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

**Hamilton County, Indiana**

**DEED CROSS-REFERENCE: 200300060155**

**MASTER ASSOCIATION CROSS-REFERENCE: 200400007258**

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

THIS NEIGHBORHOOD DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE TOWNHOMES AT AVALON (the "**Neighborhood Declaration**") is made as of \_\_\_\_\_, 2004 by **PULTE HOMES OF INDIANA, LLC**, an Indiana limited liability company (the "**Declarant**").

**RECITALS:**

- A. Declarant is the owner of certain real property located in Hamilton County, Indiana, which is more specifically described on Exhibit A attached hereto and incorporated herein by reference (the "**Neighborhood Property**"); and
- B. Declarant desires to create on the Neighborhood Property a residential neighborhood (the "**Neighborhood**") which shall have permanent open spaces and other common facilities for the benefit of the residents of the Neighborhood; and
- C. The Neighborhood Property is subject to the Master Declaration (as defined in Section 1.16 below) pursuant to which the Master Association (as defined in Section 1.15 below) has been established; and
- D. Declarant desires to provide for the preservation of the values of the Neighborhood and such other areas as may be subjected to this Neighborhood Declaration, and to provide for the maintenance of the open spaces and other facilities, and, to this end, declare and publish its intent to subject the Neighborhood Property to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, it being intended that they shall run with title to the Neighborhood Property and shall be binding on all persons or entities having or acquiring any right, title or interest in the Neighborhood Property or any part thereof and shall inure to the benefit of each owner thereof; and
- E. Declarant has deemed it desirable for the efficient preservation of the values of the Neighborhood to create an association to be known as The Townhomes at Avalon Homeowners Neighborhood Association, Inc., an Indiana nonprofit corporation (the "**Neighborhood Association**"), to which shall be delegated and assigned the powers of owning, maintaining and administering the common areas and facilities located within the Neighborhood Property, administering and enforcing the covenants and restrictions made in and pursuant to this Neighborhood Declaration with respect to the Neighborhood Property, collecting and disbursing the assessments and charges hereafter created with respect to the Neighborhood Property, and promoting the recreation, health, safety and welfare of the owners of the Neighborhood Property and all parts thereof. The Neighborhood Association shall exist in addition to and independently of the Master Association identified in the Master Declaration; and

NOW, THEREFORE, Declarant, for and in consideration of the premises and the covenants contained herein, grants, establishes and conveys to each owner of each Lot (as herein defined), mutual, non-exclusive rights, privileges and easements of enjoyment on equal terms

and in common with all other owners of Lots in and to the use of any common areas and facilities; and further, Declarant declares that the Neighborhood Property shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved, and occupied subject to the provisions, agreements, covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in the Master Declaration and as hereinafter set forth, all of which are for the purpose of protecting the value and desirability of, and shall run with, the Neighborhood Property and be binding on all parties having any right, title or interest in the Neighborhood Property or any part thereof, their respective successors and assigns, and shall inure to the benefit of Declarant and its successors in title to the Neighborhood Property or any part or parts thereof.

## ARTICLE I

### DEFINITIONS

Unless otherwise defined in this Neighborhood Declaration, all terms and words in this Neighborhood Declaration and its recorded exhibits shall have the definitions as are specified in the Master Declaration, as amended from time to time, and the meanings stated below unless the context clearly requires otherwise:

Section 1.1. "Additional Neighborhood Property" shall have the meaning ascribed thereto in Section 3.2 of this Neighborhood Declaration.

Section 1.2. "Architectural Committee" means and refers to the Committee described in Article VI of the Master Declaration.

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

Section 1.4. "Authority Transfer Date" shall have the meaning ascribed thereto in Section 3.1 of this Declaration.

Section 1.5. "Board of Directors" shall mean an elected body having its normal meaning under Indiana corporate law.

Section 1.6. "Bylaws" shall mean and refer to the Code of Bylaws of the Neighborhood Association, as the same may be amended from time to time.

Section 1.7. "City" shall mean the City of Carmel, Indiana.

Section 1.8. "Common Area" or "Common Areas" shall mean and refer to all real property (including the improvements thereto) owned by the Neighborhood Association for the common use and enjoyment of the Members. All of the Neighborhood Property which is not included in any particular Lot, as shown on current or future approved plats of the Neighborhood Property and/or as described herein, shall be considered to be a part of the Common Area.

Section 1.9. "Common Expenses" shall mean and refer to expenses of administration of the Neighborhood Association and expenses for the upkeep, maintenance, repair and

replacement of Common Areas, and all sums lawfully assessed against the Owners by the Neighborhood Association, and all sums, costs and expenses declared by this Neighborhood Declaration to be Common Expenses.

Section 1.10. "County" shall mean the County of Hamilton, Indiana.

Section 1.11. "Declarant" shall mean and refer to Pulte Homes of Indiana, LLC, an Indiana limited liability company, and any successors or assigns to whom Pulte Homes of Indiana, LLC, an Indiana limited liability company, assigns any or all of its rights as Declarant pursuant to this Neighborhood Declaration by assignment recorded in the Office of the Recorder of Hamilton County, Indiana.

Section 1.12. "Development Period" means the period of time commencing with Declarant's acquisition of the Neighborhood Property and ending when Declarant, or an affiliate or subsidiary of Declarant, has completed the development and sale of, and no longer owns, any Lot in the Neighborhood. The Development Period shall recommence as to the Additional Neighborhood Property each time the Declarant acquires any part (or all) of the Additional Neighborhood Property.

Section 1.13. "Dwelling Unit" shall mean and refer to any improvement to the Neighborhood Property intended for any type of independent ownership for use and occupancy as a residence by a single household and shall, unless otherwise specified, include within its meaning (by way of illustration but not limitation) a townhouse.

Section 1.14. "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 plot of land created by and shown on a lawfully recorded subdivision plat of the Neighborhood Property upon which a single Dwelling Unit could be constructed in accordance with applicable zoning ordinances, with the exception of the Common Area and streets dedicated to public use. Each Lot shall include such property to the centerline of any party wall separating Dwelling Units in the same Structure (as herein defined).

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. "**Master Association**" means and refers to Avalon Master Association, Inc., an Indiana nonprofit corporation, and its successors and assigns, as defined in the Master Declaration.

Section 1.19. "**Master Declaration**" means the Master Declaration of Covenants, Conditions, and Restrictions for Avalon recorded with the Recorder of Hamilton County, Indiana, on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_, as Instrument Number \_\_\_\_\_.

Section 1.20. "**Member**" means and refers to all persons who are members of the Neighborhood Association as provided in this Neighborhood Declaration, and the Articles of Incorporation and Bylaws of the Neighborhood Association.

Section 1.21. "**Mortgagee**" shall mean and refer to any person or entity holding a first mortgage on any Lot or the Common Area who has notified the Neighborhood Association of this fact in writing. An "**Eligible Mortgagee**" shall be a Mortgagee who has given notice to the Neighborhood Association of its interest and requested all rights afforded Eligible Mortgagees under Article IX.

Section 1.22. "**Neighborhood**" means the Townhomes at Avalon comprising the Neighborhood Property, which is committed by this Neighborhood Declaration to the provisions hereof and any Additional Neighborhood Property which may hereafter be declared to be subject to this Neighborhood Declaration and all improvements made to such land, including Dwelling Units, Neighborhood Common Areas, if any, and Lots.

Section 1.23. "**Neighborhood Association**" shall mean and refer to The Townhomes at Avalon Homeowners Association, Inc., an Indiana nonprofit corporation, and its successors and assigns.

Section 1.24. "**Neighborhood Declaration**" shall mean and refer to this Neighborhood Declaration of Covenants, Conditions and Restrictions for The Townhomes at Avalon, which is to be recorded in the Office of the Recorder of Hamilton County, Indiana.

Section 1.25. "**Neighborhood Property**" shall mean that certain real property located in Hamilton County, Indiana, which is more specifically described on Exhibit A attached hereto and incorporated herein by reference, as the same may be duly subdivided and platted, and any additions thereto which, from time to time, may be subjected to the covenants, conditions, restrictions, reservations, easements, charges and liens of this Neighborhood Declaration.

Section 1.26. "**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.



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Section 1.27. "Permitted Signs" shall mean (i) customary real estate sale signs which have received the prior written approval of the Committee (as defined in the Master Declaration); and (ii) temporary construction and wooden home signage.

Section 1.28. "Person" shall mean an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof.

Section 1.29. "Recorder's Office" shall mean the Office of the Recorder of Hamilton County, Indiana.

Section 1.30. "Regular Assessments" shall mean and refer to assessments levied against all Lots to fund Common Expenses.

Section 1.31. "Restrictions" shall mean and refer to the agreements, conditions, covenants, restrictions, easements, assessments, charges, liens, and other provisions set forth in this Neighborhood Declaration and the Master Declaration with respect to the Neighborhood Property, as the same may be amended from time to time.

Section 1.32. "Special Assessments" shall mean and refer to assessments levied in accordance with Section 5.7 of this Neighborhood Declaration.

Section 1.33. "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 1.34. "Supplemental Neighborhood Declaration" shall mean an amendment or supplement to this Neighborhood Declaration executed by or consented to by a Declarant or its successors or assigns, and recorded in the public records of Hamilton County, Indiana, which subjects Additional Neighborhood Property to this Neighborhood Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the Additional Neighborhood Property described therein. The term shall also refer to the instrument recorded by a Declarant or its successors or assigns to subject Additional Neighborhood Property to this Neighborhood Declaration.

## ARTICLE II

### MEMBERSHIP

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

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**ARTICLE III**

**VOTING RIGHTS**

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

**Class A:** Class A Members shall be all Members with the exception of the Class B Member. A Class A Member shall be entitled to one (1) vote for each Lot in which it holds the interest required for membership pursuant to **Article 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 Neighborhood Association. A Class B Member shall be entitled to five (5) votes for each Lot in which it holds the interest required for membership pursuant to **Article 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 happening of any of the following events, whichever occurs first (the "Authority Transfer Date"):

- (a) when the Class B Member no longer owns any Lots;
- (b) December 31, 2020; or
- (c) when the Declarant executes and records, with the Recorder's Office, a written instrument by which the Declarant terminates the Class B membership.

**Section 3.2. Expansion.** If Declarant exercises its rights to expand the Neighborhood Property to include additional real estate to be subject to this Neighborhood Declaration including, but not limited to, additional real estate to be used as Lots or Common Area (collectively, "Additional Neighborhood Property"), and in the event that Declarant's Class B membership shall have ceased as provided in **Section 3.1**, above, Declarant's Class B membership interest shall be revived with respect to all Lots owned by Declarant, including those, if any, as to which it had previously had its Class B membership interest converted to Class A membership interests. In addition, in such event, without the requirement of further action or consent by any Member, all of Declarant's rights and privileges hereunder which it enjoyed prior to the Authority Transfer Date shall also be automatically renewed and reinstated. Any such new and/or revived Class B membership interests shall cease and be converted to Class A membership interests upon the happening of any of the following events, whichever occurs first:

- (a) when the Class B member no longer owns any Lots;

- (b) December 31, 2020; or
- (c) when the Declarant executes and records, with the Recorder's Office, a written instrument by which the Declarant terminates the Class B membership.

**Section 3.3. Multiple Ownership Interests.** When more than one (1) Person constitutes the Owner of a particular Lot, all of such Persons shall be Members of the Neighborhood Association, but all of such Persons, collectively, shall have only one (1) vote for such Lot. The vote for such Lot shall be exercised as such Persons constituting the Owner of the Lot determine among themselves, and may be exercised by any one (1) of the Persons holding such ownership interest, unless any objection or protest by any other holder of such ownership interest is made prior to the completion of a vote, in which case the vote cast for such Lot shall not be counted, but the Member whose vote is in dispute shall be counted as present at the meeting for quorum purposes if the protest is lodged at such meeting. In no event shall more than one (1) vote be cast with respect to any Lot.

#### **ARTICLE IV**

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

**Section 4.1. Neighborhood Declaration.** Declarant hereby expressly declares that the Neighborhood Property and any additions thereto pursuant to this Neighborhood Declaration, shall be held, transferred and occupied subject to the Restrictions. The Owners of each Lot are subject to the Restrictions, and all other Persons, whether (i) by acceptance of a deed from Declarant, or its successors or assigns, conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall conclusively be deemed to have accepted such deed, executed such contract and undertaken such occupancy subject to each Restriction. By acceptance of such deed, or execution of such contract, or undertaking such occupancy, each Owner and each other Person for itself, its heirs, personal representatives, successors and assigns, acknowledges the rights and powers of Declarant, the Committee, the Neighborhood Association, the Master Association and the Master Board of Directors with respect to the Restrictions, and also, covenants, agrees and consents to and with Declarant, the Committee, the Neighborhood Association, the Master Association, the Master Board of Directors and the Owners and subsequent Owners of each of the Lots affected by the Restrictions, to keep, observe, comply with and perform such Restrictions and agreements.

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

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

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

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

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

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

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

(i) be only to non-profit organizations;

(ii) prohibit assignment and subleasing;

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

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

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

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

(h) all rights reserved by Declarant in the Master Declaration.

The Neighborhood Association, acting through its Board of Directors, may exercise these rights without the need for any approval from any Member, Mortgagee or any of the Federal Agencies, unless provided otherwise in this Neighborhood Declaration or in the Master Declaration.

