONDS WEST (ASSUMED BEARING) 797.87 FEET ALONG THE SOUTH LINE OF SAID QUARTER SECTION TO A RAILROAD SPIKE MARKING THE SOUTHWEST CORNER OF SAID 9.836-ACRE TRACT; THENCE NORTH 53 DEGREES 48 MINUTES 05 SECONDS WEST 110.30 FEET ALONG A SOUTHWESTERN LINE OF SAID 9.836-ACRE TRACT TO A RAILROAD SPIKE; THENCE NORTH 30 DEGREES 51 MINUTES 05 SECONDS WEST 190.75 FEET ALONG A SOUTHWESTERN LINE OF SAID 9.836-ACRE TRACT TO A RAILROAD SPIKE; THENCE NORTH 32 DEGREES 35 MINUTES 06 SECONDS WEST 194.55 FEET ALONG A SOUTHWESTERN LINE OF SAID 9.836-ACRE TRACT TO A RAILROAD SPIKE MARKING THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE NORTH 47 DEGREES 34 MINUTES 06 SECONDS WEST 328.15 FEET ALONG A SOUTHWESTERN LINE OF SAID 9.836-ACRE TRACT TO A 5/8-INCH REBAR WITH YELLOW CAP MARKING THE WEST LINE OF THE EAST HALF OF SAID QUARTER SECTION; THENCE NORTH 00 DEGREES 03 MINUTES 56 SECONDS EAST 89.89 FEET ALONG SAID WEST LINE TO A MAGNAIL; THENCE SOUTH 48 DEGREES 37 MINUTES 18 SECONDS EAST 99.42 FEET ALONG A NORTHEASTERN LINE OF SAID 9.836-ACRE TRACT TO 5/8-INCH REBAR WITH YELLOW CAP; THENCE SOUTH 61 DEGREES 58 MINUTES 10 SECONDS EAST 291.57 FEET ALONG A NORTHEASTERN LINE OF SAID 9.836-ACRE TRACT TO A 5/8-INCH REBAR WITH YELLOW CAP; THENCE NORTH 46 DEGREES 51 MINUTES 55 SECONDS EAST 39.35 FEET ALONG A NORTHWESTERN LINE OF SAID 9.836-ACRE TRACT TO A 5/8-INCH REBAR WITH YELLOW CAP; THENCE NORTH 63 DEGREES 55 MINUTES 10 SECONDS EAST 46.65 FEET ALONG A NORTHWESTERN LINE OF SAID 9.836-ACRE TRACT TO A 5/8-INCH REBAR WITH YELLOW CAP; THENCE SOUTH 45 DEGREES 49 MINUTES 04 SECONDS WEST 223.79 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.841 ACRES, MORE OR LESS.

SUBJECT TO ALL EASEMENTS, RIGHTS OF WAY, COVENANTS AND RESTRICTIONS OF RECORD.

**Exhibit B**

**By-Laws**

**CODE OF BYLAWS**  
**OF**  
**LADYWOOD GARDENS CO-OWNERS ASSOCIATION, INC.**

**ARTICLE I**

**Identification and Applicability**

**Section 1.1. Identification and Adoption.** These Bylaws are adopted simultaneously with the execution of a certain Declaration of Ladywood Gardens Horizontal Property Regime, to which these Bylaws are attached and of which they are made a part. The Declaration is incorporated herein by reference and all of the covenants, conditions rights, restrictions, and liabilities therein contained shall apply to and govern the interpretation of these Bylaws. The definitions and terms as defined and used in the Declaration shall have the same meanings in these Bylaws, and reference is hereby made to the definitions in Section 1 of the Declaration. The provisions of these Bylaws shall apply to the Property and to the administration and conduct of the affairs of the Association.

**Section 1.2. Individual Application.** All of the Owners, tenants, their guests and invitees, or any other person who might now or hereafter use or occupy a Condominium Unit or any part of the Property shall be subject to the rules, restrictions, terms and conditions set forth in the Declaration, these Bylaws, and the Act, as the same may be amended from time to time.

**ARTICLE II**

**Membership**

**Section 2.1. Members.** As provided in the Articles of Incorporation, members of Ladywood Gardens Co-Owners Association, Inc. (the "Corporation") shall be each person who is the record owner of fee simple title to a Condominium Unit. The members are also referred to herein as an "Owner" or the "Co-Owners."

**Section 2.2. Membership Certificates.** The Corporation will not have membership certificates unless otherwise authorized by the Board of Directors. The form of any such certificate, if authorized, shall be prescribed by the Board of Directors.

**Section 2.3. Duration of Membership; Resignation.** Membership in the Corporation terminates automatically once a person ceases to be record owner of a fee simple title to a Condominium Unit. All rights and privileges of an Owner in the Corporation shall cease on the termination of membership.

### **ARTICLE III**

#### **Meetings of Members**

**Section 3.1. Purpose of Meetings.** At least annually and at such other times as may be necessary or appropriate, a meeting of the Co-Owners shall be held for the purpose of electing the Board of Directors, approving the annual budget, providing for the collection of Common Expenses, and for such other purposes as may be required by the Declaration, these Bylaws, or the Act.

**Section 3.2. Annual Meeting.** The annual meeting of the Co-Owners shall be held on the fourth Thursday in January of each year, or at such other time as may be designated by the Board of Directors. Annual meetings of the Co-Owners should be held within the earlier of six (6) months after the close of the fiscal year or fifteen (15) months after the Corporation's last annual meeting. The failure to hold an annual or regular meeting at a time stated in or fixed in accordance with these Bylaws does not affect the validity of any corporate action or work any forfeiture or dissolution of the Corporation. Annual membership meetings shall be held at the place specified in the notice of the meeting; otherwise, such meeting shall be held at the Corporation's principal office. At the annual meeting of Co-Owners, the President and the Treasurer, or their designees, shall report on the activities and financial condition, respectively, of the Corporation. At each annual meeting, the Co-Owners shall appoint the Board of Directors of the Association in accordance with the provisions of these Bylaws and transact such other business as may properly come before the meeting.

**Section 3.3. Regular Meetings.** The Corporation may hold regular membership meetings at times stated in or fixed by a resolution of the Board of Directors. Regular membership meetings shall be held at the place specified in the notice of the meeting; otherwise, such meetings shall be held at the Corporation's principal office.

**Section 3.4. Special Meetings.** Special meetings of the Co-Owners may be called by resolution of the Board of Directors or by a petition in writing signed, dated and delivered by any Owner. Such petition or petitions must demand a special meeting and describe the purpose for which the meeting is to be held. Special membership meetings shall be held at the place specified in the notice of meeting; otherwise, such meetings shall be held at the Corporation's principal office. The resolution or petition shall be presented to the President or Secretary of the Association and shall state the purpose for which the meeting is to be called. No business shall be transacted at a special meeting except as stated in the petition or resolution.

**Section 3.5. Participation.** An Owner may participate in an annual, a regular or a special meeting of the Co-Owners by or through the use of any means of communication by which all Co-Owners participating may simultaneously hear each other during the meeting. An Owner participating by this means is considered to be present in person at the meeting.

**Section 3.6. Notice and Place of Meetings.** All meetings of the Co-Owners of the Association shall be held at such location within the State of Indiana as may be designated by the Board of Directors. Written notice stating the place, date and time of any meeting of the Co-Owners and, in the case of a special meeting or when otherwise required by law, a description of

the purpose or purposes for which such meeting is called, shall be delivered or mailed (first class or registered) by the Secretary of the Corporation to each Owner of record entitled to vote at such meeting and, if applicable, to any Mortgagee, at such address as appears on the records of the Corporation, at least fourteen (14) but not more than sixty (60) days before the date of such meeting, on being notified of the place, date and time thereof by the officers or persons calling the meeting. If at any meeting an amendment to the Declaration or these Bylaws is to be considered, the notice of such meeting shall describe the nature of such proposed amendment. The notice shall be mailed by first-class U. S. Mail, postage prepaid, or delivered to the Co-Owners at their respective addresses as the same shall appear upon the records of the Association, and by U.S. Certified Mail, Return Receipt Requested to the Mortgagees at their respective addresses as they shall appear on the records of the Association.

**Section 3.7. Waiver of Notice.** Notice of any meeting may be waived in writing by any Owner before or after the date and time of the meeting, if the waiver is signed by the Owner and delivered to the Corporation for inclusion in the minutes or filing with the Corporation's records. An Owner's attendance at a meeting, either in person or by proxy, (a) waives objection to lack of notice or defective notice of the meeting, unless the Owner at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, and (b) waives any valid objection to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice, unless the Owner objects to considering the matter when the matter is presented.

**Section 3.8. Voting Rights.**

- (a) **Number of Votes.** Each Owner shall be entitled to cast its vote, as set forth in Section 11 of the Declaration, on each matter coming before the meeting.
- (b) **Multiple Owners.** When the Owner of a Condominium Unit constitutes more than one person or entity, or is a partnership, there shall be only one voting representative entitled to cast the vote allocable to that Condominium Unit. At the time of acquisition of title to a Condominium Unit by a multiple Owner or a partnership, those persons constituting such Owner or the partners shall file with the Secretary of the Association an irrevocable proxy appointing one of such persons or partners as the voting representatives for such Condominium Unit, which shall remain in effect until such appointed representative relinquishes such appointment in writing, becomes incompetent, dies, or such appointment is otherwise rescinded by order of a court of competent jurisdiction. Such appointed voting representative may grant a proxy to another to vote in his place at a particular meeting or meetings pursuant to Section 3.10, which shall constitute relinquishment of his right to act as voting representative for the Condominium Unit at such meeting or meetings.
- (c) **Voting by Corporation or Trust.** Where a corporation or trust is an Owner or is otherwise entitled to vote, the trustees may cast the vote on behalf of the trust, and the agent or other representative of the corporation duly empowered by the board of directors of such corporation shall cast the vote to which the corporation is entitled.

Section 3.9. Date of Determination of Voting Rights. The Board of Directors may fix a record date to determine the Co-Owners entitled to notice of a members' meeting, to demand a special meeting, to vote or to take any other action; provided, however, that the record date may not exceed seventy (70) days prior to the meeting or action requiring a determination of the Co-Owners. In the absence of action by the Board of Directors to fix a record date as herein provided, the record date shall be the date of the meeting or action requiring a determination of the Co-Owners.

Section 3.10. Voting by Proxy. An Owner entitled to vote at any meeting of the Co-Owners may vote either in person or by proxy. An Owner may appoint a proxy to vote or otherwise act for the Owner by signing an appointment form personally or by a duly authorized attorney-in-fact of such Owner. (For purposes of this Section, a copy of a signed proxy that has been telecopied shall be deemed "signed" by the Owner.) An appointment of a proxy is valid for eleven (11) months, unless a longer or shorter period is specified in the appointment form. No proxy shall vote at any meeting of the Co-Owners unless the appointment form designating such proxy shall have been filed with the Secretary or other officer or agent authorized to tabulate votes.

Section 3.11. Quorum. Except where otherwise expressly provided in the Declaration, these Bylaws or the Act, the presence of twenty percent (20%) of all Owners at a regular or special meeting of the Board of Managers shall constitute a quorum for the transaction of business.

Section 3.12. Voting List. The Corporation shall keep at all times, at the Corporation's principal office, a complete and accurate list of all members entitled to vote. After fixing a record date for notice of a meeting, the Corporation shall prepare a list of the names of the Corporation's members who are entitled to notice of the members' meeting. The list must show the address and number of votes each Owner is entitled to vote at the meeting. Subject to the limitations described below, the list of members must be available for inspection by an Owner for the purpose of communication with other Owners concerning the meeting, beginning five (5) business days before the date of the meeting for which the list was prepared and continuing through the meeting, at the Corporation's principal office or at the place identified in the meeting notice where the meeting will be held, and the list must be available for inspection at any time during the meeting or any adjournment thereof. Subject to the limitations described below, an Owner may also inspect and copy, at any reasonable time and reasonable location specified by the Corporation, the Corporation's membership list if the member gives the Corporation written notice at least five (5) days before the member desires to inspect and copy the same; provided, however, the following conditions must exist:

- (a) the Owner's demand must be in good faith and for a proper purpose,
- (b) the Owner must describe with reasonable particularity the purpose of the inspection, and
- (c) the membership list must be directly connected with the purpose.

Notwithstanding the foregoing, the Corporation in any event may refuse to provide names or identifying information relating to contributors.

**Section 3.13. Conduct of Meetings.** The Chairman of the meeting shall be the President of the Association. He shall call the meeting to order at the duly designated time, and business will be conducted in the following order:

- (a) **Reading of Minutes.** The Secretary shall read the minutes of the last annual meeting and the minutes of any special meeting held subsequent thereto.
- (b) **Treasurer's Report.** The Treasurer shall report to the Co-Owners concerning the financial condition of the Association and answer relevant questions of the Owners concerning the Common Expenses and financial report for the prior year and the proposed budget for the current year.
- (c) **Budget.** The proposed budget for the current calendar year shall be presented to the Co-Owners for approval or amendment.
- (d) **Election of Board of Directors.**
  - (i) **Initial Directors.** The initial Directors shall be selected by the Declarant and shall serve, at the election of the Declarant, from the date upon which the Declaration is recorded in the Marion County, Indiana, public records until ninety (90) days after all of the Condominium Units have been sold and conveyed, or until such time as their successors are duly elected and qualified.
  - (ii) **Election, Term and Qualification.** Except as provided above, the Directors shall be elected at the annual meeting of the Association and those persons who receive the highest number of votes shall be deemed to have been elected. The size of the Board of Directors may be increased or decreased from time to time upon the affirmative vote of 75% of all Owners. Each Director shall hold office for the period for which elected or until his death, resignation, retirement, removal, disqualification or his successor is elected and qualifies.
- (e) **Other Business.** Other business may be brought before the meeting only upon a written request submitted to the Secretary of the Association at least ten (10) days prior to the date of the meeting; provided, however, that such written request may be waived at the meeting if agreed by a majority of votes of the Owners present at the meeting (provided a quorum exists).
- (f) **Committee Reports.** Reports of committees designated to supervise and advise on the respective segments of maintenance and operations assigned by the Board of Directors shall be presented.
- (g) **Adjournment.** Upon completion of all business before the Association, the President, upon the motion of any Owner, may adjourn the meeting; provided, however, that no annual meeting shall be adjourned until a budget is approved by the Co-Owners for the upcoming year.

**Section 3.14. Action by Written Ballot.** Any action that may be taken at an annual, a regular or a special meeting of the Co-Owners may be taken without a meeting if the Corporation delivers a written ballot to every member entitled to vote on the matter. The ballot must set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot is valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and when the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting. A solicitation for votes by written ballot must indicate the number of responses needed to meet the quorum requirements, state the percentage of approvals necessary to approve each matter other than the election of directors, and specify the time by which a ballot must be received by the Corporation to be counted. A written ballot may not be revoked once received by the Corporation.

**Section 3.15. Action by Consent.** Any action required or permitted to be taken at a meeting of the Co-Owners may be taken without a meeting if the action is approved by the Co-Owners holding at least eighty percent (80%) of the votes entitled to be cast on the action. The action must be evidenced by at least one (1) written consent which describes the action taken, is signed by the Co-Owners representing at least eighty percent (80%) of the votes entitled to be cast on the action, and is delivered to the Corporation for inclusion in the minutes or filing with the Corporation's records. Requests for written consents must be delivered to all the Co-Owners entitled to vote. Action taken by written consent is effective when the last member necessary to meet the eighty percent (80%) requirement signs the consent, unless a prior or subsequent effective date is specified in the consent.

## **ARTICLE IV**

### **Board of Directors**

**Section 4.1. Duties and Qualifications.** The business and affairs of the Corporation shall be governed and managed by the Board of Directors.

**Section 4.2. Number, Term, and Appointment.** The Board of Directors shall consist of five (5) directors to be appointed by majority vote of the Owners after the Applicable Date present at the annual meeting. Each director shall serve for a term of one (1) year. Despite the expiration of a director's term, the director continues to serve until a successor is appointed and qualifies, or until there is a decrease in the number of directors.

**Section 4.3. Vacancies.** A vacancy occurring in the Board of Directors may be filled by a majority of the remaining Directors, even if less than a quorum; but a vacancy created by an increase in the authorized number of Directors shall be filled only by election at an annual meeting or a special meeting of Condominium Unit Owners called for that purpose. Voting members may elect a Director at any time to fill any vacancy not filled by the remaining Directors.

**Section 4.4. Removal.** Directors may be removed from office with or without cause by the affirmative vote of the Condominium Unit Owners having a majority of the total votes

entitled to vote at an election of Directors. However, unless the entire Board is removed, an individual Director may be removed if the number of Condominium Unit Owners voting against the removal would be sufficient to elect a Director if such Condominium Unit Owners voted cumulatively at an annual election. If any Directors are so removed, new Directors may be elected at the same meeting.

**Section 4.5. Duties of the Board of Directors.** The Board of Directors shall perform or cause to be performed, when and to the extent deemed necessary or appropriate in the Board's business judgment or in order to ensure compliance with the terms or requirements of Declarant's financing (equity or debt) then in place, or with the requirements of any local, state or federal law, rule, ordinance, or governmental entity which would then apply to the Declarant, the Property, any Condominium Unit or the Association, the following:

- (a) Repair and replacement of the Common Areas;
- (b) Procuring of utilities, removal of garbage and waste, and snow removal from the Common Areas;
- (c) Landscaping, painting, decorating, and furnishing of the Common Areas, the exterior of the Buildings and walls;
- (d) Surfacing, paving, and maintaining streets, parking areas, garages, and sidewalks, and the regulation of the use thereof;
- (e) Assessment and collection from the Owners of the Owner's pro-rata share of the Common Expenses;
- (f) Preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered;
- (g) Preparing and delivering annually to the Co-Owners a full accounting of all receipts and expenses incurred during each year, which accounting shall be delivered to each Owner simultaneously with delivery of the annual budget;
- (h) Keeping a current, accurate, and detailed record of receipts and expenditures affecting the Property, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an Owner at any time during normal business hours;
- (i) Procuring and maintaining in force all insurance coverage required by the Declaration to be maintained for the whole Development as specified by the Declaration.

**Section 4.6. Powers of the Board of Directors.** The Board of Directors shall have such powers as are reasonably necessary or appropriate to accomplish the performance of their duties. These powers include, but are not limited to, the power:

- (a) To employ a professional managing agent or real estate management company (either being hereinafter referred to as "Managing Agent") to assist the Board in performing its duties;
- (b) To purchase for the benefit of the Co-Owners such equipment, materials, labor, and services as may be necessary in the judgment of the Board of Directors;
- (c) To procure for the benefit of the Owners fire and extended coverage insurance covering the Buildings and the Property to the full insurable value thereof, to procure public liability and property damage insurance and Workmen's Compensation insurance, if necessary, and to procure all such other insurance as is required or permitted under the Declaration, for the benefit of the Owners and the Association;
- (d) To employ legal counsel, architects, contractors, accountants, and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Association;
- (e) To include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;
- (f) To open and maintain a bank account or accounts in the name of the Association; and
- (g) To adopt, revise, amend, and alter from time to time reasonable rules and regulations with respect to use, occupancy, operation, and enjoyment of the Property; provided that the Board shall give written notice to the Co-Owners of such rules and any revision, amendment, or alteration thereof.

**Section 4.7. Limitations on Board Action.**

- (a) After the tenure of the initial Board of Directors, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than Five Thousand Dollars (\$5,000.00), unless the prior approval of a majority of Owners present or represented at any meeting is obtained (provided a quorum is present), except in the following cases:
  - (1) Supervision and management of the replacement or restoration of any portion of the Common Areas damaged or destroyed by fire or other casualty, where the cost thereof is payable out of insurance proceeds actually received; and
  - (2) Proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Co-Owners at the annual meeting.
- (b) The Board shall not have the authority to require the Association or either Owner to take an action which would be prohibited by the terms of local, state or federal

law, rule, or ordinance which would then apply to the Declarant, the Property, any Condominium Unit or the Association.

**Section 4.8. Compensation.** No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority of Owners.

**Section 4.9. Annual Meetings.** Unless the Board of Directors determines otherwise, the Board of Directors shall meet on the fourth Thursday of January each year, at a place specified by the Board of Directors, for the purpose of election of officers of the Corporation and consideration of any other business which may be brought before the meeting. No notice shall be necessary for the holding of an annual meeting.

**Section 4.10. Other Meetings.** Regular meetings of the Board of Directors may be held pursuant to a resolution of the Board to such effect, and shall be held whenever convenient for the Board of Directors. Unless otherwise provided by the Board of Directors, regular meetings shall be held at the Corporation's principal office. The Secretary shall give notice of regular meetings to each director personally or by U.S. mail at least five (5) days prior to the date of such meeting. Special meetings of the Board of Directors may be held upon the call of the President or any two (2) members of the Board of Directors. The person or persons calling such meeting shall give written notice thereof to the Secretary, who shall provide notice specifying the date, time, place and purpose or purposes of the meeting to each director either personally or by mail at least three (3) days prior to the date of the meeting. Oral notice is authorized. A director may waive any required notice of an annual, regular or special meeting. The waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or Corporate records. A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director at the beginning of the meeting, or promptly upon the director's arrival, objects to holding the meeting or transacting business at the meeting and does not vote for or assent to action taken at the meeting.

**Section 4.11. Participation.** A director may participate in an annual, a regular or a special meeting of the Board of Directors by or through the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating by this means is considered to be present in person at the meeting.

**Section 4.12. Quorum; Voting.** Three-fifths (3/5) of the directors in office when action is taken shall be necessary to constitute a quorum for the transaction of any business at a meeting of the Board of Directors. If a quorum is present when a vote is taken, the affirmative vote of a majority of the directors present when the act is taken shall be the act of the Board of Directors, unless the act of a greater number is required by law, the Articles of Incorporation or these Bylaws; provided.

**Section 4.13. Action by Consent.** Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if the action is taken by all directors. The action must be evidenced by at least one (1) written consent describing the action to be taken, signed by each director and included in the minutes or filed with the corporate records reflecting the action taken. Action taken under this Section is effective when the last director signs the consent, unless the consent specifies a prior or subsequent effective date.

**Section 4.14. Other Committees.** The Board of Directors may from time to time create and appoint standing, special or other committees to undertake studies, make recommendations and carry on functions for the purpose of efficiently accomplishing the purposes of the Corporation. Committees, to the extent specified by the Board of Directors, may exercise the powers, functions or authority of the Board of Directors, except where prohibited by law; provided, however, that if a committee is to exercise board powers, functions, or authority, (a) all the persons serving on the committee must be directors or officers, (b) there must be at least two (2) persons on the committee, and (c) the creation of the committee and the appointment of its members shall be by a majority of all directors in office when the action is taken.

## **ARTICLE V**

### **Officers**

**Section 5.1. Officers and Qualifications Therefor.** The principal officers of the Association shall be the President, Vice-President, Secretary and Treasurer, all of whom shall be elected by the Board. The Directors may appoint an Assistant Treasurer and an Assistant Secretary and such other officers as in their judgment may be necessary. Any two or more offices may be held by the same person, except that the duties of the President and Secretary shall not be performed by the same person.

**Section 5.2. Election and Terms of Office.** The officers of the Association shall be elected annually by the Board at the first meeting of the Board following each election thereof and shall hold office for a term of one (1) year and until a successor shall be duly elected and qualified, or until resignation, removal or death.

**Section 5.3. Vacancies.** Whenever any vacancies shall occur in any of the offices of the Corporation for any reason, the same may be filled by the Board of Directors, and any officer so elected shall hold office until the expiration of the term of the officer causing the vacancy and until the officer's successor shall be duly elected and qualified.

**Section 5.4. Removal.** Any officer of the Corporation may be removed, with or without cause, at any time upon the majority recommendation of the Board of Directors and the affirmative vote of a majority of the Owners.

**Section 5.5. Compensation.** The officers of the Corporation shall receive no compensation for their services in such offices.

## **ARTICLE VI**

### **Powers and Duties of Officers**

**Section 6.1. President.** The President shall be elected from among the directors and shall be the Chief Executive Officer of the Association. The President, if present, shall preside at all meetings of the members and the Board of Directors. At each annual meeting of the

members, the President or the President's designee shall report on the activities of the Corporation. Subject to the general control of the Board of Directors, the President shall manage and supervise all of the affairs of the Corporation and shall perform all of the usual duties of the chief executive officer of a corporation.

Section 6.2. Vice President. The Vice-President shall be elected from among the Directors and shall perform all duties incumbent upon the President during the absence or disability of the President. The Vice-President shall also perform such other duties as these Bylaws may prescribe or as shall, from time to time, be imposed upon him by the Board or by the President.

Section 6.3. Secretary. The Secretary shall be elected from among the Owners or Directors. The Secretary shall attend all meetings of the members and of the Board of Directors, and prepare, keep, or cause to be kept, a true and complete record and minutes of the proceedings of such meetings, and shall perform a like duty, when required, for all committees appointed by the Board of Directors. If required, the Secretary shall attest the execution by the Corporation of deeds, leases, agreements and other official documents. The Secretary shall attend to the giving and serving of all notices of the Corporation required by these Bylaws, shall have custody of the books (except books of account) and records of the Corporation, shall be responsible for authenticating records of the Corporation, and in general shall perform all duties pertaining to the office of Secretary and such other duties as these Bylaws, the Board of Directors, or an officer authorized by the Board may prescribe.

Section 6.4. Treasurer. The Treasurer shall be elected from among the Owners or Directors. The Treasurer shall keep correct and complete records of account, showing accurately at all times the financial condition of the Corporation. The Treasurer shall have charge and custody of, and be responsible for, all funds, notes, securities and other valuables which may from time to time come into the possession of the Corporation and shall deposit, or cause to be deposited, all funds of the Corporation with such depositories as the Board of Directors shall designate. At each annual meeting of the members, the Treasurer, or the Treasurer's designee, shall report on the financial condition of the Corporation. The Treasurer, or the Treasurer's designee, shall furnish, at meetings of the Board of Directors or whenever requested, a statement of the financial condition of the Corporation, and in general shall perform all duties pertaining to the office of Treasurer.

Section 6.5. Assistant Officers. The Board of Directors may from time to time designate and elect assistant officers who shall have such powers and duties as the officers whom they are elected to assist shall specify and delegate to them, and such other powers and duties as these Bylaws or the Board of Directors may prescribe. An Assistant Secretary may, in the absence or disability of the Secretary, attest the execution of all documents by the Corporation.

## **ARTICLE VII**

### **Additional Rights and Duties of Board**

**Section 7.1. Right of Entry.** An Owner of a Condominium Unit or a tenant or an occupant of part of a Condominium Unit shall be deemed to have granted the right of entry to its Condominium Unit or part of a Condominium Unit respectively, to the Board, the Managing Agent, or any person authorized by the Board in case of any emergency, in order to remedy any circumstance threatening its Condominium Unit or part of a Condominium Unit respectively, the Building in which it is located, or any person, whether the Owner or tenant is present at the time or not. Any Owner or tenant shall permit persons authorized by the Board to perform any work, when required, to enter his Condominium Unit or part of a Condominium Unit for the purpose of performing installations, alterations, or repairs to the mechanical or electrical facilities or equipment, or to make structural repairs, provided that requests for entry are made in advance and that such entry is at a time convenient to the Owner. In case of emergencies, such right or entry shall be immediate.

**Section 7.2. Right of Board to Adopt Rules and Regulations.** The Board may promulgate such reasonable rules and regulations regarding the operation of the Property as the Board may deem desirable, including, but not limited to, the use of the Common Areas. Such rules as are adopted may be repealed or amended by a vote of a majority of the Board. The Board shall cause copies of all such rules and regulations, including any amendments or repeals thereof, to be delivered or mailed promptly to all Owners at least fifteen (15) days prior to the effective date thereof. Any rule or regulation promulgated by the Board shall be properly and consistently enforced by the Board.

## **ARTICLE VIII**

### **Procedures for Assessments**

**Section 8.1. Annual Accounting.** Annually, after the close of each calendar year and prior to the date for notice of the annual meeting of the Association, the Board of Directors shall cause to be prepared and furnished to each Owner a financial statement by an independent Certified Public Accountant, which statement shall show all receipts and expenses received, incurred, and paid by the Association during the preceding calendar year.

**Section 8.2. Proposed Annual Budget.** Annually, on or before the date for notice of the annual meeting of the Association, the Board of Directors shall cause to be prepared a proposed annual budget for the ensuing calendar year estimating the total amount of the Common Expenses for the ensuing year, and furnish a copy of such proposed budget to each Owner prior to the annual meeting. The proposed annual budget shall be submitted to the Co-Owners at the annual meeting of the Association for adoption, and if so adopted, shall be the basis for the Regular Assessments (as defined in Section 8.3) for the ensuing calendar year. At the annual meeting of the Co-Owners, the proposed annual budget may be approved in whole or in part, or may be amended in whole or in part, by a majority of the vote present or represented at the

meeting (provided that a quorum is present); provided, however, that in no event shall the annual meeting of the Co-Owners be adjourned until an annual budget is approved at such meeting.

**Section 8.3. Regular Assessments.** The annual budget as adopted shall, based on the estimated cash requirement for the Common Expenses in the ensuing year as set forth in said budget, contain a proposed assessment against each Condominium Unit based on the Percentage Interest of each Condominium Unit times the total amount of said budget (herein called the "**Regular Assessment**"). The Regular Assessment against each Condominium Unit shall be paid in twelve (12) equal monthly installments, commencing on the first day of the January immediately following adoption and continuing on the first day of each calendar month thereafter. Payment of the monthly installments of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors; provided, however, that any Condominium Owner may elect to pay monthly Assessments in advance. The Regular Assessment for each year shall become a lien on each separate Condominium Unit as of the date of the adoption of the annual budget. Each Condominium Unit Owner shall pay to the Association a Regular Assessment based on the Percentage Interest for each Condominium Unit for payment of the regular Common Expenses provided for in the annual budget, including expenses for maintenance and repair of the Common Areas, necessary insurance costs, reserve funds for replacements and maintenance, costs of operation of the community activities and facilities of the Association, and for any other necessary or appropriate expenses for maintenance and operation of the Development.

**Section 8.4. Special Assessments.** In addition to the Assessments authorized above, the Association may levy such special Assessments as may be necessary for the purpose of defraying, in whole or in part: (1) the cost of any construction, reconstruction, repair or replacement of a capital improvement, including fixtures and personal property related thereto, and (2) the expense of any other contingencies or events not provided for in the annual budget or the reserves and working capital of the Association; provided that no special Assessments shall be levied without the assent of a majority of the Condominium Unit Votes cast at a meeting duly called for this purpose. Each Owner shall pay to the Association a special Assessment based on his Percentage Interest times total sum approved to meet the costs and expenses as heretofore provided. The Association may, in connection with the levy of any special Assessment, specify that the same shall be payable in installments and specify the due dates thereof.

**Section 8.5. Adjustments.** In the event that the approved budget and Regular Assessments plus the reserves and working capital of the Association prove insufficient to meet the Association's actual expenses in any year, such deficiencies may be corrected through one or more Special Assessments. In the event the approved and Regular Assessments exceed actual expenses in any year, such surplus shall be retained and used to offset expenses in the next year(s) or returned to the Co-Owners in proportion to their percentage interests, as the Board of Directors shall elect.

**Section 8.6. Temporary Budget and Assessments.** If for any reason an annual budget and the annual Assessments for any year have not been determined as of the beginning of such year, the budget and Assessments in effect during the preceding year shall continue in effect until such time as the annual budget and annual Assessments are determined in accordance with the Declaration and these Bylaws; provided, however, that said preceding budget and Assessments

may be increased by up to fifteen percent (15%) as the Board of Directors may deem necessary in said temporary budget and Assessments.

**Section 8.7. Status of Funds Collected by Association.** All funds collected pursuant to hereunder shall be held and expended by the Association solely for the purposes designated herein, and, except for any special Assessments that may be levied hereunder against less than all of the Owners, and except for such adjustments as may be required to reflect delinquent or prepaid assessments, shall be deemed to be held for the use, benefit, and account of all of the Owners for the payment of Common Expenses in accordance with the Owners' respective Percentage Interests.

## **ARTICLE IX**

### **Notices and Mortgages**

**Section 9.1. Notice to Association.** Any Owner who places a first mortgage lien upon his Condominium Unit or the Mortgagee thereof shall notify the Secretary of the Association and provide the name and address of the Mortgagee. A record of such Mortgagee and name required to be given to the Mortgagee pursuant to the terms of the Declaration or these Bylaws shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgages and the name and address of the Mortgagee are furnished to the Secretary, either by Owner or by the Mortgagee, no notice to any Mortgagee as may be otherwise required by the Declaration or these Bylaws shall be required, and no Mortgagee shall be entitled to vote on any matter on which he otherwise may be entitled to vote by virtue of the Declaration or Bylaws or proxy granted to such Mortgagee in connection with the mortgage.

**Section 9.2. Notice of Assessments.** Upon ten (10) days written notice to the Association and the payment of a reasonable fee, the Association shall deliver to any Owner, Mortgagee, prospective Mortgagee, title insurance company, purchaser or other prospective transferee of a Condominium Unit, a written statement setting forth the amount of all unpaid assessments, if any, with respect to the subject Condominium Unit, together with the amount of the current assessments for Common Expenses and the date(s) such assessments become due and payable. Any such written statement shall be binding upon the Association in favor of any person relying thereon in good faith.