**Section 4.3. Common Area.**

(a) Ownership. Declarant may retain legal title to the Common Area during the Development Period; however, if pursuant to the Master Declaration or this Neighborhood Declaration, Declarant or the Master Association elects to convey title to the Common Area to the Neighborhood Association, such conveyance shall be free and clear of all liens and other financial encumbrances and exclusive of the lien for taxes not yet due and payable. The Common Areas shall remain private, and neither Declarant's execution, or recording of an instrument portraying the Common Areas, nor the doing of any other act by Declarant is, or is intended to be, or shall be construed as, a dedication to the public of the Common Areas. Declarant or the Neighborhood Association (if Neighborhood Association then owns legal title to the Common Areas) may, however, dedicate or transfer all or any part of the Common Areas to any public agency or utility for roadways, utility or parks purposes, or for other public purposes

(b) Maintenance. Article XI of the Master Declaration specifies the maintenance obligations of the Master Association with respect to all of the Property, including the Neighborhood Property. The Master Declaration is hereby supplemented so that, in addition to the Master Association's maintenance obligations set forth in the Master Declaration with respect to the Neighborhood Property, the Neighborhood Association shall be responsible for maintaining the Common Area and the Maintenance Costs thereof shall be assessed as a Regular Assessment against all Lots subject to assessment.

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

Neighborhood Declaration, shall keep the Common Areas in good, clean, attractive and sanitary condition, order, and repair.

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

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

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

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

## ARTICLE V

### ASSESSMENTS

#### Section 5.1. Creation of the Lien and Personal Obligation for Assessments.

Article X of the Master Declaration provides for Assessments on any Lot located upon the Property. In addition to these 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 Neighborhood Association: (a) Regular Assessments, (b) Special Assessments, and

any other amounts as may be provided for hereunder to be due from any Owner in connection with his ownership of a Lot. Such assessments are to be established and collected as hereinafter provided. The Neighborhood Association's Regular Assessments and Special Assessments, together with interest thereon, late fees (as contemplated in 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 and Special Assessments, when assessed upon resolution of the Board of Directors of the Neighborhood Association for each year, shall become a lien on each Lot in the amount of the entire Regular Assessment or Special Assessment, but shall be payable in two equal installments collected on a semi-annual basis.

**Section 5.2. Purpose of Assessment.** The assessments levied by the Neighborhood Association shall be used to promote the recreation, health, safety and welfare of the residents and Owners of the Neighborhood 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 Neighborhood Association has the obligation to maintain, and for such other purposes as the Board of Directors of the Neighborhood Association may determine to be appropriate.

**Section 5.3. Annual Accounting.** Annually, after the close of each fiscal year of the Neighborhood Association and prior to the date of the annual meeting of the Neighborhood Association next following the end of such fiscal year, the Board of Directors of the Neighborhood Association shall cause to be prepared and furnished to each Owner a financial statement prepared by a certified public accountant or firm of certified public accountants then serving the Neighborhood Association, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

**Section 5.4. Proposed Annual Budget.** Annually, on or before the date of the annual or special meeting of the Neighborhood Association at which the budget is to be acted upon, the Board of Directors of the Neighborhood Association shall cause to be prepared a proposed annual budget for the next ensuing fiscal year estimating the total amount of the Common Expenses for such next ensuing fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the designated meeting of the Neighborhood Association for adoption and, if so adopted, shall be the basis for the Regular Assessments for the next ensuing fiscal year. At such annual or special meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Owners; provided, however, that in no event shall such meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, whether it be the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all sums assessed by the Neighborhood Association shall be established by using generally accepted accounting principles applied on a consistent basis. The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a

copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined. In the event there is no annual budget approved by the Owners as herein provided for the current fiscal year, whether before or after the meeting of the Neighborhood Association at which the budget is to be acted upon, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board of Directors, Regular Assessments based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

**Section 5.5. Establishment of Regular Assessment.** The Neighborhood Association must levy in each of its fiscal years a Regular Assessment against each Lot. The amount of such Regular Assessment shall be established by the Board of Directors of the Neighborhood Association, subject to the limitations imposed by **Section 5.6** below, and written notice of the same shall be sent to every Owner at least thirty (30) days in advance of the commencement of each Regular Assessment period. Regular Assessments against each Lot shall be paid in advance, payable in two equal semi-annual installments. The initial Regular Assessment levied by the Neighborhood Association for each Lot shall be adjusted according to the number of months remaining in the period for which such initial assessment was levied. All payments of Regular Assessments and Special Assessments shall be non-refundable. In no event shall any Owner be due any rebate or credit from the Neighborhood Association upon resale or other transfer or conveyance for prepaid Regular Assessments or Special Assessments.

**Section 5.6. Regular Assessments.** Prior to January 1 of the year immediately following conveyance of the first Lot to an Owner other than Declarant, the Regular Assessment shall be \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_\_.00).

(a) Upon January 1 of the year immediately following the first conveyance of a Lot to an Owner other than Declarant, and upon January 1 of each year thereafter, the Regular Assessment shall increase, effective as of January 1 of each year, without the need for a vote of the Members, by an amount equal to (i) the anticipated increase in costs 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 of the Neighborhood Association may determine not to increase the Regular Assessment to the full extent of the automatic increase provided in **subsection (a)** above, in which case the Board of Directors shall specify the amount of such lesser Regular Assessment.

(c) Upon and after January 1 of the year immediately following the first conveyance of a Lot to an Owner other than Declarant, the Regular Assessment may be increased above that established by **subsection (a)** above; provided, however, that any such change must have the consent of at least fifty percent (50%) of the votes of those Members who are entitled to vote and who, in fact, do vote, in person or by proxy, at a meeting duly called for this purpose at which a quorum is present, written notice of which (setting forth the purpose of the meeting) shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.



(d) The Regular Assessment against each Lot shall be paid in semi-annual 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. Semi-annual installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board of Directors or the Neighborhood Association, and neither the Board of Directors nor the Neighborhood Association shall be responsible for providing any notice or statements to Owners for the same. If an Owner fails to pay any semiannual installment of any such Regular Assessment on or before the due date established by the Board of Directors, a late fee in the amount of Twenty-Five and 00/100 Dollars (\$25.00) will be added to the amount due, and any such installment, together with such late fee, will be and remain, immediately due and payable.

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

(f) The Regular Assessment for each fiscal year of the Neighborhood Association shall become a lien on each separate Lot as of the first day of each fiscal year of the Neighborhood Association, even though the final determination of the amount of such Regular Assessment may not have been made by that date.

Section 5.7. Special Assessments. In addition to the Regular Assessment authorized above, the Neighborhood Association may levy, in any assessment year, a Special Assessment applicable to that year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvements upon the Common Area, including the fixtures and personal property related thereto, or for any other specified purpose. Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors of the Neighborhood Association from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in this Neighborhood Declaration. 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 Article VIII, 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 Article VIII, the Special Assessment may be levied solely against that Owner. Notwithstanding the fact that in some instances, this Neighborhood Declaration may provide that certain items of routine and ordinary repair and maintenance should be performed by the Neighborhood Association, the Neighborhood Association shall nevertheless retain the right to assess the costs thereof to any Owner or group of Owners as a Special Assessment. To be effective, any such Special Assessment shall have the assent of more than two-thirds (2/3) of the votes of each class of Members who are entitled to vote and who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present, and written notice setting forth the purpose

of the meeting must have been sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

**Section 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. Working Capital Assessment.** In addition to the Regular and Special Assessments authorized above, the Neighborhood Association shall establish and maintain a working capital fund. At the closing of each sale or other transfer of a Lot by Declarant, or any re-sale of a Lot by a Declarant, the purchaser of such Lot shall pay to the Neighborhood Association a working capital assessment in an amount equal to one-sixth (1/6th) of the then current Regular Assessment for said Lot (a "**Working Capital Assessment**"), which payment shall be non-refundable and shall not be considered as an advance payment of an assessment or other charge owed to the Neighborhood Association with respect to such Lot. The Working Capital Assessment shall be used as determined by Declarant in its sole and reasonable discretion.

**Section 5.10. Rate of Assessment.** The Regular Assessment shall be fixed at a uniform rate for all Lots, except for unoccupied Lots owned by Declarant. Except in the case of damage or destruction caused by an Owner as contemplated by Article VIII, and except for unoccupied Lots owned by Declarant, the Special Assessments shall be fixed at a uniform rate for all Lots which benefit from the construction, reconstruction, repair or replacement of capital improvements giving rise to the Special Assessment, pro rata according to each Lot's benefit, as reasonably determined by the Board of Directors of the Neighborhood Association, which determination shall be final. Notwithstanding the foregoing or anything else contained herein, no Regular Assessments or Special Assessments or other charges shall be owed or payable by Declarant with respect to any Lot or other portion of the Neighborhood Property owned by Declarant while the same is owned by Declarant, nor shall any such assessments or charges become a lien on any such Lot or other portion of the Neighborhood Property owned by Declarant.

**Section 5.11. Notice of Assessment and Certificate.** Written notice of the Regular Assessments and any Special Assessments shall be sent to every Member. The due dates for payment of the Regular Assessments and any Special Assessments shall be established by the Board of Directors of the Neighborhood Association. The Neighborhood Association shall, upon written demand by a Member at any time, furnish a certificate in writing signed by an officer or authorized agent of the Neighborhood Association setting forth whether the assessments on a specified Lot have been paid and the amounts of any outstanding assessments. A reasonable charge may be made by the Board of Directors for the issuance of these certificates, which charge shall be paid to the Board of Directors in advance by the requesting Member. Such

certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

**Section 5.12. Remedies of the Neighborhood Association in the Event of Default**

Each Owner shall be personally liable for the payment of all Regular Assessments and Special Assessments against his Lot. Where the Owner constitutes or consists of more than one Person, the liability of such Persons shall be joint and several. If any assessment pursuant to this Neighborhood Declaration is not paid within thirty (30) days after its initial due date, the assessment shall bear interest from the date of delinquency at the rate charged by the Internal Revenue Service on delinquent taxes. In addition, in its discretion, the Neighborhood Association may:

(a) impose a penalty or late charge if previously established by the Neighborhood Association;

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

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

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

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

In any action to foreclose the lien against a Lot pursuant to Section 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 Neighborhood Association of reasonable rental for such Lot and Dwelling Unit, and the Board of Directors shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and Dwelling Unit and to collect the rentals and other profits therefrom for the benefit of the Neighborhood Association to be applied to the unpaid Regular Assessments or Special Assessments. The Board of Directors may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing (and without thereby being deemed to have waived) the lien securing the same. In any action to recover any

Regular Assessment or Special Assessment, or any other debts, dues or charges owed the Neighborhood Association, whether by foreclosure or otherwise, the Board of Directors, for and on behalf of the Neighborhood Association, shall be entitled to recover from the Owner of the respective Lot and Dwelling Unit all of the costs and expenses incurred as a result of such action (including, but not limited to, reasonable attorneys' fees) and interest upon all amounts due at the rate of twelve percent (12%) per annum, which shall accrue from the date such assessments or other amounts become first due, until the same are paid in full.

**Section 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 Neighborhood Declaration, any sale or transfer of a Lot to a Mortgagee pursuant to a foreclosure of its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall not extinguish the lien of any unpaid assessments (or periodic installments, if applicable) which became due prior to such sale, transfer or conveyance, and that the extinguishment of such lien shall not relieve the prior Owner from personal liability 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 Neighborhood 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 Neighborhood Property.** The following portions of the Neighborhood Property shall be exempt from the assessments created by this Neighborhood Declaration: (a) those portions of the Neighborhood Property that are dedicated to and accepted by a local public authority; and (b) the Common Area. Except as otherwise provided in Section 5.10 hereof, no developed or undeveloped Lot, land or improvements devoted to dwelling use shall be exempt from said assessments

**Section 5.15. Replacement Reserve Fund.** The Neighborhood 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 of the Neighborhood Association, which reserve fund shall be sufficient, in the sole opinion of the Board of Directors, to accommodate such future maintenance, repair and replacement and which shall be a component of the Regular Assessment. The Replacement Reserve Fund (i) shall be conclusively deemed to be a Common Expense of the Neighborhood Association, (ii) shall be maintained by the Neighborhood Association in a separate, interest bearing account or accounts with any banking institution, the accounts of which are insured by any state or by any agency of the United States of America as selected by the Board of Directors, and (iii) may be expended only for the purpose of effecting the replacement of the Common Area, major repairs to, replacement and maintenance of any improvements within the Common Area, including but not limited to, sidewalks, parking areas, landscape improvements, street or common area lighting, streets or roadways developed as a part of the Neighborhood Property, equipment replacement, and for start-up expenses and operating

contingencies of a nonrecurring nature relating to the Common Area. The Neighborhood Association may establish such other reserves for such other purposes as the Board of Directors may from time to time consider to be necessary or appropriate. The proportional interest of any Member in any such reserves shall be considered an appurtenance of the Member's Lot and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot.

## ARTICLE VI

### ADDITIONAL RESTRICTIONS

**Section 6.1. 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 Neighborhood Association will perform all routine maintenance to landscape improvements on each Lot as provided in Article VIII below, the Owners shall be responsible for all routine 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 6.2. 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 Neighborhood Association. Any and all such painting of the exterior of any building or any portion thereof shall be done by the Neighborhood 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 6.3. 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 6.3, the Neighborhood 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 6.3 after its receipt of such a Repair Notice, the Neighborhood Association shall be entitled to enforce the provisions of this Section 6.3 in the manner contemplated under Article VIII, below, and in any other manner permitted hereunder or by applicable law.

Section 6.4. Rental Agreements. Any rental agreement for a Dwelling Unit must be for an initial period of at least one (1) year, must be in writing and must be subject to the Restrictions, and all other terms and conditions set forth in this Neighborhood Declaration and in the other Neighborhood Association documents including, but not limited to, the Statement of Commitments. Every such rental agreement must include a provision stating that any failure by the tenant, its household members or guests, to comply with such Restrictions or other terms and conditions as set forth above, shall be a default under the rental agreement, and the Owner shall be responsible for enforcing such provision at its sole expense; provided, however, that the Neighborhood Association shall also have the right to enforce any of such Restrictions and other terms and conditions against the Owner or any tenant, or both, in the sole discretion of the Neighborhood Association, without regard to whether Declarant or the Neighborhood Association were or are in privity with such tenant. The foregoing shall not be construed as a waiver by the Neighborhood Association of its rights hereunder to enforce these Restrictions against a tenant or any other Person in possession of the Neighborhood Property or any part thereof. Each Owner agrees to indemnify, defend and hold harmless the Neighborhood Association and the Board of Directors from and against all costs, liability, charges, expenses and claims resulting directly or indirectly from such Owner's failure to comply with the foregoing provisions. By accepting title to a Lot, each Owner acknowledges and accepts the Neighborhood Association's right to enforce the foregoing restrictions as provided hereunder.

Section 6.5. Declarant's Use. Notwithstanding anything to the contrary contained herein or in the Articles or Bylaws, Declarant shall have, until the Authority Transfer Date, the right to use and maintain any Lots and Dwelling Units owned by Declarant and other portions of the Neighborhood Property (other than individual Dwelling Units and Lots owned by Persons other than Declarant), as Declarant may deem advisable or necessary in its sole discretion to aid in the sale of Lots and the construction of Dwelling Units, or for the conducting of any business or activity attendant thereto, or for the construction and maintenance of Common Areas, including, but not limited to, model Dwelling Units, storage areas, construction yards, signs, construction offices, 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 Neighborhood Property at any time.

Section 6.6. Non-applicability to Neighborhood Association. Notwithstanding anything to the contrary contained herein, the covenants and restrictions set forth herein shall not apply to or be binding upon the Neighborhood Association in its ownership, management, administration, operation, maintenance, repair, replacement and upkeep of the Common Areas to

the extent the application thereof could or might hinder, delay or otherwise adversely affect the Neighborhood Association in the performance of its duties, obligations and responsibilities as to the Common Areas.

Section 6.7. Additional Rules and Regulations. The Neighborhood 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

### PARTY WALLS

Section 7.1. 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 VII, 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 7.2. Sharing of Repair and Maintenance and Destruction by Fire or Other Casualty. If any party wall is damaged or destroyed by (i) fire or other casualty, or (ii) ordinary wear and tear and deterioration from lapse of time, or (iii) or by some cause other than the act of one of the adjoining Owners, its agents, family, household or guests, then both adjoining Owners shall proceed forthwith to rebuild or repair the structural components of such party wall, sharing equally the cost thereof, and each individual Owner shall proceed forthwith to rebuild or repair the non-structural components of such wall in proportion to their respective uses of the party wall. Any and all such reconstruction and/or repairs shall be completed immediately to the extent that the failure to commence and/or complete such reconstruction and/or repairs would result in an immediate risk to human health and/or safety. All other reconstruction and/or repairs shall be completed within three (3) months following the casualty or other event that damaged or destroyed such party wall, unless a longer period of time is approved in writing by the Neighborhood Association. If a party wall is in a condition that is of such a nature that it has or will (if left uncorrected) result in further damage or destruction of such party wall, the reconstruction and/or repairs shall be completed within a reasonable time, not exceeding six (6) months following the initial discovery of the condition. Any and all such reconstruction and/or repair shall be made in a good and workmanlike manner, in compliance with all requirements of Local Governing Authorities and otherwise in compliance with all applicable laws, ordinances, rules and regulations, to the same or better condition as existed prior to such condition, damage or destruction. However, in the event of substantial destruction to the party wall and the adjoining Dwelling Units (i.e. where eighty percent (80%) or more of the party wall and the adjoining Dwelling Units are destroyed by fire or otherwise), neither Owner shall be obligated to repair or restore the party wall. Each Owner shall have an easement over that part of the other Owner's Lot that is necessary or desirable in order to repair, restore or replace the party wall.

Section 7.3. 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 7.2 above, without cost to the adjoining Owner.

**Section 7.4. Use; Other Changes.** Either Owner shall have the right to use the side of the party wall facing the Owner's Dwelling Unit in any lawful manner, including attaching structural or finishing materials to it; however, in addition to meeting the other requirements of these Restrictions and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild its Dwelling Unit in any manner which involves the alteration of any party wall shall first obtain the written consent of the adjoining Owner, whose consent shall not be unreasonably withheld, conditioned or delayed. If the adjoining Owner has not responded in writing to the requesting Owner within twenty-one (21) days of its receipt of any such written request, given by registered or certified mail, return receipt requested, such consent of the adjoining Owner shall be deemed to have been given.

**Section 7.5. Right to Contribution Runs with the Land; Failure to Contribute.** The right of any Owner to contribution from any other Owner under this Article VII 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 VII, or all of the cost in case of the negligence or willful misconduct of such Owner, the other Owner may have the party wall repaired or restored and shall be entitled to have a mechanic's lien on the property of the Owner failing to pay for the amount of its share of the repair or replacement cost.

**Section 7.6. Dispute.** In the event of a dispute between or among Owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of the cost thereof, then upon written request of one of such Owners addressed to the Neighborhood Association, the matter shall be submitted to the Board of Directors, who shall decide the dispute and whose decision shall be final.

## **ARTICLE VIII**

### **POWERS AND DUTIES OF THE ASSOCIATION**

**Section 8.1. Discretionary Powers and Duties.** The Neighborhood Association shall have the following powers and duties which may be exercised in its discretion:

(a) to enforce any covenants or restrictions which are imposed by the terms of this Neighborhood Declaration or which may be imposed on any part of the Neighborhood Property. Nothing contained herein shall be deemed to prevent the Owner of any Lot from enforcing any building restriction in its own name. The foregoing rights of enforcement shall not prevent (i) changes, releases or modifications of the restrictions or reservations placed upon any part of the Neighborhood Property by any party having the right to make such changes, releases or modifications in the deeds, contracts, declarations or plats in which such restrictions and reservations are set forth; or (ii) the assignment of the foregoing rights by the proper parties wherever and whenever such rights of assignment exist. Neither the Neighborhood Association nor



the Board of Directors shall have a duty to enforce the covenants by an action at law or in equity if either party believes such enforcement is not in the Neighborhood Association's best interest. The expenses and costs of any enforcement proceedings shall be paid out of the general fund of the Neighborhood Association; provided, however, that the foregoing authorization to use the general fund for such enforcement proceedings shall not preclude the Neighborhood Association from collecting such costs from the offending Owner;

(b) subject to the limitations set forth in Section 8.3 hereof, to employ counsel and institute and prosecute such suits as the Neighborhood Association may deem necessary or advisable, and to defend suits brought against the Neighborhood Association;

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

(d) to enter upon any Lot to perform emergency repairs or to do other work reasonably necessary for the proper maintenance or protection of the Neighborhood Property;

(e) to enter (or have the Neighborhood Association's agents or employees enter) upon any Lot to repair, maintain or restore the Lot, all improvements thereon, and the exterior of the Dwelling Unit and any other improvements located thereon if such is not performed by the Owner of the Lot, and to assess the Owner of the Lot the costs thereof, such assessment to be a lien upon the Lot equal in priority to the lien provided for in Article 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;

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

Section 8.2. Mandatory Powers and Duties. The Neighborhood Association shall exercise the following powers, rights and duties:

(a) to unconditionally accept title to the Common Area upon the transfer thereof by Declarant to the Neighborhood Association as provided hereunder or under the Master Declaration, and to hold and administer the Common Area for the benefit and enjoyment of the Owners and occupants of Lots, and to cause the Common Area and facilities to be maintained in accordance with the standards adopted by the Board of Directors;

(b) to transfer part of the Common Area to or at the direction of Declarant, for the purpose of adjusting boundary lines or otherwise in connection with the orderly subdivision or development of the Neighborhood Property, but only to the extent such re-

subdivision or adjustment does not contravene the requirements of zoning and other ordinances applicable to the Neighborhood Property;

(c) after the termination of the Class B membership, to obtain and maintain without interruption liability coverage for any claim against a director or officer for the exercise of its duties and fidelity coverage against dishonest acts on the part of directors, officers, trustees, managers, employees or agents responsible for handling funds collected and held for the benefit of the Neighborhood Association. The fidelity bond shall cover the maximum funds that will be in the custody of the Neighborhood Association or its management agent at any time while the bond is in place. The fidelity bond coverage shall be in an amount as may be determined to be reasonably prudent by the Board of Directors;

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

(e) to maintain a casualty insurance policy affording fire and extended coverage insurance insuring each Lot and Structures constructed thereupon including, but not limited to, the Dwelling Unit in an amount equal to the full replacement value of the improvements which in whole or in part, comprise the Dwelling Unit, including, without limitation, any party walls. Declarant shall, in addition, also procure endorsements naming the Lot Owner(s) as additional insureds under such insurance policies and requiring each such insurer to provide (i) immediate written notice to the Lot Owner(s) of any cancellation of such policy, and (ii) at least thirty (30) days' written notice to the Lot Owner(s) prior to any termination or material modification of such policy. Declarant will furnish to the purchaser of each Lot, at or prior to the closing of the acquisition of that Lot, a certificate of insurance and endorsement evidencing the insurance coverage described herein. Owners shall not do or permit any act or thing to be done in or to a Lot or Dwelling Unit which is contrary to law or which invalidates or is in conflict with Declarant's policy of insurance. An Owner who fails to comply with the provisions of this paragraph shall pay all costs, expenses, liens, penalties, or damages which may be imposed upon the Owner, Declarant or the Neighborhood Association by reason thereof. Notwithstanding the foregoing, each Owner of a Lot shall be responsible for the purchase and maintenance of its own insurance policies covering liability, loss and/or damage with respect to contents and other personal property and fixtures located within and about each Dwelling Unit.

(f) to provide for the maintenance of the Common Area and any and all (i) improvements, Structures or facilities which may exist or be erected from time to time on

the Common Area; (ii) easement areas of which the Neighborhood Association is the beneficiary and for which it has the maintenance responsibility; and (iii) facilities, including, but not limited to, fences and signs, authorized by the Neighborhood Association and erected on any easements granted to the Neighborhood Association;

- (g) to pay all proper bills, taxes, charges and fees on a timely basis;
- (h) to maintain its corporate status;
- (i) to maintain all private streets, open space and landscaping within the Common Area;
- (j) to regularly mow, re-sow, re-seed or re-sod lawn areas and fertilize lawn areas at least three (3) times each year within the Common Areas and on each Lot and to operate and maintain in-ground irrigation/sprinkler systems in the Common Areas and in the landscaped areas of each Lot;
- (k) to care for, spray, trim, protect, plant, replant and prune trees, shrubs and other landscaping, maintenance and upkeep of the Common Area and to pick up and remove from the Common Area all loose material, rubbish, filth and accumulation of debris; and to do any other thing necessary or desirable in the judgment of the Neighborhood Association to keep the Common Area in neat appearance and in good order, including, but not limited to, cleaning the private streets and maintaining any street lights located in the Common Areas;
- (l) to arrange for plowing and/or removal of snow and ice on all Common Areas, streets and public walks within the Neighborhood; and
- (m) to adopt, publish and enforce rules and regulations governing the use of the Common Area and facilities and with respect to such other areas of responsibility assigned to it by this Neighborhood Declaration, except where expressly reserved herein to the Members. Such rules and regulations may grant to the Board of Directors the power to suspend a Member's voting rights and the Member's right to use non-essential services for non-payment of assessments and to assess charges against Members for violations of the provisions of the Neighborhood Declaration or rules and regulations.

**Section 8.3. Limitation on Neighborhood Association Action.** The Neighborhood Association shall hold a duly authorized, duly noticed special meeting of the Members of the Neighborhood Association prior to commencing or prosecuting any judicial or administrative proceeding, and no judicial or administrative proceeding shall be commenced or prosecuted by the Neighborhood Association except upon the affirmative vote of at least seventy-five percent (75%) of the votes cast at said special meeting by Members entitled to vote authorizing the commencement and prosecution of the proposed action. This Section 8.3 shall not apply to (a) actions brought by the Neighborhood Association to enforce the provisions of this Neighborhood Declaration, the Bylaws, or rules and regulations adopted by the Board of Directors (including, without limitation, any action to recover Regular Assessments or Special Assessments or other charges or fees or to foreclose a lien for such items) or (b) counterclaims brought by the Neighborhood Association in connection with proceedings instituted against it.

**Section 8.4. Board of Directors Authority to Act** Unless otherwise specifically provided in the Neighborhood Association's documents, all rights, powers, easements, obligations and duties of the Neighborhood Association may be performed by the Board of Directors. Notwithstanding anything to the contrary contained herein, any rules or regulations which are promulgated by the Board of Directors may be repealed or amended by a majority vote of the Members cast, in person or by proxy, at a meeting convened for such purpose in accordance with the Bylaws.

**Section 8.5. Compensation** No director or officer of the Neighborhood Association shall receive compensation for services as such director or officer except to the extent expressly authorized by a majority vote of the Class A Members.