**Section 9.3. Financial Statements.** The Association, upon the request of any Mortgagee, shall provide to said Mortgagee the most recent financial statement prepared on behalf of the Association pursuant to these Bylaws.

**Section 9.4. Notices to Mortgagees.** The Association shall promptly provide to any Mortgagee of whom the Association has been provided notice under these Bylaws of any of the following:

- (a) Any condemnation or casualty loss that affects either a material portion of the Regime or the Condominium Unit securing its mortgage;

- (b) Any delinquency in the payment of Regular or Special Assessments owed by the Owner of any Condominium Unit on which said holder, insurer, or guarantor holds a mortgage, if said delinquency continues for more than sixty (60) days;
- (c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and,
- (d) Any proposed action that requires the consent of a specified percentage of Mortgagees.

Section 9.5. Availability of Information. The Association shall keep and shall make available to prospective purchasers of Condominium Units, upon request at reasonable business hours, copies of the Declaration, Bylaws, current rules and regulations, if any, and the most recent financial statement of the Association.

## ARTICLE X

### Miscellaneous

Section 10.1. Corporate Seal. The Corporation may, but need not, have a corporate seal. The form of any such corporate seal may be specified in a resolution of the Board of Directors. A corporate seal, however, shall not be required for any purpose, and its absence shall not invalidate any document or action.

Section 10.2. Execution of Contracts and Other Documents. Unless otherwise ordered by the Board of Directors, all written contracts and other documents entered into by the Corporation shall be executed on behalf of the Corporation by the President or Vice President and, if required, attested by the Secretary or an assistant secretary.

Section 10.3. Fiscal Year. The fiscal year of the Corporation shall begin on January 1 of each year and end on the immediately following December 31.

## ARTICLE XI

### Amendments

Except as otherwise provided herein, these Bylaws may be modified or amended by the vote of 75% of all Condominium Unit Owners at a meeting of the Association duly held for such purpose; provided, however, these Bylaws may not be amended without the consent in writing of Declarant, so long as Declarant shall be the Owner of one or more Condominium Units. No such amendment shall become operative unless and until the same is set forth in an amendment to the Declaration and duly recorded in the office of the Recorder for Marion County, Indiana; provided, however, that the Board of Directors shall give written notice to all holders of mortgages on Condominium Units of such amendment at least thirty (30) days prior to the effective date of such amendment.

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**Exhibit C**

**Master Site Plan**

**A true and accurate copy of the Master Site Plan was filed in the Marion County Recorder's Office on December 13, 2005 as Instrument No. 2005-0204167.**

**Exhibit D**  
**Plans and Specifications**



**LADYWOOD VILLAS  
GENERAL SPECIFICATIONS**

These General Specifications cover labor and material necessary for the construction of a residence for: \_\_\_\_\_ hereafter referred to as (The Customer) and by The Augusta Group, LLC hereafter referred to as (The Builder) in accordance with the plans submitted herewith at:

Address: \_\_\_\_\_

Lot # \_\_\_\_\_ in \_\_\_\_\_ Community.

**These general specifications are the property of The Builder and may not be used or altered without The Builder's written permission.**

The general conditions herein set forth shall apply to any contract given under these General Specifications and shall be binding upon The Customer, The Builder and the Builder's subcontractors. The Plan, elevations, sections, and detail drawings, together with these General Specifications, are to form the basis of the contract, and where The Plan and specifications differ, The Plan shall govern.

The Builder reserves the right to update The Plan, to clarify construction details and to change The Plan according to state, county and municipal code changes and requirements.

The Builder reserves the right to install alternate materials, without customer approval, due to supplier contractual changes, availability of materials, and local municipal requirements. All product alternates will be of equivalent quality, standards and function.

**MODEL HOME DISCLAIMER**

Our Models are an example of the type of homes that The Augusta Group builds. The Augusta Group, LLC makes no representation that your home shall be an exact replica of our Models, since our models often include some available options, at an additional cost.

Additionally, from time to time, necessary changes shall be made on specifications and plans including the placement of various items i.e., cabinet door swings, structural improvements, and changes necessary because of building code requirements and changes.

**Because your new home will not be identical to our Model, please review your plans and specifications carefully. Your new home shall be built according to the specifications and plans that you are signing, not to what you may have seen in our Models.**

Customer Initials

Customer Initials: \_\_\_\_\_



**LADYWOOD VILLAS  
GENERAL SPECIFICATIONS**

**EXCAVATING AND GRADING**

The **Builder** shall do all necessary excavation to the elevation shown on **The Plan**. Additional labor and/or materials necessary by reason of deficiencies in soil conditions requiring extra excavation not foreseeable until after excavation is completed, will be paid for by **The Builder**. The hauling away of excess dirt, if any, will be the responsibility of **The Builder**. Final grading shall be done by **The Builder**.

**FOUNDATIONS, CONCRETE FLOORS & STOOPS**

Concrete footings for walls and piers shall be of sizes shown on **The Plan** or as required by the governing county or Municipality. Compressive strength of concrete shall be as code requires.

Concrete Floors are to be an average of three and one-half (3 ½) inches thick, to be poured with a steel trowel finish. Stoops to be constructed as indicated on **The Plan** and to be poured with a light, broom finish and pitched for drainage. **The Builder WILL NOT** be responsible for normal shrinkage cracks that may occur. Compressive strength of concrete shall be per building code requirements.

**SLAB**

Footings Size	12"x24" Frost Footings 2500 PSI Concrete
Support for Garage Slab	Poured Concrete Wall
Garage Floor Slope	4"
Garage Floor Weather lip	Standard
Notched Foundation Wall For Door	Standard
Divided Garage Door Foundation	Pour Through Slab
Slab Control Joints	Saw Cut As Required
Vapor Barrier Under Slab	6 Mil. Visqueen
Garage Floor Control Joints	1" deep every 10'

**UNFINISHED BASEMENT**

Walk Out Areas	Step Down foundation to follow grade w/ frame walls above
Walkout Basement Windows	Per Plan to match rest of home
Footings Size	16W"x8"D Footings 2500 PSI Concrete
Poured Wall	8' or 9' Per Plan
Waterproofing	Mar-Flex 5000 Membrane w/ Drain and Dry Board
Perimeter Drain Tile	4" perforated pipe to sump pump
Basement Floor	4" Concrete Slab over gravel
Egress Basement Window and Well	48"x48" white vinyl slider window with Mar-Flex 44110 (Sandstone color) 1 piece polyethylene window well w/ integrated stairway
Non-Egress Basement Window and Well	32"x16" white vinyl slider window with corrugated steel window well

**WALKS AND DRIVEWAYS**

The width and length of the sidewalk from the driveway to the front steps shall be per **The Plan**; consisting of concrete averaging three and one-half (3 ½) inches thick and 3' wide. The driveway from the street to the garage floor shall be concrete 3 ½" - 4" thick by sixteen (16) feet in width.

**GIRDERS AND COLUMNS**

Girders, columns and bearing walls on Main Level, Crawlspace and Basement to be as shown on **The Plan**.



**LADYWOOD VILLAS  
GENERAL SPECIFICATIONS**

**WOOD FRAMING**

All necessary labor and carpentry work shall be done in substantial conformity with The Plan and specifications or any variations, changes, or amendments thereof that have been approved in writing by the contracting parties.

Other framing material shall be: bridging, headers, corner bracing, nailing, caulking, and furring to be in accordance with standard building practices, local codes, and ordinances.

Joist Size & Grade	Engineered I Joist – Size per engineering
Sill Plate Spec & Anchor System	Treated 2 x 4 Bolts or Anchor Straps
Exterior Wall Framing	2x4 or 2x6 Per Plan 16" O.C.
Exterior Wall Sheathing	7/16" OSB or Green Guard w/ Tyvek House Wrap
Corner Bracing	Plywood/OSB, Structural Composite or Metal Corner Bracing
Band Board	Per Plan / Per Engineer
Interior Wall Framing	2x4 or 2x6 Per Plan 16" O.C.
Floor Sheathing	Concrete slab main floor, 3/4" T&G on 2nd floor and/or bsmt/crawl
Structural Beams	Laminated Wood Per Plan
Steel Beams	Sized per engineer calculation if needed
Roof Sheathing	7/16" O.S.B. w/ clips
Roof System	Pre-Engineered Truss
Roof Pitch	Per Plan
Roof Overhang, Front, Back, Side	12" Per Plan
Stairs	Carpet Box
1st Floor Ceiling Height	9' or Per Plan

**EXTERIOR DOORS & WINDOWS**

**WINDOWS**

Materials	Insulated Low-E Vinyl w/ drywall wrap and wood sill
Manufacturer	Silver Line or Equivalent
Model	2900 Single Hung or Equivalent
Color	White
Grids	Internal, Front Windows only
Screens	All Operating Windows

The Builder will construction clean windows only when the home is completed.

**ENTRY DOOR**

Front Door	Insulated Steel 6-Panel or Equivalent
Sidelights	Per Plan
Transom	Per Plan
Threshold	Adjustable Aluminum
Weatherstrip	Yes
Front Door Deadbolt	Kwikset Polished Brass or Equivalent
Front Door hardware	Kwikset Chelsea Polished Brass or Equivalent
Peephole	Yes

**GARAGE/HOUSE ENTRY DOOR**

Type	Insulated steel 6-panel or equivalent
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**LADYWOOD VILLAS  
GENERAL SPECIFICATIONS**

Threshold	Adjustable Aluminum
Weatherstrip	Yes
Hardware	Kwikset Saxton Polished Brass or equiv

**PATIO DOORS**

Type	Per Plan - Silver Line Vinyl Sliding Door or 15 light steel swing door
Threshold	Standard
Screens	Included
Transom	Per Plan
Hardware	White Locking Handle

**OVERHEAD GARAGE DOOR**

Size	16 x 7
Type	Non-Insulated Steel Raised Panel with windows Per Plan
Finish	Pre-finished Sandstone
OPTIONAL Garage Door Opener	Liftmaster 1/2 HP Chain Drive w/ two remotes
Locking Mechanism	Inside Only (no key lock from outside)

**ATTIC ACCESS**

Attic access will be furnished in locations per plan and per local code requirements (in garage or inside of home). Size will be 22 1/2" x 30". The Builder will not install disappearing stairwell.

**EXTERIOR FINISH MATERIALS**

Exterior wall surfacing, siding, trim, fascia material, soffit and brick shall be per development requirements and/or per Plan. All front railings and/or columns if shown on The Plan, shall be pre-primed rough sawn cedar or equivalent.

**EXTERIOR TRIM/SIDING MATERIALS**

Siding	Heartland Ultra Premium Vinyl Siding - Clay
Soffit	Vinyl
Fascia/Gutter Board	1x6 Smart Trim Composite or equal
Frieze Board	1x4 (exposed) Smart Trim Composite or equal
Rake	1x4 Smart Trim Composite
Band Board	Per Plan
Window Head, Sill and Jamb	Per Plan
Entry Door Trim	Per Plan
Porch Columns/Railings	Per Plan
Porch Ceiling	4 x 8 Beadboard Sheet material
Garage Door Trim	2 x 8 Cedar
Gable End Louvers	Vinyl Per Plan
Bay Window Trim	Per Plan
Shutters	Vinyl Per Plan



**LADYWOOD VILLAS  
GENERAL SPECIFICATIONS**

**ROOF/GUTTERS**

Shingles	GAF 25 Year, 3-Tab or Equivalent
Selection	Weathered Gray
Felt	30#
Venting	Lomanco 865 or equiv
Gutters	5" Pre-finished Aluminum - Clay
Downspouts	2x3 Pre-finished Aluminum -Clay

**BRICK/STONE**

Location	Per Print
Manufacturer/Name/Style	General Shale Arcadia
Joint Type	Tooled
Lintels	Primed Steel
Address Stone	No

**EXTERIOR PAINT**

Exterior Trim and Siding	ICI Dulux Ultra Hide Durus Exterior Acrylic Flat Masonry - ICI Heartland Clay
Garage Doors	Pre Finished Sandstone
Exterior Doors	ICI Dulux Professional Exterior 100% Acrylic Semi Gloss - ICI Zanzibar Coast
Exterior Caulking	Where 2 Non-like Materials Meet

Exterior trim shall have 1 coat exterior paint in material and color as specified above. Exterior doors shall have 1 coat of semi gloss exterior paint in material as specified above, color as selected by customer.

**HEATING/COOLING**

System shall be installed according to the requirements of the National Society of Heating and Ventilating Engineers, and in all cases will conform to local ordinances. The appropriate size of all equipment will be determined based on contractor load calculations.

Furnace Type	Carrier 58MCA060-1-12
Furnace Efficiency	90% Gas
Air Conditioning	Carrier 13 SEER 38ETG w/ Puron
Thermostat	Honeywell TH5110 Digital Non-Programmable
1st Floor Supply Ducts	Insulated Ductboard and Flex Duct
1st Floor Returns	Insulated Ductboard and Flex Duct
2nd Floor Supply Runs	Insulated Ductboard and Flex Duct
2nd Floor Returns	Insulated Ductboard and Flex Duct
Bath Fans	Vented To Outside
Range Fan	Recirculating
Dryer Vent	Vented to Outside
Energy Star Testing	Blower Door Test



**LADYWOOD VILLAS  
GENERAL SPECIFICATIONS**

**PLUMBING**

All plumbing shall be properly installed according to local codes and ordinances and thoroughly tested. Hot and cold water connections shall be made with bathtub/shower lavatories, kitchen sink and laundry box. Shut off valves shall be located under all sinks and water closets. Water and Sewer connections shall be made with water and sewer mains at the street. Plumbing line for gas to dryer and range, if selected, shall be installed to local codes.

Plumbing fixtures and specifications are as follows:

Utilities	City Sewer, Water and Natural Gas Hookups
Toilets	Mansfield 130 Round Front or Equivalent
Bath Tubs	Aqua Glass 326032 Fiberglass Tub/Shower or Equivalent
Full Bath Sinks	Cultured Marble with Integrated sink, sized Per Plan
Powder Room Sinks	Per Plan - Alto Pedestal 290 or Cultured Marble with Integrated sink
Kitchen Sinks	Sterling PRO33226 Stainless Steel 6 1/2" deep
Utility Sink	Optional - Mustee 18W Wall Mount
Kitchen Faucet	Delta 400 Chrome w/ spray
Vanity Sinks Faucet	Delta 520 Chrome w/ chrome lever handle
Bath Tub/Shower Faucet	Delta 1343 Chrome w/ chrome handle
Bath Shower Stall Faucet	Delta 1323 Chrome w/ chrome handle
Soaking Tub Faucet	Delta 2730 Chrome w/ crystal knobs
Washer Connections	Hot and Cold Supply w/ drain
Gas Lines to gas appliances	Corrugated Stainless Steel Tubing (CSST)
Water Heater Type/Capacity	Bradford-White 40 gallon gas M4 Series
Hose Bibbs	2 Frost Protected
Supply Lines	Vanguard Vanex PEX or equivalent
Drain/Vent Lines	PVC
Ice Maker Line	Box With Shut-off
Rough In Water Softener	Optional - Bypass to Kitchen and Hose Bibbs
Garbage Disposal	In Sink Erator 1/3 Horsepower

**ELECTRICAL**

All electrical work will comply with the local codes and ordinances.

Service Location	Underground service to house, circuit panel in garage
Service Size	200 amp
Switches	White single pole
Outlets	White, Located per code requirements, GFI located per code requirements
Telephone	Three (3) locations to be determined by owner at BRINKS Consultation Meeting. One (1) additional phone location is included in the Optional Finished Basement packages. Wiring for phone is CAT5e.
Cable TV	Three (3) locations to be determined by owner at BRINKS Consultation Meeting. One (1) additional cable location is included in the Optional Finished Basement packages. Wiring for cable is QS-RG6 coaxial cable.



**LADYWOOD VILLAS  
GENERAL SPECIFICATIONS**

**LIGHT FIXTURES**

Entry	QM 3074-66 or Recessed Can Lights Per Plan
Kitchen	2 light Fluorescent CRE CLDC2341, 1 recessed can over sink
Nook/Kitchen Island	QM 6303-15-66
Dining Room	QM 6007-5-2
Living Room	Per Plan - Ceiling Fan Rough In w/ 2 switches standard
Powder Room	DF 415 Strip Light (size dependent on vanity width) and ceiling exhaust fan
All Bathrooms	DF 415 Strip Light (size dependent on vanity width) and ceiling exhaust fan/light w/ 2 switches
Master Bedroom	QM 3074-66 (size dependent on size of room/hallway)
Secondary Bedrooms/Study	QM 3074-66 (size dependent on size of room/hallway)
Finished Bonus Rooms/Hallways	QM 3074-66 (size dependent on size of room/hallway)
Walk-in Closets	Per Plan - Quorum 3012-8-6
Laundry Room	2 light basic fluorescent fixture - NLT-234
Garage	Porcelain Keyless Fixture With Switch
Unfinished Basement/Unfinished Storage Areas	Porcelain Keyless Fixture Per Plan
Finished Basement	Per Plan - QM 3074-66 or Recessed Can Fixtures
Optional Fireplace	2 Eyeball Can Lights

**EXTERIOR FIXTURES**

Front Coach Light	Per Plan - DF 1101-BK
Rear Patio/Service Door Light	Per Plan - DF 1161-BK
Porch Light	Per Plan - QM 3080-7-15
Yard Post Light	Yes - DF 1106-BK w/ photo cell
Security Flood Light	Optional
Exterior Outlets	2 Weather Proof GFI per plan
Garage Outlets	1 on common living wall of garage of each unit
Security	Brinks® Functional system with keypad, siren, power module and contacts on Entry Door, Patio Doors and Garage Entry Door (up to 4 doors).
Doorbell	Yes, 1 button at Entry door, chime inside home

All phone and cable locations will be home run to central location and to exterior of home for hook-up by applicable utility. Phone and cable service connections and fees shall be the responsibility of The Customer.

**INSULATION**

Exterior wall insulation shall consist of R-18. Common garage walls shall consist of R-13. Ceilings shall have an average of R-38 blown insulation or the equivalent in batts. Garage ceilings shall be uninsulated, unless Bonus Room is above. If Bonus Room is added above garage, garage ceiling will be insulated per code. Unfinished basement walls shall have no additional insulation. Crawlspace and Finished Basement walls shall consist of R-10. Other insulation shall consist of R-13 fiberglass friction fit in rim joists. Foundation walls shall be insulated to meet local code requirements.

Exterior Walls	R-13 Kraft-back Batt
Common Garage Walls	R-13 Kraft-back Batt
Overhangs	R-30 blown cellulose/fiberglass or batt equivalent
Ceilings	R-38 blown cellulose/fiberglass or batt equivalent
Garage Ceilings	Uninsulated, unless Bonus Room above

Last Updated: 7/1/05



**LADYWOOD VILLAS  
GENERAL SPECIFICATIONS**

Crawspace Walls  
Basement Walls  
Eave Baffles  
Infiltration Caulk  
Sill Sealer  
Floor Joist @ Perimeter

2" foam insulation board  
R-10 if Unfinished -- R-13 batts added if Optional Finish is selected  
Standard  
Approved Fire Caulk  
Standard  
R-13

**DRYWALL**

Interior Walls  
Interior Ceilings  
Sloped Ceilings @ Stairs  
Garage Walls  
Garage Ceilings  
Optional Finished Garage

1/2" drywall, Smooth finish  
5/8" drywall, textured finish  
Textured  
1/2" Drywall, sanded, 5/8" sanded at fire rated wall between units  
5/8" Drywall, sanded, no finish  
Smooth finish walls with textured ceiling, insulation, and paint on walls and ceiling

**MILLWORK**

Please note: if optional stained mantle is selected, variation of final finish stain color will happen due to species of material and wood grain.

**INTERIOR TRIM**

Base  
Door Casing  
Window Sill  
Finger Jointed  
Primed  
Stained Trim and Doors  
Crown Moulding  
Chair Rail  
Picture Moulding  
Built-ins  
Breakfast Bar  
Wall Caps  
1/2 wall at Stairs  
OPTIONAL Stair Railing/Spindles  
Wall Handrail  
Hardware

3" Pre-Primed MDF or Pre-Primed Finger-joint  
2 1/4" Pre-Primed MDF or Pre-Primed Finger-joint  
Pre-Primed MDF w/ apron below  
Yes, if solid wood  
Yes  
Optional - Oak  
Optional  
Optional  
Optional  
Optional  
46" High wall with laminate countertops  
42" High wall with Solid Surface countertops  
Per Plan - Painted wood cap  
42" with painted wood cap  
Oak w/ stain finish  
Oak w/ stain finish  
Brass wall brackets on wall handrail

**INTERIOR DOORS**

Type  
Stain Grade Type  
Hardware  
Door Stops  
By-Pass Hardware

6-panel wood grain hollow-core painted  
6 panel oak  
Kwikset Saxton polished brass or equiv  
Hinge Stop/Heavy Spring  
Thumb Pull

Last Updated: 7/1/05



**LADYWOOD VILLAS**  
**GENERAL SPECIFICATIONS**

The Builder will furnish all door hardware. All interior doors will have passage hardware. All bath and bedroom doors shall have a privacy lock.



**LADYWOOD VILLAS  
GENERAL SPECIFICATIONS**

**CABINET / VANITY TOPS**

Kitchen cabinets and vanities shall be of the layout as noted on The Plan.

**CABINERY**

**Powder Room**

Countertop	Bruce or Equivalent – Builder Standard Selections
Backsplash	Cultured Marble with integrated sink
Hardware	4"
	Optional

**Secondary/Basement Bathrooms**

Countertop	Bruce or Equivalent – Builder Standard Selections
Backsplash	Cultured Marble with integrated sink
Hardware	4"
	Optional

**Master Bathroom**

Countertop	“Raised Height “ (approx. 34”)Bruce or Equivalent – Builder Standard Selections
Backsplash	Cultured Marble with integrated sink
Hardware	4"
	Optional

**Kitchen**

Countertop	Bruce or Equivalent w/ 36" Wall cabinets– Builder Standard Selections
Edge	Laminate
Hardware	No-Drip Edge or Square Edge Per Plan
Wall Cabinet Crown Moulding	Optional
	Optional

**PAINTING**

All interior walls shall have 2 coats of flat latex interior paint in color and material as specified below. Interior Trim and interior doors shall have 2 coats of semi gloss latex interior paint in color and material as specified below. Common Garage walls and garage ceilings shall be sanded drywall w/ no paint. Interior Ceilings shall have 1 coat of flat latex interior paint in color and material as specified below.

Interior Walls	ICI Dulux Ultra Hide Latex Flat Interior – Antique White
Interior Ceilings	ICI Dulux Ultra Hide Latex Flat Interior – Antique White
Interior Trim	ICI Dulux Ultra Hide Latex Semi-Gloss Interior Wall and Trim Enamel – White On White
Interior Doors	ICI Dulux Ultra Hide Latex Semi-Gloss Interior Wall and Trim Enamel – White On White



**LADYWOOD VILLAS  
GENERAL SPECIFICATIONS**

**FLOORING**

Entry	Per Plan - Mannington Jumpstart Resilient
Kitchen/Nook	Per Plan - Mannington Jumpstart Resilient
Bathrooms and Laundry	Per Plan - Mannington Jumpstart Resilient
Dining Room	Per Plan - Shaw Seaside Heights 25 oz.
Living/Great/Family Room/Basement	Per Plan - Shaw Seaside Heights 25 oz.
Bedrooms (incl. Bsmt BR) /Study/Bedroom	
Closets	Per Plan - Shaw Seaside Heights 25 oz.
Sunroom	Per Plan - Shaw Seaside Heights 25 oz.
Stairs	Per Plan - Shaw Seaside Heights 25 oz.
Carpet Padding	1/2 6# Rebond

Flooring in closets will be the same as the adjacent room or area.

**CLOSET SHELVING**

Pantry (where applicable)	5--12" White Ventilated
Linens	5--12" White Ventilated
All Bedrooms	1--12" White Ventilated
Coat/Broom Closet (where applicable)	1--12" White Ventilated
Laundry (Closet and over W/D)	1--12" White Ventilated

**BATH ACCESSORIES AND MIRRORS**

Unless noted otherwise below, standard mirrors are 36" high plate glass mirrors with polished edges. Width is to be approximately 2" shorter than vanity width.

**POWDER ROOM**

Towel Ring	1 Maxwell Chrome
T.P. Holder	1 Maxwell Chrome
Mirror	24"x36" Oval mirror or standard mirror per Plan if vanity.

**SECONDARY BATHROOMS**

Towel Bar/Towel Ring	1 Maxwell Chrome Towel Bar, 1 Maxwell Chrome Towel Ring
T.P. Holder	1 Maxwell Chrome
Shower Curtain Rod	Chrome
Mirror	Standard per Plan

**MASTER BATH**

Towel Bar/Towel Ring	1 Maxwell Chrome Towel Bar, 1 Maxwell Chrome Towel Ring for each sink bowl
T.P. Holder	1 Maxwell Chrome
Shower Curtain Rod	Chrome
Shower Enclosure	Optional
Mirror	Standard per Plan



**LADYWOOD VILLAS  
GENERAL SPECIFICATIONS**

**APPLIANCES**

The Builder will supply the following appliances:

Range	GE 30" Self Clean Electric
Hood Vent	Recirculating 3 speed w/ light
Dishwasher	GE 4 cycle, 2 level
Optional Microwave	GE Recirculating Microwave/Hood vent combo
Refrigerator	Optional
Washer	Optional
Dryer	Optional

The Builder will not install any appliances not purchased from The Builder.

**FIREPLACE**

Optional Fireplace shall be a direct-vent gas unit complete with glass front and ceramic logs. The standard finish will be a 6" x 12" ceramic tile surround and 12" x 12" hearth with a white painted mantle or a painted Benchmark Cabinet surround. 2 eyeball can lights will be installed on ceiling above fireplace. Marble surround and hearth are optional.

Type	OPTIONAL - Majestic 36" Direct Vent (36BDVR) with fixed glass panel on front
Mantel	Benchmark Cabinet (no tile).

**EXTERIOR FEATURES**

Landscape Package	8 18" Shrubs, 1 2" yard tree
Sod/Seed Yard	Sod in Front yard and side yards, hydroseed rear yard
Front Leadwalk	Concrete 3' Wide Broom Finish
Driveway	Concrete 16' Wide Broom Finish
Uncovered Patio	8'x7'4" Concrete w/ broom finish
Mailbox	Medium Mailbox on 4"x4" Cedar "Gothic" post w/ paper holder (1 box per unit, 4 boxes on 1 post per building)
House Numbers	Yes - 3" Black Numbers
Splashblocks	PVC
Community Sidewalks	Concrete Per Community
Fence	Optional- Vinyl 5' solid privacy w/ 1' lattice on top (6' tall total)
Irrigation System	Standard, Front and Sides only

Last Updated: 7/1/05



**LADYWOOD VILLAS**  
**GENERAL SPECIFICATIONS**

**ACCEPTANCE AND APPROVAL**

We, the undersigned, have read and do hereby accept and approve these General Specifications. There are no other understandings, representations or agreements, oral or written, relative to the subject matter of these specifications between the parties or The Builder's Representatives.

\_\_\_\_\_ Date: \_\_\_\_\_  
Customer

\_\_\_\_\_ Date: \_\_\_\_\_  
Customer

**THE AUGUSTA GROUP, LLC**  
9567 Valparaiso Court  
Indianapolis, Indiana 46268

By: \_\_\_\_\_ / \_\_\_\_\_ Date: \_\_\_\_\_  
Title

**The Augusta Group, LLC © Copyright.**  
**All floor plans and elevations are the exclusive property of The Augusta Group, LLC**  
**Copyright infringement could result in legal prosecution under Federal copyright law.**

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**FIRST AMENDMENT TO DECLARATION OF  
LADYWOOD GARDENS HORIZONTAL PROPERTY REGIME**

This Declaration of Ladywood Gardens Horizontal Property Regime, Indianapolis, Indiana, recorded on the 13<sup>th</sup> day of December at Instrument Number 2005-0204168 in the Office of Recorder of Marion County, Indiana, is hereby amended this 28 day of JUNE, 2006 by Oakfield Development, LLC (the Declarant) as follows:

1. Section 19, Sub-Section (a) is amended by adding a new subsection (a) to read as follows:

(a) Leases. The following limitation is imposed on the leasing or rental of Dwelling Units:

(i) Limit on Number of Leased Dwelling Units. No more than twenty percent of the total Dwelling Units, at any given time, may be leased or rented for exclusive occupancy by one or more tenants. The calculation for total Dwelling Units available for lease shall be determined upon final total constructed units determined at the time of project completion. For purposes of this Subsection (a), a Dwelling Unit is exclusively occupied by one or more tenants, if the Owner has entered a landlord-tenant relationship with the occupant which is governed by a lease. Prior to the execution of any lease, and in addition to the requirements set forth in this Subsection (a), the Owner must notify the Board or the Board's agent as to the Owner's intent to lease his/her Dwelling Unit. After receiving such notice, the Board or the Board's agent shall advise the Owner if the Dwelling Unit may be leased or whether the maximum number of Dwelling Units within the Real Estate is currently being leased. If the maximum number of Dwelling Units is already being leased, the Board or the Board's agent shall place the Owner on the waiting list in priority order based on the date of notice from the Owner, and shall notify the Owner of that Owner's position on the waiting list. When an existing tenant vacates a Dwelling Unit, the Owner of that Lot shall immediately notify the Board or the Board's agent of such fact and that Dwelling Unit cannot be re-rented or leased until all prior Owners on the waiting list, if any, have had a chance to rent or lease their Dwelling Units. An Owner on the waiting list who obtains the opportunity to rent or lease his/her Dwelling Unit, must present an executed lease to the Board or to the Board's agent, within sixty (60) days of the date of notice that he/she may rent or lease the Dwelling Unit, or that Owner will forfeit his/her position on the waiting list.

(ii) General Lease Conditions. All leases, including renewals, shall be in writing, and no lease shall be entered into for a term of less than one (1) year without the prior written approval of the Board. No portion of any Dwelling Unit other than the entire Dwelling Unit may be leased for any period. No subleasing is permitted. No Owner will be permitted to lease or rent his/her Dwelling Unit, if the Owner is delinquent in paying any assessments or other charges due to the Association at the time the lease is entered. All leases shall be made expressly subject and subordinate in all respects to the terms of the Declaration, By-Laws and any rules and regulations promulgated by the Board, as amended, to the same extent as if the tenant were an Owner and a member of the Association; and shall provide for direct action

by the Association and/or any Owner against the tenant with or without joinder of the Owner of such Lot. The Owner shall supply copies of the Declaration, By-Laws and rules and regulations to the tenant prior to the effective date of the lease. In addition, the Board shall have the power to promulgate such additional rules and regulations as, in its discretion, may be necessary or appropriate concerning leasing.

(iii) Exceptions During Period of Good Faith Sale or Significant Hardship. The Board of Directors may, in its discretion, grant an exception, for not more than one (1) year at a time, to the limit provided in this Subsection L, to an Owner if the Board determines that the Owner is actively and in good faith trying to sell or otherwise dispose of his Dwelling Unit or if the Board, by majority vote of the entire Board, determines that the Owner has a Significant Hardship. For purposes of this subparagraph, examples of a Significant Hardship may include:

- (a) death of a Owner;
- (b) divorce of an Owner;
- (c) temporary, necessary relocation of the residence of an Owner to a point outside of a fifty (50) mile radius of the perimeter of the Real Estate due to a change of employment or retirement; or
- (d) temporary, necessary relocation of the residence of an Owner due to mental or physical infirmity or disability of at least one (1) of the Owners.

(iv) Six Month Waiting Period. In addition to all other provisions, for a period of at least six (6) months after an Owner's acquisition of a Dwelling Unit, the Owner cannot rent or lease that Dwelling Unit for exclusive occupancy by one or more non-owner tenants. After such time, said Dwelling Unit will be eligible to be leased if all other conditions are satisfied. In the case of the transfer of ownership of a Dwelling Unit, which was properly leased under these rules by the previous Owner, the new Owner can continue with such lease only to finish the then current term of not more than one (1) year. When that term ends, the Owner, if he/she wants to lease his/her Dwelling Unit, must meet all requirements the same as other Owners who are not exempted.

(v) Owner is Still Liable. No lease shall provide, or be interpreted or construed to provide, for a release of the Owner from his/her responsibility to the Association and to the other Owners for compliance with the provisions of the Declaration, By-Laws and any rules and regulations promulgated by the Board, or from the Owner's liability to the Association for payments of assessments.

(vi) Approval of Form of Lease. Any Owner desiring to enter into a lease for his/her Dwelling Unit shall submit the form of the proposed lease to the Board (which form need not include the identity of the tenant or the rental amount) for review for compliance with the requirements of this Subsection (a). The Board may employ an attorney in connection with any such review, and a reasonable fee may be charged to the applicant to offset the expense so incurred. In the event the Board fails to approve or disapprove the form of the lease within thirty (30) days after submission by the applicant, the form of the lease shall be deemed approved. A copy of each executed lease by an Owner (which may have the

rental amount deleted) shall be provided to the Board by the Owner within thirty (30) days after execution.

(vii) Violations. If any Owner leases or rents his/her Dwelling Unit in violation of the provisions of this Subsection (a), the Association may bring a legal action to enjoin the improper conduct.