**Section 8.6. Non-liability of Directors, Officers and Board Members.** The directors and officers of the Neighborhood Association and members of the Architectural Committee, and all committees thereof, shall not be liable to the Owners or any other persons for any error or mistake of judgment in carrying out their duties and responsibilities as directors or officers of the Neighborhood Association or members of the Architectural Committee, or any committee thereof, except for their own individual willful misconduct or gross negligence. It is intended that the directors and officers of the Neighborhood Association and members of the Architectural Committee, and all committees thereof, shall have no personal liability with respect to any contract made by them in good faith on behalf of the Neighborhood Association, and the Neighborhood Association shall indemnify and hold harmless each of the directors, officers, Architectural Committee members, or committee members against any and all liability to any person, firm or corporation arising out of contracts made in good faith on behalf of the Neighborhood Association.

**Section 8.7. Indemnity of Directors and Officers.** Except with respect to matters (i) as to which it is adjudged in any civil action, suit, or proceeding that such person is liable for gross negligence or willful misconduct in the performance of his or her duties, or (ii) to which it is adjudged in any criminal action, suit or proceeding that such person had reasonable cause to believe that such person's conduct was unlawful or that person had no reasonable cause to believe that such person's conduct was lawful, the Neighborhood Association shall indemnify, hold harmless and defend any person, his or her heirs, assigns and legal representatives (collectively, the "Indemnitee") made or threatened to be made a party to any action, suit or proceeding, or subject to any claim, by reason of the fact that he or she is or was a director or officer of the Neighborhood Association or member of the Board of Directors or the Committee, or any committee thereof, from and against (1) all liability, including, without limitation, the reasonable cost of settlement of, or the amount of any judgment, fine, or penalty rendered or assessed in any such claim, action, suit, or proceeding; and (2) all costs and expenses, including attorneys' fees, actually and reasonably incurred by the Indemnitee in connection with the defense of such claim, action, suit or proceeding, or in connection with any appeal thereof. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against an Indemnitee, no director or officer of the Neighborhood Association, or member of the Board of Directors or the Committee, or any committee thereof, shall be considered or deemed to be guilty of or liable for gross negligence or willful misconduct in the performance of his or her duties where, acting in good faith, such director or officer of the Neighborhood Association, or member of the Committee, or committee thereof, relied on the books and records of the

Neighborhood Association or statements or advice made by or prepared by any managing agent of the Neighborhood Association or any director, officer or member of the Neighborhood Association, of any accountant, attorney or other person, firm or corporation employed by the Neighborhood Association to render advice or service, unless such director, officer or member had actual knowledge of the falsity or incorrectness thereof; nor shall a director, officer or member be deemed guilty of gross negligence or willful misconduct by virtue of the fact that he or she failed or neglected to attend a meeting or meetings of the Neighborhood Association, the Board of Directors or the Committee, or of any committee thereof. The costs and expenses incurred by an Indemnitee in defending any action, suit or proceeding may be paid by the Neighborhood Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Indemnitee to repay the amount paid by the Neighborhood Association if it shall ultimately be determined that the Indemnitee is not entitled to indemnification or reimbursement as provided in this Article VIII.

## ARTICLE IX

### RIGHTS OF MORTGAGEES

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

Section 9.1. Veterans Administration. To the extent required by the Veteran's Administration (the "VA"), if any of the Lots are security for a loan guaranteed by the VA and if there is a Class B Member:

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

(b) Eligible Mortgagees shall have the following rights:

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

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

(iii) notice of any Extraordinary Action of the Neighborhood Association;

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

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

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

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

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

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

**Section 9.2. 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 X below;
- (b) mergers, consolidations and dissolution of the Neighborhood Association;
- (c) mortgaging or conveyance of the Common Area; and
- (d) Material Amendment of this Neighborhood Declaration

**Section 9.3. Freddie Mac.** Assuming that Mortgagees may securitize pools of mortgages, including mortgages on Lots and/or Dwelling Units in the Neighborhood, with the Federal Home Loan Mortgage Corporation (a/k/a "Freddie Mac"), the following requirements shall apply to all Lots and Dwelling Units in the Neighborhood:

- (a) Unless at least two-thirds (2/3) of the first Mortgagees (based on one vote for each first mortgage owned) or two-thirds (2/3) of the Class A Members have given their prior written approval, the Neighborhood Association shall not take any of the following actions:
  - (i) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area. The re-subdivision and/or adjustment of boundary lines of the Common Area and the granting of easements by the Neighborhood Association shall not require the consent described in subsection (a) above;
  - (ii) change the method of determining the obligations, assessments, dues, or other charges that may be levied against an Owner;

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

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

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

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

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

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

**Section 9.4. Fannie Mae.** Assuming that Mortgagees may secure funding for mortgage loans by selling mortgage loans, including mortgages on Lots and/or Dwelling Units in the Neighborhood, to the Federal National Mortgage Association (a/k/a "Fannie Mae"), the following requirements shall apply to all Lots and Dwelling Units in the Neighborhood:

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

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

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

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

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

(b) Provided that improvements have been constructed in the Common Area and provided that a Mortgagee gives written notice to the Neighborhood Association that it has relied on the value of the improvements in making a loan on a portion or all of the Neighborhood Property, then subject to the right of Declarant to annex additional areas as provided in Article X 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 Neighborhood Association shall not add or amend any material provision of this Neighborhood Declaration or related Neighborhood Association documents concerning the following:

(i) voting rights of any Member;

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

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

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

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

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

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

(viii) insurance or fidelity bonds;

(ix) leasing of Dwelling Units;

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



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

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

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

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

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

**Section 9.5. General.**

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

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

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

(d) **Excess Proceeds.** Should there be excess insurance or condemnation proceeds after the renovation, repair or reconstruction called for herein, such excess proceeds may be distributed equally to the Owners, apportioned equally among the Lots; subject, however, to the priority of a Mortgagee with regard to the proceeds applicable to the Lot securing said Mortgagee and in accordance with Indiana law.

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

(f) **Termination.** Eligible Mortgagees representing at least sixty-seven percent (67%) of the votes of the mortgaged Lots must consent to the termination of the

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legal status of the Neighborhood Association for reasons other than substantial destruction or condemnation of the Neighborhood Property.

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

## **ARTICLE X**

### **GENERAL PROVISIONS**

**Section 10.1. Enforcement.** The Neighborhood Association or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens and charges now or hereafter imposed by the provisions of this Neighborhood Declaration or other Neighborhood Association documents unless such right is specifically limited herein or therein. Failure by the Neighborhood Association or by any Owner to enforce any right, provision, covenant or condition which may be granted by this Neighborhood Declaration shall not constitute a waiver of the right of the Neighborhood Association or an Owner to enforce such right, provision, covenant or condition in the future. All rights, remedies and privileges granted to the Neighborhood Association or any Owner pursuant to any term, provision, covenant or condition of the Neighborhood Declaration shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies nor shall it preclude the party exercising the same from exercising such privileges as may be granted to such party by this Neighborhood Declaration or at law or in equity.

**Section 10.2. Severability; Headings; Conflicts.** Invalidation of any one of the provisions of this Neighborhood Declaration by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect. Titles of paragraphs are for convenience only and are not intended to limit or expand the covenants, rights or obligations expressed therein. In the case of any conflict between the Articles and this Neighborhood Declaration, this Neighborhood Declaration shall control; in the case of any conflict between this Neighborhood Declaration and the Bylaws, this Neighborhood Declaration shall control. In case of any conflict between the Master Declaration and this Neighborhood Declaration, the Master Declaration shall control.

**Section 10.3. Duration.** The covenants and restrictions of this Neighborhood Declaration shall run with and bind the Neighborhood Property and shall inure to the benefit of and be enforceable by the Neighborhood Association or the Owner of any Lot subject to this Neighborhood Declaration, their respective legal representatives, heirs, successors and assigns, unless such right is specifically limited herein, for a term of twenty (20) years from the date this Neighborhood Declaration is recorded, after which time the covenants and restrictions of this Neighborhood Declaration shall be automatically extended for successive periods of twenty (20) years each, unless terminated by a written and recorded instrument approved in advance by the affirmative and unanimous vote of all Members of the Neighborhood Association and their respective Mortgagees.

**Section 10.4. 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 Neighborhood Property other than annexation or withdrawal of those properties referred to in this Article X;
- (x) voting rights;
- (xi) restrictions affecting leasing or sale of a Lot; or
- (xii) any provision which is for the express benefit of Mortgagees.

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

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

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

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

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

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

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

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

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

(i) termination of this Neighborhood Declaration;

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

(iii) conveyance of all Common Areas.

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

**Section 10.5. Amendment.** Amendments to this Neighborhood Declaration other than Material Amendments or Extraordinary Actions shall be approved by at least sixty-seven percent (67%) of the votes entitled to be cast by all Members present and voting, in person or by proxy, at any duly called and conveyed meeting, or in writing by Members entitled to cast at least sixty-seven percent (67%) of the total authorized votes of all Members and the vote of the Class B Member, if any.

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

**Section 10.6. Special Amendment.** Notwithstanding anything herein to the contrary, Declarant may unilaterally amend this Neighborhood Declaration for any reason prior to the first conveyance of a Lot to an Owner other than Declarant, and after such first conveyance, may make any amendment required by any of the Federal Agencies or by the Local Governing Authorities, as a condition of the approval of this Neighborhood Declaration, by the execution and recordation of such amendment following notice to all Members.

**Section 10.7. Waiver.** Declarant hereby expressly reserves unto itself (so long as these Restrictions are in effect), the unqualified right to waive or alter from time to time such of the herein contained restrictions as it may deem best, as to any one or more of the Lots, which waiver or alteration shall be evidenced by the mutual written consent of Declarant and the then-Owner of the Lot as to which some or all of said restrictions are to be waived or altered; such written consent shall be duly acknowledged and recorded in the Recorder's Office.

**Section 10.8. Annexation of Additional Neighborhood Property.** Notwithstanding anything contained in this Neighborhood Declaration to the contrary, Declarant may annex any Additional Neighborhood Property without the consent of the Neighborhood Association. The Neighborhood Association may annex any Additional Neighborhood Property and provide for maintenance, preservation and architectural control of Lots and Common Area within such Additional Neighborhood Property, and may add to its membership under the provisions of Article II herein, with the written consent of more than fifty percent (50%) of each class of Members. Any future improvements on the Additional Neighborhood Property must be consistent with or better than the initial improvements on the Neighborhood Property in terms of quality, design and construction and comparable in style, size and cost.

**Section 10.9. Withdrawable Real Estate.**

(a) Prior to the date which is five (5) years after the date of the recordation of this Neighborhood Declaration, Declarant shall have the unilateral right, without the consent of the Class A Members or any Mortgagee, to execute and record an amendment to this Neighborhood Declaration withdrawing any portion of the Neighborhood Property upon which Dwelling Units have not been constructed.

(b) Upon the dedication or the conveyance to any public entity or authority of any portion of the Neighborhood Property for public street purposes, this Neighborhood Declaration shall no longer be applicable to the land so dedicated or conveyed.

**Section 10.10. Management Contracts.** For such time as Declarant has Class B membership status, Declarant shall have the right to enter into professional management contracts on behalf of the Neighborhood Association for the management of the Neighborhood Property for terms not to exceed one (1) year; provided, however, that from and after the date upon which the Declarant is no longer a Class B Member, the Neighborhood Association shall have the right to terminate such contracts, with or without cause, upon thirty (30) days' written notice to the other party and without payment of a termination fee.

**Section 10.11. Dissolution.** Subject to the restrictions and conditions contained in Article IX and this Article X, the Neighborhood Association may be dissolved with the assent given in writing and signed by at least two-thirds (2/3) of each class of Members and in accordance with Article 13 of the Indiana Nonprofit Corporation Act of 1991. Upon dissolution of the Neighborhood Association, other than incident to a merger or consolidation, the assets of the Neighborhood Association, both real and personal, shall be offered to an appropriate public agency to be devoted to purposes and uses that would most nearly reflect the purposes and uses to which they were required to be devoted by the Neighborhood Association. In the event that such offer of dedication is refused, such assets shall be then offered to be granted, conveyed or assigned to any non-profit corporation, trust or other 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 10.12. Negligence.** Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents, invitees or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Neighborhood Association. An Owner shall pay the amount of any increase in insurance premiums occasioned by violation of any of the Restrictions by such Owner, any member of his family or their respective guests, employees, agents, invitees or tenants.

**Section 10.13. Acceptance and Ratification.** All present and future Owners, Mortgagees, tenants and occupants of the Lots and Dwelling Units, and other Persons claiming by, through or under them, shall be subject to and shall comply with the provisions of the Master Declaration, this Neighborhood Declaration, the Articles, the By-Laws and the rules, regulations and guidelines as adopted by the Board of Directors and (to the extent of its jurisdiction) the Architectural Committee, or any committee thereof, as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Lot or Dwelling Unit shall constitute an agreement that the provisions of the Master Declaration, this Neighborhood Declaration, the Articles, the Bylaws and rules, regulations and guidelines, as each may be amended or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any Person having at any time any interest or estate in a Lot or Dwelling Unit or the Neighborhood Property, all as though such provisions were recited and stipulated at length in


each and every deed, conveyance, mortgage or lease thereof. All Persons who may own, occupy, use, enjoy or control a Lot or Dwelling Unit or any part of the Neighborhood Property in any manner shall be subject to this and guidelines applicable thereto as each may be amended or supplemented from time to time.

Section 10.14. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Neighborhood Declaration would be unlawful, void, or voidable for violation of the common law rule against perpetuities, then such provisions shall continue on for the maximum amount of time as allowed by Indiana Code 32-17-8, et seq. as amended from time to time.

WITNESS the following signature:

**DECLARANT:**

PULTE HOMES OF INDIANA, LLC an Indiana  
limited liability company

By:   
David Compton, Vice President of Land  
Acquisition

STATE OF INDIANA )  
 )SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, personally appeared David Compton, known to me to be the Vice President of Land Acquisition of Pulte Homes of Indiana, L.L.C, who acknowledged the execution of the foregoing Neighborhood Declarations of Covenants, Conditions and Restrictions as such officer acting for and on behalf of said limited liability company, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 2<sup>nd</sup> day of April, 2004.