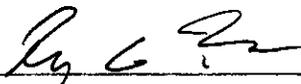
(viii) Effective Date of Lease Conditions. These leasing restrictions shall not apply to any Dwelling Unit of an Owner who, at the time of recording this provision, is renting or leasing said Dwelling Unit for exclusive occupancy by one or more non-owner tenants, so long as such Dwelling Unit continues to be owned by the same Owner and is not occupied as a residence by such Owner. In order for this exception to apply, said Owner must deliver a copy of the executed lease, which is in effect at the time to the Board within thirty (30) days after the recording of this document and shall furnish a copy of any subsequent lease within thirty (30) days after its execution. Such copy may have the rental amount deleted. Failure of such an Owner to timely deliver a copy of any such lease to the Board shall result in said Owner's Dwelling Unit being subject to these restrictions.

(ix) Institutional Mortgages. The provisions of this Subsection (a) shall not apply to any institutional mortgage holder of any Lot which comes into possession of the mortgage holder by reason of any remedies provided by law or in equity or in such mortgage or as a result of a foreclosure sale or other judicial sale or as a result of any proceeding, arrangement or deed in lieu of foreclosure.

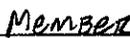
The Property shall remain subject to and entitled to the benefits from the originally recorded Declarations of the Gardens of Ladywood Estates, recorded the 13<sup>th</sup> day of December 2005 in the Office of the Recorder of Marion County, Indiana at Instrument Number 2005 0204168. However, all terms and conditions set forth in the Declaration Amendment shall supplement that original declaration and supercede any provisions therein to the contrary.

IN WITNESS WHEREOF, the undersigned has caused this Amendment to be executed the date and year first above written:

Oakfield Development, LLC

  
\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Printed

  
\_\_\_\_\_  
Title



State of Indiana                    )  
  )    SS:  
County of Marion                    )

Subscribed and sworn to before me, a Notary Public in and for said County and State personally appeared Ryan G Thomas who first having been sworn upon his oath, states the foregoing statements are true and accurate this 28 day of June, 2006.

Susan Hayes  
Notary Public

Susan Hayes  
Printed

County of Residence:  
Hendricks

My Commission Expires: 2 / 22 / 2012

Approved 09/21/2006  
Washington Township Assessor  
By: [Signature]  
Real Estate Deputy

(31)  
[Handwritten initials]

**Amended And Restated Amended Declaration Of Covenants of Ladywood Gardens**

(Ladywood Gardens- a zero-lot line PUD)  
(formerly known as Ladywood Gardens Horizontal Property Regime)

THIS AMENDED AND RESTATED AMENDED DECLARATION OF COVENANTS OF LADYWOOD GARDENS ("Amended Declaration") is made this \_\_\_\_ day of September, 2006, by Oakfield Development, II, LLC, an Indiana limited liability company, ("Declarant"),

WITNESSIETH:

WHEREAS, Declarant was and, in part, remains the owner of certain real estate in Marion County, Indiana, more particularly described in **Exhibit A** attached hereto and incorporated herein by reference (hereinafter referred to as the "Original Real Estate," Real Estate," or "Ladywood Gardens"); and

WHEREAS, Declarant made and recorded with the Recorder of Marion County, Indiana, as Instrument No. 2005-0181860, a Amended Declaration of Ladywood Gardens Horizontal Property Regime ("Original Amended Declaration"); and

WHEREAS, the Original Real Estate has been platted into lots and developed into a residential neighborhood ("Ladywood Gardens"); and

WHEREAS, Declarant has sold or will sell to **Augusta Group, LLC** ("Builder"), or its assigns, all the developed lots and common ground in Ladywood Gardens, for the purposes of causing homes to be built on those lots; and

WHEREAS, several condominium homes have already been constructed on said lots in Ladywood, and have been purchased by third-party home purchasers ("Current Homeowners"); and

WHEREAS, Ladywood was originally declared, established and platted as condominiums under Indiana's Condominium Law (formerly the Horizontal Property Law); and

WHEREAS, Declarant, Builder and the Current Homeowners acknowledge and agree that it is in the best interest of all concerned that Ladywood not be organized as condominiums, but rather, should be organized and operated as a zero-lot line planned urban development ("PUD"); and

WHEREAS, Declarant desires to provide for the preservation and enhancement of the values and amenities in Ladywood and the common facilities therein contained, and to this end, Declarant desires to subject the Original Real Estate (together with such portions (or all) of the Supplemental Real Estate as many hereafter be made subject to the terms of this Amended Declaration, as hereinafter provided) to certain rights, privileges, covenants, restrictions, easements, assessments, charges and liens, each and all to the extent herein provided, for the benefit of the Original Real Estate (and any portions (or all) of the Supplemental Real Estate as

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may be hereafter made subject to the terms of this Amended Declaration, as hereinafter provided, and each owner of all or part thereof; and

WHEREAS, Declarant deems it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which shall be delegated and assigned the powers of owning, maintaining and administering any common facilities located in Ladywood Gardens, administering and enforcing the covenants and restrictions contained in this Amended Declaration, collecting and disbursing the assessments and charges imposed and created hereunder, and promoting the health, safety and welfare of the owners of the Property; and

WHEREAS, Declarant has caused to be incorporated under the laws of the State of Indiana a not-for-profit corporation under the name "Ladywood Gardens Co-Owners Association, Inc."), or a similar name, as such agency for the purpose of exercising such functions;

NOW, THEREFORE, Declarant hereby declares that the Property is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth, all of which are declared to be in furtherance of a plan for preservation and enhancement of the Property, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property as a whole and of each of the Lots situated therein, and which shall run with the Property and be binding upon all parties having any right, title or interest in the Property, their heirs, successors and assigns.

## ARTICLE I DEFINITIONS

**Section 1.** The following words when used in this Amended Declaration or any supplemental Amended Declaration (unless the context shall prohibit) shall have the following meanings:

- A. "Association" shall mean Ladywood Gardens Co-Owners Association, Inc., an Indiana nonprofit corporation which Declarant has caused, or will cause, to be incorporated under said name or a similar name, its successors and assigns.
- B. "Common Area" shall mean (i) all portions of the Property shown upon any final Plat of the Property; or any part thereof, which are not Lots or Living Units, other than portions thereof (such as streets) which are dedicated to the public, whether such Plat is heretofore or hereafter recorded, including all improvements and structures constructed or to be constructed thereon, (ii) to the extent hereinafter established, such portions of the Property as are herein declared to be Common Area, and (iii) to the extent hereinafter established, such improvements located, installed or established in, to, on, under, across or through the Property as are herein declared to be Common Area whether located, installed or established entirely or partially on Lots, or portions of the

Property which are not Lots, or on any combination of the foregoing.

- C. "Declarant" shall mean Oakfield Development, II, LLC, an Indiana limited liability company, and any successors and assigns of it whom it designates in one or more written recorded instruments to have the rights of Declarant hereunder, including, but not limited to, any mortgagee acquiring title to any portion of the Property pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant.
- D. "Limited Common Area" shall mean such portions of the Common Area described herein, as: (i) the use of which hereby is declared and established to be is limited or restricted to the Owners of one or more but less than all of the Lots, such as and specifically including patios, porches, fences, driveways, walkways, sidewalks, landscaping and parking spaces, (ii) which are appurtenant or attached to one or more but less than all of the Living Units, and (iii) which are not necessary for the beneficial use and enjoyment of all of the Lots. The use of Limited Common Area shall be further defined by rules and regulations established by the Association.
- E. "Living Unit" shall mean a residential housing unit consisting of a group of rooms and hallways which are designed or intended for use as living quarters for one family. For the purpose of determining membership in the Association, each Living Unit as constructed by Declarant or Builder on a Lot shall be considered as a separate and individual unit. Living Units are identified on the Plat by a series of building and living unit numbers, as follows:  
  

Building 1:	Units 1, 2, 3 and 4
Building 2:	Units 5, 6, 7 and 8
Building 3:	Units 9, 10, 11 and 12
Building 4:	Units 13, 14, 15 and 16
Building 5:	Units 17, 18, 19 and 20
Building 6:	Units 21, 22, 23 and 24
Building 7:	Units 25, 26, 27 and 28
Building 8:	Units 29, 30, 31 and 32
Building 9:	Units 33, 34 and 35
Building 10:	Units 36, 37 and 38
- F. "Lot" shall have the same meaning as Living Unit, and shall further mean and refer to that portion of the Property assigned and intended for use as a building site for, or developed and improved for use as, a Living Unit; provided, however, that where a Living Unit (i) is separated from an adjacent Living Unit by a Party Wall, or (ii) shares a Party Wall with an adjacent Living Unit, the center line of such Party Wall and its vertical extensions shall constitute the common boundary line (lot line) between such 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 or Living Units; provided, further, that where any exterior wall of a Living Unit is not a Party Wall but extends outside the boundary lines (lot lines) of the Lot (as shown on any such Plat) upon which such Living Unit is primarily located, the boundary lines of such Lot shall be deemed extended to include all of the ground area occupied by such Living Unit. It is the intent hereof that, in any and all events, this Amended Declaration and any Plat of the Property or any part thereof shall be interpreted and construed so that all ground area underlying and lying beneath a Living Unit shall be and constitute part of the Lot upon which such Living 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 Living 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 supercede the boundary lines for Lots shown on any recorded final Plat of the Property or any part thereof.

- G. "Member" shall mean any person or entity holding membership in the Association as provided herein.
- H. "Mortgage" shall mean any mortgage or other security instrument by which a Lot or any part thereof or any structure thereon is encumbered.
- I. "Mortgagee" shall mean any person or entity named as the Mortgagee under any such Mortgage or any successors or assigns to the interest of such person or entity under such Mortgage.
- J. "Original Real Estate" shall mean the parcel of real estate in Marion County, Indiana described in the Plat, recorded in the Office of the Recorder of Marion County, Indiana, as Instrument No. 2005-181861, and hereby incorporated in this Amended Declaration.
- K. "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation, option-purchasers and contract purchasers.
- L. "Person", whether appearing in upper case or lower case form, shall mean an individual, firm, corporation, partnership, limited liability company, association, trust, or other legal entity, or any combination thereof
- M. "Plat" shall mean that certain subdivision Plat or Plats of the Property as from time to time recorded in the office of the Recorder of Marion County, Indiana and all amendments and modifications thereto. It is anticipated that the Declarant may first record a "conditional plat" and may thereafter, following the construction of any building or buildings containing Living Units, record a

“final plat.” In the event that, with respect to the Property or any part thereof, there is recorded with the Recorder of Marion County, Indiana, both a “conditional final plat” and, subsequently, a “final plat,” then the “final plat” shall supersede and control, and the term Plat as used throughout the Amended Declaration shall mean and refer to such subsequently recorded “final plat.”

- N. “Property” shall mean and refer to the Original Real Estate together with such portions of the Supplemental Real Estate as have, from time to time, been subjected to, and are, at any time, subject to this Amended Declaration.

**Section 2. Other Terms** - Other terms and words defined elsewhere in this Amended Declaration shall have the meanings herein attributed to them.

## ARTICLE II. PROPERTY SUBJECT TO THIS AMENDED DECLARATION

**Section 1. Amended Declaration.** Declarant hereby expressly declares that the Property shall be held, transferred, sold, conveyed and occupied subject to all the terms, covenants, conditions, restrictions and provisions of this Amended Declaration. The Owner of any Lot subject to this Amended Declaration, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall accept such deed, execute such contract and undertake such occupancy subject to all of the terms, covenants, conditions, restrictions and provisions of this Amended Declaration. By acceptance of such deed, execution of such contract or undertaking such occupancy, each Owner acknowledges the rights and powers of Declarant and of the Association with respect to or under this Amended Declaration, and, for himself and his heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant, he Association, and the Owners and subsequent Owners of each of the Lots affected by this Amended Declaration, to keep, observe, perform and comply with this Amended Declaration.

**Section 2. Consent And Agreement of Current Owners.** By their signatures below, said Current Owners hereby consent and agree to the applicability of this Amended Declaration to Lots and homes purchased by the Current Owners prior to the date of this Amended Declaration, when the Property was organized as a condominium neighborhood, rather than a zero-lot line planned urban development. Henceforth, the Current Owners shall be deemed, for all purposes hereunder, to be Owners of Lots subject to all the terms, covenants, conditions, restrictions and provisions of this Amended Declaration, and the provisions of this Amended Declaration shall control their rights, responsibilities and duties vis-à-vis the Declarant, other Owners, each other and all other persons subject to this Amended Declaration. In order to effectuate the purpose of this provision, Current Owners and Declarant shall execute and exchange quitclaim deeds, subject to any existing purchase money mortgages in favor of Current Owners’ lenders, by which the legal description of Current Owners’ respective interests in their Lots and homes are made consistent with the provisions of this Amended Declaration.

**Section 3. Declarant's Right of Expansion.** Declarant shall have, and hereby reserves, the right, at any time, and from time to time, on or before the "Applicable Date" (hereinafter defined) to add to the Property and subject to this Amended Declaration all or any part of any Supplemental Real Estate. Any portion of the Supplemental Real Estate shall be added to the Property, and therefore and thereby becomes a part of the Property and subject in all respects to this Amended Declaration, when Declarant places of record in Marion County, Indiana an instrument so declaring the same to be a part of the Property, which Amended Declaration may be made as part of the subdivision Plat of any portion of the Supplemental Real Estate, or by an amendment or supplement to this Amended Declaration, or otherwise. Upon the recording of any such instrument on or before the Applicable Date, the real estate described therein shall, for all purposes, thereafter be deemed a part of the Property and the Owners of any Lots within such real estate shall be deemed for all purposes to have and be subject to all the rights, duties, privileges and obligations of Owners of Lots within the Property. No single exercise of Declarant's right and option to add to and expand the Property, as, described in this Section 3, as to any part or parts of the Supplemental Real Estate shall preclude Declarant from thereafter from time to time further expanding and adding to the Property to include other portions of the Supplemental Real Estate, such right and option of expansion may be exercised by Declarant from time to time as to all or any portions of any Supplemental Real Estate so long as such expansion is accomplished on or before the Applicable Date. Such expansion of the Property is entirely at the discretion of Declarant and nothing contained in this Amended Declaration or otherwise shall require Declarant to expand the Property beyond the Original Real Estate, or any other portions of the Supplemental Real Estate which Declarant may voluntarily and in its sole discretion from time to time subject to this Amended Declaration.

ARTICLE III  
MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

**Section 1. Membership.** Every Owner of a Lot subject to assessment, except as herein provided to the contrary, shall be entitled and required to be a member of the Association. If title to a Lot is held by more than one person, each of such persons shall be a member. An Owner of more than one Lot shall be entitled to, and there shall be required, one membership for each such Lot. Each such membership shall be appurtenant to the Lot upon which it is based and shall transfer automatically by voluntary or involuntary conveyance of the title of that Lot. Except as herein otherwise expressly provided, no person or entity other than an Owner or Declarant may, be a member of the Association, and a membership in the Association may not be transferred except in connection with the transfer of title to that Lot.

**Section 2. Transfer.** A membership in the Association shall not be transferred, pledged or alienated in any way, except upon the transfer of the record title of a Lot and then only to such transferee, by assignment, intestate succession, testamentary disposition; foreclosure of mortgage of record or other legal process. It shall be the responsibility of each Owner, upon becoming entitled to membership, to so notify the Association in writing, and until so notified, the Association may continue to carry the name of the former Owner as a member, in its sole discretion. Any attempt to make a prohibited transfer is void and will not be reflected upon the

books and records of the Association. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in his name to the transferee of title of such Lot, the Association shall have the right to record the transfer upon the books of the Association and issue a new membership to the transferee, and thereupon the old membership outstanding in the name of the transferor shall be null and void as though the same had been surrendered.

**Section 3.** Voting. The Association shall have two (2) classes of voting membership, as follows:

- A. Class A. Class A members shall be all Owners of Lots, with the exception of the Declarant prior to termination of Class B membership; and shall be entitled to one (1) vote for each Lot owned with respect to each matter submitted to a vote of members upon which the Class A members are entitled to vote. When more than one person holds title to any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot. There can be no split vote. Prior to or at the time of any meeting at which a vote is to be taken, each co-Owner or other person entitled to a vote at such meeting shall file with the Secretary of the Association the name of the voting co-Owner or other person entitled to a vote at such meeting, unless such co-Owner or other persons have filed a general voting authority with the Secretary applicable to all votes until rescinded. If co-Owners cannot agree on how to exercise their vote or otherwise fail to follow the procedures and requirements of this Amended Declaration, their votes will not be counted and shall be deemed forfeited.
  
- B. Class B. Class B members shall be the Declarant and all successors and assigns of Declarant designated by Declarant as Class B members in a written notice mailed or delivered to the resident agent of the Association. Each Class B member shall be entitled, on all matters requiring a vote of the membership of the Association, to three (3) votes for each Lot owned by it. The Class B member shall be the Declarant. The Declarant shall be entitled to three (3) votes for each Lot owned. For purposes of this calculation, it shall be assumed that Declarant owns all Lots, which number shall be reduced as Lots are conveyed by the Declarant to an Owner. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier: (a) when the total number of votes outstanding in the Class A membership exceeds by a ratio of two to one the total number of votes outstanding in the Class B membership; or, (b) December 31, 2007. Declarant shall be entitled to Class A memberships for all Lots of which it is the Owner on or after the termination of Class B membership.

**Section 4.** Suspension of Voting Rights. In the event any Owner shall be in arrears in the payment of any amount due under any of the provisions of this Amended Declaration for a period of thirty (30) days, or shall be in default in the performance of any of the terms of this Amended Declaration for a period of thirty (30) days, such Owner's right to vote as a member of the Association shall be suspended and shall remain suspended until all payments are brought

current and all defaults remedied.

**Section 5. Board of Directors.** The Owners shall elect a Board of Directors (hereafter “Board”) of the Association as prescribed by the Association’s Articles of Incorporation (hereafter “Articles”) and By Laws (hereafter “By Laws”), as amended from time to time. The Board shall manage the affairs of the Association. Directors need not be Members, as long as Declarant owns Lots in the Property.

#### ARTICLE IV PROPERTY RIGHTS

**Section 1. General Provisions.** All easements described in this Amended Declaration are permanent easements appurtenant, running with the land. They shall at all times inure to the benefit of and be binding on the Owner and the mortgagee from time to time of any Lots and the Owner and mortgagee, if any, from time to time of the Common Area, and their respective heirs, successors, personal representatives or assigns.

**Section 2. Right of Quiet Enjoyment.** Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Area (except for such portions thereof as are Limited Common Area), which right and easement shall include, but not be limited to, easements for ingress and egress to his Lot for himself and his invitees, for lateral support, utility, water and sewer easements, vehicular parking, pedestrian ingress and egress, and use and enjoyment of open spaces and all other parts of the Common Area. Such right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- A. The right of the Association to pass reasonable rules, with respect to the Common Area, for the health, comfort, safety and welfare of persons using same (including, but not limited to, rules restricting or limiting parking of vehicles to designated portions of the Common Area) and for all Owners;
- B. The right of the Association to suspend the voting rights and right to the use of recreational facilities, if any, situated upon the Common Area (but not rights of access to Lots) by an Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for an infraction of its published rules and regulations;
- C. The right of the Association to levy assessments as provided in this Amended Declaration.
- D. The right of Owners to the use of parking spaces as provided in this Article;
- E. The right of the Owner of each Lot to an exclusive easement on the Common Area for entrances to a Living Unit or to areas occupied by fireplaces, roof overhangs, balconies, air conditioning compressors, flower boxes, patios, porches, driveways, sidewalks and other appurtenances which are part of the

original construction of any Living Unit, or which are added pursuant to the provisions of Article VI hereof and to a reciprocal easement for access where necessary over adjoining Lots for the maintenance and upkeep of the walls, fences or other improvements; and

- F. The rights of the Association and Declarant reserved under Sections 4 and 5 of this Article IV or elsewhere in this Amended Declaration.

**Section 3.** Delegation of Enjoyment. Any Owner may delegate, in accordance with the By-Laws of the Association, his right of enjoyment to the Common Areas to residents of his Lot, including the members of his family, his tenants, or contact purchasers.

**Section 4.** Association's Rights.

- A. The Association shall have the right to manage, build, reconstruct, repair, maintain, improve and operate the Common Area.
- B. The Association shall have the right to mortgage all or any portion of the Common Area for the purpose of securing a loan of money to be used for any of the purposes specified in subsection 4.A. next hereinabove, provided that the rights of such mortgagee in the Common Area shall be subordinate to the rights of the Owners under this Amended Declaration, and provided, further, that the mortgage shall have received the prior written approval specified in Article XI herein below.
- C. The Association shall have the right to dedicate or transfer all or any part of the Common Area to any governmental subdivision or public agency or utility, and to grant permits, licenses, and easements over the Common Area for utilities, roads, and other purposes necessary or useful for the proper maintenance or operation of the project, subject to any prior written approval required by Article XI hereinbelow.
- D. The Property shall be subject to easements of record on the date hereof and any easements in the Common Area which may hereafter be granted by Declarant or the Association (subject to the approval referred to in the preceding paragraph) to any public or private utilities or governmental bodies for the installation and maintenance of electrical and telephone conduit and lines, gas pipes, sewers or water pipes, coaxial cable, or any other utility services serving any Lots or the Common Area. Lots shall also be subject to easements for the maintenance of unintentional encroachments of the Common Area improvements thereon.
- E. Notwithstanding anything herein to the contrary, no abandonment, partition, subdivision, encumbrance, sale or transfer of the Common Area or other common property or any part thereof shall be effective unless it shall have received the prior written approval specified in Article XI hereinbelow.

**Section 5. Declarant's Rights.** Declarant shall have the same rights as any other Owner as to Lots owned by it from time to time, except as otherwise specified herein. In addition, until the last Lot is conveyed to an owner other than Declarant, or until the Applicable Date (whichever event shall first occur), Declarant shall have the right and easement over the Common Area for the completion of improvements, whether or not platted, and making repairs to improvements (whether on the Common Area, or upon unsold Lots, or upon other portions of any Supplemental Real Estate) and the right to maintain and use facilities (including, but not limited to model Living Units) and signs upon the Common Area or any Lots for the purpose of marketing units, and to invite and escort the public thereon for such purpose. Declarant may assign its rights in whole or in part.

**Section 6. Non-Dedication to Public Uses.** Nothing contained in this Amended Declaration shall be construed or be deemed to constitute a dedication, express or implied, of any part of the Common Area to the public or to or for any public use or purpose whatsoever, all of such Common Areas being reserved to the Owners and the Association as provided in this Amended Declaration, but subject, however, to the rights of the Association and the Declarant to thereafter dedicate portions of such Common Area to the public or to or for public uses or purposes but only to the extent, and upon all of the conditions, set forth in this Amended Declaration.

**Section 7. Easement for Unintentional Encroachment.** Notwithstanding any other provisions contained herein, in the event that any Living Unit or any structure containing one or more Living Units or any improvements to any Living Unit encroaches upon any part of the Common Area, as a result of construction, reconstruction, repair, shifting, settlement or movement of any part of the Property, then a perpetual easement appurtenant to such encroaching Lot shall exist for the continuance of any such encroachment on the Common Area.

**Section 8. Parking Rights.** Each Lot contains parking areas and driveways (including garages) for the use of its Owner. The Association, at its option, may maintain additional parking spaces on the Common Area for the use of Owners, guests and invitees, subject to reasonable regulation by rule of the Association. In addition, Declarant may, and hereby expressly reserves the right, power and authority to designate by any plat, or any part thereof, portions of the Property for the purpose of construction thereon of a garage or garages for the parking or storage of vehicles (each part so designated by Declarant for a garage shall be designated as, and is hereinafter referred to as, a "Garage Space"). Garage Spaces may have garages for the parking or storage of vehicles constructed thereon by Declarant, and Declarant may convey Garage Spaces by deed (or grant exclusive easements for the use of the same) to Owners of Lots as appurtenances to the Lot owned by an Owner. After the conveyance by Declarant of the last Lot included in the Property on the Applicable Date to an Owner other than Declarant, Declarant's right to convey (or grant easements to use) Garage Spaces shall terminate and any Garage Spaces then existing which have not been so conveyed by Declarant by deed or easement shall thereafter be under the control of the Association which may either (A) convey the same (or grant easement for the use thereof) to the Owner of any Lot, or (B) retain the same for use as general Common Area, or (C) lease or license the use of the same to the Owner of any Lot. Notwithstanding this provision and to provide clarity to this Amended Declaration, it is acknowledged and agreed that the garage space attached to each Living Unit as originally planned and platted is part and parcel

to such Living Unit and is not intended to be governed as a "Garage Space," by this provision. Garages attached directly to Living Units and reflected on the existing and currently recorded plat constitute part of the Living Units but may be utilized only for the storage of vehicles, personal belongings of Owners and the like, but may not be used or utilized as a bedroom, kitchen, or porch, bathroom, or other living space. This provision concerns additional parking areas and Garage Spaces not currently built, planned or reflected on the existing and currently recorded plat.

**Section 9.** Ownership of Common Area. Declarant shall transfer title to the Common Area to the Association as the Property is developed.

## ARTICLE V ASSESSMENTS

**Section 1.** Personal Obligations. Declarant, for each Lot owned by it within the Property hereby covenants, and each Owner of a Lot by acceptance of a deed, or other conveyance therefore, whether or not it shall be so expressed therein, shall be and is deemed to covenant and hereby agrees to pay to the Association: (a) annual assessments or charges, which shall be payable in regular installments, for the payment or provision of all expenses of administration of the Association, expenses for the upkeep, maintenance, repair and replacement of the Common Area together with any Swimming Pool and related facilities located within any Common Area, and all other expenses incurred or to be incurred by the Association for or in connection with the performance by the Association of its duties, obligations and responsibilities under this Amended Declaration, which expenses shall include, but not be limited to, the expenses and costs of hazard and liability insurance for Common Areas and any other common property, exterior maintenance of Living Units and garages or Garage Spaces, snow removal, trash removal, sewer and water charges (if payable by the Association), outside lighting, and an adequate reserve fund for the periodic maintenance, repair and replacement of those improvements and elements of the Common Area and any other common property that must be replaced on a periodic basis and which the Association may be obligated to maintain, and (b) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. Any assessments authorized herein, together with interest, costs and reasonable attorneys' fees, shall be a continuing lien from the first day of January (for annual assessments) and from the date the first installment is payable (for special assessments) against the Lot assessed. Such annual assessments shall be due and payable in twelve (12) equal monthly installments on the first day of each and every month commencing on the first day of July of each year. Each 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 on the date said assessment became due and payable, presumably January of each year as to annual assessments. The unsatisfied obligation of an Owner shall be shared, jointly and severally, by an Owner's successors in title or interest unless, whether or not expressly assumed by them and whether or not, prior to such transfer, a written notice of the lien for such assessments was recorded in the Office of the Recorder of Marion County, Indiana. No Owner shall escape liability for the assessments which fell due while he was the Owner by reason of non-use of the Common Area or non-use, transfer or abandonment of his Lot or Living Unit.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and residents of the Property, to purchase and maintain the insurance specified in this Amended Declaration and to construct, manage, improve, maintain, repair and administer the Common Area and all pipes, wires, or other conduits of matter or energy located upon the Common Area and for the exterior maintenance of Living Units and garages/Garage Spaces. An adequate reserve fund shall be maintained for working capital and for the periodic maintenance, repair and replacement of those improvements and elements of the Common Areas and any other common property that must be replaced on a periodic basis and those portions of the exterior of Living Units and garages/Garage Spaces which the Association is required to maintain. Such fund shall be maintained out of the regular assessments, unless an emergency arises, and the Board determines that funds generated by a special assessment are needed.

**Section 3. Annual Assessments.** The Board may fix the annual assessments at an amount not to exceed one hundred fifteen percent (115%) of the annual assessments of the immediately prior year.

**Section 4. Special Assessments.** In addition to the annual assessments 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 insurance for, construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, and for the exterior maintenance of Living Units and garages/Garage Spaces, provided that any such assessment shall have the assent of not less than two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

**Section 5. Notice and Quorum.** Written notice of any meeting of Members called for the purpose of taking any action authorized under Article V, Sections 3 or 4, shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting at the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of the total number of votes entitled to be cast (Class A and Class B votes combined) shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting (thirty percent (30%) of the total number of votes entitled to be cast). No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 6. Rate of Assessment.** Annual and Special assessments must be fixed at a uniform rate for all Lots. Annual assessments shall be collected on a monthly basis and special assessments shall be collected as the Board determines. The provisions of this Section 6 are subject to the provisions of Section 13 of this Article V as to all Lots owned by Declarant.

**Section 7. Commencement of Initial Annual Assessments.** The annual assessments provided for herein shall commence as to all Lots subjected to this Amended Declaration on the first day of the month following the month of recording of the instrument by which such Lots

became a part of the Property, which is likely to be a deed or other similar instrument from Declarant or its assigns to an Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year.

**Sections 8. Commencement of Annual Assessments.** By May 31 of each year the Board shall fix the amount of annual assessments against each Lot for the following fiscal year (i.e., July 1 to June 30 following) and shall send written notice thereof to each Owner. The due date for payment of annual assessments shall be as set by the Board. At the time the Board fixes the amount of annual assessments it shall adopt a budget for the following fiscal year and cause a copy of such budget in reasonable detail to be furnished to each Owner.

**Section 9. Proof of Payment.** Upon written demand of an Owner or Mortgagee, at any time and for a reasonable charge, the Association shall furnish a written certificate signed by an officer of the Association setting forth whether there are any then unpaid annual or special assessments levied against such Owner's or Mortgagee's Lot. Such certificate shall be conclusive evidence of payment of any annual or special assessments not stated therein as unpaid.

**Section 10. Nonpayment of Assessments.** Any assessments which are not paid when due shall be deemed delinquent. If an assessment is not paid within thirty (30) days after the delinquency date, it shall bear interest from the delinquency date at the rate of eight percent (8%) per annum and shall become a continuing lien, from the date first due, in favor of the Association on the Lot against which assessed and the improvements thereon and the Association (or any Owner acting in the name and for the benefit of the Association) may bring an action at law or in equity against the person personally obligated to pay the same, including interest, costs and reasonable attorneys' fees for any such action, which shall be added to the amount of such assessment and included in any judgment rendered in such action, and the Association may also enforce and foreclose any lien it has or which may exist for its benefit.

**Section 11. Recording and Enforcement of Liens.** This Amended Declaration evidences a lien for all sums due hereunder. To further evidence a lien for sums assessed pursuant to this Article, the Association may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Lot, the name of the person personally obligated to pay the same and a description of the Lot. Such a notice shall be signed by an officer of the Association and it or a notice of lien or adverse claim thereof may, but need not, be recorded in the office of the Recorder of Marion County, Indiana. No notice of lien shall be recorded until there is a delinquency in payment of the assessment for thirty (30) days. Upon such a delinquency for thirty (30) days, the Association shall proceed promptly to enforce the lien or, in its discretion, to sue the person personally liable to pay the lien for the delinquency. Such lien shall be enforced by action in the same manner in which mortgages on real property may be foreclosed in Indiana. In any such foreclosure, the Association may collect all costs of foreclosure including reasonable attorneys' fees. All such costs and expenses shall be secured by the lien being foreclosed. The person personally obligated to pay the lien shall also be required to pay to the Association any assessments against the Lot which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire, hold, convey, lease,

rent, encumber, use and otherwise deal with the foreclosed interest in the Lot as the Owner thereof. The Association shall upon written request report to any encumbrances of a Lot any assessments remaining unpaid for longer than thirty (30) days after the same shall have become due, provided, however, that such encumbrance first shall have furnished to the Association written notice of such encumbrance

**Section 12. Subordination of Lien.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage ("First Mortgagee") and to tax liens and liens for special assessments in favor of any taxing and assessing unit of government. Sale or transfer of any Lot shall not affect the assessment lien. No sale or acquisitions subsequent to and resulting from a foreclosure of a First Mortgage shall relieve a Lot from liability for any assessments thereafter becoming due or from the lien thereof or shall relieve the person personally obligated to pay the same from personal liability for assessments due prior to such sale or transfer or acquisition.

**Section 13. Limitations on Assessments Owed by Declarant.** Notwithstanding anything to the contrary contained herein, Declarant shall be obligated to pay, as to any and all Lots owned by it from time to time, only twenty-five percent (25%) of the assessments (whether regular annual assessments or special assessments) payable hereunder by Owners (other than Declarant) of Lots, and all such Lots owned by Declarant shall be subject to a lien hereunder only for amounts determined under this Section 13. This obligation of Declarant shall commence only after Declarant has sold all but six (6) of the Lots described on the Plat.

**Section 14. Reserve Fund.** The Board of Directors shall establish and maintain a reserve fund by allocation and payment to such reserve fund of an amount determined annually by the Board of Directors to be sufficient to meet the periodic costs of fulfilling the obligations, specified in Article VII, Section 1 above, to maintain and repair the exterior of the Living Units. In determining the amount the Board of Directors shall take into consideration the expected useful life of what is required to be maintained and repaired, projected increases in the cost of materials and labor, interest to be earned by such fund, and the advice of Declarant and such consultants as the Board of Directors may employ. The reserve fund shall be deposited in a special account with a lending institution the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of; or fully guaranteed as to principal by, the United States of America. Such fund shall hereafter be referenced to as the "Reserve Fund."