Nicholas R. Surgin  
(signature)  
Nicholas R. Surgin  
Printed Name Notary Public  
INDIANA  
My Commission Expires: 9-3-09  
My County of Residence: Hamilton

This instrument was prepared by and after recording return to:

Angela E. Tempel  
ICE MILLER  
One American Square  
Box 82001  
Indianapolis, IN 46282



**EXHIBIT A**

**AVALON OF FISHERS SECTION ONE D**

I, the undersigned Registered Land Surveyor hereby certify that the included plat correctly represents a subdivision of part of the Southwest Quarter of Section 25, Township 18 North, Range 5 East, Hamilton County, Indiana, being more particularly described as follows:

Commencing at the Southwest corner of said Quarter Section; thence North 00 degrees 14 minutes 01 seconds West (Assumed Bearing) along the West line of said Quarter Section, 646.57 feet; thence North 00 degrees 45 minutes 49 seconds East 94.77 feet to the Southwest corner of Avalon of Fishers Section One D, recorded as Instrument No. 200400007260 in Plat Cabinet 3 on Slide 334 in the Office of the Recorder of Hamilton County, Indiana, said point also being the POINT OF BEGINNING of this description; thence North 06 degrees 06 minutes 11 seconds East 138.07 feet to the point of tangency of said curve; said point also being the point of tangency of said curve concave southerly, the radius point of said curve being South 20 degrees 55 minutes 11 seconds East 540.00 feet from said point; (2) North 88 degrees 56 minutes 47 seconds East 29.65 feet to the point of tangency of said curve concave northerly, the radius point of said curve being North 01 degrees 03 minutes 13 seconds West 540.00 feet from said point; (3) easterly along said curve 29.65 feet to the point of tangency of said curve concave southerly, the radius point of said curve being South 20 degrees 55 minutes 11 seconds East 540.00 feet from the radius point of said curve; (4) easterly along said curve 29.65 feet to the point of tangency of said curve concave southerly, the radius point of said curve being South 20 degrees 55 minutes 11 seconds East 540.00 feet from the radius point of said curve; (5) South 25 degrees 59 minutes 31 seconds East 39.78 feet to the point of curvature of said curve concave northeasterly, the radius point of said curve being North 64 degrees 00 minutes 29 seconds East 160.69 feet from said point; (6) southeasterly along said curve 160.69 feet to the point of tangency of said curve; said point being North 64 degrees 00 minutes 29 seconds East 190.00 feet from the radius point of said curve; thence to a point on a curve concave southeasterly, the radius point of said curve being South 58 degrees 52 minutes 52 seconds East 20.00 feet from said point; thence southwesterly along said curve 160.69 feet to the point of tangency of said curve; said point being South 59 degrees 51 minutes 52 seconds East 20.00 feet from the radius point of said curve; thence South 21 degrees 19 minutes 23 seconds West 7.77 feet to the point of tangency of said curve concave northwesterly, the radius point of said curve being North 68 degrees 46 minutes 44 seconds West 104.00 feet from said point; thence southwesterly along said curve 97.02 feet to the point of tangency of said curve; said point being North 68 degrees 46 minutes 44 seconds West 104.00 feet from the radius point of said curve; thence South 74 degrees 40 minutes 15 seconds West 94.56 feet to the point of tangency of said curve concave southerly, the radius point of said curve being South 45 degrees 49 minutes 19 seconds East 72.00 feet from said point; thence westerly along said curve 7.74 feet to the point of tangency of said curve; said point being South 15 degrees 19 minutes 45 seconds East 72.00 feet from the radius point of said curve; thence South 68 degrees 59 minutes 31 seconds West 48.22 feet to the point of tangency of said curve concave northerly, the radius point of said curve being North 21 degrees 00 minutes 29 seconds East 48.00 feet from said point; thence westerly along said curve 16.97 feet to the point of tangency of said curve; said point being North 21 degrees 00 minutes 29 seconds West 48.00 feet from the radius point of said curve; thence South 89 degrees 15 minutes 00 seconds West 343.42 feet; thence North 00 degrees 00 minutes 00 seconds West 25.82 feet to the point of curvature of a curve concave southerly, the radius point of said curve being North 89 degrees 15 minutes 00 seconds East 30.00 feet from said point; thence northwesterly along said curve 9.03 feet to the point of tangency of said curve; said point being North 15 degrees 15 minutes 00 seconds East 30.00 feet from the radius point of said curve; thence North 05 degrees 02 minutes 02 seconds West 6.86 feet to the point of tangency of said curve; said point being North 05 degrees 02 minutes 02 seconds West 6.86 feet from the radius point of said curve. Containing 2.448 acres, more or less, subject to all legal highways, rights-of-way, easements and restrictions of record.

This subdivision consists of 29 lots numbered 103-131 (both inclusive) Block labeled "Avalon of Fishers" and Common Areas labeled C.A. #25 and C.A. #25A. The size of lots and width of streets are shown in decimal parts thereof.

Cross-Reference is hereby made to a survey plat prepared by S. C. Appelweck, Registered Land Surveyor, with Title 865 Article 1, Chapter 12 of the Indiana Administrative Code recorded as Instrument No. 200400007260 in the Office of the Recorder of Hamilton County, Indiana.

57.00  
23

CROSS REFERENCES: INSTRUMENT NOS. 200300060155, 200300057694, 200300068001, 200300092211

**DECLARATION OF COVENANTS AND RESTRICTIONS CONCERNING THE USE AND DEVELOPMENT OF REAL ESTATE**

PULTE HOMES OF INDIANA, LLC, the owner or contract purchaser of the real estate located in Hamilton County, Indiana, and described in "Exhibit A" attached hereto and made a part hereof (the "Real Estate") on behalf of itself and its successors in right, title or interest in all or any part of the Real Estate (collectively, the "Owner"), makes, grants and creates the following covenants and restrictions with respect to the use and development of the Real Estate (collectively, the "Covenants") to and for the benefit of the owners of the real estate more particularly described on "Exhibit B" (the "Adjacent Real Estate") attached hereto:

1. Statement of Covenants: As set forth herein, the Covenants shall impose development standards with respect to the entire residential development, including each subdistrict thereof, on the Real Estate, and are not in lieu of or subject to, any commitments or covenants Owner may have made, did or will make to the Fishers Advisory Plan Commission and Town Council of the Town of Fishers, Indiana, in connection with Owner's petition to change the zoning classification of the Real Estate. The Owner intends that the Covenants run with the land and bind all future owners of any portion of the Real Estate.

2. Development Standards for Improvements on the Real Estate.

A. Landscaping of Adjacent Real Estate. Prior to the conveyance of any platted lots or housing units on the Real Estate, subject to reasonable delays for adverse weather conditions or plant material availability, Owner shall provide and install, at its expense, evergreen trees of such variety, size and number and at such locations as the owner of the Adjacent Real Estate reasonably deem necessary to provide a barrier between Plaintiff's residence and the lights of vehicles egressing the Real Estate to Olio Road, and Owner shall replace any such trees that do not survive for twelve (12) months from the date of planting or assign to Plaintiffs a one (1) year replacement warranty from the supplier of such trees. Owner shall incur the costs of installing said evergreen trees, including but not limited to the removals of existing trees on the Adjacent Real Estate necessary to plant the evergreen trees in such a manner as to create the agreed upon barrier. Notwithstanding anything in these Covenants to the contrary, the actual cost to Owner of constructing such barrier, including but not limited to the cost of the evergreen trees, installation and any necessary removal of existing trees, shall not exceed the sum of Ten Thousand Dollars (\$10,000).

B. Olio Road Curb Cut. Owner shall use its best efforts to cause the Hamilton County Highway Department or other agency or agencies having jurisdiction (herein, the "Agencies") to approve and thereafter locate any curb cut on Olio Road for vehicular access to the Real Estate such that the north curb line extended of the access/interior road at the point of intersection with the right-of-way line of Olio Road is not less than forty (40) feet south of the south line of the existing curb cut that provides ingress to and egress from the Adjacent Real Estate. If Owner is unable to obtain a permit to so locate the curb cut, then the owners of the Adjacent

200300099008  
Filed for Record in  
HAMILTON COUNTY, INDIANA  
JENNIFER J HAYDEN  
09-24-2003 At 08:08 am.  
DEC COV RES 57.00

Real Estate, at their option, may seek approval to move the existing curb cut on the Adjacent Real Estate, and if such approval is obtained, Owner shall, at its cost, relocate and reconstruct such curb cut and any related structures and landscaping in the same style and quality as that which it replaces.

C. **Use.** Owner shall not use, cause or permit the Real Estate to be used for any purpose other than the development and operation of a residential subdivision, or cause or permit any part of the Real Estate to be developed, constructed, used or maintained as or for commercial, commercial/retail, office building or industrial purposes regardless of the type of uses that may be permitted by the current or any future zoning classification of the Real Estate, or variance therefrom or exception thereto.

D. **Permitted Landscaping.** Prior to the conveyance of any platted lots or housing units on the Real Estate, subject to reasonable delays for adverse weather conditions or plant material availability, Owner shall:

- i. Construct or cause to be constructed (a) a continuous earthen berm not less than seven (7) feet in height above the proposed finished grade of the portion of the Real Estate on which such earthen berm will be located (except as otherwise provided below) along the entire west property line of the Real Estate situated south of Mud Creek and north of the northern right-of-way of 126<sup>th</sup> Street (herein, the "Olio Berm") in substantial compliance with the landscape buffer plan attached hereto as "Exhibit C", and (b) an earthen berm in substantial compliance with the landscape buffer plan attached hereto as "Exhibit D", which may be constructed in phases to match the eastward development of the Real Estate (herein the "126<sup>th</sup> Street Berm") (the Olio Berm and the 126<sup>th</sup> Street Berm may hereinafter be referred to jointly as the "Berms", and the landscape and buffer plans attached as Exhibits C and D may hereinafter be referred to jointly as the "Landscape and Buffer Plans");
- ii. Except for any portion of the Real Estate adjacent to 126<sup>th</sup> Street that is conveyed to and used by the Hamilton Southeastern School Corporation or its successor as shown on the Site Plan, provide a landscape buffer of not less than fifty (50) feet in width along the entire south and west property lines of the Real Estate contiguous to the east right-of-way line of Olio Road and the north right-of-way line of 126<sup>th</sup> Street, respectively (the "Landscape Setback Areas");
- iii. Cause each of the Berms to be landscaped with grass and mulch and viable evergreen trees, which shall be (a) not less than ten (10) feet in height at planting on the Olio Berm only, (b) Norwegian Spruce, Austrian Pine or other type or variety of evergreen tree reasonably acceptable to Owner and the owner of the Adjacent Real Estate, (c) not less frequently than twelve (12) trees every one hundred (100) lineal feet for the Olio Berm only, and (d) consistent with the Landscape and Buffer Plan attached hereto as Exhibit D for the 126<sup>th</sup> Street Berm;

- iv. Except for the portion of the Landscape Setback Area already covered with woods and located in the western portion of subdistrict A as shown on the Site Plan and provided that such area remains covered with such woods, cause the Landscape Setback Areas to be landscaped with evergreen, deciduous and flowering trees and shrubs, grass and mulch in substantial compliance with the Landscape and Buffer Plans;
- v. Not construct, or permit to be constructed, in the Landscape Setback Areas any above ground structures or buildings except as otherwise provided below; and
- vi. Maintain, or cause the homeowner's association of all or each subdistrict on the Real Estate contiguous or adjacent to any part of the Landscape Setback Areas or Berms to maintain and agree to maintain at all times the Berms and the Landscape Setback Areas and the trees, grass and mulch thereon, including the timely replacement thereof of all trees and grass which are or reasonably appear to be dead of the same size, variety and species, and the replenishment of the mulch not less frequently than annually between the months of March through June.

Notwithstanding anything in this paragraph to the contrary, (A) the Olio Berm may be broken or interrupted to the extent necessary for one (1) access drive on Olio Road; (B) the 126<sup>th</sup> Street Berm may be broken or interrupted for two (2) access drives on 126<sup>th</sup> Street; and (C) the Olio Berm may be tapered diagonally to a height less than seven (7) feet for purposes of (a) one (1) access drive onto the Real Estate from Olio Road, and (b) otherwise not more than once every fifty (50) feet provided that Owner's engineers have reasonably determined such taper is necessary for the structural integrity or drainage of the Olio Berm, and that the sides of each such taper overlap in such a manner as to make the Olio Berm appear to be continuous from the adjacent public right-of-way.

Notwithstanding anything in this paragraph to the contrary, the perimeter landscaping requirements, including all landscaping, mounding and buffering, shall not apply to the approximately 1.8 acre portion of the Real Estate, which is more particularly described on "Exhibit K" attached hereto ("Tract C2"), that is subject to a lease (the "Lease") between the Owner and Ralph E. McCord for the remainder of Ralph E. McCord's life or until voluntarily terminated by Ralph E. McCord. Upon the termination or expiration of the Lease for any reason, all landscaping requirements contained in the Covenants shall apply to Tract C2, and Owner shall promptly install all required landscaping, mounding and buffering on Tract C2, subject to delays for adverse weather conditions or plant material availability.