## ARTICLE VI ARCHITECTURAL CONTROLS

**Section 1. Architectural Control Committee Authority.** No exterior additions, removals or alterations (including changes in color or appearance) to any building on the Property, additional fences, or changes in existing fences, hedges, walls, walkways and other structures shall be commenced, erected or maintained except such as are installed or approved by the Declarant in connection with the initial construction of the buildings on the Property, until the written plans and specifications showing in reasonable detail the nature, kind, shape, height,

materials (including color), location and approximate cost of same shall have been submitted to and approved in writing as to harmony of the external design and location in relation to surrounding buildings in the Property by an Architectural Committee composed of the Board of the Association or three (3) or more representatives appointed by the Board. In the event said Board, or its designated Committee, fails to approve or disapprove such design and location within thirty (30) days after said written plans and specifications have been submitted to it, such approval will be deemed to have been denied. If no such submission (or a submission that is, in any fashion, detail, requirement or manner deficient), has been made to the Architectural Committee or their representatives, suit to enjoin or force the removal of such additions, alterations or changes may be instituted at any time by the Association or any Owner. During the time which the Association has a Class B member, the decisions of the Architectural Committee must have the written approval of the Declarant.

**Section 2.** Restoration In Accordance with Original Plans. Any restoration or repair of the Common Area or exterior of Living Units or garages/Garage Spaces, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Amended Declaration and the original plans and specifications, unless other action is approved by First Mortgagees on Lots which have at least fifty-one percent (51%) of the votes of Lots subject to First Mortgagees.

## ARTICLE VII OTHER RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

**Section 1.** The Common Area and Exteriors. Subject to the terms and conditions of this Amended Declaration, the Declarant shall convey the Common Area to the Association. The Association, subject to the rights and obligations of the Owners as set forth in this Amended Declaration, shall be responsible for, and be vested with, the exclusive management and control of the Common Area and all improvements and landscaping thereon (including furnishings and equipment related thereto), and shall keep the same in good, clean, attractive and sanitary condition, order and repair. Such responsibility (to the extent the same is not otherwise herein declared or stated to be the obligation or responsibility of Owners of Lots) shall include, but not be limited to, the following: the maintenance and repair of the Common Area improvements, such as the recreational facilities, if any, driveways, parking areas, walkways, exterior ornamental lighting, landscaping and lawns and all other improvements or material located within or used in connection with the Common Area. Without limiting the generality of the foregoing, if a lake or other water retention facility is installed as part of the storm and surface water drainage system of the Property, such lake or other water retention facility shall be a part of the Common Area to be operated, managed, controlled, repaired and maintained by the Association. Under no circumstances shall any obligation for the maintenance or repair of any such lake or water retention facility be imposed upon, or implied as an obligation of any governmental agency, unless such obligation is specifically and expressly assumed or accepted by any such governmental agency. In order to preserve the uniform and high standard of the Property, the Association shall also be responsible for the maintenance and repair of the exterior of all Living Units, which responsibility shall include, but not be limited to the following: the maintenance and repair of exterior surfaces of all buildings on the Property, including, without

limitation, the painting of the same as often as necessary, the replacement of trim and caulking, the maintenance and repair of roofs, gutters, downspouts and overhangs, the maintenance and repair of exterior windows and doors, necessary painting, staining and repair of patio structures on a Lot as originally built but not of additions thereto made by an Owner. The Association shall mow, trim, water and otherwise care for grass, trees, or other plants located on a Lot. The Association shall also provide for snow removal from streets, sidewalks, and driveways on a Lot. All maintenance and repair of the individual Living Units and attached garages/Garage Spaces shall be the sole obligation of and shall be performed at the sole cost and expense of the individual Owner, except to the extent the exterior maintenance and repair is provided by the Association. In the event that the need for maintenance or repair is caused through the willful or negligent act of an Owner, his family, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject.

**Section 2. Lawn and Planting Maintenance.** To the extent the Association undertakes to water plantings established by individual Owners, it will not be responsible for any damage to such gardens and plantings due to overwatering, underwatering or improper watering. In lieu of maintaining separate water lines for the Common Area, the Association may draw water for such purposes from exterior sillcocks on each Living Unit or Lot, provided that it endeavors to rotate such drawing among all Living Units or Lots by a schedule or other reasonable means so as to approximately equalize the amount of water taken from each Living Unit or Lot over the course of a season.

**Section 3. Services.** The Association may obtain and pay for the services of any persons or entities, to maintain its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Property whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Property or the enforcement of this Amended Declaration. The Association may arrange with others to furnish trash collection and other common services to each Lot. Any agreement for professional management of the Property, or any other contract providing for services by Declarant or an entity owned or controlled by the same persons as Declarant, must provide for termination by either party without cause or payment of a termination fee on ninety (90) days or less written notice and by either party for cause upon thirty (30) days or less written notice and shall have a maximum contract term of one (1) year, but may be renewable by agreement of the parties for successive one-year terms.

**Section 4. Personal Property for Common Use.** The Association may acquire and hold for the use and benefit of all of the Owners tangible and intangible personal property and may dispose of the same by sale or otherwise. Such beneficial interest shall not be transferable except with the transfer of title to a Lot, provided that an Owner may delegate his right of enjoyment of such personal property to residents of his Lot. A transfer of title to a Lot shall transfer to the transferee ownership of the transferors beneficial interest in such property in accordance with the purposes which its intended, without hindering or encroaching upon the lawful rights of other Owners. The transfer of title to a Lot under foreclosure shall entitle the purchaser to the beneficial interest in such personal property associated with the foreclosed Lot.

**Section 5.** Utilities. The Association shall pay as a common expense all charges for water, sewer and other utilities used upon the Common Area, subject to the Association's right to draw water from exterior sillcocks on Living Units or Lots as provided in Section 2 of this Article VII.

**Section 6.** Hazard and Liability Insurance for Common Property. The Association shall procure fire and extended coverage insurance on insurable Common Areas, other common property and property for which the Association is responsible on a current replacement cost basis in an amount not less than 100% of the insurable value (based on current replacement only); and shall use the proceeds of such hazard insurance solely for the repair, replacement or reconstruction of such insurable Common Areas and other property, including insured improvements. The cost of such insurance shall be assessed as provided in Article V above. Holders of First Mortgages ("First Mortgagees") on Living Units, jointly or singly, may pay overdue premiums on hazard insurance policies, or may secure new hazard insurance coverage on the lapse of a policy, for the Common Areas and other property, and First Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association. The Association is authorized to enter into an agreement in favor of all First Mortgagees of Living Units establishing entitlement to such reimbursement.

## ARTICLE VIII OWNERS' MAINTENANCE

**Section 1.** Upkeep and Maintenance. Each Owner shall be responsible for the cleaning, upkeep and maintenance of his Living Unit, including attached garage and all other areas, features or parts of his Lot, Common Areas and Limited Common Areas appurtenant thereto to the extent not otherwise specifically required under this Amended Declaration to be maintained by the Association. The maintenance, upkeep and repair which each Owner shall furnish and be responsible for, at his or her own expense shall include but shall not be limited to (i) all the maintenance, repairs, decorating and replacements within his or her Living Unit including, but not limited to, all internal installation of such Living Unit such as refrigerators, ranges and other appliances, lighting fixtures and plumbing, and any other portion of any other utility services located within the Living Unit or upon the Lot and (ii) maintenance, upkeep, repair and replacement of any partitions, interior walls, ceilings, floor surfaces, windows, frames and doors. An Owner shall do no act nor any work that will impair the structural soundness or integrity of building or an adjoining Living Unit or garage, or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other Living Units, garages or their Owners.

**Section 2.** Heating of Living Units. For the purpose of preventing damage to and breakage of water, sewer and other utility lines and pipes in a Living Unit which might result in damage to that or other Living Units, all Owners, shall maintain the temperature in their Living Units, at all times, at least 55 degrees Fahrenheit, subject, however, to the inability to maintain such temperature due to causes beyond the Owner's reasonable control. Any damage resulting

from the refusal or failure of an Owner to so maintain such minimum temperature may be repaired by the Association and (unless due to causes beyond the Owner's reasonable control) the cost thereof assessed against the Lot of the refusing or failing Owner. However, if the failure to maintain such minimum temperature is due to causes beyond the Owner's reasonable control the cost of such repair shall be a common expense.

## ARTICLE IX PARTY WALLS

**Section 1.** General Rules of Law to Apply. Each wall which is built as a part of the original construction of any Living Unit upon the Property and which connects two (2) or more Living Units or forms part of walls in two (2) or more Living Units shall constitute a party wall (any such wall being herein referred to as 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 negligent or intentional or willful acts or omissions shall apply thereto.

**Section 2.** Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners who make use of such Party Wall, proportionately.

**Section 3.** Destruction by Fire or Other Casualty. If any Party Wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance maintained by any of the Owners who make use of such Party Wall or by the Association, and repaired out of the proceeds of same, any Owner who has used the Party Wall may restore it, and if the other Owners thereafter make use of the Party Wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent, intentional or willful acts or omissions.

**Section 4.** Weatherproofing. Notwithstanding any other provision of this Article, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who by his negligent or willful act causes, the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

**Section 5.** Right to Contribution Runs with Land. The right of any Owner for 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 6.** Arbitration. In the event of any dispute arising concerning a Party Wall, or under the provisions of this Article, each Owner subject to the dispute, plus the Association, shall each choose one arbitrator, and the decision shall be by a majority of all the arbitrators. (Should any party refuse to appoint an arbitrator within ten (10) days after written request therefore from another party, the Board of Directors of the Association shall select an arbitrator for the refusing party.)

ARTICLE X  
GENERAL RESTRICTIONS, OBLIGATIONS AND RIGHTS  
APPLICABLE TO PROPERTY

**Section 1.** Living Unit and Lot Restrictions. No more than one Living Unit shall be erected or maintained on each Lot. No Living Unit shall be used for purposes other than as a single-family residence, nor shall any trade or business of any kind be carried on within a Living Unit or upon a Lot, nor shall any Lot or any part thereof be let, leased, sublet, assigned or suffered to be used for hotel or transient occupancy, provided that none of the following activities shall be considered a violation of this covenant:

- A. The maintenance of model Living Units and business and sales offices by Declarant or its assigns during the construction and sale periods.
- B. The maintenance of offices by the Association or its designated manager for purposes of management of the Property.
- C. Lease, rental or use of a Living Unit for purposes consistent with this Section.
- D. The use of a Lot by an Owner for incidental office purposes to the extent permitted by applicable zoning ordinances.

**Section 2.** Common Area Restrictions. No industry, business, trade, occupation or profession of any kind shall be conducted, maintained or permitted on any part of the Common Area, nor shall any "for sale," "for rent," "for lease," "lease-option," or similar signs or any window display advertising be maintained or permitted on any part thereof, except that Declarant and its assigns reserves the right for itself or its agents to maintain model Living Units, business and sales offices, storage areas and construction offices on the Common Area during the construction and sales period until the last Lot existing as part of the Property on the Applicable Date is conveyed, and to place "for sale," "for rent," "for lease," "lease-option," or any other similar signs on any part of the Common Area and to use any part of the Common Area for sale or display purposes during such period. No Living Unit or garage shall be constructed on the Common Area, other than garages constructed on Garage Spaces.

**Section 3.** Obstructions. There shall be no obstruction of the Common Area, nor shall anything be kept or stored on any part of the Common Area without the prior written consent of the Declarant or Association, except construction materials and equipment during the construction period or except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from the Common Area except upon the prior written consent of the Association.

**Section 4.** Prohibition of Damage and Certain Activities. Nothing shall be done or kept on any Lot or in any Living Unit or on or in any Common Area or any part thereof which would increase the rate of insurance on the Property or any part thereof over what the Association, but for such activity, would pay, without the prior written consent of the

Association. Nothing shall be done or kept on any Lot or in any Living Unit or on or in any Common Area or any part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Area or any part thereof or of the exterior of the Property and buildings thereon shall be committed by any Owner or any invitee or tenant of any Owner and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him or his invites or tenants, to the Association and other Owners. No noxious, destructive or offensive activity shall be allowed on any Lots or in the Common Area or any part thereof, nor shall anything be done thereon which may be or may become a nuisance to any other Owner or to any other person at any time lawfully residing on the Property; provided, however, that no act, conduct, activity or operation which Declarant is authorized or permitted to do hereunder shall ever be deemed to be noxious, destructive, offensive nor a nuisance for purposes of this Section 4.

**Section 5.** Fences, Walls and Patios. No Owner shall erect, relocate, heighten, lower or otherwise move or change any fence, wall or patio upon the Property, except as provided in Article VI hereinabove.

**Section 6.** No Unsightly Uses. No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out on any portion of the Common Area, or on a Lot so as to be visible from outside the Lot. The Common Area shall be kept free and clear of all trash, food, food waste, garbage, rubbish, debris and other unsightly materials.

**Section 7.** Animals. No animals, rabbits, livestock, fowl or poultry of any kind shall be raised, bred or kept in or on any Lot or on the Common Area or any part thereof, except that household pets of mature size of not more than 18 inches in height may be kept on Lots, subject to rules and regulations adopted by the Board provided that they are not kept, bred, or maintained for any commercial purposes; provided, further, that any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property subject to these restrictions upon three days written notice from the Board, and provided further, that upon written request of 25% of the voting members of the Association, the Board of Directors shall have the authority to, and shall order the removal of any pet.

**Section 8.** Prohibited Structures. No structure of a temporary character, trailer, boat, camper-bus, basketball hoops, basement, tent, or shack shall be maintained on any Lot nor shall any garage or other building except a permanent residence, be used on any Lot at any time as a residence or sleeping quarters, either temporarily or permanently.

**Section 9.** Storage. Outside storage of any items, including but without limiting the generality of the foregoing, sporting equipment, toys, outdoor cooking equipment, yard and garden tools and equipment and trash and garbage containers, shall not be allowed unless screened from view by enclosures so as to be effectively screened from view outside the Lot. The design of such screened enclosure must be approved by the Association in accordance with the architectural control provisions hereof. The storage or collection of garbage, trash, food, food waste, compost, or rubbish of any character whatsoever, any material that emits foul or obnoxious odors, the growing of any noxious or illegal weed or other natural substance, and the

harboring of the source of any noise or activity which disturbs the peace, comfort or serenity of residents is prohibited. Usual household trash and garbage shall be regularly collected and may be kept outside only if in sanitary containers which are so screened. Notwithstanding the foregoing, no boats, snowmobiles, recreational vehicles, trailers, camping vehicles, buses, mobile homes, tractor/trailers, trucks, motorcycles, mini bikes, mopeds, unlicensed or inoperable vehicles, or any other vehicles of any description other than normal passenger automobiles shall at any time be stored or parked on any Lot outside of a garage, or on any part of the Common Area, either permanently or temporarily, other than (A) within an enclosed garage constructed on a Garage Space, or (B) such portions, if any, of the Common Area as maybe designated by the Association for such purposes.

**Section 10. Signs.** No sign of any kind (other than designations, in such styles and materials as the Association shall by rule or regulation approve, of street addresses and names of occupants) shall be displayed to the public view on any Lot, except that a "For Sale" sign may be displayed on the Property itself that it is in such form as the Board may require, and except that (i) the Declarant and its assigns shall be permitted to erect and maintain upon the Property such signs as it deems appropriate to advertise and/or identify the development during the construction and sale periods and (ii) the Declarant shall be permitted to install and the Association shall thereafter maintain a permanent monument sign or signs identifying Ladywood Gardens.

**Section 11. Antennae.** Except with prior written approval and the authorization of the Board, no exterior television or radio antennae of any sort shall be placed, allowed or maintained upon any portion of the improvements or structures to be located upon the Property.

**Section 12. Rental** Any lease between an Owner and a lessee shall provide that the terms of the lease shall be subject in all respects to the provisions of this Amended Declaration and the Articles of Incorporation and By-Laws of the Association, as amended, and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. Owners shall be liable for breaches and defaults hereunder by their tenants, guests and invitees. All leases shall be in writing. No Living Unit, garage, Lot or Garage Space may be leased for a period of less than 30 days. A garage or Garage Space may only be leased with and as an appurtenance to a Living Unit. Other than the foregoing, there shall be no restrictions on the right of any Owner to lease his Living Unit.

**Section 13. Rules and Regulations.** The Board may adopt, and may amend, modify, rescind and cancel, such other rules and regulations from time to time governing the use and enjoyment of the Common Area as the Board in its sole discretion deems appropriate or necessary.

**Section 14. Temporary Structures and Outbuildings.** No structure of a temporary character, tent, shack, basement, garage, barn, storage device or other out-building shall be erected, placed, or altered upon any Lot for use as a residence either temporarily or permanently, or at any time be used for such purpose.

**Section 15. Motor Vehicle Repair.** The repair of inoperative motor vehicles or

material alteration of motor vehicles shall not be permitted on any Lot unless entirely within a garage permitted to be constructed per the terms of the Amended Declaration.

**Section 16.** Semi-Tractor Trucks, Trailers, Etc. No semi-tractor trucks, semi-trucks, semi-tractor trailers, boats, campers, mobile homes, disabled vehicles, and/or trailers shall be permitted to park on the Property or a Lot unless fully enclosed in a garage, or unless the same is necessary and incident to the Declarant's, Declarant's assignee's or Association's business on the Property.

ARTICLE XI  
RIGHTS' FOR THE PROTECTION OF FIRST MORTGAGEES

**Section 1.** Precedence. The provisions of this Article take precedence over any other conflicting provisions of this Amended Declaration.

**Section 2.** Notice of Action. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor of a First Mortgage on a Lot or Living Unit and the address thereof (a holder of a First Mortgage on a Lot or Living Unit who has so requested such notice shall be referred to herein as an "eligible mortgage holder" and an insurer or governmental guarantor of a First Mortgage on a Lot or Living Unit who has so requested such notice shall be referred to herein as an "eligible insurer or guarantor"), any such eligible mortgage holder or eligible insurer or guarantor will be entitled to timely written notice of:

- A. Any condemnation loss or any casualty loss which affects a material portion of the project or any Lot or Living Unit on which there is a First Mortgage held, insured, or guaranteed by such eligible mortgage holder or eligible insurer or guarantor, as applicable;
- B. Any delinquency in the payment of assessments or charges owed, or any other default in the performance of any obligation under the Amended Declaration, By-Laws or Articles of Incorporation by an Owner of a Lot or Living Unit subject to a First Mortgage held, insured, or guaranteed by such holder or insurer or guarantor, which remains uncured for a period of 60 days;
- C. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- D. Any proposed action which would require the consent of a specified percentage of mortgage holders as specified in this Article XI;
- E. Any default in the performance by the Owner of any obligation under the Amended Declaration or By-Laws which is not cured within sixty (60) days.

**Section 3.** Termination & Reallocation. Any election to terminate the legal status of the project after substantial destruction or a substantial taking in condemnation of the project

property must have the written approval of eligible holders holding first mortgages on Lots which have at least 51% of the votes of Lots subject to eligible first mortgage holders. No reallocation of interests in the Common Area or the Association resulting from a partial condemnation or partial destruction of the project may be effected without the prior written approval of eligible holders holding first mortgages on all remaining Lots whether existing in whole or in part, and which have at least 51% of the votes of such remaining Lots subject to eligible first mortgage holders.

**Section 4.** No Right of First Refusal. The right of an Owner to sell, transfer, or otherwise convey his Lot or Living Unit will not be subject to any right of first refusal or any similar restriction in favor of the Association or other Owners.

**Section 5.** Amendment. During the first-twenty (20) years following its recordation, this Amended Declaration may be amended or modified at any time by an instrument recorded in the Office of the Recorder of Marion County, Indiana, approved and signed by at least ninety percent (90%) of the then Owners, and thereafter by an instrument signed by at least seventy-five percent (75%) of the then Owners. Provided, however, that none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. Except as prohibited below, this Amended Declaration may also be amended by Declarant, if it then has any ownership interest in the Property, at any time within four (4) years after the recordation hereof. Any amendment must be recorded. Neither the Association, the Owners nor Declarant shall effect any of the following changes without the prior written approval of two-thirds (2/3) of the Owners of Lots (excluding Declarant or Declarant's any assignee-builder):

- A. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area owned directly or indirectly by the Association for the benefit of the Owners of the Living Units. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area owned by the Association by the Living Unit Owners is not a transfer in the meaning of this clause;
- B. Change the method of determining the obligations, assessments, dues or other charges that may be levied per the terms hereof;
- C. By act or omission change, waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Dwelling Units, the exterior maintenance of Living Units, the maintenance of the Common Area owned by the Association, party walls, common fences and driveways, and the upkeep of lawns and plantings in the Property;
- D. Fail to maintain fire and extended coverage on insurable Common Area owned by the Association on a current replacement cost basis in an amount at least 100 percent of the insurable value (based on current replacement costs);
- E. Use hazard insurance proceeds for losses to any Common Area owned by the

Association for other than the repair, replacement, or reconstruction of the Common Area owned by the Association;

- F. Change the voting rights, assessments, assessment liens or subordination of assessment liens, except as provided for in this Amended Declaration;
- G. Change the manner in which reserves for maintenance, repair and replacement of Common Areas have been set up and previously maintained by the Association;
- H. Change the rights to the use of the Common Area owned by the Association, except as provided for in this Amended Declaration;
- I. Any change concerning convertibility of Living Units into Common Area owned by the Association or vice versa, except as provided for in this Amended Declaration;
- J. Any change in requirements for insurance or fidelity bonds set forth in this Amended Declaration;
- K. Any termination of legal status of the development for reasons other than substantial destruction or condemnation of the Property;
- L. Any imposition of any restriction on a Living Unit Owner's right to sell or transfer his or her Living Unit;
- M. Restoration and repair of the Common Area (after a hazard damage or partial condemnation) in a manner other than specified in the Amended Declaration;
- N. Any action to terminate the legal status of the development after substantial destruction or condemnation occurs; or
- O. Any provision that expressly benefits mortgage holders, insurers or guarantors.

The covenants, restrictions and all other provisions of this Amended Declaration shall run with the land and shall be binding upon the persons owning any portion of the Property and all parties claiming under them for a period of twenty (20) years from the date of recordation, and thereafter shall automatically extend for successive periods often (10) years each unless prior to the expiration of such ten-year period this Amended Declaration is amended or changed in whole or in part as hereinabove provided.

**Section 6.** FHA/VA Approval. As long as there is a Class B Membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration, as applicable:

- A. The annexation to the Property of additional property; provided, however, that such approval is not and shall not be required for annexation to the Property of

all or any portion of the Supplemental Real Estate;

- B. Dedication to the public or to or for any public use or purpose of any part of the Common Area; provided, however, that such approval is not and shall not be required for the granting of easements to utility companies, public or private, for the installation, maintenance, repair, replacement and servicing of equipment and facilities necessary to provide all utility services to the Property; and
- C. Amendment of this Amended Declaration; provided however, that such approval is not and shall not be required for any amendment or supplement to this Amended Declaration made by Declarant for the purpose of exercising its reserved right to expand the Property with the limits, and in accordance with the procedures, contained in this Amended Declaration.

**Section 7. Declarant's Joinder.** In addition to the other requirements for amendment of this Amended Declaration and the By-Laws contained herein, the written joinder and consent of the Declarant shall be required for any amendment of either this Amended Declaration or the By-Laws until the conveyance by Declarant of the last Lot existing as part of the Property and any Common Area, on the Applicable Date to an Owner other than Declarant. This right may be waived at any time by recording a written waiver executed and acknowledged by Declarant.

**Section 8. Examination of Books and Records.** First Mortgagees and holders, insurers and guarantors of First Mortgages shall have the right to examine the books and records of the Association, as set forth more fully in the By-Laws.

**Section 9. Payment of Taxes and Insurance.** First Mortgagees may jointly or singly pay taxes or other charges which are in default and which may or have become a charge against any Common Area or other common property and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Area or other common property, and First mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

**Section 10. Designation of Representative.** Any holder of a First Mortgage on a Lot or Living Unit may designate a representative to attend meetings of members.

**Section 11. Distribution of Insurance Proceeds and Condemnation Awards.** No provision of this Amended Declaration or the By-Laws shall be construed as giving to the Owner or to any other party priority over any rights of First Mortgagees of Lots pursuant to their First Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Common Area or other common property.

## ARTICLE XII INSURANCE

**Section 1. Maintenance of Insurance.** Commencing not later than the time of the first

conveyance of a Lot to an owner other than Declarant, the Association shall maintain, to the extent reasonably available, the following insurance:

- A. Master or blanket type policy of fire insurance with extended coverage endorsement (including vandalism, sprinkler leakage (if appropriate), debris removal, cost of demolition, malicious mischief, windstorm and water damage) insuring the Living Units and garages located on each Lot or Garage Space, and the Common Area (including all of the fixtures installed therein as of the date thereof, and specifically including, without limiting the generality of the foregoing, interior walls, interior doors, built-in cabinets and counters and electrical and plumbing conduits, pipes and fixtures initially installed by the Declarant, and any fixtures, equipment or other property within a Living Unit or garage which are to be financed by a First Mortgagee, and including also common personal property, supplies, building service equipment, but not including carpeting, drapes, wall coverings, fixtures, furniture, furnishings, or other personal property supplied or installed by Owners or tenants and also not including land, foundations, excavation and other items normally excluded from coverage) and covering the interests of the Association, the Board of Directors and all Owners and their mortgagees, as their interests may appear, for full insurable replacement cost, as determined annually by the Board of Directors. If permitted by the insurance company writing the policy, improvements and betterments not part of the Living Unit and garage as originally constructed may, at the direction and sole cost and expense of the Owner of the subject Lot, be issued under a rider to the master policy, that part of the premium allocable to such improvements and betterments being chargeable against the specific Lot to which it applies. Said policy shall afford, as a minimum, protection against the following:

1. loss or damage by fire and other perils normally covered by the standard extended coverage endorsement;
2. all other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available. The name of the insured under such policies must be set forth therein substantially as follows: "Ladywood Gardens Co-Owners Association, Inc. for the use and benefit of the Individual Owners." The policies may also be issued in the name of an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such trustee, for the use and benefit of the individual Owners. Loss payable shall be in favor of the Association (or Insurance Trustee), as a trustee for each Owner and each such Owner's First Mortgagee, Each Owner and each such Owner's First Mortgagee, if any, shall be beneficiaries of the policy with respect to the Common Area equally with each other Lot, and with respect to each Living Unit and

garage, in proportion to the insurable value of such Living Unit or garage compared to the aggregate insurable value of all Living Units and garages. Evidence of insurance shall be issued to each Owner and First Mortgagee upon request. Policies must provide for the recognition of any Insurance Trust Agreement.

- B. If reasonably available, such policies shall include:
1. Agreed Amount Endorsement (or like endorsement);
  2. Inflation Guard Endorsement
  3. Construction Code Endorsements (such as a Demolition Cost Endorsement, a Contingent Liability from Operation of Building Laws Endorsement and an Increased Cost of Construction Endorsement) if the project is subject to a construction code provision which would become operative and require changes to undamaged portions of the improvements, thereby imposing significant costs in the event of partial destruction of the project by an insured peril; and
  4. Steam Boiler Coverage (if applicable) for loss or damage resulting from steam boiler equipment accidents in an amount not less than \$50,000 per accident per location.
  5. Miscellaneous All such Policies must provide for the following: recognition of any Insurance Trust Agreement, a waiver of the right of subrogation against owners individually; That the insurance is not prejudiced by any act or neglect of individual Owners which is not in the control of such Owners collectively; and that the policy is primary in the event the Owner has other insurance covering the same loss.
- C. Workmen's compensation, occupational disease and like insurance (if the Association has eligible employees);
- D. Comprehensive public liability insurance in such amounts and with such coverage as the Board of Directors shall from time to time determine, but at least:
1. Covering events occurring anywhere on the Common Area (and public ways; if any) or arising out of or in connection with the use, ownership or maintenance of the Common Area;
  2. Covering without limitation, legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Area, and legal liability arising out of lawsuits related to employment contracts of the Association,

and such other coverages as are customarily covered with respect to projects similar in construction, location, and use;

3. Insuring each officer and member of the Board of Directors, the managing agent and each Owner and with cross liability endorsement to cover liabilities of the Owners as a group to an Owner and with a "Severability of Interest Endorsement" which would preclude the insurer from denying the claim of an Owner for the negligent act of another Owner, occupant or the Association; and
  4. In amounts generally required by private institutional mortgage investors for projects similar in construction, location and use; provided, however, that such coverage shall be for at least \$1,000,000.00 for bodily injury, including deaths of persons and property damage arising out of a single occurrence.
- E. Such other insurance as the Board of Directors may determine.
- F. All such policies, must provide that they may not be canceled or substantially modified by any party without at least 10 days' prior written notice to the Association and to each holder of a First Mortgage which is listed as a scheduled holder of a First Mortgage in the insurance policy.

**Section 2.** Owners' Individual Policies. Each Owner should carry, and shall be responsible for carrying, insurance for his own benefit insuring his personal liability, and his carpeting, wall covering, fixtures, furniture, furnishings, and other personal property, and fixtures and other property supplied or installed by him or a previous Owner or tenant, provided that all such policies must, if obtained, contain waivers of subrogation and further provided that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any such additional insurance carried by any Owner.

**Section 3.** Additional Coverages. In addition and supplement to the foregoing powers, and not in limitation thereof, the Board of Directors shall have the authority at all times without action by the Owners to obtain and maintain all coverages and endorsements required by any First Mortgagee, for the acceptance of mortgages on Living Units, garages of Lots, as such requirements area amended from time to time.

**Section 4.** Insurance Trustee. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance.

Each Owner, by acceptance of a deed to his, her or its Lot, hereby appoints the

Association, or any Insurance Trustee or substitute Insurance Trustee designated by the Association, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association or any Insurance Trustee is hereby required to receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for Owners and their First Mortgage holders, as their interests may appear, and to apply and administer the same as follows:

- A. All insurance proceeds paid to Association or Trustee (hereinafter sometimes referred to merely as "Trustee") shall be deposited in escrow with a title insurance company or other depository acceptable to the Trustee and a majority of First Mortgagees of record.
- B. The Owner of the Living Unit or garage with respect to which the insured loss occurred shall, within thirty (30) days after insurance proceeds are deposited in accordance with paragraph (A) above, enter into a firm contract with a qualified builder providing for the reconstruction or remodeling of the Living Unit or garage, to substantially the same condition as existed immediately prior to the insured loss; provided, however, that no contract shall be entered into by the Owner for an amount in excess of the insurance proceeds then held by the Trustee for said Living Unit or garage, until additional funds are deposited by the Owner sufficient to cover all construction costs as determined by the Trustee and First Mortgagee. Said reconstruction or remodeling shall be commenced and completed with due diligence and in no event shall said work be completed later than 180 days after said insurance proceeds are deposited in escrow as aforesaid. The Association and First Mortgagees of record of the Living Units or garages affected and the Lots underlying the same shall have the right, but not the obligation, to deposit such additional funds in excess of insurance proceeds as may be required to permit construction as herein provided and any such advances shall be a lien upon the Lot or Lots subordinated, however, to the interests of First Mortgagees of record.
- C. In the event the Owner fails to enter into a contract as provided in subparagraph (B) above, or in the event that reconstruction or remodeling is not commenced or completed as provided above, then the Trustee or the First Mortgagee of record, with the consent of the Trustee, shall have the right, but not the obligation, to enter into those contracts which it deems necessary to complete said reconstruction or remodeling of the Living Unit or garage, and the Trustee or First Mortgagee shall have the right to have said insurance proceeds applied in satisfaction of any obligation incurred pursuant to said contracts, without liability of any kind to the Owner, including, but not limited to, interest on said insurance proceeds. The Trustee may employ any bonded party or parties as its agents in exercising those functions given to it in this Section 4. The Trustee shall be empowered to pay said agent a reasonable fee for the services rendered by said agent and to collect said charge from the Owner or Owners, as the case may be,

and in the same manner as that which is provided herein for the collection of an insurance premium paid by the Association.

- D. Disbursement of funds on deposit pursuant to subparagraph (A) above, for contracts for reconstruction or remodeling entered into under subparagraphs (B) and (C) above, shall be made by a title insurance company or other agent (“Agent”) selected by Trustee and the affected First Mortgagees of record, subject to the following:
1. Article VI of these covenants entitled “Architectural Controls” shall apply to all said reconstruction or remodeling.
  2. Receipt by Agent of such sworn construction statements, lists of subcontractors, lien waivers and receipts as it shall determine to be appropriate. Disbursements may be by periodic or progress payments, and Agent may make such inspections and withhold such payments as it deems necessary to insure completion in compliance with plans and specifications. Agent shall be entitled to a reasonable fee for the services rendered by it, and the Trustee may collect such fee from the Owner or Owners, as the case may be, and in the same manner as that which is provided herein for the collection of insurance premiums paid by the Association.
  3. In the event a contract is entered into pursuant to subparagraph (B) hereinabove, the written consent of the Owner to said payment or payments.
- E. In the event that a remodeling or reconstruction contract is, for any reason, not entered into pursuant to the provisions of subparagraphs (B) and (C) hereinabove, within 10 days after deposit of insurance proceeds in escrow for a damaged or destroyed Living Unit or garage, as herein provided, or in the event there are excess funds after reconstruction or remodeling, the proceeds or excess, as the case May be, shall be disbursed to each Owner and Mortgagee of record of the affected Lot as their interests appear.
- F. In the event the Owner whose property is damaged fails to make satisfactory arrangements for the repair and reconstruction of the damaged property and, in the event the Trustee decides to repair and reconstruct the damaged property and it is determined by it that the insurance proceeds are not sufficient for all costs and expenses associated therewith, the Association or the First Mortgagee may deposit, arrange for and disburse funds over and above the insurance proceeds to complete the repair and reconstruction and to pay the costs associated and related therewith. Upon completion of the work, the Board of Directors may levy a Special-Charge Assessment against the Owner, which Special-Charge Assessment shall be a lien against the Lot having the effect of a special assessment lien under Article V hereof but superior to all other annual and

special assessments, and which lien may be enforced in the same manner as provided herein for other assessment liens. The Special-Charge Assessment shall be in the amount expended by the Trustee over and above the insurance proceeds received by the Trustee to repair and reconstruct the Owner's premises, including necessary costs, expenses and fees associated with the work.