**E. Construction Conditions.** During the period of construction of any structure or improvement on the Real Estate, Owner (i) shall not permit or acquiesce to, the occupancy or any other use, other than during actual construction activity for construction purposes only, of any such structure or improvement by any person other than the legal owner or the immediate family of the legal owner, and (ii) shall remove promptly, in compliance with all applicable laws, from the Real Estate all persons other than said owner or his or her immediate family, including, but not limited to, any employee or agent of Owner or any general, prime or sub contractor

working on the Real Estate (individually and collectively referred to herein as the "Contractor") who may at any time use or attempt to use any such structure or improvement for any purpose prior to the completion of construction thereof; provided, however, the foregoing shall not prohibit employees of Owner or of any Contractor to occupy a structure or improvement on the Real Estate solely for actual construction work while it is being constructed; and (iii) shall (a) provide for and cause as needed, but no less than weekly, which may require daily collection and removal, the collection and removal of all trash and other debris in the public right-of-way along both the east and west sides of Olio Road from 126<sup>th</sup> Street to Mud Creek, (b) use and cause the Contractor and its employees and agents to use reasonable procedures to minimize construction noise, dust, dirt, trash, lighting and other debris, and (c) not perform or cause the Contractor to perform construction work in subdistrict A and the portion of subdistrict C of the Real Estate identified on "Exhibit H" attached hereto on Sunday or Saturday; provided, however, that construction work shall be permitted in subdistricts A and C on Saturdays and Sundays from time to time as necessary to meet bona fide deadlines imposed by contracts with unrelated third parties.

F. **Units.** Owner (i) shall construct, or shall cause others to construct, the structures and improvements on the Real Estate in substantial accordance with the Site Plan of the Real Estate attached hereto as "Exhibit E" (the "Site Plan") and the Avalon Development Standards Matrix attached hereto as "Exhibit F" (the "Development Matrix"); (ii) shall ensure that the number of housing units on the Real Estate shall not exceed 1,250; (iii) subject to F(ii) hereof, shall not permit the number of units constructed in subdistricts B, C1, and C2 shown on the Site Plan to exceed the respective number of units shown on the Development Matrix by more than 10% for an individual subdistrict; (iv) subject to F(ii) hereof, shall not permit the number of units constructed in subdistricts A and F shown on the Site Plan to exceed the respective number of units shown on the Development Matrix by more than 3% for an individual subdistrict; and (v) shall not sell newly constructed housing units or homes in any subdistrict on the Real Estate except in compliance with all requirements of these Covenants, the Site Plan, the Development Matrix, and the Development Standards attached hereto as "Exhibit G" (the "Development Standards"). Owner shall only permit the number of units in subdistricts A and F to increase above the number of units specified in the Development Matrix if necessary to compensate Owner for the loss of platted lots elsewhere on the Real Estate due to issues and problems created during platting or as a result of adverse soil conditions, the existence of wetlands or archeological sites, or other site or engineering conditions or limitations. The additional housing units that might be added to a subdistrict shall comply with all requirements of such subdistrict per the Site Plan, Development Matrix and the Development Standards

G. **Lighting.** Owner shall not construct, acquiesce to, cause or permit (i) any street lights or street signs to be installed on the Real Estate other than uniform and consistent black or bronze colored metal standards in substantial accordance with "Exhibit E" attached hereto and made a part hereof; (ii) any street light to be installed on the Real Estate that (a) exceeds fifteen (15) feet in height above

finished grade, (b) emits more foot candles than a 100 watt high pressure sodium bulb for any street light located on the Real Estate, and (c) does not have a full top reflector with house sides; and (iii) the lighting on the Real Estate (a) to exceed .05 foot candle at any point along the west property line of the Real Estate, and (b) to be arranged to reflect light towards Olio Road or any property.

- H. **Model Homes.** Owner shall not install model homes except on those lots designated as model home lots on the Site Plan attached as "Exhibit H"; provided, however, that Owner may construct a model home on any other lot that is closer to Olio Road than the model home lots designated on Exhibit H.
- I. **Monuments.** Owner shall not construct, acquiesce to, or cause or permit others to construct, any monument signage on the Real Estate except for (i) a monument sign on the southwest corner of the Real Estate at the intersection of 126<sup>th</sup> Street and Olio Road substantially in accordance with the Plans attached hereto, made a part hereof and marked "Exhibit I", (ii) entrance signage at the curb cut on Olio Road substantially in accordance with "Exhibit J" attached hereto, and (iii) entrance signage at no more than two (2) curb cuts onto 126<sup>th</sup> Street. Lighting of all monument signage (a) shall be arranged to reflect light away from any street or adjacent property, (b) shall not be colored-up lights; provided, however, that this provision shall not be interpreted to prohibit the temporary placement of seasonal holiday decorations and lights not intended to specifically illuminate signage or entrance monumentation, and (c) shall not exceed .05 foot candle at any point along the west property line of the Real Estate. For purposes of this paragraph, the placement of seasonal holiday lights and decorations shall be considered temporary only if the placement of such lights and decorations occurs not more than thirty (30) days prior to or seven (7) days after the applicable holiday date.
3. **Term of Covenants.** The Covenants shall automatically terminate after (i) thirty (30) years after the date of execution hereof, and (ii) no lineal decedent of Plaintiffs resides on any portion of the Adjacent Real Estate. Notwithstanding the foregoing, the Covenants shall automatically terminate when any portion of the Adjacent Real Estate is zoned and used for commercial or industrial purposes.
4. **Miscellaneous.** These Covenants may be amended only upon the prior written consent of both (i) the owners of the Adjacent Real Estate and (ii) either Pulte Homes of Indiana, LLC or the homeowner's association for the development constructed upon the Real Estate.

*[ REMAINDER OF PAGE INTENTIONALLY LEFT BLANK ]*

IN WITNESS WHEREOF, Owner has caused these Covenants to be executed by its duly authorized representative as of this 1st day of August, 2003.

PULTE HOMES OF INDIANA, LLC

By: Mark Thomas  
Mark Thomas, President

STATE OF INDIANA            )  
  ) SS:  
COUNTY OF HAMILTON        )

On this 1st day of August, 2003, personally appeared before me, Mark Thomas, who, being by me duly sworn did say that he is the President of Pulte Homes of Indiana, LLC, an Indiana limited liability company, and that as such officer he has the authority to execute the foregoing instrument on behalf of each of said entity and acknowledged that he executed the same as his free act and deed and as the free act and deed of each of said entity.



David M. Compton, Notary Public  
Resident of HAMILTON County

My Commission Expires: June 24, 2007.

This instrument prepared by Richard M. Blaiklock, Attorney at Law, Lewis & Wagner, 500 Place, 501 Indiana Avenue, Suite 200, Indianapolis, IN 46202-3199.

**EXHIBIT A**

Legal Description

A part of Section 25, Township 18 North, Range 5 East, in Fall Creek Township, Hamilton County, Indiana, more particularly described as follows:

Beginning at the Southeast corner of the Southwest Quarter of said Section 25; thence South 89 degrees 15 minutes 10 seconds West along the South line thereof 1,435.66 feet; thence North 00 degrees 44 minutes 06 seconds West 39.81 feet; thence South 89 degrees 15 minutes 54 seconds West 328.08 feet; thence North 85 degrees 01 minutes 28 seconds West 362.69 feet; thence North 89 degrees 10 minutes 22 seconds West 361.02 feet; thence North 79 degrees 25 minutes 30 seconds West 50.19 feet; thence North 20 degrees 58 minutes 02 seconds West 34.93 feet; thence North 01 degrees 03 minutes 13 seconds West 362.32 feet; thence North 00 degrees 35 minutes 26 seconds West 147.94 feet; thence North 05 degrees 02 minutes 02 seconds West 180.71 feet; thence North 01 degrees 54 minutes 42 seconds West 524.93 feet; thence North 00 degrees 57 minutes 02 seconds East 65.70 feet; thence North 01 degrees 54 minutes 42 seconds West 98.42 feet; thence North 03 degrees 03 minutes 27 seconds West 164.07 feet; thence North 20 degrees 52 minutes 14 seconds East 177.92 feet; thence North 32 degrees 52 minutes 32 seconds West 57.39 feet; thence North 10 degrees 02 minutes 31 seconds West 115.99 feet; thence North 04 degrees 21 minutes 57 seconds West 459.74 feet; thence North 00 degrees 21 minutes 55 seconds East 202.78 feet to the Northwest corner of said Southwest Quarter; thence North 89 degrees 24 minutes 55 seconds East along the North line thereof 311.21 feet to a point on the thread of Mud Creek; thence along said thread of Mud Creek by the next 12 calls; (1) North 01 degrees 55 minutes 21 seconds East 89.60 feet; (2) North 46 degrees 57 minutes 19 seconds East 141.43 feet; (3) North 19 degrees 35 minutes 06 seconds East 199.77 feet; (4) North 22 degrees 31 minutes 09 seconds West 208.14 feet; (5) South 88 degrees 51 minutes 19 seconds East 102.43 feet; (6) North 24 degrees 55 minutes 52 seconds East 82.64 feet; (7) South 75 degrees 30 minutes 08 seconds East 89.91 feet; (8) North 26 degrees 18 minutes 12 seconds East 78.93 feet; (9) North 81 degrees 36 minutes 21 seconds East 210.32 feet; (10) North 66 degrees 46 minutes 59 seconds East 111.54 feet; (11) South 66 degrees 46 minutes 41 seconds East 212.34 feet; (12) North 77 degrees 54 minutes 03 seconds East 114.11 feet to the East line of the aforesaid Quarter, Quarter Section; thence North 00 degrees 12 minutes 43 seconds West along the West line of the East Half of the Northwest Quarter of said Section 25 a distance of 1,865.46 feet to the South right-of-way line of State Road 238; thence South 58 degrees 11 minutes 05 seconds East along said right-of-way line 223.64 feet; thence South 71 degrees 09 minutes 40 seconds East along said right-of-way line 51.31 feet; thence North 31 degrees 48 minutes 55 seconds East 17.05 feet to a point on the centerline of State Road 238, said point being on a curve concave northeasterly, the radius point of said curve being North 31 degrees 41 minutes 07 seconds East 4,971.02 feet from said point; thence southeasterly along said curve and along said centerline 147.52 feet to the point of tangency of said curve, said point being South 29 degrees 59 minutes 06 seconds West 4,971.02 feet from the radius point of said curve; thence South 60 degrees 00 minutes 37 seconds East along the centerline of State Road 238 a distance of 1,097.46 feet to a point on the East line of the Northwest Quarter of said Section 25; thence South 00 degrees 12 minutes 00 seconds East along said East line



186.28 feet; thence North 89 degrees 34 minutes 25 seconds East 315.17 feet to the centerline of State Road 238; thence along said centerline by the next four (4) courses; (1) South 57 degrees 58 minutes 16 seconds East 402.64 feet to the point of curvature of a curve concave southwesterly, the radius point of said curve being South 32 degrees 01 minutes 44 seconds West 535.00 feet from said point; (2) southeasterly along said curve 186.19 feet to the point of tangency of said curve, said point being North 51 degrees 58 minutes 08 seconds East 535.00 feet from the radius point of said curve; (3) South 38 degrees 01 minutes 52 seconds East 567.98 feet to the point of curvature of a curve concave northeasterly, the radius point of said curve being North 51 degrees 58 minutes 08 seconds East 1,250.00 feet from said point; (4) southeasterly along said curve 259.58 feet to a point on said curve, said point being South 40 degrees 04 minutes 14 seconds West 1,250.00 feet from the radius point of said curve; thence South 00 degrees 25 minutes 27 seconds East 631.78 feet to the Northwest corner of the Northeast Quarter of the Southeast Quarter of said section 25; thence South 00 degrees 21 minutes 37 seconds East along the East line of said Half Quarter Section 1,325.52 feet to the Southeast corner said Quarter, Quarter Section; thence North 89 degrees 20 minutes 30 seconds East along the North line of the Southeast Quarter of the Southeast Quarter of said Section 25 a distance of 1,323.01 feet to a point on the East line of said Quarter, Quarter Section; thence South 00 degrees 22 minutes 01 seconds East along said East line 1,323.39 feet to the Southeast corner thereof; thence South 89 degrees 15 minutes 25 seconds West along the South line of said Quarter, Quarter Section 2,646.13 feet to place of beginning, containing 394.996 acres, more or less.