- G. Betterments or improvements made subsequent to the date of initial conveyance of a Lot by Declarant to an Owner other than Declarant by any Owner to his Lot shall be the responsibility of the Owner to insure separately (or by rider as above provided) if he desires the same insured. If the Trustee or First Mortgagee undertakes the reconstruction or remodeling of a Living Unit or garage as above provided, the same need be restored only to substantially the same condition as the Living Unit or garage was as of the completion of original construction thereof

**Section 5. Insurance Premiums.** Insurance premiums for any blanket property insurance coverage and the other insurance coverages purchased by the Association, shall be common expenses to be paid by assessments levied by the Association, and such assessments shall be held in a separate escrow account of the Association and used solely for the payment of the blanket property insurance premiums and other insurance premiums as such premiums become due.

### ARTICLE XIII EMINENT DOMAIN

**Section 1.** The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Area, or part thereof, and by acceptance of a deed for his, her or its unit, each Owner appoints the Association as attorney-in-fact for such purposes. In the event of a taking or acquisition of part or all of the Common Area by a condemning authority, the award or proceeds of settlement shall be payable to the Association, or other trustee (such as a bank or title insurance company appointed as such by the Association), for the use and benefit of the Owners and their Mortgagees as their interests may appear.

**Section 2. Reconstruction.** In the event of a partial taking of the Common Area (or conveyance in lieu thereof) the Association shall promptly cause the remaining portions of the Common Area to be restored functionally and aesthetically to reasonably the same condition as before the taking, using so much of the proceeds of such taking for such purpose as shall be reasonably necessary. In the event of a total taking of the Common Area (or conveyance in lieu thereof), and the project is terminated by the election hereinabove required, the proceeds shall be allocated equally among each Lot, payable jointly to the Owners and mortgage holders thereof.

ARTICLE XIV  
GENERAL PROVISIONS

**Section 1.** Enforcement. Enforcement of these covenants and restrictions and of the provisions contained in the Articles and By-Laws may be by any proceeding at law or in equity instituted by the Association or by any Owner against any person (including the Association) violating or attempting to violate any covenant or restriction, either to restrain violation, to compel compliance, or to recover damages, and against the land, to enforce any lien created by these covenants; and failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Attorneys' fees and costs of any such actions to restrain violation or to recover damages as determined by the Court shall be assessable against and payable by any persons violating the terms contained herein.

**Section 2.** Mergers. Upon a merger or consolidation of the Association with another corporation as provided in its Articles and By-Laws, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or corporation, or, alternatively, the properties, rights and obligations of another corporation may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall affect any revocation, change or additions to the covenants established by this Amended Declaration within the Property, except as hereinabove provided.

**Section 3.** Access. For the purpose solely of performing the repairs and maintenance authorized by this Amended Declaration, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner (except in an emergency), to enter upon any Lot and Living Unit.

**Section 4.** Emergency Access. For the purpose of performing emergency Repairs under this Amended Declaration, or of taking emergency action to seal a Living Unit from weather or otherwise to prevent damage or destruction to any Lot or Living Unit, the Association through its duly authorized agents or employees, shall have the right to enter upon any Lot or Living Unit at any time, without notice, with such persons and material as the Association deems necessary, to accomplish such emergency repairs or to take such emergency action.

**Section 5.** Severability. Invalidation of any one of these covenants or restrictions by legislation, judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

**Section 6.** Notices. Any notice required to be sent to any member of the Association under the provisions of this Amended Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of such member appearing on the records of the Association at the time of such mailing.

**Section 7. Captions.** The Article and Sections headings herein are intended for convenience of reference only and shall not be given any substantive effect.

**Section 8. Construction.** In the event of an apparent conflict between this Amended Declaration and the By-Laws, the provisions of this Amended Declaration shall govern.

IN WITNESS HEREOF, Oakfield Development, II, LLC, an Indiana limited liability company, has caused this Amended Declaration to be executed as of the date first written above.

Oakfield Development, II, LLC

By: [Signature]  
Ryan G. Thomas, Manager

Non-Disclosure of Social Security Data

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

By: [Signature]  
Matthew A. Griffith, Esq.

MARTHA A. WOMACKS  
MARION COUNTY AUDITOR  
552484 SEP 28 06  
DUTY ENTERED FOR TAXATION  
SUBJECT TO FINAL ACCEPTANCE  
FOR TRANSFER

STATE OF INDIANA        )  
                                  )SS:  
COUNTY OF MARION     )

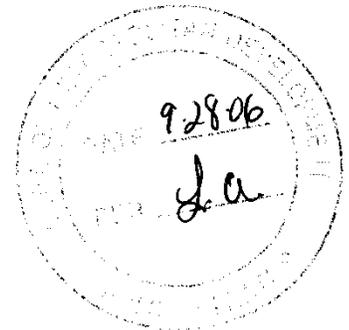
Before me the undersigned, a Notary Public in and for said County and State, personally appeared Ryan G. Thomas, as Manager of Declarant, Oakfield Development, II, LLC, an Indiana limited liability company, and having been duly sworn acknowledged execution of this Amended And Restated Amended Declaration of Covenants of Ladywood Gardens.

Witness my hand and Notarial Seal this 7th day of September, 2006.

Signature: [Signature]  
Printed: MICHAEL SCHUPAY

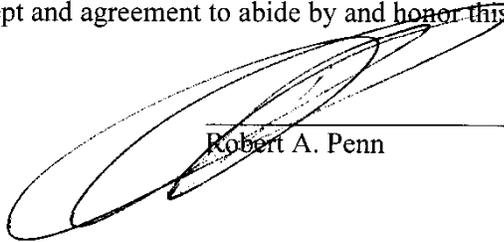


My Commission Expires: 5/4/08  
Residing in MARION County



**CONSENT AND AGREEMENT**

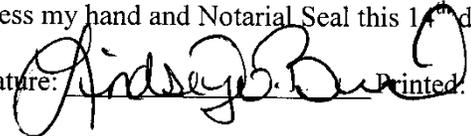
Robert A. Penn and Tyrone Roberts, being all the Owners of Living Units in Ladywood Gardens and the only Current Owners, and Augusta Group, LLC being the builder of the homes in Ladywood Gardens, all being fully advised in the premises and agreeing that the adoption of this Amended Declaration and the conversion of Ladywood Gardens from a condominium neighborhood to a planned urban development is in the best interest of all parties, hereby consent, accept and agreement to abide by and honor this Amended Declaration.

  
\_\_\_\_\_  
Robert A. Penn

STATE OF INDIANA        )  
  )SS:  
COUNTY OF MARION     )

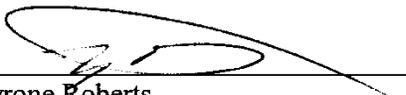
Before me the undersigned, a Notary Public in and for said County and State, personally appeared Robert A. Penn, having been duly sworn acknowledged execution of this Amended And Restated Amended Declaration of Covenants of Ladywood Gardens.

Witness my hand and Notarial Seal this 14<sup>th</sup> day of September, 2006.

Signature:  Printed: Lindsey N. Brennan  
\_\_\_\_\_

My Commission Expires: 06/01/2014

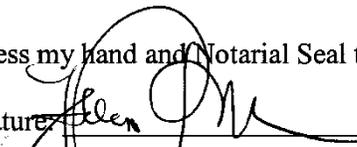
Residing in Marion County

  
\_\_\_\_\_  
Tyrone Roberts

STATE OF HAWAII            )  
  )    SS:  
CITY & COUNTY OF HONOLULU)

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Tyrone Roberts, having been duly sworn acknowledged execution of this Amended And Restated Amended Declaration of Covenants of Ladywood Gardens.

Witness my hand and Notarial Seal this 8<sup>th</sup> day of August, 2006.

Signature:  Printed: Helen Ramos

My Commission Expires: July 16, 2008

Residing in Honolulu County

AUGUSTA HOMES, LLC

By: *Denny Yovanovich*  
Denny Yovanovich, Manager/President

STATE OF INDIANA        )  
                                  )SS:  
COUNTY OF MARION     )

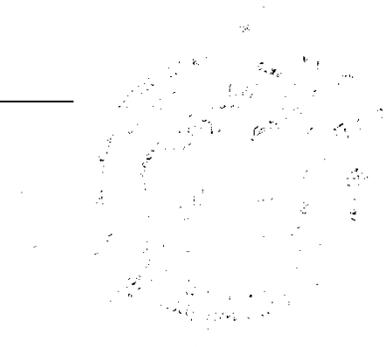
Before me the undersigned, a Notary Public in and for said County and State, personally appeared Denny Yovanovich, as Manager and President of Augusta Homes, LLC, an Indiana limited liability company, and having been duly sworn acknowledged execution of this Amended And Restated Amended Declaration of Covenants of Ladywood Gardens.

Witness my hand and Notarial Seal this 7<sup>th</sup> day of September, 2006.

Signature: *Susan Hayes* Printed: SUSAN HAYES

My Commission Expires: 02/22/12

Residing in HENDRICKS County



**Exhibits:**

A     Legal Description

Prepared by & return to: *X*  
Matthew A. Griffith, Esq.  
THRASHER BUSCHMANN GRIFFITH & VOELKEL, P.C.  
151 N. Delaware St., Suite 1900  
Indianapolis IN 46204  
(317) 686-4773

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# Exhibit A

## MULTI-FAMILY HORIZONTAL PROPERTY REGIME BOUNDARY

A PART OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 16 NORTH, RANGE 4 EAST, SECOND PRINCIPAL MERIDIAN, WASHINGTON TOWNSHIP, MARION COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID QUARTER SECTION, THENCE SOUTH 89 DEGREES 23 MINUTES 54 SECONDS WEST (ASSUMED BEARING) 197.87 FEET ALONG THE SOUTH LINE OF SAID QUARTER SECTION TO A RAILROAD SPIKE AT THE SOUTHWEST CORNER OF THE 9.836-ACRE TRACT OF LAND DESCRIBED IN INSTRUMENT NUMBER 2002-020078169 IN THE OFFICE OF THE RECORDER OF SAID MARION COUNTY; THE FOLLOWING FIVE (5) COURSES ARE ALONG THE SOUTHWESTERN LINE OF SAID 9.836-ACRE TRACT: THENCE (1) NORTH 53 DEGREES 48 MINUTES 05 SECONDS WEST 110.30 FEET TO A RAILROAD SPIKE; THENCE (2) NORTH 30 DEGREES 51 MINUTES 05 SECONDS WEST 190.75 FEET TO A RAILROAD SPIKE; THENCE (3) NORTH 32 DEGREES 35 MINUTES 06 SECONDS WEST 194.55 FEET TO A RAILROAD SPIKE; THENCE (4) NORTH 47 DEGREES 34 MINUTES 06 SECONDS WEST 328.15 FEET TO A RAILROAD SPIKE; THENCE (5) NORTH 00 DEGREES 03 MINUTES 56 SECONDS EAST 23.35 FEET ALONG SAID EAST LINE TO A RAILROAD SPIKE AND THE POINT OF BEGINNING OF THIS DESCRIPTION, WHICH POINT IS THE SOUTHEAST CORNER OF THE 3.00-ACRE TRACT OF LAND DESCRIBED IN INSTRUMENT NUMBER 2004-0198119 IN SAID RECORDER'S OFFICE, THENCE NORTH 40 DEGREES 16 MINUTES 56 SECONDS WEST 55.11 FEET, THENCE NORTH 23 DEGREES 23 MINUTES 50 SECONDS WEST 30.89 FEET, THENCE NORTHWESTERLY 49.63 FEET ALONG AN ARC TO THE LEFT AND HAVING A RADIUS OF 161.98 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF NORTH 32 DEGREES 10 MINUTES 27 SECONDS WEST AND A LENGTH OF 49.44 FEET, THENCE NORTH 40 DEGREES 57 MINUTES 00 SECONDS WEST 169.87 FEET, THENCE NORTHWESTERLY 14.47 FEET ALONG AN ARC TO THE RIGHT AND HAVING A RADIUS OF 38.00 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF NORTH 30 DEGREES 02 MINUTES 19 SECONDS WEST AND A LENGTH OF 14.39 FEET, THENCE NORTH 48 DEGREES 44 MINUTES 40 SECONDS EAST 236.35 FEET; THENCE NORTHWESTERLY 17.80 FEET ALONG AN ARC TO THE RIGHT AND HAVING A RADIUS OF 266.56 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF NORTH 60 DEGREES 54 MINUTES 43 SECONDS EAST AND A LENGTH OF 17.80 FEET TO SAID EAST LINE OF THE WEST HALF; THENCE SOUTH 00 DEGREES 03 MINUTES 56 SECONDS WEST 11.31 FEET ALONG SAID EAST LINE TO THE SOUTHERN BOUNDARY OF MILLERSVILLE ROAD PER PLANS FOR PROJECT U.S.-467(1), DATED 1960, THENCE ALONG SAID BOUNDARY NORTHEASTERLY 186.98 FEET ALONG AN ARC TO THE RIGHT AND HAVING A RADIUS OF 256.56 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF NORTH 82 DEGREES 32 MINUTES 50 SECONDS EAST AND A LENGTH OF 182.87 FEET, THENCE SOUTH 69 DEGREES 50 MINUTES 17 SECONDS EAST 97.26 FEET ALONG SAID BOUNDARY; THENCE SOUTH 33 DEGREES 17 MINUTES 40 SECONDS EAST 110.78 FEET ALONG SAID BOUNDARY TO THE SOUTHWESTERN BOUNDARY OF EMERSON AVENUE PER SAID PROJECT, THENCE ALONG SAID BOUNDARY SOUTHEASTERLY 334.68 FEET ALONG AN ARC TO THE LEFT AND HAVING A RADIUS OF 711.62 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF SOUTH 29 DEGREES 42 MINUTES 25 SECONDS EAST AND A LENGTH OF 331.61 FEET TO THE NORTHWESTERN LINE OF REAL ESTATE KNOWN AS LADYWOOD ESTATES HORIZONTAL PROPERTY REGIME RECORDED AS INSTRUMENT NUMBER 2002-020078169, THE FOLLOWING SIX COURSES BEING ALONG SAID NORTHWESTERN LINE: THENCE (1) SOUTH 51 DEGREES 44 MINUTES 25 SECONDS WEST 76.13 FEET; THENCE (2) SOUTH 31 DEGREES 56 MINUTES 25 SECONDS WEST 57.65 FEET; THENCE (3) SOUTH 63 DEGREES 55 MINUTES 10 SECONDS WEST 46.65 FEET; THENCE (4) SOUTH 46 DEGREES 51 MINUTES 55 SECONDS WEST 39.35 FEET; THENCE (5) NORTH 61 DEGREES 58 MINUTES 10 SECONDS WEST 291.57 FEET; THENCE (6) NORTH 48 DEGREES 37 MINUTES 18 SECONDS WEST 99.42 FEET TO SAID EAST LINE OF THE WEST HALF OF THE NORTHEAST QUARTER; THENCE SOUTH 00 DEGREES 03 MINUTES 56 SECONDS WEST 66.54 FEET ALONG SAID LINE TO THE POINT OF BEGINNING CONTAINING 5.140 ACRES, MORE OR LESS.

### ALSO INCLUDING:

A PART OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 16 NORTH, RANGE 4 EAST, SECOND PRINCIPAL MERIDIAN, WASHINGTON TOWNSHIP, MARION COUNTY, INDIANA, AND BEING A PART OF THE 9.836-ACRE TRACT OF LAND CONVEYED TO LADYWOOD ESTATES HORIZONTAL PROPERTY REGIME, RECORDED IN INSTRUMENT NUMBER 2002-020078169, IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID QUARTER SECTION, THENCE SOUTH 89 DEGREES 23 MINUTES 54 SECONDS WEST (ASSUMED BEARING) 197.87 FEET ALONG THE SOUTH LINE OF SAID QUARTER SECTION TO A RAILROAD SPIKE MARKING THE SOUTHWEST CORNER OF SAID 9.836-ACRE TRACT; THENCE NORTH 53 DEGREES 48 MINUTES 05 SECONDS WEST 110.30 FEET ALONG A SOUTHWESTERN LINE OF SAID 9.836-ACRE TRACT TO A RAILROAD SPIKE; THENCE NORTH 30 DEGREES 51 MINUTES 05 SECONDS WEST 190.75 FEET ALONG A SOUTHWESTERN LINE OF SAID 9.836-ACRE TRACT TO A RAILROAD SPIKE; THENCE NORTH 32 DEGREES 35 MINUTES 06 SECONDS WEST 194.55 FEET ALONG A SOUTHWESTERN LINE OF SAID 9.836-ACRE TRACT TO A RAILROAD SPIKE MARKING THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE NORTH 47 DEGREES 34 MINUTES 06 SECONDS WEST 328.15 FEET ALONG A SOUTHWESTERN LINE OF SAID 9.836-ACRE TRACT TO A 5/8-INCH REBAR WITH YELLOW CAP MARKING THE WEST LINE OF THE EAST HALF OF SAID QUARTER SECTION, THENCE NORTH 00 DEGREES 03 MINUTES 56 SECONDS EAST 89.89 FEET ALONG SAID WEST LINE TO A MAGNAIL; THENCE SOUTH 48 DEGREES 37 MINUTES 18 SECONDS EAST 99.42 FEET ALONG A NORTHEASTERN LINE OF SAID 9.836-ACRE TRACT TO 5/8-INCH REBAR WITH YELLOW CAP; THENCE SOUTH 61 DEGREES 58 MINUTES 10 SECONDS EAST 291.57 FEET ALONG A NORTHEASTERN LINE OF SAID 9.836-ACRE TRACT TO A 5/8-INCH REBAR WITH YELLOW CAP; THENCE NORTH 46 DEGREES 51 MINUTES 55 SECONDS EAST 39.35 FEET ALONG A NORTHWESTERN LINE OF SAID 9.836-ACRE TRACT TO A 5/8-INCH REBAR WITH YELLOW CAP; THENCE NORTH 63 DEGREES 55 MINUTES 10 SECONDS EAST 46.65 FEET ALONG A NORTHWESTERN LINE OF SAID 9.836-ACRE TRACT TO A 5/8-INCH REBAR WITH YELLOW CAP; THENCE SOUTH 45 DEGREES 49 MINUTES 04 SECONDS WEST 223.79 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.841 ACRES, MORE OR LESS.

SUBJECT TO ALL EASEMENTS, RIGHTS OF WAY, COVENANTS AND RESTRICTIONS OF RECORD.



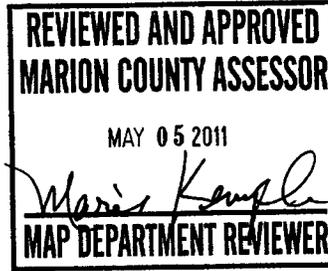
Pages: 59

Fee: \$188.50  
By: JLW

**A201100039464**

May 05, 2011 1:53 PM  
Julie L. Voorhes,  
Marion County Recorder

BILLIE L. OSBANY  
MARION COUNTY ASSESSOR  
068461 MW-5E  
SUBJECT TO FINAL ACCEPTANCE  
FOR TRANSFER



59  
JLW

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
LADYWOOD GARDENS**

**Marion County, Indiana**

**CROSS-REFERENCES: INSTRUMENT NUMBERS 2005-0181860, 2005-0181861, 2005-0204167, 2005-0204168, 2006-0098692, 2006-0149289 AND 2008-55406**

**DEED CROSS-REFERENCES: INSTRUMENT NUMBERS 2008-007744, 2008-0134558, 2009-0044778, 2009-0079203, 2009-0083734, 2009-0094064, 2009-0100589, 2009-0105655, 2009-0105656 AND 201100028993**

2011-39465



**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
LADYWOOD GARDENS**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR LADYWOOD GARDENS (the "**Declaration**") is made to be effective as of April 1, 2011 (the "**Effective Date**") by Salin Bank and Trust Company, an Indiana corporation ("**Declarant**"), and Michael A. Ripley, Margaret Joan McCellan, Michael L. Fortman, Paul R. Debeneditis, Paul F. Debeneditis, Miguel Campos and Michael A. Meredith (collectively, the "**Current Residents**") and is consented to by First Bank of Berne, MainSource Bank and Union Savings Bank (collectively, the "**Current Mortgagees**").

**RECITALS:**

- A. Declarant and the Current Residents are the owners of a certain parcel of real estate located in Marion County, Indiana, which is more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "**Property**").
- B. A residential community is being developed on the Property (the "**Community**").
- C. Certain instruments affecting the Property have been recorded in the Office of the Recorder of Marion County, Indiana, which documents consist of (i) that certain Declaration of Ladywood Gardens Horizontal Property Regime, dated October 28, 2005 and recorded November 3, 2005 as Instrument Number 2005-0181860, (ii) that certain Declaration of Ladywood Gardens Horizontal Property Regime, dated December 13, 2005 and recorded December 13, 2005 as Instrument Number 2005-0204168, (iii) that certain First Amendment to Declaration of Ladywood Gardens Horizontal Property Regime, dated June 28, 2006 and recorded June 28, 2006 as Instrument Number 2006-0098692, (iv) that certain Declaration of Ladywood Gardens Horizontal Property Regime, dated December 13, 2005 and recorded May 20, 2008 as Instrument Number 2008-55406, (v) that certain Amended and Restated Amended Declaration of Covenants of Ladywood Gardens, dated September 7, 2006 and recorded September 28, 2006 as Instrument Number 2006-0149289, (vi) that certain Ladywood Gardens Horizontal Property Regime survey/plat recorded November 3, 2005 as Instrument Number 2005-0181861, and (vii) that certain Ladywood Gardens Horizontal Property Regime survey/plat recorded December 13, 2005 as Instrument Number 2005-0204167 (collectively, the "**Prior Recorded Documents**").
- D. Declarant and the Current Residents desire to terminate the effect of the Prior Recorded Documents, provide for the preservation of the values of the Community and such other areas as may be subjected to this Declaration, and provide for the maintenance of open spaces and other facilities, and, to this end, to subject the Property to this Declaration and all of the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, it being intended that the Prior Recorded Documents shall be of no further force or effect and that this Declaration 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.

- E. Declarant and the Current Residents deem it desirable for the efficient preservation of the values of the Community that Ladywood Gardens Homeowners Association, Inc., an Indiana nonprofit corporation (the "**Association**"), be delegated and assigned the powers of owning, maintaining and administering the common areas and facilities located within the Property, administering and enforcing the covenants and restrictions made in and pursuant to this Declaration with respect to the Property, collecting and disbursing the assessments and charges hereafter created with respect to the Property, and promoting the recreation, health, safety and welfare of the owners of the Property and all parts thereof.
- F. The Current Mortgagees are all of the beneficiaries of mortgages with respect any portion of the Property.
- G. The Current Mortgagees desire to (i) consent to the termination of the Prior Recorded Documents, (ii) consent to this Declaration, and (iii) subordinate their interest in the Property to this Declaration.

NOW, THEREFORE, Declarant and the Current Residents, for and in consideration of the premises and the covenants contained herein, grant, establish and convey to each owner of each Lot (as herein defined), mutual, non-exclusive rights, privileges and easements of enjoyment on equal terms and in common with all other owners of Lots in and to the use of any common areas and facilities; and further, Declarant and the Current Residents declare that the Property shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved, and occupied subject to the provisions, agreements, covenants, conditions, restrictions, reservations, easements, assessments, charges and liens hereinafter set forth, all of 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 Declarant, the Current Residents and their successors in title to the Property or any part or parts thereof.

#### ARTICLE I.

#### DEFINITIONS

Section 1.1. "**Additional Property**" shall mean additional real estate subjected to this Declaration including, but not limited to, additional real estate to be used as Lots or Common Area, pursuant to a Supplemental Declaration (collectively, "**Additional Property**").

Section 1.2. "**Association**" shall mean and refer to the Ladywood Gardens Homeowners Association, Inc., an Indiana nonprofit corporation, and its successors and assigns.

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

Section 1.4. "**Board of Directors**" shall mean the elected body having its normal meaning under Indiana corporate law.

Section 1.5. "**Bylaws**" shall mean and refer to the Bylaws of the Association, as the same may be amended from time to time.

Section 1.6. "**City**" shall mean the City of Indianapolis, Indiana.

Section 1.7. "**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. All of the Property which is not included in any particular Lot, as shown on the Plat or any future Plat of the Property, shall be considered to be a part of the Common Area.

Section 1.8. "**Common Expenses**" shall mean and refer to expenses of administration of the Association and expenses for the upkeep, maintenance, repair and replacement of Common Areas, and all sums lawfully assessed against the Owners by the Association, and all sums, costs and expenses declared by this Declaration to be Common Expenses.

Section 1.9. "**County**" shall mean the County of Marion, Indiana.

Section 1.10. "**Declarant**" shall mean and refer to Salin Bank and Trust Company, an Indiana corporation, or any successors or assigns to whom the foregoing assigns any or all of its rights as Declarant pursuant to this Declaration by assignment recorded in the Recorder's Office.

Section 1.11. "**Declaration**" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Ladywood Gardens, which is to be recorded in the Recorder's Office.

Section 1.12. "**Development Period**" means the period of time commencing on the Effective Date and ending when Declarant, or an affiliate or subsidiary of Declarant, has completed the development and sale of, and no longer owns, any Lot.

Section 1.13. "**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.

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

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

Section 1.16. "**Lot**" shall mean and refer to any discrete plot of land created by and shown on the Plat or any future plat of the Property upon which a Dwelling Unit could 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 the Plat or any future plat of the Property or any part thereof, provided further, however, 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 the Plat or any future Plat of the Property or part thereof) upon which such Dwelling Unit is primarily located, the boundary lines of such Lot shall be deemed 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 the Plat or any future plat of the Property 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, the Plat or any part thereof and any future plat or any part thereof shall be interpreted and construed so that all ground area underlying 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 supercede the boundary lines for Lots shown on the Plat or any future plat or part thereof.

Section 1.17. "**Maintenance Costs**" means all of the costs necessary to keep the facilities to which the term applies operational and in good condition, including but not limited to the cost of all upkeep, maintenance, repair, replacement, of all or any part of any such facility, payment of all insurance with respect thereto, all taxes imposed on the facility and on the underlying land, leasehold, easement or right-of-way, and any other expense related to continuous maintenance, operation or improvement of the facility.

Section 1.18. "**Member**" 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 1.19. "**Mortgagee**" shall mean and refer to any person or entity holding a first mortgage on any Lot or the Common Area who has notified the 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 1.20. "**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 1.21. "**Permitted Signs**" shall mean (i) customary real estate sale or lease signs which have received the prior written approval of the Architectural Review Board (as defined in Article VII); and (ii) temporary construction signage.

Section 1.22. "Person" shall mean an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof.

Section 1.23. "Property" shall mean that certain real property located in Marion County, Indiana, which is more specifically described on Exhibit A attached hereto and incorporated herein by reference, as the same may be duly subdivided and platted, and any additions thereto which, from time to time, may be subjected to this Declaration.

Section 1.24. "Recorder's Office" shall mean the Office of the Recorder of Marion County, Indiana.

Section 1.25. "Regular Assessments" shall mean and refer to assessments levied against all Lots to fund Common Expenses.

Section 1.26. "Special Assessments" shall mean and refer to assessments levied in accordance with Section 5.7 of this Declaration.

Section 1.27. "Structure" shall mean any temporary or permanent improvement or building or portion thereof, including, without limitation, walls, decks, patios, stairs, windows, window boxes, doors, fences, play equipment, trampolines, 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 1.28. "Water Assessments" shall mean and refer to assessments levied in accordance with Section 5.9 of this Declaration.

Section 1.29. "Supplemental Declaration" shall mean an amendment or supplement to this Declaration executed by or consented to Declarant or its successors or assigns, and recorded in the public records of Marion County, Indiana, which subjects Additional Property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the Additional Property described therein.

**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 with respect to each matter submitted to a vote of Members upon which the Class A Members are entitled to vote.

**Class B:** The Class B Member shall be Declarant and all successors and assigns of Declarant designated by Declarant as Class B Members in a written notice mailed and delivered to the resident agent of the Association. 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. 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 earlier to occur of (i) the seventh (7<sup>th</sup>) anniversary of the recording of this Declaration in the Recorder's Office, and (ii) the expiration of the Development Period.

**Section 3.2. Multiple Ownership Interests.** When more than one (1) Person constitutes the Owner of a particular Lot, all of such Persons shall be Members of the Association, but all of such Persons, collectively, shall have only one (1) vote for such Lot. The vote for such Lot shall be exercised as such Persons constituting the Owner of the Lot determine among themselves, and may be exercised by any one (1) of the Persons holding such ownership interest, unless any objection or protest by any other holder of such ownership interest is made prior to the completion of a vote, in which case the vote cast for such Lot shall not be counted, but the Member whose vote is in dispute shall be counted as present at the meeting for quorum purposes if the protest is lodged at such meeting. In no event shall more than one (1) vote be cast with respect to any Lot.

**ARTICLE IV.**

**DECLARATION OF RESTRICTIONS AND STATEMENT OF PROPERTY RIGHTS**

**Section 4.1. Declaration.** Declarant and the Current Residents hereby expressly declare that the Property (and any additions thereto pursuant to a Supplemental Declaration) shall be held, transferred and occupied subject to this Declaration. The Owners of each Lot are subject to this Declaration, and all other Persons, whether (i) by acceptance of a deed from Declarant or a Current Resident, or their successors or assigns, conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant, a Current Resident or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall conclusively be deemed to have accepted such deed, executed such contract and undertaken such occupancy

subject to this Declaration. By acceptance of such deed, or execution of such contract, or undertaking such occupancy, each Owner and each other Person for itself, its heirs, personal representatives, successors and assigns, acknowledges the rights and powers of Declarant, the Architectural Review Board and of the Association with respect to this Declaration, and also, covenants, agrees and consents to and with Declarant, the Architectural Review Board, the Association, and the Owners and subsequent Owners of each of the Lots affected by this Declaration, to keep, observe, comply with and perform the provisions of this Declaration.

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

(a) this Declaration, as it may be amended from time to time, and to any restrictions, limitations or other matters contained in any deed conveying any part of the Property to the Association;

(b) the right of the Association to limit the number of guests of Members on any part of 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;

(c) 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;

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

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

(f) 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 and/or the County and consistent with its designation of the Common Area as "open space", to transfer all or any part of the Common Area to an organization conceived and organized to own and maintain common open space, or, if such organization will not accept such a transfer, then to a Local Governing Authority or other appropriate governmental agency, or, if such a transfer is declined, then to another entity in accordance with the laws governing the same, for such purposes and subject to conditions as may be agreed to by the Members. Except in the case of dissolution, any such transfer shall have the assent of at least two-thirds (2/3) of each class of Members

entitled to vote and who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present, written notice of which must have been sent to all Members not less than twenty-five (25) days nor more than fifty (50) days in advance of the meeting setting forth the purpose of the meeting. Upon such assent and in accordance therewith, the officers of the Association shall execute the necessary documents to effectuate the transfer under this subparagraph (f). 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;

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

(h) 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 with respect to the lessee(s)' uses of the Common Area and facilities, all of 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;

(i) the right of 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;

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

(k) the right of 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 the Board of Directors, may exercise these rights without the need for any approval from any Member, Mortgagee or any of the Federal Agencies, unless provided otherwise in this Declaration.

Section 4.3. Common Area.

(a) Ownership. Declarant may retain legal title to the Common Area during the Development Period, but shall convey title to the Common Area to the Association free and clear of all liens and other financial encumbrances, exclusive of the lien for taxes not yet due and payable, no later than the end of the Development Period. The Common Areas shall remain private, and neither Declarant's execution, or recording of an instrument portraying the Common Areas, nor the doing of any other act by Declarant is, or is intended to be, or shall be construed as, a dedication to the public of the Common Areas. Declarant or the Association may, however, dedicate or transfer all or any part of the Common Areas to any public agency or utility for roadways, utility or parks purposes, or for other public purposes.

(b) Maintenance. The Association shall be responsible for maintaining the Common Area and the Maintenance Costs thereof shall be assessed as a Regular Assessment against all Lots subject to assessment. Notwithstanding anything to the contrary set forth in this Declaration, from and after the Effective Date, the Association shall be solely responsible for all costs incurred with respect to the maintenance and repair of the Common Area, whether or not such Common Area has then been conveyed to the Association pursuant to this Declaration, and regardless of whether such costs are incurred by Developer or an affiliate of Developer. All such costs incurred by Developer or an affiliate of Developer, shall be reimbursed by the Association within ten (10) days of the Association's receipt of an invoice from the party incurring such costs.

(c) Control. The Association, subject to the rights of Declarant and the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon and, except as otherwise provided herein or in a Supplemental Declaration, shall keep the Common Areas in good, clean, attractive and sanitary condition, order, and repair.

(d) No Permanent Structures. Except for underground utility facilities and except as provided in this Declaration or any Supplemental Declaration, no permanent improvements shall be made to or installed on the Common Area other than lighting, seating, walkways, paved paths, roadways, drives, planting structures, and fountains or other non-recreational water features. The use of the Common Area shall be subject to rules and regulations adopted by the Board of Directors which are not inconsistent with the provisions of this Declaration or any Supplemental Declaration.

(e) Delegation of Use. Any Member may delegate its right of enjoyment to the Common Area and facilities to the members of its immediate household, its tenants or contract purchasers who reside on the Member's Lot. However, by accepting a deed to such Lot, each Owner, for itself individually, covenants that (i) every rental agreement with respect to the Lot shall contain specific conditions which require the tenant thereunder to abide by all Association covenants, rules and regulations, without exception, (ii) each such tenant will be provided, prior to the execution of such lease, a complete set of all Association covenants, rules and regulations, and (iii) the Owner shall comply with the requirements of Section 6.20.

(f) Damage or Destruction by Owner. In the event any Common Area is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents, members of his family, or any other Person having or gaining access to the Owner's Lot, such Owner authorizes the Association to repair said damaged area, and an amount equal to the costs incurred to effect such repairs shall be assessed against such Owner as a Special Assessment and shall constitute a lien upon the Lot of said Owner until paid in full. The Association shall repair said damaged area in a good and workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association in the discretion of the Association.

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

## **ARTICLE V.**

### **ASSESSMENTS**

#### **Section 5.1. Creation of the Lien and Personal Obligation for Assessments.**

Declarant covenants and agrees, for each Lot owned by Declarant, and each Owner of a Lot covenants and agrees, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other instrument of conveyance, to pay to the Association: (a) Regular Assessments, (b) Water Assessments, (c) Special Assessments, and (d) any other amounts as may be provided for hereunder to be due from any Owner in connection with his ownership of a Lot. Such assessments are to be established and collected as hereinafter provided. The Association's Regular Assessments, Water Assessments and Special Assessments, together with interest thereon, late fees (as contemplated in Section 5.6(d) below) and costs of collection thereof, as hereinafter provided, shall be assessed against each applicable Owner's Lot and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment became first due. The Regular Assessments, when assessed upon resolution of the Board of Directors for each year, shall become a lien on each Lot in the amount of the entire Regular Assessment, but shall be payable in four equal installments collected on a quarterly basis.

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

**Section 5.3. Annual Accounting.** Annually, after the close of each fiscal year of the Association and prior to the date of the annual meeting of the Association next following the end of such fiscal year, the Board of Directors shall cause to be prepared and furnished to each Owner a financial statement prepared by a certified public accountant or firm of certified public accountants then serving the Association, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year. Any costs charged to the Association for the preparation of said statements shall be a Common Expense.

**Section 5.4. Proposed Annual Budget.** Annually, on or before the date of the annual or special meeting of the Association at which the budget is to be acted upon, the Board of Directors shall cause to be prepared a proposed annual budget for the next ensuing fiscal year estimating the total amount of the Common Expenses for such next ensuing fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the designated meeting of the Association for adoption and, if so adopted, shall be the basis for the Regular Assessments for the next ensuing fiscal year. At such annual or special meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Owners; provided, however, that in no event shall such meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, whether it be the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all sums assessed by the Association shall be established by using generally accepted accounting principles applied on a consistent basis. The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined. In the event there is no annual budget approved by the Owners as herein provided for the current fiscal year, whether before or after the meeting of the Association at which the budget is to be acted upon, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board of Directors, Regular Assessments based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

**Section 5.5. Establishment of Regular Assessment.** The Association must levy in each of its fiscal years a Regular Assessment against each Lot. The amount of such Regular Assessment shall be established by the Board of Directors, subject to the limitations imposed by Section 5.6 below, and commencing with calendar year 2011, written notice of the same shall be sent to every Owner at least thirty (30) days in advance of the commencement of each Regular Assessment period. Regular Assessments against each Lot shall be paid in advance, payable in four equal quarterly installments. All payments of Regular Assessments, Water Assessments and Special Assessments shall be non-refundable, and all collections and funds held by the Association on account thereof shall be appurtenant to and be applied for the benefit of the respective Lot. In no event shall any Owner be due any rebate or credit from the Association upon resale or other transfer or conveyance for prepaid Regular Assessments, Water Assessments or Special Assessments.

**Section 5.6. Regular Assessments.** For the calendar year 2011, the Regular Assessment shall be One Thousand Nine Hundred Twenty Dollars (\$1920.00), payable in quarterly payments of Four Hundred Eighty Dollars (\$480.00).

(a) Upon January 1, 2012, and upon January 1 of each year thereafter, the Regular Assessment shall increase, effective as of January 1 of each year, without the need for a vote of the Members, by an amount equal to (i) the anticipated increase in costs of insurance, taxes, snow removal, recycling, trash and waste removal and other Common Area maintenance services, plus (ii) an amount equal to the amount of the Regular Assessment for the immediately preceding year multiplied by ten percent (10%).

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

(c) The Regular Assessment may be increased above that established by subsection (a) above; provided, however, that any such change must have the consent of at least fifty percent (50%) of the votes of those Members who are entitled to vote and who, in fact, do vote, in person or by proxy, at a meeting duly called for this purpose at which a quorum is present, written notice of which (setting forth the purpose of the meeting) shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

(d) The Regular Assessment against each Lot shall be paid in quarterly installments, each of which is paid in full in advance by the due dates specified by the Board of Directors, the first of which due date shall not be earlier than fifteen (15) days after the written notice of such Regular Assessment is given to the Owners. Quarterly installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board of Directors or the Association, and neither the Board of Directors nor the Association shall be responsible for providing any notice or statements to Owners for the same. If an Owner fails to pay any quarterly installment of any such Regular Assessment on or before the due date established by the Board of Directors, a late fee in the amount of \$25.00 will be added to the amount due, and any such installment, together with such late fee, will be and remain, immediately due and payable.

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

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

Section 5.7. Special Assessments. In addition to the Regular Assessment authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to that year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvements upon the Common Area, including the fixtures and personal property related thereto, or for any other specified purpose. Without limiting the generality of the foregoing provisions, Special Assessments may be made by the

Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in this Declaration. Except in the case of damage or destruction caused by an Owner or any of his guests, tenants, licensees, agents, members of his family, or any other Person having or gaining access to the Owner's Lot as contemplated by Section 4.3(f), any such Special Assessment shall be levied against all of the Lots which benefit from the construction, reconstruction, repair or replacement of capital improvements giving rise to the Special Assessment, pro rata according to each Lot's benefit, as reasonably determined by the Board of Directors, which determination shall be final. In the case of damage or destruction caused by an Owner or any of his guests, tenants, licensees, agents, members of his family, or any other Person having or gaining access to the Owner's Lot as contemplated by Section 4.3(f), the Special Assessment may be levied solely against that Owner. Notwithstanding the fact that in some instances, this Declaration may provide that certain items of routine and ordinary repair and maintenance should be performed by the Association, the Association shall nevertheless retain the right to assess the costs thereof to any Owner or group of Owners as a Special Assessment. To be effective, any such Special Assessment described in the preceding sentence shall have the assent of more than two-thirds (2/3) of the votes of each class of Members affected by such Special Assessment.

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

Section 5.9. Water Assessments. In addition to the Regular Assessment and Special Assessment authorized above, the Association must levy a Water Assessment against each Occupied Lot. The amount of such Water Assessment shall be (i) the amount of the actual bills for the time period determined by the Board of Directors for all water supplied to the Property (including without limitation water used in the Dwelling Units located on each Occupied Lot and water used to irrigate the Common Area, all of which is metered by a single meter as of the Effective Date), divided by (ii) the number of Occupied Lots. Notwithstanding the preceding, if the Board of Directors reasonably determines that a particular Lot or Lots are using or are responsible for the use of a disproportionate amount of water, the Board of Directors may determine to equitably adjust the Water Assessments among the Occupied Lots, which determination shall be final. The Water Assessment shall be paid in arrears on dates and upon a schedule (not more than monthly) established by the Board of Directors. The Association shall send bills for the Water Assessment to each Occupied Lot at least fifteen (15) days in advance of the due date for such assessment. As of the Effective Date, Lots 13, 15, 16, 25, 30 and 32 are, and shall always be, "Occupied Lots". Any Lot that is not Occupied Lot as of the Effective Date (i) shall be temporarily deemed to be an Occupied Lot during any period in which the Dwelling Unit located upon such Lot is actually occupied as a residence (e.g. rented or leased by Declarant), and (ii) shall be permanently deemed to be an Occupied Lot when such

Lot is sold and transferred by Declarant to a third party, unless Declarant sells and transfers such Lot to a third party that does not intend to occupy the Dwelling Unit on such Lot as a residence but rather to hold such Lot for resale, in which event such Lot shall be permanently deemed to be an Occupied Lot when such third party sells or transfers such Lot to another third party.

**Section 5.10. Rate of Assessment.** The Regular Assessment shall be fixed at a uniform rate for all Lots, except for undeveloped Lots. Except in the case of damage or destruction caused by an Owner as contemplated by Section 4.3(f), and except for undeveloped Lots, the Special Assessments shall be fixed at a uniform rate for all Lots which benefit from the construction, reconstruction, repair or replacement of capital improvements giving rise to the Special Assessment, pro rata according to each Lot's benefit, as reasonably determined by the Board of Directors, which determination shall be final. Notwithstanding the foregoing or anything else contained herein, (i) no Regular Assessments, Water Assessments or Special Assessments or other charges shall be owed or payable with respect to any Undeveloped Lot, nor shall any such assessments or charges become a lien on any Undeveloped Lot, and (ii) no Water Assessment shall be owed or payable with respect to any Lot that is not an Occupied Lot, nor shall any such assessments or charges become a lien on any Lot that is not an Occupied Lot, except as expressly provided in Section 5.9. As of the Effective Date, Lots 5-8 are "Undeveloped Lots". An Undeveloped Lot shall continue to be considered an Undeveloped Lot until the construction of a Dwelling Unit thereon is substantially complete and thereafter until either (i) such Dwelling Unit is being occupied as a residence, or (ii) the Owner causing the construction of the Dwelling Unit on such Lot sells or transfers ownership of such Lot.

**Section 5.11. Notice of Assessment and Certificate.** Written notice of the Regular Assessments, Water Assessments and any Special Assessments shall be sent to every Member. The due dates for payment of the Regular Assessments, Water Assessments and any Special Assessments shall be established by the Board of Directors. The Association shall, upon written demand by a Member at any time, furnish a certificate in writing signed by an officer or authorized agent of the Association setting forth whether the assessments on a specified Lot have been paid and the amounts of any outstanding assessments. A reasonable charge may be made by the Board of Directors for the issuance of these certificates, which charge shall be paid to the Board of Directors in advance by the requesting Member. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

**Section 5.12. Remedies of the Association in the Event of Default.** Each Owner shall be personally liable for the payment of all Regular Assessments, Water Assessments and Special Assessments against his Lot. Where the Owner constitutes or consists of more than one Person, the liability of such Persons shall be joint and several. If any assessment pursuant to this Declaration is not paid within thirty (30) days after its initial due date, the assessment shall bear interest from the date of delinquency at the rate charged by the Internal Revenue Service on delinquent taxes. In addition, in its discretion, the Association may:

- (a) impose a penalty or late charge if previously established by the Association;

(b) bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot, and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. A suit to recover a money judgment for nonpayment of any assessment levied pursuant to this 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, provided that access and the provision of utilities to the Lot through the Common Area shall not be precluded. A Member, whose rights have been suspended in this manner, shall have no right to any refund or suspension of his obligations to pay such assessments or any other assessments becoming due for the duration of such suspension or otherwise; and

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

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

In any action to foreclose the lien against a Lot pursuant to Section 5.12(a) above, the Owner and any occupant of the Lot and Dwelling Unit which are the subject of such action shall be jointly and severally liable for the payment to the Association of reasonable rental for such Lot and Dwelling Unit, and the Board of Directors shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and Dwelling Unit and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid Regular Assessments, Water Assessments or Special Assessments. The Board of Directors may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessment, Water Assessment or Special Assessment without foreclosing (and without thereby being deemed to have waived) the lien securing the same. In any action to recover any Regular Assessment, Water Assessment or Special Assessment, or any other debts, dues or charges owed the Association, whether by foreclosure or otherwise, the Board of Directors, for and on behalf of the Association, shall be entitled to recover from the Owner of the respective Lot and Dwelling Unit all of the costs and expenses incurred as a result of such action (including, but not limited to, reasonable attorneys' fees) and interest upon all amounts due at the rate of twelve percent (12%) per annum, which shall accrue from the date such assessments or other amounts become first due, until the same are paid in full.

Section 5.13. Subordination of the Lien to Mortgages. The lien for the assessments provided for herein shall be subordinate to the lien of any properly recorded first mortgage encumbering a Lot. Notwithstanding anything contained in this Section 5.13 or elsewhere in this Declaration, any sale or transfer of a Lot to a Mortgagee pursuant to a foreclosure of its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall not extinguish the lien of any unpaid assessments (or periodic installments, if applicable) which became due prior to such sale, transfer or conveyance, and any extinguishment of such lien shall not relieve the prior Owner

from personal liability therefor; and further provided, that any Person taking title to such Lot in the foregoing manner shall have no right to use the non-essential services or amenities of the Property until such time as all assessments due with respect to such Lot have been paid in full. No such sale, transfer or conveyance shall relieve the Lot, or the purchaser thereof at such foreclosure sale, or the grantee in the event of conveyance in lieu thereof, from liability for any assessments (or periodic installments of such assessments, if applicable) thereafter becoming due or from the lien for such assessments.

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

**Section 5.15. Replacement Reserve Fund.** The Association shall establish and maintain a reserve fund ("**Replacement Reserve Fund**") for the maintenance, repair and replacement of the Common Area and improvements located thereon 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 Regular Assessment. The Replacement Reserve Fund (i) shall be conclusively deemed to be a Common Expense of the Association, (ii) shall be maintained by the Association in a separate, interest bearing account or accounts with any banking institution, the accounts of which are insured by any state or by any agency of the United States of America as selected by the Board of Directors, and (iii) may be expended only for the purpose of effecting the replacement of the Common Area, major repairs to, replacement and maintenance of any improvements within the Common Area, including but not limited to, sidewalks, driveways, 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 consider to be necessary or appropriate. The proportional interest of any Member in any such reserves shall be considered an appurtenance of the Member's Lot and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot.

## **ARTICLE VI.**

### **USE, RESTRICTIONS AND ARCHITECTURAL CONTROLS**

**Section 6.1. Residential Use.** The Property shall be used exclusively for residential purposes except as provided in Section 6.31 hereof. Declarant reserves the right, during the Development Period, pursuant to a recorded subdivision or re-subdivision plat, to alter, amend, and change the Common Area and any Lot line of any undeveloped Lot or add additional Lots. No structure shall be erected, altered, placed or permitted to remain on any Lot other than one (1)

Dwelling Unit and appurtenant structures, approved by the Association and appropriate Local Governing Authorities, for use solely by the occupant(s) of the Dwelling Unit.

**Section 6.2. Architectural Review Board Approval.** No Structure or addition to a Structure shall be erected, placed, painted, altered or externally modified or improved on any Lot unless and until (i) 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 have been filed with and approved in writing in all respects by the Architectural Review Board (as defined in Article VII below) and, if required, by appropriate Local Governing Authorities; and (ii) all construction permits have been obtained, if applicable or required.

**Section 6.3. Laundry.** No clotheslines may be erected on any Lot, and no clothing, sheets, blankets, rugs, laundry or wash shall be hung out, exposed, 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. Lot Maintenance.** Each Owner shall, at all times, maintain its Lot and Dwelling Unit and all appurtenances thereto free of debris or rubbish and in good repair and in a state of neat appearance from all exterior vantage points. While the Association will perform all routine maintenance to landscape improvements on each Lot as provided in Article XI below, the Owners, subject to Section 6.6 below, shall be responsible for all routine and extraordinary maintenance to Structures or amenities on his Lot, and all extraordinary items of maintenance to any landscape improvement on his Lot, including, without limitation, trees and shrubs, and for repair of any damage or destruction to any Structure or landscape improvement or amenity on his Lot, including, without limitation, trees and shrubs, whether or not caused by the Owner, a third party, elements of nature, or acts of God.

**Section 6.6. Additions to Landscape Improvements.** No tree, shrub, or other vegetation or landscape improvement shall be removed or altered unless such item is dead or decayed and dangerous to human health, safety, or welfare, and the removal has been approved in writing in advance by the Architectural Review Board, or removal is ordered by a Local Governing Authority or by the Architectural Review Board to maintain proper sightlines. No approval for removal of any trees or shrubs shall be granted by the Architectural Review Board unless appropriate provisions are made for replacing the removed trees or shrubs. Each Owner is permitted to add to the landscape of his Lot certain landscaping features within approved flowerbeds; however, prior to adding any such landscape, the Owner of such Lot must submit a written landscape plan to the Architectural Review Board for its review and obtain the written approval of such Architectural Review Board.

**Section 6.7. Nuisance.** No noxious or offensive activity shall be carried on or permitted to 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. Nothing shall be done or kept or permitted to be done or kept by an Owner in any Dwelling Unit, or on any Lot, or on any of the Common Areas, which will cause an increase in the rate of insurance paid by the Association

or any other Owner. No Owner shall permit anything to be done or kept in his Dwelling Unit or on his Lot which will result in a cancellation of insurance on any part of the Common Area or any other Owner, or which would be a violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau. No Dwelling Unit or Lot shall be used in any unlawful manner or in any manner which might cause injury to the reputation of the Community or which might be a nuisance, annoyance, or inconvenience, or which might cause damage, to other Owners and occupants of Dwelling Units or neighboring property, including, without limiting the generality of the foregoing, noise by the use of any musical instrument, radio, television, loud speakers, electrical equipment, amplifiers or other equipment or machinery. No exterior lighting on a Lot shall be directed outside the boundaries of the Lot. No outside toilets shall be permitted on any Lot (except during a period of construction and then only upon obtaining prior written consent of the Architectural Review Board), and no sanitary waste or other wastes shall be permitted to be exposed.

**Section 6.8. Signs.** Permitted Signs shall include only those professionally constructed signs which advertise a home on a Lot for sale by a licensed and registered real estate broker/company, and which are non-illuminated and less than or equal to six (6) square feet in size ("Permitted Signs"). With the exception of Permitted Signs, all signs including, but not limited to those advertising a garage sale or a Lot "For Lease", must be approved by the Architectural Review Board before being placed upon any Lot or Common Area, or displayed from a Dwelling Unit. No more than one sign (including a Permitted Sign) may be displayed on a Lot or from a Dwelling Unit at any one time. In addition, no more than one sign (including a Permitted Sign) may be displayed in the Community by an entity owning multiple Lots. All Permitted Signs advertising a Lot for sale shall be removed within three (3) business days from the date of the conveyance of the Lot or the execution of the lease agreement, as applicable. Signs advertising a Lot for "Rent to Own", or something similar, are expressly prohibited and may not be placed on any Lot or displayed from a Dwelling Unit constructed thereon. The Declarant and any Builder are expressly exempt from the requirements of this Section 6.9 and may post any signs in Common Areas and Lots owned by Declarant and/or Builder, as they deem necessary.

**Section 6.9. Animals.** No domesticated or wild animal shall be kept or maintained on any Lot, except that no more than three (3) common household pets such as dogs and cats 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. Excessive barking of dog(s) or vicious animals shall constitute a nuisance and may be ordered removed from the Property by the Association. 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. Failure to remove any solid animal waste shall subject the owner to a fine not to exceed \$50.00 per occurrence as determined by the Board of Directors. Law enforcement and animal control personnel shall have the right to enter the Property to enforce local animal control ordinances.

**Section 6.10. Trash Storage.** Trash shall be collected and stored in sealed trash receptacles only and not solely in plastic garbage bags. Trash and garbage receptacles shall not

be permitted to remain in public view and shall remain inside of each Owner's garage except on days of trash collection, and except for 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. No rubbish, garbage or other waste shall be allowed to accumulate on any Lot or Common Area. No homeowner or occupant of a Lot shall burn or bury any garbage or refuse on any Lot or Common Area.

Section 6.11. Antennae Systems. To the extent not inconsistent with federal and state 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. To the extent not inconsistent with federal law, satellite dishes will not exceed eighteen (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 6.12. Painting and Exterior Design. No Owner shall cause or permit any alterations or changes of the exterior design and/or color scheme of any Dwelling Unit, Structure or building including, but not limited to, the exterior paint color scheme and roof shingle color scheme and materials. No person shall paint the exterior of any building, or portion thereof, except contractors and agents employed by Declarant or the Association. Any and all such painting of the exterior of any building or any portion thereof shall be done by the Association, and the costs thereof will be assessed to the Owners either as a part of the Regular Assessments due hereunder or, if necessary, as a Special Assessment, as determined by the Board of Directors in its discretion under Article V above. All Dwelling Units will, at all times, be painted in a uniform color, without variation. By way of example only, in the event the Board of Directors or Declarant, as applicable, deems it necessary to paint only a portion of a building (i.e., in the case of damage affecting only one Dwelling Unit), and, if matching paint cannot be located or if, when applied, the paint does not match the finish on the adjacent Dwelling Units, the Board of Directors, in its sole discretion, may cause the exterior of the entire building to be painted, with the costs thereof being assessed to the Owners of the Dwelling Units in the building, either as a part of the Regular Assessments due hereunder, or, if necessary, as a Special Assessment, as determined by the Board of Directors in its discretion.

Section 6.13. Finished Exteriors. The exteriors of all Structures, including, without limitation, walls, doors, windows and roofs, shall be kept in good maintenance and repair by the Owners of Dwelling Units within that Structure. No Structure shall be permitted to stand with its exterior in an unfinished condition for longer than six (6) months after the commencement of construction. In the event of fire, windstorm or other damage, the exterior of a Structure shall not be permitted to remain in a damaged condition for longer than three (3) months, unless expressly excepted by the Board of Directors in writing. If the Board of Directors determines that any Structure or Dwelling Unit is not in compliance with the provisions of this Section 6.13, the Association shall send written notice to the Owner of that Structure or Dwelling Unit identifying, with reasonable specificity, the items in need of repair or maintenance (a "**Repair**

Notice"). If an Owner fails to comply with the provisions of this Section 6.13 after its receipt of such a Repair Notice, the Association shall be entitled to enforce the provisions of this Section 6.13 in the manner contemplated under Section 11.1(l), below, and in any other manner permitted hereunder or by applicable law.

Section 6.14. Fences. No fence or similar enclosure shall be erected or built on the Property except for any fencing without the prior written approval of the Architectural Review Board

Section 6.15. 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 6.16. Commercial Vehicles. Except upon the prior written approval of the Architectural Review Board, no commercial or industrial vehicle, including, but not limited to, moving vans, trucks, tractors, trailers, vans, wreckers, tow trucks, hearses and buses, shall be parked overnight or regularly or habitually parked on the Property, nor shall any such vehicle be located on the Property for longer than twenty-four (24) hours.

Section 6.17. Recreational Vehicles. No recreational vehicles or equipment, including, but not limited to, boats, boating equipment, jet-skis, wave runners, travel trailers, fuel tanks, 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 criteria deemed to be relevant by the Architectural Review Board. The Association shall not be required to provide a storage area for these vehicles.

Section 6.18. 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 VI, upon twelve (12) hours' written, telephonic or verbal notice and at the vehicle owner's sole expense.

Section 6.19. Garage Usage. Any conversion of any garage that will preclude the parking of vehicles within that garage is prohibited. Owners shall keep and maintain 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 6.20. Rental Agreements. Any rental agreement for a Dwelling Unit shall (i) require an initial period of at least one (1) year, (ii) be in writing, (iii) require the payment of rental at prevailing market rates or higher, and (iv) be subject to 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 provisions of this Declaration, or other terms and conditions as set forth above, shall be a default under the rental agreement, and the Owner shall be responsible for enforcing such provision at its sole expense; provided, however, that the Association shall also have the right to enforce any provision of this Declaration and other terms and conditions against the Owner or any tenant, or both, in the sole discretion of the Association, without regard to whether Declarant or the Association were or are in privity with such tenant. The foregoing shall not be construed as a waiver by the Association of its rights hereunder to enforce any provision of this Declaration against a tenant or any other Person in possession of the Property or any part thereof. Prior to leasing a Dwelling Unit, the

Owner of the Dwelling Unit shall notify the Association in writing. Each Owner agrees to indemnify, defend and hold harmless the Association and the Board of Directors from and against all costs, liability, charges, expenses and claims resulting directly or indirectly from such Owner's failure to comply with the foregoing notification provision. By accepting title to a Lot, each Owner acknowledges and accepts the foregoing restrictions on leasing a Dwelling Unit and the Association's right to enforce such restrictions as provided hereunder.

**Section 6.21. Construction and Marketing.** Declarant or its assigns 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 by Declarant.

**Section 6.22. Dusk to Dawn Lights.** Each Owner shall maintain any and all 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 6.23. Garages.** Garage doors shall remain closed except when entering and exiting or otherwise accessing the garage.

**Section 6.24. Storage Facilities.** No permanent, temporary or portable storage facilities shall be permitted on any Lot, except for portable storage facilities that are located wholly within the Owner's garage area and are removed within twenty-four (24) hours. No portable storage facility is permitted in any driveway, Common Area, or public right-of-way.

**Section 6.25. Awnings.** Except with respect to Lots upon which Declarant maintains a sales office or model home, or as otherwise approved by the Architectural Review Board, no metal, wood, fabric, fiberglass or similar type material awnings or patio covers will be permitted anywhere on the Property.

**Section 6.26. Mailboxes.** No individual mailboxes at curb or on any Dwelling Unit shall be allowed or permitted. Common postal facilities, with individual mailboxes, for all attached Dwelling Units within each single building have been or will be installed for each building.

**Section 6.27. Address Markers.** No Person, except Declarant or the Association, shall remove, alter, change, or add to the uniform address markers for each Lot.

**Section 6.28. Pools and Hot Tubs.** No pools or hot tubs shall be permitted on any Lot.

**Section 6.29. Play Equipment.** No children's play equipment such as playhouses, sandboxes, swing and slide sets, and trampolines, shall be permitted on any Lot.

**Section 6.30. Basketball Goals.** No basketball goals, hoops, or backboards shall be permitted on any Lot.

**Section 6.31. Business Use.** No garage sale, moving sale, rummage sale or similar activity and no trade or business may be conducted in or from any Lot, except that an Owner or occupant resident on a Lot may conduct business activities within a Dwelling Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit; (b) no sign or display is erected that would indicate from the exterior that the Dwelling Unit is being utilized in part for any purpose other than that of a residence; (c) no commodity is sold upon the premises; (d) no person is employed other than a member of the immediate family residing in the Dwelling Unit; (e) no manufacture or assembly operations are conducted; (f) the business activity conforms to all zoning requirements for the Property; (g) the business activity does not involve persons coming onto the Property who do not reside in the Property or door-to-door solicitation of residents of the Property; and (h) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board of Directors. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the leasing of a Lot or Dwelling Unit shall not be considered a trade or business within the meaning of this Section 6.31. This Section 6.31 shall not apply to any activity conducted by Declarant or its affiliates or a builder approved by Declarant with respect to their development and sale of the Property or their use of any Dwelling Units which Declarant or such builder owns within the Property for such activities.

**Section 6.32. Landscaping of Common Areas.** No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Areas, except with prior, express written permission from the Architectural Review Board.

**Section 6.33. Declarant's Use.** Notwithstanding anything to the contrary contained herein or in the Articles or Bylaws, Declarant shall have, until the expiration of the Development Period, the right to use and maintain any Lots and Dwelling Units owned by Declarant and other portions of the Property (other than individual Dwelling Units and Lots owned by Persons other than Declarant), as Declarant may deem advisable or necessary in its sole discretion to aid in the sale of Lots and the construction of Dwelling Units, or for the conducting of any business or activity attendant thereto, or for the construction and maintenance of Common Areas, including, but not limited to, model Dwelling Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. Declarant shall have the right to relocate any or all of the same from time to time as it desires. At no time shall any of such facilities so used or maintained by Declarant be or become part of the Common Areas, unless so designated by Declarant, and Declarant shall have the right to remove the same from the Property at any time.

**Section 6.34. Non-applicability to Association.** Notwithstanding anything to the contrary contained herein, the covenants and restrictions set forth in this Article VI shall not apply to or be binding upon the Association in its ownership, management, administration,

operation, maintenance, repair, replacement and upkeep of the Common Areas to the extent the application thereof could or might hinder, delay or otherwise adversely affect the Association in the performance of its duties, obligations and responsibilities as to the Common Areas.

Section 6.35. Additional Rules and Regulations. The Association shall have the authority to adopt such rules and regulations regarding this Article VI as it may from time to time consider necessary or appropriate.

## ARTICLE VII.

### 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 Development Period, the Architectural Review Board shall consist solely of Declarant. Upon the expiration of the Development Period, the number of members of the Architectural Review Board shall automatically be increased to equal the number of members on the Board of Directors, and the individuals who are members of the Board of Directors shall automatically be deemed to be the members of the Architectural Review Board, without the necessity for further action. The term of membership for each member of the Architectural Review Board will be coterminous with the term of such individual's membership on the Board of Directors.

Section 7.2. Removal and Vacancies. After the expiration of the Development Period, a member of the Architectural Review Board may only be removed in the event such member is removed from or otherwise ceases to be a member of the Board of Directors. Appointments to fill vacancies in unexpired terms on the Architectural Review Board shall be made in the same manner as members are appointed or elected to the Board of Directors.

Section 7.3. Officers. At the first meeting of the Architectural Review Board (after the expiration of the Development Period) following each annual meeting of Members, the Architectural Review Board 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 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. The Architectural Review Board shall regulate all initial construction, development and improvements on the Property and all modifications and changes to existing improvements on the Property. In furtherance thereof, the Architectural Review Board 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 Association's right to require an applicant to obtain any required approvals from any such Local Governing Authorities or to otherwise comply with applicable laws, rules, regulations and local ordinances. No approval by the Architectural Review Board or any committee thereof shall be effective unless in writing and signed by all of the members of the Architectural Review Board or the 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, any committee thereof or the Board of Directors of any provision of this Declaration requiring such approval hereunder or otherwise prevent the Architectural Review Board, any committee thereof or the Board of Directors from enforcing this Declaration at any later date. If approval has not been issued in writing within thirty (30) days after submission of an application to the Board of Directors, the Architectural Review Board, then any such request shall be deemed to be denied.

**Section 7.6. Discretion.** Declarant intends that the members of the Architectural Review Board, and all committees thereof, exercise discretion in the performance of their duties, and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by the members of the Architectural Review Board and such committees.

**Section 7.7. Enforcement.** Any exterior addition, change or alteration made without a written application to, and prior written approval of, the Architectural Review Board, shall be deemed to be in violation of this Declaration and the Board of Directors shall have the right to require such exterior to be immediately restored to its original condition at the offending Owner's sole cost and expense.

**Section 7.8. 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 member of the Board of Directors within twenty (20) days of the adverse ruling.

**Section 7.9. Liability of the Architectural Review Board, Declarant, Association.** Neither the Architectural Review Board, nor any committee nor any agent thereof, nor Declarant,

nor the Association, shall be liable in any way for any costs, fees, damages, delays, or any charges or liability whatsoever relating to the approval or disapproval of any plans submitted to it, nor shall the Architectural Review Board nor any committee thereof, nor any agent thereof, nor Declarant, nor the Association, be responsible in any way for any defects in any plans, specifications or other materials submitted to any of them, or for any defects in any work done according thereto. Further, the Architectural Review Board, its committees, Declarant, and the Association make no representations or warranties as to the suitability or advisability of the design, engineering, method of construction involved, or materials to be used. Each Owner should seek professional construction advice, engineering, and inspections with respect to such Owner's Lot, at such Owner's sole cost and expense, prior to proposing plans for approval by the Architectural Review Board, its committees or the Board of Directors.

Section 7.10. Inspection. The Architectural Review Board and Declarant may, but shall not be obligated to, inspect work being performed on a Lot or Dwelling Unit to assure compliance with this Declaration, the restrictions contained in the Plat or any future plat of the Property and applicable regulations. However, neither the Architectural Review Board, nor any committee nor member thereof, nor Declarant, nor any agent or contractor employed or engaged by any of the foregoing, shall be liable or responsible for defects or deficiencies in any work inspected or approved by any of them, or on behalf of any of them. Further, no such inspection performed or approval given by or on behalf of the Architectural Review Board, any committee thereof or Declarant shall constitute a warranty or guaranty of the work so inspected or approved.