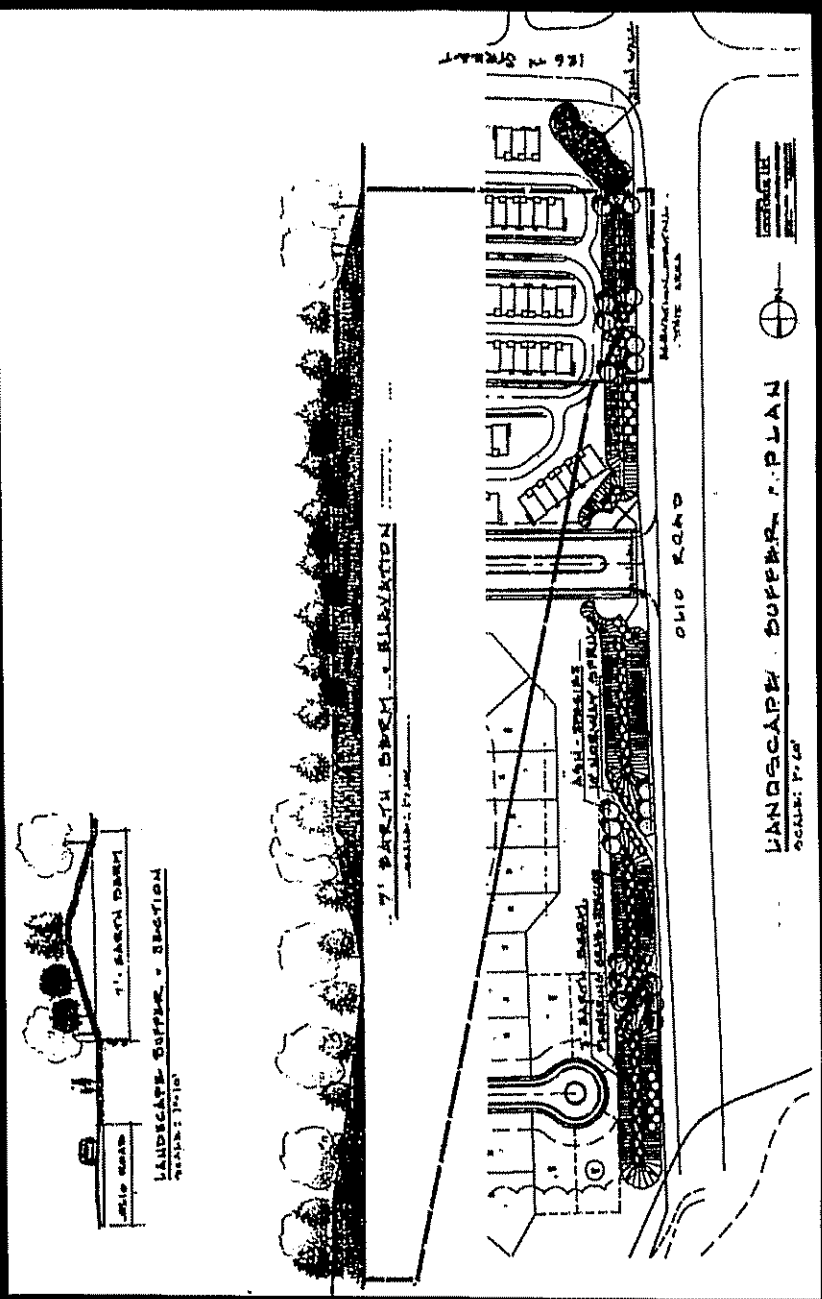
S/42060/Legal/DescOfRealEstate  
December 12, 2002  
(R) KRG (F) GDK

**EXHIBIT B -- LEGAL DESCRIPTION**

A PART OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 26, TOWNSHIP 18 NORTH, RANGE 5 EAST IN FALL CREEK TOWNSHIP, HAMILTON COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 26, TOWNSHIP 18 NORTH, RANGE 5 EAST, SAID POINT BEING NORTH 00 DEGREES 00 MINUTES 06 SECONDS EAST (ASSUMED BEARING) 577.00 FEET FROM THE SOUTHEAST CORNER THEREOF: THENCE SOUTH 89 DEGREES 33 MINUTES 02 SECONDS WEST 896.09 FEET TO A POINT ON AN EXISTING FENCE LINE; THENCE NORTH 35 DEGREES 15 MINUTES 10 SECONDS EAST ALONG SAID FENCE LINE 147.27 FEET; THENCE NORTH 36 DEGREES 49 MINUTES 27 SECONDS EAST ALONG SAID FENCE LINE 70.26 FEET; THENCE NORTH 24 DEGREES 23 MINUTES 27 SECONDS EAST ALONG SAID FENCE LINE 101.15 FEET; THENCE NORTH 16 DEGREES, 42 MINUTES 23 SECONDS EAST ALONG SAID FENCE LINE 209.36 FEET; THENCE NORTH 02 DEGREES 41 MINUTES 43 SECONDS EAST 147.98 FEET TO A POINT; THENCE SOUTH 51 DEGREES 04 MINUTES 50 SECONDS EAST 275.643 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES (ASSUMED BEARING) 210.654 FEET TO A POINT; THENCE NORTH 89 DEGREES 27 MINUTES 32 SECONDS EAST 305.798 FEET TO THE EAST LINE OF SAID QUARTER SECTION, THENCE SOUTH 00 DEGREES 00 MINUTES (ASSUMED BEARING) 100 FEET TO THE POINT OF BEGINNING, CONTAINING 5.245 ACRES, MORE OR LESS.

NOTE: THE ACREAGE INDICATED IN THIS LEGAL DESCRIPTION IS SOLELY FOR THE PURPOSE OF IDENTIFYING THE SAID TRACT AND SHOULD NOT BE CONSTRUED AS INSURING THE QUANTITY OF LAND.

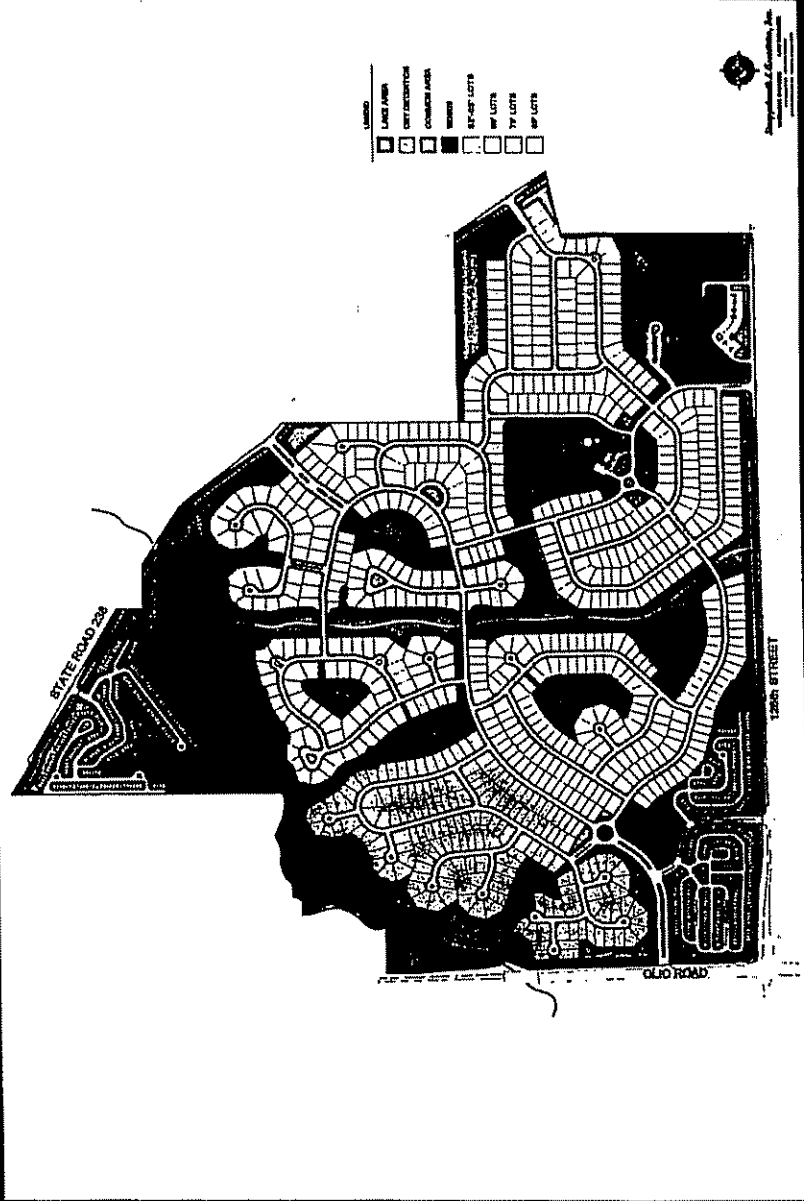


LANDSCAPE SUPPLY - SECTION  
 11. BARTH BURN  
 156th Street

LANDSCAPE SUPPLY PLAN  
 SCALE: 1" = 10'  
 NORTH ARROW  
 156th Street

EXHIBIT C





**EXHIBIT E**

Avalon Development Standards Matrix

District	Land Use Type	Permitted Land Use	Open Space Acreage <sup>1</sup>	Pwelling Units <sup>1</sup> (Max.)	Density <sup>1</sup>	Square Feet Per Residential Unit (Min.)	Lot Width (Min.)	Internal Public Street <sup>3</sup>	Front Setbacks				Blgd. Ht. (Max.)
									Olito Road (Min.)	126th Street (Min.)	SR 238 (Min.)	Rear Setback <sup>4</sup>	
A	Single-family attached/Multi-family (for sale)	R6	28.6	250	8.7	800 sq. ft. single-story 1000 sq. ft. multi-story	n/a	5' min 15' max	20'	20'	n/a	(see note 4)	35'
B	Single-family attached/Multi-family (for sale)	R6	42.3	186	4.4	800 sq. ft. single-story 1000 sq. ft. multi-story	n/a	5' min 15' max	n/a	n/a	n/a	(see note 4)	35'
c1	Single-family detached	R3-C	70.9	175	2.5	1300 sq. ft. single-story 1800 sq. ft. multi-story	52'	25' Bldg.	25'	n/a	n/a	25'	35'
c2	Single-family detached	R3-C	1.8	4	2.2	1300 sq. ft. single-story 1800 sq. ft. multi-story	52'	25' Bldg.	25'	n/a	n/a	25'	35'
D	Single-family detached	R3-C	47.5	80	1.7	1500 sq. ft. single-story 2200 sq. ft. multi-story	80'	25' Bldg.	n/a	n/a	n/a	25'	35'
E	Single-family detached	R3-C	111.5	260	2.3	1400 sq. ft. single-story 1900 sq. ft. multi-story	70'	25' Bldg.	n/a	20'	n/a	25'	35'
F	Single-family detached	R3-C	96.8	295	3.0	1400 sq. ft. single-story 1600 sq. ft. multi-story	60'	25' Bldg.	n/a	20'	n/a	25'	35'
G	Single-family detached/School	R3-C	21.8	0	0	1400 sq. ft. single-story 1900 sq. ft. multi-story	70'	25' Bldg.	n/a	20'	n/a	25'	35'
<b>TOTALS<sup>2</sup></b>			<b>421.3</b>	<b>1250</b>	<b>2.97</b>								

Notes:

- 1) The acreages and units within each district are approximate and may change with final engineering. Variation within each district is permitted up to 10%, however the maximum density per district, overall density (3.2), and total units (1250) shall remain the same.
- 2) Rear-yard setbacks shall exist outside of any landscape easements.
- 3) Distance shown is a Minimum unless otherwise specified.
- 4) In Districts A and B: for buildings with equal to or less than 4 units, buildings must be separated by 15'; for buildings with more than 4 units, buildings must be separated by 20'.

**EXHIBIT G**

**To Declaration of Covenants and Restrictions Concerning  
the Use and Development of Real Estate**

**"Development Standards"**

The development standards applicable to the Real Estate are as follows, which standards are identical to Section 4 of Ordinance No. 020303 and 021803G, an Ordinance Amending the Zoning Ordinance of Fishers, Indiana – 1980, adopted by the Town Council of Fishers, Hamilton County, Indiana on June 2, 2003 (the "Avalon PUD"). Capitalized terms used below shall have the same meaning as such term in defined in the Avalon PUD, unless clearly indicated otherwise below. The following standards are meant to be read and interpreted along with the Site Plan and the Development Standards Matrix.

A. Residential Standards:

- (1) Streets shall have sidewalks and street trees on both sides of the street. All street trees shall be placed approximately forty (40) feet to sixty (60) feet, on center, in a planting strip between the street and sidewalks. Street trees shall be placed in a manner whereby they are outside the corner vision clearance, and do not obstruct views of any required signage. The planting strip shall be a minimum of four feet

wide. All street trees shall be a minimum two-inch caliper, as measured twelve inches from the ground. All street trees shall be deciduous and selected from the Town of Fishers approved List of Recommended Species.

- (2) Cul-de-sac islands shall be landscaped with live plant material.
- (3) Any lots abutting 126<sup>th</sup> Street, Olio Road or State Road 238 shall have twenty (20) feet of common area, adjacent to the thoroughfare or right-of-way. This common area shall be exclusive of any utility easements. This common area shall contain either a wall or fence of ornamental block, brick, metal or wood, or an earthen berm, averaging six (6) feet in height along 126<sup>th</sup> Street and S.R. 238 and a minimum of seven (7) feet along Olio Road, in combination with landscape plant material. A minimum of fifty percent of the trees shall be evergreen. Evergreen or deciduous trees shall be planted at a minimum rate of twelve (12) trees per 100 lineal feet and may be evenly spaced or clustered. The deciduous trees shall be of at least two inch caliper as measured twelve (12) inches above the ground and the evergreens will be at least seven (7) feet of height at planting. This tree requirement is in addition to the street tree requirement. These improvements shall be provided by the developer and maintained by the Homeowners Association.
- (4) All detached single-family residences shall have a minimum two-car garage.
- (5) The height of accessory structures shall be limited to fifteen (15) feet.
- (6) Lot coverage shall not exceed 40 percent and shall include buildings, parking areas and all other impervious surfaces, such as sidewalks, driveways, and other walkways.
- (7) All detached single-family lots shall have a minimum depth of 110 feet.
- (8) Corner lots shall be deemed to have two (2) front yards; therefore, the front yard landscaping and fencing requirements apply to both street frontages on corner lots.
- (9) A standard landscaping package shall be included with each home sold. This landscape package shall provide for trees and shrubs around the building. In addition to the street tree requirement, lots greater than 65 feet in width at the setback line shall be planted with at least two (2) trees either deciduous and/or evergreen and a minimum of twenty (20) shrubs. The deciduous tree shall be of at least two-inch caliper as measured twelve inches from the ground and the evergreen at least six feet in height. Lots with street frontage less than sixty-five (65) feet shall require one (1) deciduous or evergreen lawn tree of the same dimensions as stated above and a minimum of eleven (11) shrubs shall be planted at the foundation of the structure.
- (10) Side load or courtyard entry garages shall have two (2) windows located on the front elevation of the garage. Front loading garages protruding more than eight (8) feet shall also contain a window facing the entry. If the garage protrudes more than twelve (12) feet, it shall contain two windows on the side facing the entry.
- (11) A third car garage may be added to residences. The third car garage entrance must be recessed a minimum of 2 feet from the 2-car garage entrance. Any three-car driveway must taper to a maximum of 16 wide at the property line. On lots more than 65 feet in width, residences with a front-loading garage that protrudes in front of the first floor façade, shall have a front façade including garage equal to or greater than 40 feet wide.