## ARTICLE VIII.

### EASEMENTS

Section 8.1. General Easement Rights. Declarant and the Current Residents hereby grant a non-exclusive blanket easement over, across, through and under the Property 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 and all other emergency personnel and government, to enter upon the Property, in the exercise of the functions provided for by this Declaration, Articles, Bylaws and rules and regulations of the Association, and in the event of emergencies or in the performance of governmental functions. Declarant and the Current Residents further grant a non-exclusive blanket easement over, across, through and under the Property to utility service providers for ingress, egress, installation, replacement, repair and maintenance of underground utility and service lines and systems, including, but not limited to, water, sewer, gas, telephones, electricity, television, cable or communication lines and systems. By virtue of this easement it shall be expressly permissible for Declarant or the utility service provider to install, maintain and repair facilities and equipment on the Property if such utility service provider promptly restores the disturbed area, if any, as nearly as is practicable to the condition in which it was found, provided, however, that no sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or relocated except as proposed and approved by Declarant in advance in writing. Should any utility providing a service to the Property request a specific easement by separate recordable document, Declarant or the Association shall have the right to grant such easement with respect to the Property without conflicting with the terms hereof. This blanket easement shall in no way affect any other

recorded easements on the Property, shall be limited to improvements as originally constructed, and shall not cover any portion of a Lot upon which a Dwelling Unit has been constructed.

**Section 8.2. Limitation on General Easement Rights.** The rights accompanying the easements provided for in Section 8.1 of this Article VIII shall, except in the event of an emergency, be exercised only during reasonable daylight hours and then, whenever practicable, only after advance notice to any Owner or tenant directly affected.

**Section 8.3. Intentionally Deleted.**

**Section 8.4. Encroachments.** If any improvement on a Lot or the Common Area now or hereafter encroaches on any other Lot or Common Area, by reason of (a) the original construction thereof by Declarant or its assigns, which shall include, but not be limited to, any party wall or drive which encroaches over a Lot's boundary line and any drainage of stormwater 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 over the encroached-upon portion of such Lot or Common Area in favor of the Owner of the encroaching improvements, solely to the extent of such encroachment and solely for the period of time the encroachment exists (including replacements thereof), for the limited purposes of use, repair, replacement and maintenance of the encroaching improvement.

**Section 8.5. Ingress/Egress Easement.** Declarant, its agents and employees, shall have a right of ingress and egress over the Common Area, and any roadways and drives within the Community as required for construction of improvements and development of the Property, and otherwise as Declarant deems to be necessary or for access, ingress and egress to and from any Dwelling Unit.

**Section 8.6. Reservation of Right to Grant Future Easements.** Declarant reserves the right to (a) grant non-exclusive easements over any Lot or Common Area for the purposes of (i) 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 (ii) obtaining the release of any bonds posted with a municipality, governmental agency or regulatory agency, (b) 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, and (c) in its sole discretion, grant licenses and non-exclusive easements over, under, across or through the Property in favor of owners of adjoining real property, and their tenants, successors and assigns, for purposes of providing access and utilities benefiting such adjoining real property.

**Section 8.7. Bonds and/or Dedication Requirements.** Declarant reserves the right to grant and reserve easements or to vacate or terminate easements across all Lots or Common Area as may be required by any governmental agency or authority or utility in connection with the release of improvement bonds or the dedication of public streets for maintenance by governmental agencies.

**Section 8.8. Easements for Corrective Work.** Declarant reserves a non-exclusive easement over, across, under, through and above all Lots and the Common Area for the purposes of correcting drainage, regrading, maintenance, landscaping, mowing and erecting street intersection signs, directional signs, temporary promotional signs, entrance features, lights and wall features, and for the purpose of executing any of the powers, rights, or duties granted to or imposed upon the Association in this Declaration or any Supplemental Declaration.

**Section 8.9. Reciprocal Cross-Easements for Adjoining Dwelling Units.** Subject to **Section 10.1** below, there is hereby created in favor of the Owner of each Lot an easement and right of entry onto each adjoining Lot permitting such Owner to repair and maintain all encroaching party walls, roofs, roof overhangs, eaves, downspouts, gutters, and splash blocks at reasonable times; provided, however, that the Owner exercising this right of entry upon the adjoining Owner's Lot shall be solely responsible for preserving and restoring the adjoining Owner's Lot to the same condition such adjoining Lot was in prior to the exercise of the right of entry.

#### **ARTICLE IX.**

##### **PARKING**

No Owner, tenant, or any other Person shall park any type of vehicle in any Common Area other than an Owner or tenant of a Dwelling Unit may park on the portion of the driveway of such Dwelling Unit that may be located within the Common Area but not within the common roadways within the Common Area. Notwithstanding the foregoing, visitors, guests and invitees shall be permitted to park in those portions of the Common Area designated by Declarant or the Association as visitor parking areas; provided, however, that such parking shall be permitted only on a temporary and intermittent basis and no such parking shall be permitted in any portion of the Common Area which has not been designated as a visitor parking area. Temporary parking on or within any public right-of-way within or adjacent to the Property is prohibited except to the extent expressly permitted by Local Governing Authorities, and shall be subject to any restrictions or limitations relating thereto, including, without limitation, fees assessed by any Local Governing Authorities. The Board of Directors may promulgate such additional rules and regulations as it deems appropriate to regulate the use of any Common Areas for parking purposes, which 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.

#### **ARTICLE X.**

##### **PARTY WALLS/COMMON ROOFS**

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

**Section 10.2. Sharing of Repair and Maintenance of Party Walls and Destruction by Fire or Other Casualty.** If a party wall is damaged or destroyed by (i) fire or other casualty, or (ii) ordinary wear and tear and deterioration from lapse of time, or (iii) or by some cause other than the act of one of the adjoining Owners, its agents, family, household or guests, then both adjoining Owners shall proceed forthwith to rebuild or repair the structural components of such party wall, sharing equally the cost thereof, and each individual Owner shall proceed forthwith to rebuild or repair the non-structural components of such wall in proportion to their respective uses of the party wall. Any and all such reconstruction and/or repairs shall be completed immediately to the extent that the failure to commence and/or complete such reconstruction and/or repairs would result in an immediate risk to human health and/or safety. All other reconstruction and/or repairs shall be completed within three (3) months following the casualty or other event that damaged or destroyed such party wall, unless a longer period of time is approved in writing by the Association. If a party wall is in a condition that is of such a nature that it has or will (if left uncorrected) result in further damage or destruction of such party wall, the reconstruction and/or repairs shall be completed within a reasonable time, not exceeding six (6) months following the initial discovery of the condition. Any and all such reconstruction and/or repair shall be made in a good and workmanlike manner, in compliance with all requirements of Local Governing Authorities and otherwise in compliance with all applicable laws, ordinances, rules and regulations, to the same or better condition as existed prior to such condition, damage or destruction. However, in the event of substantial destruction to the party wall and adjoining Dwelling Units (i.e. where eighty percent (80%) or more of the party wall and the adjoining Dwelling Units are destroyed by fire or otherwise), neither Owner shall be obligated to repair or restore the party wall. Each Owner shall have an easement over that part of the other Owner's Lot that is necessary or desirable in order to repair, restore or replace the party wall.

**Section 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 use and enjoyment of the party wall, then the Owner(s) of the Dwelling Unit(s) from whence the Offending Parties committed the act that caused the damage or destruction, shall forthwith proceed to rebuild and repair the same, in the manner required under Section 10.2 above, without cost to the adjoining Owner.

**Section 10.4. Use; Other Changes.** Either Owner shall have the right to use the side of the party wall facing the Owner's Dwelling Unit in any lawful manner, including attaching structural or finishing materials to it; however, in addition to meeting the other requirements of this Declaration and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild its Dwelling Unit in any manner which involves the alteration of any party wall shall first obtain the written consent of the adjoining Owner, whose consent shall not be unreasonably withheld, conditioned or delayed. If the adjoining Owner has not responded in writing to the requesting Owner within twenty-one (21) days of its receipt of any such written request, given by registered or certified mail, return receipt requested, such consent of the adjoining Owner shall be deemed to have been given.

**Section 10.5. Common Roofs.** As used herein "Common Roof" shall mean the roof of a building containing more than one Dwelling Unit, including gutters and appurtenances thereto.

If a portion of a Common Roof not wholly contained within one Lot is damaged or destroyed by (i) fire or other casualty, or (ii) ordinary wear and tear and deterioration from lapse of time, or (iii) or by some cause other than the act of one of the adjoining Owners, its agents, family, household or guests, then the Owners of the Lots affected by such damage or destruction shall proceed forthwith to rebuild or repair the Common Roof, sharing equally the cost thereof. 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 Common Roof, unless a longer period of time is approved in writing by the Association. If a Common Roof is in a condition that is of such a nature that it has or will (if left uncorrected) result in further damage or destruction of such Common Roof, the reconstruction and/or repairs shall be completed within a reasonable time, not exceeding six (6) months following the initial discovery of the condition. Any and all such reconstruction and/or repair shall be made in a good and workmanlike manner, in compliance with all requirements of Local Governing Authorities and otherwise in compliance with all applicable laws, ordinances, rules and regulations, to the same or better condition as existed prior to such condition, damage or destruction. However, in the event of substantial destruction to the Common Roof and adjoining Dwelling Units (i.e. where eighty percent (80%) or more of the Common Roof and the adjoining Dwelling Units are destroyed by fire or otherwise), no Owner shall be obligated to repair or restore the Common Roof. Each Owner shall have an easement over that part of the other Owners' Lots that is necessary or desirable in order to repair, restore or replace the Common Roof. If any Common Roof is damaged or destroyed through the act of one or more Offending Parties, whether or not such act is negligent or otherwise culpable, so as to deprive another adjoining Owner of the use and enjoyment of the Common Roof, 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 this Section 10.5, without cost to the adjoining Owners. In addition to meeting the other requirements of this Declaration and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild any portion of a Common Roof located on such Owner's Lot in any manner which involves the alteration of any Common Roof or portion thereof shall first obtain the written consent of the adjoining Owners, whose consent shall not be unreasonably withheld, conditioned or delayed. If any 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 such adjoining Owner shall be deemed to have been given.

**Section 10.6. Right to Contribution Runs with the Land; Failure to Contribute.**

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

**Section 10.7. Dispute.** In the event of a dispute between or among Owners with respect to the repair or rebuilding of a party wall or Common Roof 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 and whose decision shall be final. In addition, the Association may, but shall not be obligated to, undertake the repair or replacement of any Common Roof and assess the costs thereof to the Owners of the Dwelling Units in the building(s), either as a part of the Regular Assessments due hereunder, or, if necessary, as a Special Assessment, as determined by the Board of Directors in its discretion. By way of example only, if a Common Roof repair affects less than all of the Dwelling Units under such Common Roof but sound maintenance practices would dictate replacement of all of the shingles on such Common Roof or limiting the repair to less than all of the Common Roof would otherwise be impractical and the Owners cannot agree upon the sharing of the costs of such repair, the Board of Directors, in its sole discretion, may apportion the costs among the Owners and/or may undertake the repair and assess the costs thereof to the Owners of the Dwelling Units in the building(s), either as a part of the Regular Assessments due hereunder, or, if necessary, as a Special Assessment, as determined by the Board of Directors in its discretion.

## 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 foregoing rights of enforcement shall not prevent (i) changes, releases or modifications of the restrictions 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; or (ii) the assignment of the foregoing rights by the proper parties wherever and whenever such rights of assignment exist. 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 either party believes such 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; 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 build facilities upon 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, trim, re-sow, re-seed or re-sod lawn areas and fertilize lawn areas within the Common Areas and on each Lot and to operate and maintain in-ground

irrigation/sprinkler systems in the Common Areas and in the landscaped areas of each Lot;

(e) to maintain, irrigate, spray, trim, protect, plant, fertilize, replace and prune trees, shrubs and other landscaping located within the Common Areas and on each Lot, provided, however, that the Association shall not be required to maintain, irrigate, spray, trim, protect, plant, fertilize replace or prune any flowers, plants, trees, shrubs, or any other landscaping installed by an Owner on such Owner's Lot;

(f) to maintain 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 streets and maintaining any street lights located in the Common Areas;

(g) to arrange for plowing and/or removal of snow from private streets located within Common Areas. It shall be each Owner's responsibility, however, to remove snow from the driveway and walkway to the front door of the Owner's Dwelling Unit;

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

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

(j) subject to the limitations set forth in Section 11.3 hereof, 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;

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

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

(m) to enter (or have the Association's agents or employees or contractors enter) upon any Lot to repair, maintain or restore the Lot or perform such other acts as may be reasonably necessary to make such Lot and improvements situated thereon, if any, conform to the requirements of this Declaration, 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.

Neither the Association nor any of its agents, employees, or contractors shall be liable for any damage, which may result from any maintenance work performed hereunder;

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

(o) to adopt, publish and enforce rules and regulations governing the use of the Common Area and facilities and with respect to such other areas of responsibility assigned to it by this 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;

(p) to remove a member of the Board of Directors and declare such member's office to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors;

(q) to arrange for the collection of trash and recyclable items on a weekly basis from approved locations and from appropriate receptacles in the manner contemplated in Section 6.10 above;

(r) to paint exterior wood trim and perform all exterior painting, but shall not be responsible for any other maintenance of the exterior of a Dwelling Unit.

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

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

(b) to transfer part of the Common Area to or at the direction of Declarant, for the purpose of adjusting boundary lines or otherwise in connection with the orderly subdivision or development of the 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 and 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, including death, and property damage for any single occurrence;

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

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

(g) to maintain its corporate status; and

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

(i) to be solely responsible for all costs incurred in connection with the maintenance and repair of the Common Area in accordance with Section 4.3(b) hereof.

**Section 11.3. Limitation on Association Action.** The Association shall hold a duly authorized, duly noticed special meeting of the Members of the Association prior to commencing or prosecuting any judicial or administrative proceeding, and no judicial or administrative proceeding shall be commenced or prosecuted by the Association except upon the affirmative vote of at least seventy-five percent (75%) of the votes cast at said special meeting by Members entitled to vote authorizing the commencement and prosecution of the proposed action. This Section 11.3 shall not apply to (a) actions brought by the Association to enforce the provisions of this Declaration, the Bylaws, or rules and regulations adopted by the Board of Directors (including, without limitation, any action to recover Regular Assessments, Water Assessments or Special Assessments or other charges or fees or to foreclose a lien for such items) or (b) counterclaims brought by the Association in connection with proceedings instituted against it.

**Section 11.4. Board of Directors 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 of

Directors may be repealed or amended by a majority vote of the Members cast, in person or by proxy, at a meeting convened for such purpose in accordance with the Bylaws.

**Section 11.5. 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 11.6. Non-liability of Directors, Officers and Board Members.** The directors and officers of the Association and members of the Architectural Review Board, and all committees thereof, shall not be liable to the Owners or any other persons for any error or mistake of judgment in carrying out their duties and responsibilities as directors or officers of the Association or members of the Architectural Review Board, or any committee thereof, 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, and all committees thereof, shall have no personal liability with respect to any contract made by them in good faith on behalf of the Association, and the Association shall indemnify and hold harmless each of the directors, officers, Architectural Review Board members, or committee members against any and all liability to any person, firm or corporation arising out of contracts made in good faith on behalf of the Association.

**Section 11.7. Indemnity of Directors and Officers and Members of the Architectural Review Board.** Except with respect to matters (i) as to which it is adjudged in any civil action, suit, or proceeding that such person is liable for gross negligence or willful misconduct in the performance of his or her duties, or (ii) to which it is adjudged in any criminal action, suit or proceeding that such person had reasonable cause to believe that such person's conduct was unlawful or that person had no reasonable cause to believe that such person's conduct was lawful, the Association shall indemnify, hold harmless and defend any person, his or her heirs, assigns and legal representatives (collectively, the "Indemnitee") made or threatened to be made a party to any action, suit or proceeding, or subject to any claim, by reason of the fact that he or she is or was a director or officer of the Association or member of the Board of Directors of the Architectural Review Board, or any committee thereof, from and against (1) all liability, including, without limitation, the reasonable cost of settlement of, or the amount of any judgment, fine, or penalty rendered or assessed in any such claim, action, suit, or proceeding; and (2) all costs and expenses, including attorneys' fees, actually and reasonably incurred by the Indemnitee in connection with the defense of such claim, action, suit or proceeding, or in connection with any appeal thereof. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against an Indemnitee, no director or officer of the Association, or member of the Board of Directors or the Architectural Review Board, or any committee thereof, shall be considered or deemed to be guilty of or liable for gross negligence or willful misconduct in the performance of his or her duties where, acting in good faith, such director or officer of the Association, or member of the Architectural Review Board, or any committee thereof, 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, officer or member of the Association, of any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service, unless such director, officer or member had actual knowledge of the falsity or incorrectness thereof; nor shall a director, officer or member be deemed guilty of gross negligence or willful misconduct by virtue

of the fact that he or she failed or neglected to attend a meeting or meetings of the Association, the Board of Directors or the Architectural Review Board, or any committee thereof. 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 Article XI.

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

(a) Declarant must provide to the VA a copy of all amendments to the Declaration. 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 of 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 default 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.** To the extent required by the Federal Housing Authority (the "FHA"), if any of the Lots are security for a loan insured by the FHA and if there is a Class B Member, the following actions will require the prior approval of the FHA:

- (a) annexation of additional properties, except the land described in Article XIII below;
- (b) mergers, consolidations and dissolution of the Association;
- (c) mortgaging or conveyance of the Common Area; and
- (d) Material 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 (2/3) of the first Mortgagees (based on one vote for each first mortgage owned) or two-thirds (2/3) of the Class A Members have given their prior written approval, the 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 require the consent described in subsection (a) above;
  - (ii) change the method of determining the obligations, assessments, dues, or other charges that may be levied against an Owner;
  - (iii) by act or omission, waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Dwelling Units and their appurtenances, the exterior maintenance of Dwelling Units and their appurtenances, the maintenance of the Common Area, common fences and driveways, and the upkeep of lawns and plantings in the Property;
  - (iv) fail to maintain fire and extended coverage insurance on insurable parts of the Common Area or other property owned by the Association on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value, based on current replacement costs, not including land value; or

(v) use hazard insurance proceeds for losses to the Common Area or other property owned by the Association 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 default is not cured within sixty (60) days after the Owner's receipt of notice of the default.

(c) A Mortgagee may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy for such Common Area. The Mortgagee making such payments shall be owed immediate reimbursement therefor from the 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 default is not cured within sixty (60) days after the Owner's receipt of notice of the default;

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

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

(b) Provided that improvements have been constructed in the Common Area and provided that a Mortgagee gives written notice to the 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 Declarant to annex additional areas as provided in Article XIII

Section 12.5. General.

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

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

(c) **Notice.** As set forth in this Article XII, 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 Bylaws or the Articles; 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.

(d) **Excess Proceeds.** Should there be excess insurance or condemnation proceeds after the renovation, repair or reconstruction called for herein, such excess proceeds may be distributed equally to the Owners, apportioned equally among the Lots; subject, however, to the priority of a Mortgagee with regard to the proceeds applicable to the Lot securing said Mortgagee and in accordance with Indiana law.

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

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

(g) **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 the Board of Directors and a majority of the Mortgagees.

**ARTICLE XIII.**

**GENERAL PROVISIONS**

Section 13.1. Enforcement. 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 herein or therein. 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.

**Section 13.2. Severability; Headings; Conflicts.** 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 and this Declaration, this Declaration shall control; in the case of any conflict between this Declaration and the Bylaws, 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 herein, 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 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**"), as each such term is defined below, must be approved by Members entitled to cast at least sixty-seven percent (67%) of the votes of Members present and voting, in person or by proxy, at a meeting held in accordance with the notice and quorum requirements for Material Amendments and Extraordinary Actions contained in the Bylaws, such vote including the vote of a majority of the Class A Members present and voting, in person or by proxy, at such meeting and the vote of the Class B Member, if any.

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

- (i) assessment basis or assessment liens;
- (ii) any method of imposing or determining any charges to be levied against individual Owners;
- (iii) reserves for maintenance, repair or replacement of Common Area improvements;
- (iv) maintenance obligations;

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

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

(vii) reduction of insurance requirements;

(viii) restoration or repair of Common Area improvements;

(ix) the annexation or withdrawal of land to or from the 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.

herein, unless at least sixty-seven percent (67%) of the Members, and Mortgagees representing at least fifty-one percent (51%) of those Lots with Mortgages have given their prior written approval, the 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.

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

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

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

Any amendment to this Declaration 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.** Declarant 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. Declarant shall give notice in writing to such Owners and Mortgagees of any amendments. Declarant shall not have the right at any time by amendment of this Declaration to grant or establish any easement through, across or over any Lot which Declarant has previously conveyed without the consent of the Owner of such Lot. All amendments to this Declaration shall be in writing and recorded among the appropriate land records.

**Section 13.7. Waiver.** Declarant hereby expressly reserves unto itself (so long as this Declaration is in effect), the unqualified right to waive or alter from time to time such of the herein contained restrictions as it may deem best, as to any one or more of the Lots, which waiver or alteration shall be evidenced by the mutual written consent of Declarant and the

then-Owner of the Lot as to which some or all of said restrictions are to be waived or altered; such written consent shall be duly acknowledged and recorded in the Recorder's Office.

**Section 13.8. Annexation of Additional Property.** Notwithstanding anything contained in this Declaration to the contrary, Declarant may annex any Additional Property without the consent of the Association or the Members. The Association may annex any Additional Property and provide for maintenance, preservation and architectural control of Lots and Common Area within such Additional Property, and may add to its membership, with the written consent of more than fifty percent (50%) of each class of Members. Any future improvements on the Additional Property must be consistent with or better than the initial improvements on the Property in terms of quality, design and construction and comparable in style, size and cost. Any Additional Property, once annexed, shall be deemed to be a part of the Property.

**Section 13.9. 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 such Owner's respective Lot and structures constructed thereupon including, but not limited to, the Dwelling Unit in an amount equal to the full replacement value of the improvements which in whole or in part, comprise the Dwelling Unit, including, without limitation, any party walls. Each and every Owner shall, in addition, also procure endorsements naming the Association as an additional insured under such insurance policies and requiring each such insurer to provide (i) immediate written notice to the Association of any cancellation of such policy, and (ii) at least thirty (30) days' written notice to the Association prior to any termination or material modification of such policy. 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 and endorsement, 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, including an endorsement naming the Association as an additional insured. 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. Owners shall not do or permit any act or thing to be done in or to a Lot or Dwelling Unit which is contrary to law or which invalidates or is in conflict with the Owner's policy of insurance. An Owner who fails to comply with the provisions of this paragraph shall pay all costs, expenses, liens, penalties, or damages which may be imposed upon the Owner, Declarant or the Association by reason thereof.

**Section 13.10. Withdrawable Real Estate.** 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 13.11. Management Contracts.** The Board of Directors may enter into professional management contract(s) for the management of the Property, in accordance with the Articles and Bylaws.

**Section 13.12. Dissolution.** Subject to the restrictions and conditions contained in Article XII and this Article XIII, 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".

**Section 13.13. Negligence.** Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents, invitees or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Association. An Owner shall pay the amount of any increase in insurance premiums occasioned by violation of any provision of this Declaration by such Owner, any member of his family or their respective guests, employees, agents, invitees or tenants.

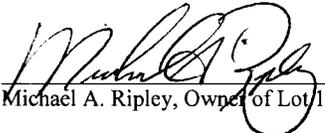
**Section 13.14. Acceptance and Ratification.** All present and future Owners, Mortgagees, tenants and occupants of the Lots and Dwelling Units, and other Persons claiming by, through or under them, shall be subject to and shall comply with the provisions of this Declaration, the Articles, the By-Laws and the rules, regulations and guidelines as adopted by the Board of Directors and (to the extent of its jurisdiction) the Architectural Review Board, or any committee thereof, as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Lot or Dwelling Unit shall constitute an agreement that the provisions of this Declaration, the Articles, the Bylaws and rules, regulations and guidelines, as each may be amended or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any Person having at any time any interest or estate in a Lot or Dwelling Unit or the Property, all as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All Persons who may own, occupy, use, enjoy or control a Lot or Dwelling Unit or any part of the Property in any manner shall be subject to this and guidelines applicable thereto as each may be amended or supplemented from time to time.

**Section 13.15. Perpetuities.** If any of the covenants, conditions, restrictions, or other provisions of this Declaration would be unlawful, void, or voidable for violation of the common law rule against perpetuities, then such provisions shall continue on for the maximum amount of time as allowed by Indiana Code 32-17-8, et seq. as amended from time to time.

**Section 13.16. Plat.** Contemporaneously with the recording of this Declaration in the Recorder's Office a plat of the Property created by Beam, Longest and Neff, LLC under Project No. 090046 (the "**Plat**") is being recorded in the Recorder's Office. The Current Residents hereby consent to the Plat and the recording thereof and each Current Resident hereby designates Declarant as his/her attorney-in-fact solely for the purpose of executing the Plat and any documents required in connection with the approval process for the Plat as an owner of a portion of the Property.

**Section 13.17. Termination of Prior Recorded Documents.** The Prior Recorded Documents are hereby terminated and shall be of no further force or effect with respect to the Property. To the extent that any Prior Recorded Document created a validly existing horizontal property regime or 'condominium' upon the Property, (i) this Declaration shall be deemed to be a "removal instrument" as defined in Indiana Code § 32-25-8-16, and (ii) Declarant and the Current Residents hereby agree that the Property shall not be deemed to be owned in common among Declarant and the Current Residents, but rather (a) Declarant shall be deemed to be the sole owner of the Common Area, as reflected on the Plat, (b) Declarant shall be deemed to be the Owner of Lots 1-8, 14, 17-24, 26-29 and 31, as reflected on the Plat, and (c) each Current Resident shall be deemed to be the Owner of the Lot indicated on such Current Resident's signature page attached to this Declaration, as such Lot is reflected on the Plat. In order to keep continuity of Lot numbers from the unit numbers set forth in the Prior Recorded Documents, Lots 9-12 are not reflected on the Plat and are reserved for future Lots. To the extent any undivided percentage interest in the Common Areas was conveyed to or is owned by any Current Resident, each Current Resident hereby conveys any such undivided percentage interest to Declarant. Each Current Resident hereby agrees to promptly execute any additional instruments reasonably requested by Declarant to effectuate or further evidence the intent of this Section.



  
Michael A. Ripley, Owner of Lot 13

STATE OF IN )  
                                  )SS:  
COUNTY OF Marion

Before me, a Notary Public in and for said County and State, personally appeared Michael A. Ripley, who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions for Ladywood Gardens as his free act and deed.

Witness my hand and Notarial Seal this 18th day of January, 2011.



  
Signature

Elizabeth Hodge  
Printed Name                      Notary Public

My Commission Expires: 3/26/2015 My County of Residence: Marion



  
Michael L. Fortman, Owner of Lot 16

STATE OF Indiana  
COUNTY OF Hancock )SS:

Before me, a Notary Public in and for said County and State, personally appeared Michael L. Fortman, who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions for Ladywood Gardens as his free act and deed.

Witness my hand and Notarial Seal this 19 day of January, 2011.



  
Signature

Regina R Bider  
Printed Name Notary Public

My Commission Expires: March 5, 2017 My County of Residence: Hancock



PAUL R. DEBENEDITTIS AND PAUL F. DEBENEDITTIS, TENANTS IN COMMON, OWNER OF LOT 25

Paul R. DeBenedittis  
Paul R. Debeneditis

STATE OF Indiana )  
 )SS:  
COUNTY OF Marion )

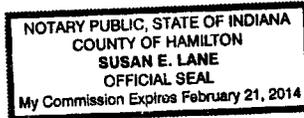
Before me, a Notary Public in and for said County and State, personally appeared Paul R. Debeneditis : , who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions for Ladywood Gardens as their free act and deed.

Witness my hand and Notarial Seal this 28<sup>th</sup> day of January, 2011.

Susan E Lane  
Signature

SUSAN E Lane  
Printed Name Notary Public

My Commission Expires: 2-21-2014 My County of Residence: Hamilton









**CONSENT AND SUBORDINATION  
TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
LADYWOOD GARDENS**

The undersigned, a mortgagee with respect to a portion of the real estate subject to the forgoing Declaration, hereby approves and consents to (i) the execution and recordation of the forgoing Declaration and the Plat (as defined in the foregoing Declaration), (ii) the termination of the Prior Recorded Documents (as defined in the foregoing Declaration), and (iii) to the extent any of the Prior Recorded Documents created a validly existing horizontal property regime or 'condominium', the release of the real estate subject to the forgoing Declaration from such horizontal property regime or 'condominium', and hereby subordinates its interest in any portion of the real estate subject to the forgoing Declaration to the provisions of the forgoing Declaration.

By: Angie Wood - Main Source Bank  
Name: Angie Wood  
Title: Retail Lending Officer

STATE OF Indiana  
COUNTY OF DeKalb )SS:

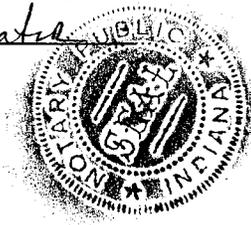
Before me, a Notary Public in and for said County and State, personally appeared Angie Wood, known to me to be the Retail Lending Officer of Main Source Bank, who acknowledged the execution of the foregoing Consent and Subordination on behalf of said entity.

Witness my hand and Notarial Seal this 10<sup>th</sup> day of January, 2011.

Crystal A. Hedinger  
Signature

Crystal A. Hedinger  
Printed Name Notary Public

My Commission Expires: 10-27-14 My County of Residence: DeKalb





I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Matthew G. DeLaruelle.

This instrument was prepared by: Matthew G. DeLaruelle, ICE MILLER LLP, One American Square, Suite 2900, Indianapolis, IN 46282.

**EXHIBIT A**

**Legal Description of the Property**

A PART OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 16 NORTH, RANGE 4 EAST, SECOND PRINCIPAL MERIDIAN, WASHINGTON TOWNSHIP, MARION COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID QUARTER SECTION; THENCE SOUTH 89 DEGREES 23 MINUTES 54 SECONDS WEST (ASSUMED BEARING) 797.87 FEET ALONG THE SOUTH LINE OF SAID QUARTER SECTION TO A RAILROAD SPIKE AT THE SOUTHWEST CORNER OF THE 9.836-ACRE TRACT OF LAND DESCRIBED IN INSTRUMENT NUMBER 2002-78169 IN THE OFFICE OF THE RECORDER OF SAID MARION COUNTY; THE FOLLOWING FIVE (5) COURSES ARE ALONG THE SOUTHWESTERN LINE OF SAID 9.836-ACRE TRACT; THENCE (1) NORTH 53 DEGREES 48 MINUTES 05 SECONDS WEST 110.30 FEET TO A RAILROAD SPIKE; THENCE (2) NORTH 30 DEGREES 51 MINUTES 05 SECONDS WEST 190.75 FEET TO A RAILROAD SPIKE; THENCE (3) NORTH 32 DEGREES 35 MINUTES 06 SECONDS WEST 194.55 FEET TO A RAILROAD SPIKE; THENCE (4) NORTH 47 DEGREES 34 MINUTES 06 SECONDS WEST 328.15 FEET TO A 5/8 INCH REBAR WITH YELLOW CAP ON THE EAST LINE OF THE WEST HALF OF SAID NORTHEAST QUARTER; THENCE (5) NORTH 00 DEGREES 03 MINUTES 56 SECONDS EAST 23.35 FEET ALONG SAID EAST LINE TO A RAILROAD SPIKE AND THE POINT OF BEGINNING OF THIS DESCRIPTION, WHICH POINT IS THE SOUTHEAST CORNER OF THE 3.00-ACRE TRACT OF LAND DESCRIBED IN INSTRUMENT NUMBER 2004-0198119 IN SAID RECORDER'S OFFICE; THENCE NORTH 40 DEGREES 16 MINUTES 56 SECONDS WEST 55.11 FEET; THENCE NORTH 23 DEGREES 23 MINUTES 50 SECONDS WEST 30.89 FEET; THENCE NORTHWESTERLY 49.63 FEET ALONG AN ARC TO THE LEFT AND HAVING A RADIUS OF 161.98 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF NORTH 32 DEGREES 10 MINUTES 27 SECONDS WEST AND A LENGTH OF 49.44 FEET; THENCE NORTH 40 DEGREES 57 MINUTES 00 SECONDS WEST 169.87 FEET; THENCE NORTHWESTERLY 14.47 FEET ALONG AN ARC TO THE RIGHT AND HAVING A RADIUS OF 38.00 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF NORTH 30 DEGREES 02 MINUTES 19 SECONDS WEST AND A LENGTH OF 14.39 FEET; THENCE NORTH 48 DEGREES 44 MINUTES 40 SECONDS EAST 236.35 FEET; THENCE NORTHEASTERLY 17.80 FEET ALONG AN ARC TO THE RIGHT AND HAVING A RADIUS OF 266.56 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF NORTH 60 DEGREES 54 MINUTES 43 SECONDS EAST AND A LENGTH OF 17.80 FEET TO SAID EAST LINE OF THE WEST HALF; THENCE SOUTH 00 DEGREES 03 MINUTES 56 SECONDS WEST 11.31 FEET ALONG SAID EAST LINE TO THE SOUTHERN BOUNDARY OF MILLERSVILLE ROAD PER PLANS FOR PROJECT U.S.-467(1), DATED 1960; THENCE ALONG SAID BOUNDARY NORTHEASTERLY 186.98 FEET ALONG AN ARC TO THE RIGHT AND HAVING A RADIUS OF 256.56 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF NORTH 82 DEGREES 32 MINUTES 50 SECONDS EAST AND A LENGTH OF 182.87 FEET; THENCE SOUTH 69 DEGREES 50 MINUTES 17 SECONDS WEST 97.26 FEET ALONG SAID BOUNDARY; THENCE SOUTH 33 DEGREES 17 MINUTES 40 SECONDS EAST 110.78 FEET ALONG SAID BOUNDARY TO THE SOUTHWESTERN BOUNDARY OF EMERSON AVENUE PER SAID PROJECT; THENCE ALONG SAID BOUNDARY SOUTHEASTERLY 334.68 FEET ALONG AN ARC TO THE LEFT AND HAVING A RADIUS OF 711.62 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF SOUTH 29 DEGREES 42 MINUTES 25 SECONDS EAST AND A LENGTH OF 331.61 FEET TO THE NORTHWESTERN LINE OF REAL ESTATE KNOWN AS LADYWOOD ESTATES HORIZONTAL PROPERTY REGIME RECORDED AS INSTRUMENT NUMBER 2002-020078169, THE FOLLOWING SIX COURSES BEING ALONG SAID NORTHWESTERN LINE; THENCE (1) SOUTH 51 DEGREES 44 MINUTES 25 SECONDS WEST 76.13 FEET; THENCE (2) SOUTH 31 DEGREES 56 MINUTES 25 SECONDS WEST 67.65 FEET; THENCE (3) SOUTH 63 DEGREES 55 MINUTES 10 SECONDS WEST 46.65 FEET; THENCE (4) SOUTH 46 DEGREES 51 MINUTES 55 SECONDS WEST 39.35 FEET; THENCE (5) NORTH 61 DEGREES 58 MINUTES 10 SECONDS WEST 291.57 FEET; THENCE (6) NORTH 48 DEGREES 37 MINUTES 18 SECONDS WEST 99.42 FEET TO SAID EAST LINE OF THE WEST HALF OF THE NORTHEAST QUARTER; THENCE SOUTH 00 DEGREES 03 MINUTES 56 SECONDS WEST 66.54 FEET ALONG SAID LINE TO THE POINT OF BEGINNING, CONTAINING 5.140 ACRES, MORE OR LESS.

JOSEPH P. O'CONNOR  
MARION COUNTY ASSESSOR

A201600102144

09/15/2016 10:36 AM  
KATHERINE SWEENEY BELL  
MARION COUNTY IN RECORDER  
FEE: \$ 57.50  
PAGES: 15  
By: KB

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2016 SEP -9 A 10: 23

DULY ENTERED FOR TAXATION  
SUBJECT TO FINAL ACCEPTANCE  
FOR TRANSFER

THIS DOCUMENT IS PROVIDED FOR SOLE USE OF THE NATIONAL TITLE GROUP AND IS NOT ELIGIBLE FOR RESUBMISSION UNDER IC 36-1-7

Cross-Reference: A201100039464; A201100039465

**FIRST AMENDMENT TO THE  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
LADYWOOD GARDENS**

This First Amendment to the Declaration of Covenants, Conditions and Restrictions for Ladywood Gardens was made as of the date set forth below.

**WITNESSETH:**

WHEREAS, Ladywood Gardens located in Marion County, Indiana was created and formed pursuant to a certain "Declaration of Covenants, Conditions and Restrictions for Ladywood Gardens," recorded in the Office of the Recorder of Marion County, Indiana, on May 5, 2011, as Instrument No. A201100039464 ("Declaration"); and

WHEREAS, the Declaration established Ladywood Gardens as a Planned Unit Development with the Common Areas and Limited Areas applicable thereto; and

WHEREAS, in 2011, A Re-Plat of the Ladywood Gardens Subdivision was recorded in the Office of the Recorder of Marion County, Indiana, May 5, 2011, as Instrument No. A201100039465 ("Re-Plat");

WHEREAS, Article XIII, and Section 13.5 of the Declaration enables the Declaration to be amended by a vote of not less than Sixty-Seven percent (67%) of the total authorized votes of the Owners; and

WHEREAS, the Owners within Ladywood Gardens, and who are members of Ladywood Gardens Homeowners Association, Inc. ("Association") desire to adopt certain amendments to the Declaration of the Association as set forth herein; and

WHEREAS, the Owners holding more than sixty-seven percent (67%) of the total authorized votes of the Owners voted to approve this First Amendment to the Declaration of Covenants, Conditions and Restrictions for Ladywood Gardens.



KB (15)

NOW, THEREFORE, the Declaration of Covenants, Conditions and Restrictions for Ladywood Gardens is hereby amended as follows:

1. **Section 6.20 is hereby deleted in its entirety and a new Article XIV entitled "Rental Restrictions" is hereby added to the Declaration.**

#### ARTICLE XIV

##### RENTAL RESTRICTIONS

Section 14.1. General Purposes of Leasing Restrictions. The Association's members recognize that an owner-occupant is both psychologically and financially invested in a home to a greater extent than a renter, and thus owner-occupants maintain their property better than renters generally. The Association's members wish to insure that the residents within Ladywood Gardens share the same proprietary interest in and respect of the Dwelling Units, the Lots and the Common Areas. They also want to encourage residents to not only maintain property values but also to improve them and recognize that owner-occupants have more incentive to do so compared to non-owner occupants. Thus, the provisions of this Article XIV shall be applicable.

Section 14.2. Limits on the Number of Leased Dwelling Units ("Rental Cap"). No more than three (3) of the twenty-six (26) Dwelling Units may be leased or rented to non-owner occupants at any given time, except as may be otherwise provided in this Article XIV. The Dwelling Units described in Section 14.3 below shall count towards the three (3) Dwelling Unit "rental cap". If at any time such number of Dwelling Units are leased or rented, an Owner who wants to rent or lease his or her Dwelling Unit which is not already rented shall be placed upon a waiting list by the Board of Directors. When an existing tenant moves out, the Owner of that Dwelling Unit shall immediately notify the Board of Directors or Managing Agent of such fact and that Dwelling Unit cannot be re-rented until all prior Owners on the waiting list, if any, have had a chance to rent their Dwelling Units. Prior to the execution of any lease, and in addition to the requirements set forth below, the Owner must notify the Board of Directors or the Managing Agent as to that Owner's intent to lease his or her Dwelling Unit. After receiving such notice, the Board of Directors or the Managing Agent shall advise the Owner if his or her Dwelling Unit may be leased or whether the maximum number of Dwelling Units within Ladywood Gardens is currently being leased. If the maximum number of Dwelling Units is being leased, the Board of Directors or the Managing Agent shall also notify the Owner of that Owner's position on the waiting list.

The Rental Cap provided in this Section 14.2 will not apply to any situation where a Dwelling Unit is occupied by family members of the Dwelling Unit Owner. Thus, this kind of occupancy will not be considered to be a "rental" in the context of the Rental Cap, even though the Owner and occupants will still be subject to the remaining provisions and requirements of this Article XIV.

Section 14.3. Effective Date of "Rental Cap" on Existing Rentals. Within fifteen (15) days after the date on which this Amendment is recorded in the Office of the Recorder of Marion County

THE BOARD OF DIRECTORS OF THE ASSOCIATION OF OWNERS OF DWELLING UNITS IN LADYWOOD GARDENS, INC. IS HEREBY FILED UNDER IC 36.2.1

(the "Recording Date"), the Board of Directors or Managing Agent shall provide written notice to all Owners setting forth the Recording Date and the then current address of the Managing Agent. The Rental Cap provisions of Section 14.2 shall not apply to the Owner of any Dwelling Unit in Ladywood Gardens which, as of the Recording Date, is rented or leased by its Owner to a non-owner occupant, so long as the Owner-landlord mails or otherwise delivers to the Managing Agent of the Association (at the address shown in the notice of the Recording Date), within sixty (60) days after the Recording Date, a copy of each executed lease of such Owner-landlord's Dwelling Unit (or Dwelling Units) which is in effect as of the Recording Date. Such lease copies may have the rental amount deleted. The Owners of such pre-Recording Date rented Dwelling Units shall not be subject to the provisions of Section 14.2, but shall be subject to the remaining provisions of this Article XIV. However, when the legal owners of record of any of the pre-Recording Date rented Dwelling Units sell, transfer or convey such Dwelling Unit(s) to another Owner after the date of recording of this Amendment, such Dwelling Unit(s) shall immediately become subject to Section 14.2. The failure of any such Owner-landlord of a leased or rented Dwelling Unit to deliver a copy of such pre-Recording Date lease within said sixty day period to the Managing Agent shall result in said Owner-landlord's Dwelling Unit being subject to the Rental Cap (from and after the date of expiration of such pre-Recording Date lease). However, in no event shall the Rental Cap apply to any lease executed prior to the Recording Date or to any renewals thereof provided for in any such leases, so long as the Dwelling Unit continues to be occupied by one or more of the non-owner occupants in possession of the Dwelling Unit as of the Recording Date. Any Dwelling Unit that falls under the exception of this Section 14.3 shall, nevertheless, be counted as one of the three (3) maximum Dwelling Units that may be rented at any given time even though such maximum does not apply to restrict the Owner of such pre-Recording Date leased Dwelling Unit.

Section 14.4. Hardship Exceptions and Waiver. Notwithstanding Section 14.2 above, if an Owner wishes to rent or lease his or her Dwelling Unit, but the maximum number of Dwelling Units is currently being leased, the Owner may request the Board of Directors to waive the "rental cap" and approve a proposed lease if the Owner establishes to the Board's satisfaction that the "rental cap" will cause undue hardship. If a majority of the entire Board of Directors approves in writing of the Owner's request, the Board of Directors shall permit the Owner to rent or lease said Dwelling Unit, subject to any further conditions or limitations imposed by the Board in the Board's discretion, but only if the Owner satisfies all other requirements of this Article XIV. Such decision shall be at the sole discretion of the Board. Examples of an undue hardship include:

- (a) death, dissolution or liquidation of an Owner;
- (b) divorce or marriage of an Owner;
- (c) necessary relocation of the residence of an Owner to a point outside of a fifty (50) mile radius of the perimeter of Ladywood Gardens due to a change of employment or retirement of at least one (1) of such Owners;
- (d) necessary relocation of the residence of an Owner due to mental or physical infirmity or disability of at least one (1) of such Owners;

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- (e) difficult local real estate market conditions; and
- (f) other similar circumstances.

Section 14.5. General Lease Conditions.

- (a) All leases, including renewals, shall be in writing, and no lease shall be entered into for a term of less than one (1) year without the prior written approval of the Board of Directors.
- (b) A copy of each executed lease by an Owner which identifies the tenant (but which may have the rental amount deleted) shall be provided to the Board of Directors or the Managing Agent by the Owner within thirty (30) days after execution.
- (c) No portion of any Dwelling Unit other than the entire Dwelling Unit shall be leased for any period.
- (d) No subleasing shall be permitted.
- (e) All leases shall be made expressly subject and subordinate in all respects to the terms of the Declaration, By-Laws, Articles of Incorporation, and any rules and regulations promulgated by the Board of Directors, as amended, to the same extent as if the tenant were an Owner and a member of the Association;
- (f) All leases shall provide for direct action by the Association and/or any Owner against the tenant with or without joinder of the Owner of such Dwelling Unit. If such provision is not in the lease, it will be deemed to be in such lease.
- (g) The Owner shall supply copies of such legal documents to the tenants prior to the effective date of the lease. The Owner and the tenant shall also submit to the Board or the Managing Agent a signed statement acknowledging that the tenant has read the "Declaration of Covenants, Conditions & Restrictions", the Association's By-Laws, the Association's rules and regulations, and all amendments thereto, and that the tenant agrees to comply with all of the provisions in such documents.
- (h) The Owner cannot be delinquent in the payment of any assessments or other charges to the Association. If at any time an Owner becomes delinquent, the Board shall have the right to revoke said Owner's right to lease the Owner's Dwelling Unit, even if during the term of a lease.
- (i) The Board of Directors shall have the power to promulgate such additional rules and regulations as, in its discretion, may be necessary or appropriate concerning leasing.

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- (j) All Owners who do not reside in the home shall provide the Board of Directors with the name of the tenant(s) and any other residents living in the home.

Section 14.6. One Year Waiting Period. In addition to all other provisions of this Article XIV, for a period of at least one (1) year after an Owner's acquisition of a Dwelling Unit, said Owner cannot lease such Dwelling Unit. After such time, said Dwelling Unit will be eligible to be leased if all other conditions of this Article XIV are satisfied and provided further that the Owner is not delinquent in the payment of any assessments or other charges to the Association. Notwithstanding this Section 14.6, if an Owner wishes to lease a Dwelling Unit prior to the end of the one year waiting period, the Owner may apply to the Board of Directors for a waiver. The Board may, in writing, approve an earlier lease if the Owner establishes to the Board's satisfaction that the waiting period will cause undue hardship in the manner as defined in Section 14.4 above.

Section 14.7. Owner is Still Liable. No lease shall provide, or be interpreted or construed to provide, for a release of the Owner from his or her responsibility to the Association and the other Owners for compliance with the provisions of the Declaration, the Articles of Incorporation, the By-Laws, and any rules and regulations promulgated by the Board of Directors, including the upkeep of the Dwelling Unit, or from the Owner's liability to the Association for payments of assessments or any other charges.

Section 14.8. Violations. Any lease or attempted lease of a Dwelling Unit in violation of the provisions of this Article XIV shall be voidable at the election of the Association's Board of Directors or any other Owner, except that neither party to such lease may assert this provision of this Article XIV to avoid its obligations thereunder. In the event of a violation, the Board of Directors, on behalf of the Association, or any Owner, shall have the right to exercise any and all available remedies at law or equity.

Section 14.9. Institutional Mortgagees. The provisions of this Article XIV shall not apply to any institutional mortgagee of any Dwelling Unit which comes into possession of the Dwelling Unit by reason of any remedies provided by law or in equity or in such mortgage or as a result of a foreclosure sale or other judicial sale or as a result of any proceeding, arrangement, or deed in lieu of foreclosure. However, when a Dwelling Unit is sold or conveyed by such an institutional mortgagee to a subsequent purchaser, that subsequent purchaser shall be bound by the provisions of this Article XIV.

Section 14.10. Burden of Proof. Anything to the contrary herein notwithstanding, if at any time a Dwelling Unit is not occupied by one of the Owners thereof, there shall be a presumption that the Dwelling Unit is being leased and subject to the provisions of this Article XIV and the Owners shall have the burden of proving to the satisfaction of the Board of Directors that the occupancy is not in violation of the terms of this Article XIV, including but not limited to the delivery to the Board of directors of a written statement of the nature and circumstances of the occupancy and any written document or memorandum that is the legal basis for the occupancy. For purposes of this Article XIV and this Section 14.10, any occupancy (including occupancy pursuant to a rent-to-buy contract or similar arrangement or pursuant to any option to purchase)

by anyone other than an Owner shall be deemed to be a lease, rental or other similar arrangement, unless the Owner delivers to the Board of Directors a written purchase contract, conditional sales contract or similar contract whereby the occupant is unconditionally and presently legally obligated to purchase the Dwelling Unit.

2. Article X of the Declaration is hereby deleted in its entirety and replaced with the following new Article X, entitled "Party Walls".

#### PARTY WALLS

Section 10.1 General Rules of Law to Apply. Each wall built as part of the original construction of a Dwelling Unit and situated upon the dividing line between two Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article X, the general rules of law regarding party walls and liability of Owners for property damage due to negligence or willful acts or omissions in connection with party walls shall apply thereto.

Section 10.2 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners sharing such party wall proportionately.

Section 10.3 Destruction by Fire or Other Casualty. If any party wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, any Owner sharing such a wall may restore it, and the Owner sharing such wall shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, subject to the right of either of such Owners to call for a larger contribution from the other under any rule of law regarding liability for negligent, intentional or willful acts or omissions.

Section 10.4 Weatherproofing. Notwithstanding any other provision of this Article, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who by his negligent or willful act causes a party wall to be exposed to elements shall bear the entire cost of correcting such condition.

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

Section 10.6 In the event of any dispute arising in connection with a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of the three arbitrators. (Should any party refuse to appoint an arbitrator within ten days after written request therefore from another party, the Board of Directors of the Association shall select an arbitrator for the refusing party.)

3. Section 13.9 of the Declaration shall be deleted in its entirety. In addition, the following new Article XV and XVI shall be added to the Declaration.

ARTICLE XV  
INSURANCE

Section 15.1. Public Liability Insurance. The Association shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time; provided, such policy shall be for at least One Million Dollars (\$1,000,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Such comprehensive public liability insurance policy shall cover all of the Common Properties and shall insure the Association, the Board of Directors, or any committee of the Association or Board, any Managing Agent appointed or employed by the Association, all persons acting or who may act as agents or employees of the foregoing with respect to the Real Estate or the Development. Such public liability 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.

Section 15.2. Casualty Insurance.

(a) The Association shall procure a master casualty insurance policy that must be of the kind typically referred to in the insurance business as "All In". (Thus, the other two kinds of association insurance policies for this kind of community that commonly known as "Single Entity" and "Bare Walls" shall NOT be obtained by the Association.) The "All In" insurance coverage is broader and more inclusive than "Single Entity" or "Bare Walls" coverage. The Association's policy shall not only cover the Common Areas but also certain items located within the boundaries of each Owner's Unit such as:

Fixtures

Appliances, whether built-in or not, such as those used for refrigerating, ventilating, cooking, dishwashing, laundering, security, and housekeeping.

Cabinetry

Drywall

Wall coverings

Basically, the Association's master casualty policy will cover all property within the Units EXCEPT FOR floor, ceiling and wall coverings, window treatments, and the personal property of Unit Owners. Those items will be the responsibility of the applicable Dwelling Unit Owner to insure.

All coverage should be on a 100% full replacement cost basis.

In addition, the Association's master casualty insurance policy shall also cover additions, alterations, betterments and improvements made to or within the Units, regardless of whether such additions, alterations, betterments or improvements were made by the current Owner of a Unit, or by a prior Owner.

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Each Unit Owner is required to maintain, at his or her own expense, the appropriate form of insurance (typically referred to as an HO-6 policy) to cover his or her floor, ceiling and wall coverings, window treatments, additional living expenses, as well as personal property stored either within the Unit or elsewhere on the Ladywood Gardens property, comprehensive personal liability, Association deductible reimbursement (see below), and loss assessment exposures.

Each Owner may, at his or her own expense, purchase such additional insurance as he or she may deem necessary, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in subsection (b) below relating to the master casualty insurance policy to be obtained by the Association. Each Owner may obtain additional casualty insurance at his or her own expense upon his or her Unit, but such insurance shall provide that it shall be without contribution as against the casualty insurance purchased by the Association.

The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Board, the Board may cause such replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a Common Expense. Such insurance coverage shall be for the benefit of each Owner and, if applicable, the Mortgagee of each Owner.

(b) The sole duty of the Board in connection with any insurance proceeds shall be to receive such proceeds as are paid and to hold the same for the purposes elsewhere stated herein, for the benefit of the Owners. The proceeds shall be used or disbursed by the Association or the Board, as appropriate, only in accordance with the provisions of this Declaration. Such casualty insurance policies shall contain provisions that the insurer (i) waives its right to subrogation as to any claim against the Association, the Board of Directors, its agents and employees, the Owners, their respective agents and guests, and (ii) waives any defense based on the invalidity arising from the acts of the insured. Such policies shall further provide to the extent obtainable upon reasonable terms (a) that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners, and (b) that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Association does not elect to restore.

Section 15.3. Other Insurance. The Association shall also obtain any other insurance required by law to be maintained, including, but not limited to, worker's compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including, but not limited to, liability insurance on vehicles owned or leased by the Association and officers' and directors' liability policies. Such insurance coverage shall also provide for and cover cross liability claims of one insurance party against another insurance party. Such insurance shall inure to the benefit of each Owner, the Association, the Board of Directors and any Managing Agent acting on behalf of the Association. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Association.

**Section 15.4. General Provisions.** The premiums for all insurance hereinabove described shall be paid by the Association as part of the Common Expenses. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner and Mortgagee whose interest may be affected thereby, which notice shall be furnished by the officer of the Association who is required to send notices of meetings of the Association. All policies shall also contain an endorsement to the effect that such policy shall not be terminated for non-payment of premiums without at least thirty (30) days prior written notice to the Owner and Mortgagee of each Lot and Dwelling Unit.

In no event shall any distribution of insurance proceeds be made by the Board of Directors directly to an Owner where there is a Mortgagee endorsement on the certificate of insurance or insurance policy or the Board has notice of a Mortgagee as it applies to such Owner's share of such proceeds. In such an event, any remittances shall be to the Owner and his Mortgagee jointly. The same restriction on distribution shall apply to the distribution of any condemnation awards in connection with any taking of any of the Common Areas. Notwithstanding the foregoing, under no circumstances shall any distribution of insurance proceeds in excess of amounts needed to repair damage or pay off any first mortgage or any condemnation awards be made by the Association to any Owners or Mortgagees if to do so would be in violation of the Act or if the same would constitute a distribution of earnings, profits or pecuniary gain to the members of the Association; in any such event, any such insurance proceeds or condemnation awards shall be retained by the Association for use in the payment of its expenses of operation.

**Section 15.5. Liability For the Association's Deductible.** All insurance claims covered by the Association's master casualty insurance policy carry a deductible in an amount determined by the Board, up to a maximum of Ten Thousand Dollars (\$10,000) per occurrence. Notwithstanding anything else contained in this Declaration or the By-Laws, liability for the amount of damage within the limits of any applicable insurance deductible on a policy of insurance issued to the Association shall be in the following manner: The Board of Directors of the Association may, in the case of a claim for damage to a Unit or the Common Areas, (i) pay the deductible amount as a Common Expense, or (ii) after notice and an opportunity for a hearing, assess the deductible amount against the Unit Owners who caused the damage or from whose units the damage or cause of loss originated, or (iii) require the Owners of the Units affected to pay the deductible amount. In reaching its decision, the Board may consider the following factors:

(a) Whether the damage resulted from a negligent or intentional act or omission by the Owner, that Owner's tenant, family, servant, employee, agent, visitor or licensee of that Owner or tenant, or from the failure to maintain any portion of the Owner's property, including any appliance, equipment, or fixture in the Owner's Unit.

(b) Whether the damage involved was limited solely to one Owner's Unit or the Limited Areas assigned to that Owner's Unit.

(c) Whether the damage involved both the Common Areas and/or one or more Units or the Limited Areas assigned to a Unit or Units.

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All decisions and determinations to be made under the above shall be by the Association's Board of Directors, and the same shall be final and binding as between the Association and the affected Owners.

Each Owner is responsible for verifying with his or her own insurance agent that the Owner's share of any such Association deductible is covered under his or her own Dwelling Unit Owner's insurance policy (assuming the deductible is not assessed as part of the Common Expenses allocable to all Owners). The Owner should pay particular attention to the portion of his or her HO-6 policy which is typically called "Coverage A--Building Property" to ensure that there is sufficient coverage for the Owner's possible share of the Association's deductible. Any portion of such a deductible which has been assessed to a particular Owner's account will be subject to the same collection procedures as provided in this Declaration and the By-Laws for Assessments.

Section 15.6 Conflicting Provisions. If there is any conflict between any provisions in this Article XV and other provisions in this Declaration, the provisions contained in this Article XV shall control

#### ARTICLE XVI

##### Casualty and Restoration; Condemnation; Termination

Section 16.1. Casualty and Restoration. In the event of damage to or destruction of the structure or exterior of any Dwelling Unit or in the event of damage to or destruction of any of the Common Areas due to fire or any other casualty or disaster, the Association shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Association, if any, shall be applied to the cost of such repair and reconstruction.

If the insurance proceeds, if any, received by the Association as a result of any such fire or other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, (i) the cost for restoring the damage and repairing and reconstructing a building or Dwelling Unit so damaged or destroyed (or the cost thereof in excess of insurance proceeds received, if any) shall be assessed by the Association against all of the Owners in equal shares as a Special Assessment and (ii) the cost for restoring the damage and repairing and reconstructing any Common Areas so damaged or destroyed (or the cost thereof in excess of insurance proceeds received, if any) shall be assessed by the Association against all of the Owners in equal shares as a Special Assessment. Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses as a Special Assessment and shall constitute a lien from the time of assessment as provided herein.

For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the Dwelling Unit(s) so damaged or destroyed to as near as possible the same condition as it existed immediately prior to damage or destruction and with the same type of architecture.

Immediately after a fire or other casualty or disaster causing damage to any property for which the Board of Directors or Association has the responsibility of maintenance and repair hereunder, the Board shall obtain reliable and detailed estimates of the cost to place the damaged

property in a condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors desires or deems necessary.

Encroachments upon any Lot which may be created as a result of such reconstruction or repair of any Dwelling Unit shall not constitute a claim or basis of a proceeding of action for the Owner upon whose Dwelling Unit such encroachment exists, provided that such reconstruction was either substantially in accordance with the original plans and specifications or as the Dwelling Unit was originally constructed.

Section 16.2. Total or Partial Condemnation.

(a) In the event of the condemnation of all or any part of the Common Areas, or of all or any part of any Dwelling Unit or Lot, the Board is hereby authorized to negotiate with the condemning authority and/or to contest an award made for the appropriation of such Common Areas, Dwelling Units or Lots. For the purpose of such negotiation and/or of contest of such award to the Board as to Dwelling Units and Lots, the Board is hereby declared to be the agent and attorney-in-fact of any Owner affected by the condemnation. This appointment of the Board shall be deemed coupled with an interest and shall be irrevocable. Nothing contained herein, however, shall preclude any Owner from asserting any rights or claims to compensation which cannot be legally asserted by the Board.

(b) Awards for the taking of all or part of a Dwelling Unit or Lot shall be collected by the Board and distributed to the affected Owners. To the extent possible, negotiated awards or awards resulting from a contest shall specify the allocation of the award among Owners affected. In the event that an Owner does not agree with the distribution of an award, such Owner shall be entitled to have the dispute settled by arbitration as provided herein. The protesting Owner shall appoint one arbitrator, the Board acting as agent for all other affected Owners shall appoint a second arbitrator and such arbitrators shall choose a third arbitrator. A majority decision of the arbitrators shall be binding on all Owners and shall be enforceable.

Section 16.3 Conflicting Provisions. If there is any conflict between any provisions in this Article XVI and other provisions in this Declaration, the provisions contained in this Article XVI shall control.

\*\*\*\*\*

Full Force and Effect. All other provisions of the Declaration of Covenants, Conditions and Restrictions for Ladywood Gardens shall remain in full force and effect.

Certification. The undersigned persons hereby represent and certify that all requirements for and conditions precedent to this First Amendment to the Declaration of Covenants, Conditions and Restrictions for Ladywood Gardens have been fulfilled and satisfied.

THIS DOCUMENT IS PREPARED BY CREDIT NATIONAL TITLE SERVICE AND IS NOT ELIGIBLE FOR RESALE UNDER 1236a.7

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IN WITNESS WHEREOF, we, the undersigned, do hereby execute this First Amendment to the Declaration of Covenants, Conditions and Restrictions for Ladywood Gardens and certify the truth of the facts herein stated, this 10 day of August, 2016.

LADYWOOD GARDENS HOMEOWNERS ASSOCIATION, INC.  
Steve Fowler  
Steve Fowler, President

Attest  
Scott Geis  
Scott Geis, Secretary



STATE OF INDIANA )  
COUNTY OF Marion )

Before me a Notary Public in and for said County and State, personally appeared Steve Fowler and Scott Geis, the President and Secretary, respectively, of Ladywood Gardens Homeowners Association, Inc. who acknowledged execution of the foregoing First Amendment to the Declaration of Covenants, Conditions and Restrictions for Ladywood Gardens and on behalf of said corporation and the Owners, and who, having been duly sworn, stated that the representations contained herein are true.

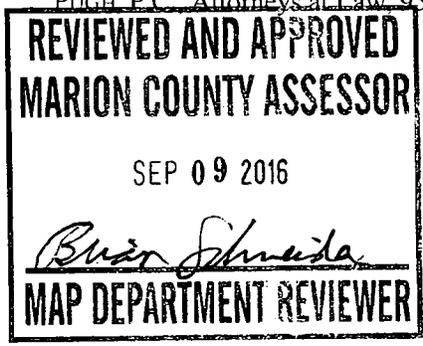
Witness my hand and Notarial Seal this 10 day of August, 2016.

My Commission Expires:  
7-26-22  
Residence County:  
Marion

Kristy D. Page  
Notary Public  
Kristy Page  
Signature

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

This instrument prepared by, and should be returned to, P. Thomas Murray, EADS MURRAY & PUGH, P.C., Attorneys at Law, 9515 E. 59<sup>th</sup> St., Suite B, Indianapolis, IN 46216



THIS DOCUMENT IS NOT ELIGIBLE FOR RESALE UNDER IC 36.2.7

LADYWOOD GARDENS HOMEOWNERS ASSOCIATION, INC.

We, the owners of Living Units in Ladywood Gardens, hereby consent to and approve the proposed amendments on leasing, including the removal of Section 6.20 in its entirety and the addition of new Article XIV (including Section 14.1 through 14.10) to the "Amended and Restated Amended Declaration of Covenants of Ladywood Gardens" filed for record with the Marion County Recorder at Instrument #2006-0149289 as recommended by the Board of Directors of the Ladywood Gardens Homeowners Association, Inc.

SCOTT M. GIES  
Name of Owner(s) - Printed

[Signature]  
Signature of Owner(s)

5311 Ladywood Knoll Lane  
Street address of home in Ladywood Gardens

John G. Price  
Name of Owner(s) - Printed

[Signature]  
Signature of Owner(s)

5325 Ladywood Knoll Lane  
Street address of home in Ladywood Gardens

KATHY HARTING  
Name of Owner(s) - Printed

[Signature]  
Signature of Owner(s)

5321 Ladywood Knoll Lane  
Street address of home in Ladywood Gardens

Vanessa Webb  
Name of Owner(s) - Printed

[Signature]  
Signature of Owner(s)

5337 Ladywood Knoll Pl.  
Street address of home in Ladywood Gardens

MANUEL A. SEPULVEDA  
Name of Owner(s) - Printed

[Signature]  
Signature of Owner(s)

5333 Lady Knoll Place  
Street address of home in Ladywood Gardens

Katie Miller

Name of Owner(s) - Printed

Katie Miller

Signature of Owner(s)

5331 Ladywood Knoll Lane

Street address of home in Ladywood Gardens

SCOTT HAMILTON

Name of Owner(s) - Printed

Scott Hamilton

Signature of Owner(s)

5320 Ladywood Knoll Pl.

Street address of home in Ladywood Gardens

Sarah E. Archer

Name of Owner(s) - Printed

Sarah Archer

Signature of Owner(s)

5335 Ladywood Knoll

Street address of home in Ladywood Gardens

CHARLES L TURNER

Name of Owner(s) - Printed

Charles L Turner

Signature of Owner(s)

5324 LADYWOOD KNOLL RD

Street address of home in Ladywood Gardens

Raykisha Robinson

Name of Owner(s) - Printed

Raykisha Robinson

Signature of Owner(s)

5330 Ladywood Knoll Place

Street address of home in Ladywood Gardens

BRUCE TRENT

Name of Owner(s) - Printed

Bruce Trent

Signature of Owner(s)

5327 LADYWOOD KNOLL PL

Street address of home in Ladywood Gardens

THIS DOCUMENT IS PROVIDED BY THE TITLE GUARANTEE COMPANY AND IS NOT VALID FOR RESALE UNDER IC 36-2-7

LADYWOOD GARDENS HOMEOWNERS ASSOCIATION, INC.

We, the owners of Living Units in Ladywood Gardens, hereby consent to and approve the proposed amendments on leasing, including the removal of Section 6.20 in its entirety and the addition of new Article XIV (including Section 14.1 through 14.10) to the "Amended and Restated Amended Declaration of Covenants of Ladywood Gardens" filed for record with the Marion County Recorder at Instrument #2006-0149289 as recommended by the Board of Directors of the Ladywood Gardens Homeowners Association, Inc.

LINDA GILLETTE Linda Gillette  
Name of Owner(s) - Printed Signature of Owner(s)

5332 Ladywood Knoll LN.  
Street address of home in Ladywood Gardens

Steven Fowler Steven Fowler  
Name of Owner(s) - Printed Signature of Owner(s)

5307 Ladywood Knoll Lane  
Street address of home in Ladywood Gardens

Deborah Robinson Deborah Robinson  
Name of Owner(s) - Printed Signature of Owner(s)

5333 Ladywood Drive  
Street address of home in Ladywood Gardens

M. Joan McChellan M. Joan McChellan  
Name of Owner(s) - Printed Signature of Owner(s)

5306 LaReverend Knoll Lane  
Street address of home in Ladywood Gardens

Demetria Neisher Demetria Neisher  
Name of Owner(s) - Printed Signature of Owner(s)

5305 Ladywood Knoll Pl.  
Street address of home in Ladywood Gardens

Emily Anslinger  
5317 Ladywood Knoll Pl Emily Anslinger

PROPOSED  
RESALE  
GROUP AND IS NOT  
ELIGIBLE FOR RESALE UNDER IC 36.2.7