- (12) Like model elevations shall be separated by at least one (1) lot and no like model elevations shall be directly across the street from one another. No two (2) adjacent residences shall have the same exterior siding color.
- (13) Residential in character streetlights shall not exceed fifteen (15) feet in height, and shall be located at major intersections throughout the subdivision. The height of such lights shall be measured from the adjacent ground. Each light shall have shielding to direct light downward in order to minimize light pollution.
- (14) A maximum of two (2) residences may be served by each/any private access drives in order to accomplish any of the following:
  - a. Remove garage entrances from the street
  - b. Provide distinctive open space opportunities
  - c. Take advantage of unique topography
- (15) Homes with a 50 percent brick front (windows, doors, garage doors, accompanying frames and any other opening are excluded from calculations of the total area) or a covered front porch with railings (of at least eight feet in width and four feet in depth and a minimum of 32 square feet) shall have at least two (2) of the following significant architectural design features. Homes with less than a 50 percent brick front or without a front porch of the preceding dimensions shall have a combination of four (4) or more of the following features.
  - a. Reverse gable peak
  - b. Covered front porch with railings on front and side (of at least eight feet in width and four feet in depth or a minimum of 32 square feet)
  - c. 32 inch brick or stone plinth with water table on all sides
  - d. Architectural treatment on gable ends
  - e. A separate overhead door per car for each garage
  - f. Covered front stoop/steps with pathway leading from sidewalk and driveway
  - g. Bay-window on front elevation
  - h. Architecturally treated entranceways (for homes without a front porch)
  - i. Garage doors containing windows of high standard and quality
  - j. Overhang or soffit of at least 8 inches from exterior wall
  - k. Transom windows
  - l. Veranda/balcony
  - m. Two or more roof planes
  - n. Brick accent area of at least 25 percent of the front elevation; windows, doors, garage doors, accompanying frames and any other openings are excluded from calculations of the total area.
  - o. Dormers (at least two)
  - p. At least 2 feet of relief at two or more points along the front facade elevation, excluding relief for doors and windows and garage.
  - q. Decorative shutters
  - r. Architecturally-enhanced articulated trim moldings, i.e. fipons above windows

**B. Multi-Family Standards:**

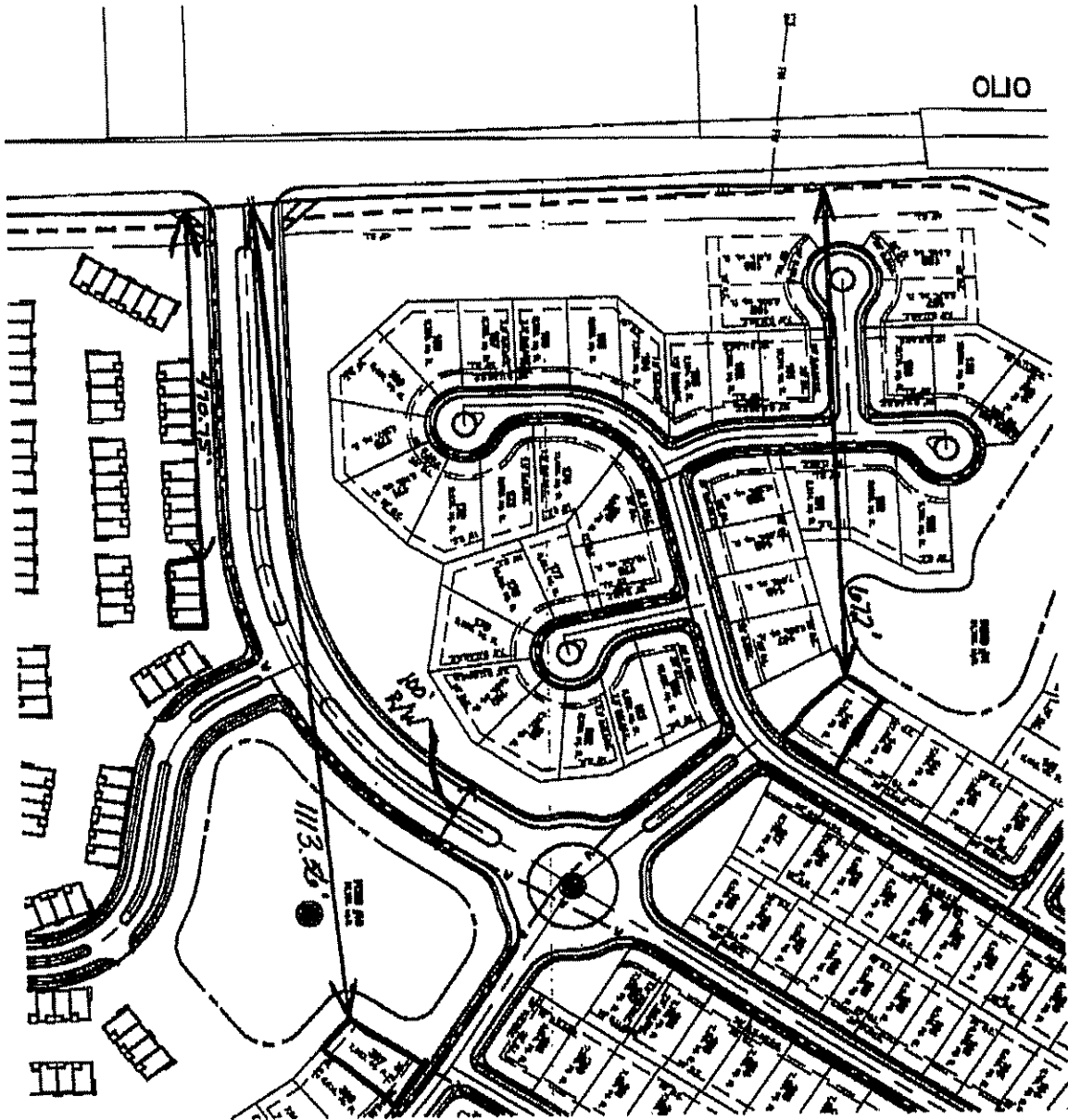
- (1) In the parcels containing Multi-family units, coverage shall not exceed 50 percent,

which shall include buildings, parking areas and all other impervious surfaces. A minimum separation between structures of twenty (20) feet is required.

- (2) The predominant building material on the multi-family buildings shall feature natural tones/hues and shall be permitted to be accented with brighter, more intense complementary or contrasting tones. Decorative pre-cast panels, wood, composite lap, high quality grade vinyl or shingle siding shall also be used. Buildings of two stories or less shall use brick, wood, composite lap or shingle siding as the predominant building material.
- (3) Any lots abutting 126<sup>th</sup> Street, Olio Road or State Road 238 shall have twenty (20) feet of common area, adjacent to the thoroughfare or right-of-way. This common area shall be exclusive of any utility easements. This common area shall contain either a wall or fence of ornamental block, brick, metal or wood, or an earthen berm, averaging six (6) feet in height along 126<sup>th</sup> Street and S.R. 238 and a minimum of seven (7) feet along Olio Road, in combination with landscape plant material. A minimum of fifty percent of the trees shall be evergreen. Evergreen or deciduous trees shall be planted at a minimum rate of twelve (12) trees per 100 lineal feet and may be evenly spaced or clustered. The deciduous trees shall be of at least two inch caliper as measured twelve (12) inches above the ground and the evergreens will be at least seven (7) feet of height at planting. This tree requirement is in addition to the street tree requirement. These improvements shall be provided by the developer and maintained by the Homeowners Association.
- (4) The height of accessory structures shall be limited to fifteen (15) feet.
- (5) Residences may be served by private access drives in order to accomplish any of the following:
  - a. Remove garage entrances from the street
  - b. Provide distinctive open space opportunities
  - c. Take advantage of unique topography
- (6) Each townhouse unit shall be architecturally complimentary to the adjacent unit. Variations shall be approved by the Exit 10 PUD Committee.
- (7) Residential in character streetlights shall not exceed 15 feet in height and shall have shields, and shall be located at major intersections throughout the subdivision.
- (8) A landscaping area shall be required on the perimeter of the development between any adjacent public street and parking area. The perimeter shall be landscaped with a buffer screen of either a wall or fence of ornamental block, brick, metal or wood, or an earthen berm. These shall be in combination with a hedge of evergreen and/or deciduous shrubs and trees. Evergreen or deciduous trees shall be planted at a rate six (6) trees per 100 lineal feet and may be evenly spaced or clustered. This tree requirement is in addition to the street tree requirement.
- (9) A standard landscaping package shall be included with each unit sold. This landscape package shall provide for trees and shrubs on the front and in the case of end units, also on the side. In addition to the street tree requirement, one (1) deciduous or evergreen lawn tree of the same dimensions as stated above shall be planted for every two units and with a minimum of four (4) shrubs per unit shall be planted at the foundation of the structure.
- (10) Townhouse structures shall have a minimum two-car garage. Rear-loaded garages on

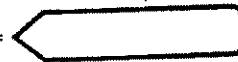
townhouses are permitted but not required. Townhouse garages shall not protrude more than four feet from the front façade. Multi-family structures with front-loading garages shall have no more than two garage entrances next to one another. The Exit 10 PUD Committee shall approve variations.

- (11) All public streets shall have sidewalks and street trees on both sides of the street. All street trees shall be placed approximately forty (40) feet to sixty (60) feet on center in a planting strip between the street and sidewalks. Street trees shall be placed in a manner whereby they are outside the corner vision clearance and do not obstruct views of any required signage. The planting strip shall be a minimum of four feet wide. All trees shall be a minimum two-inch caliper, as measured twelve inches from the ground. All trees shall be deciduous and selected from the Town of Fishers approved List of Recommended Species.
- (12) Pedestrian crossings shall be clearly identified by color or texture change, through the use of stamped asphalt or concrete, pavers or Thermoplastic.
- (13) Final review of multi-family plans shall be subject to approval by the Exit 10 PUD Committee and the Department of Development.
- (14) Any requirements not specified by this PUD Ordinance shall be subject to Chapters 151.070 R6 and 151.071 R7 Residential Districts of the Town of Fishers Code of Land Use Ordinances.
- (15) Any dumpsters shall be screened from view and shall not be placed in required parking spaces.



**EXHIBIT H**

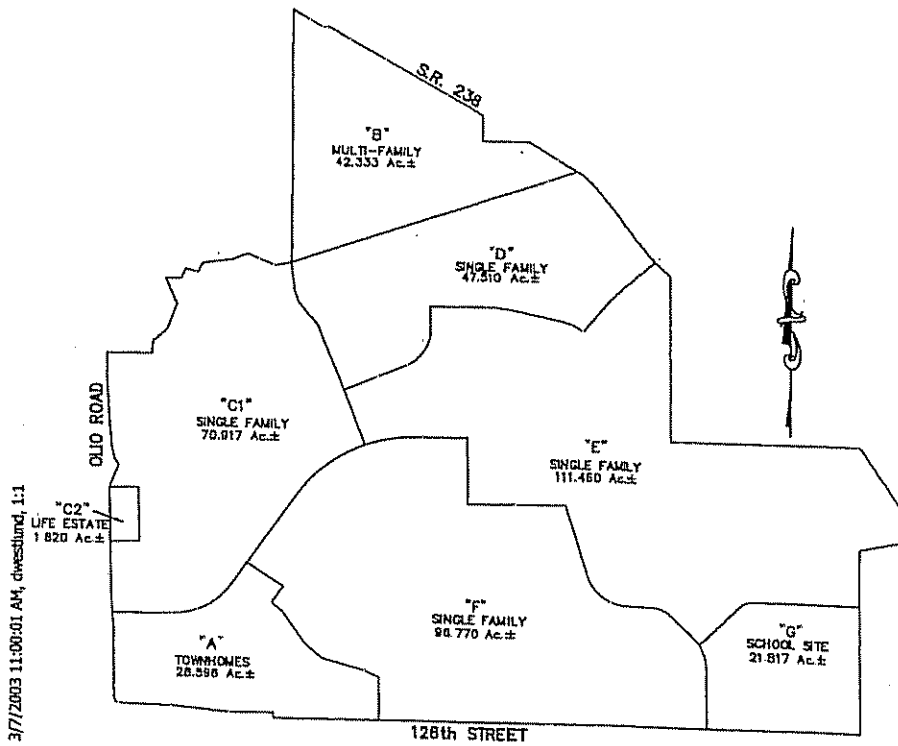
MODELS =





**CONSULTING ENGINEERS  
LAND SURVEYORS**  
2848 Alameda Rd. - Fibert, WI 46038  
(317) 819-5835 - 1-800-728-8317 - FAX: (317) 819-5818  
DDE: 44930 X-FILE: 44930 SUB-FILE: DISTRICT MAP

JOB ID \_\_\_\_\_  
CONTROL # 44930



\\44930\dwg\DISTRICT MAP.dwg, Layout1, 3/7/2003 11:00:01 AM, dwestbund, 1:1

**EXHIBIT H**

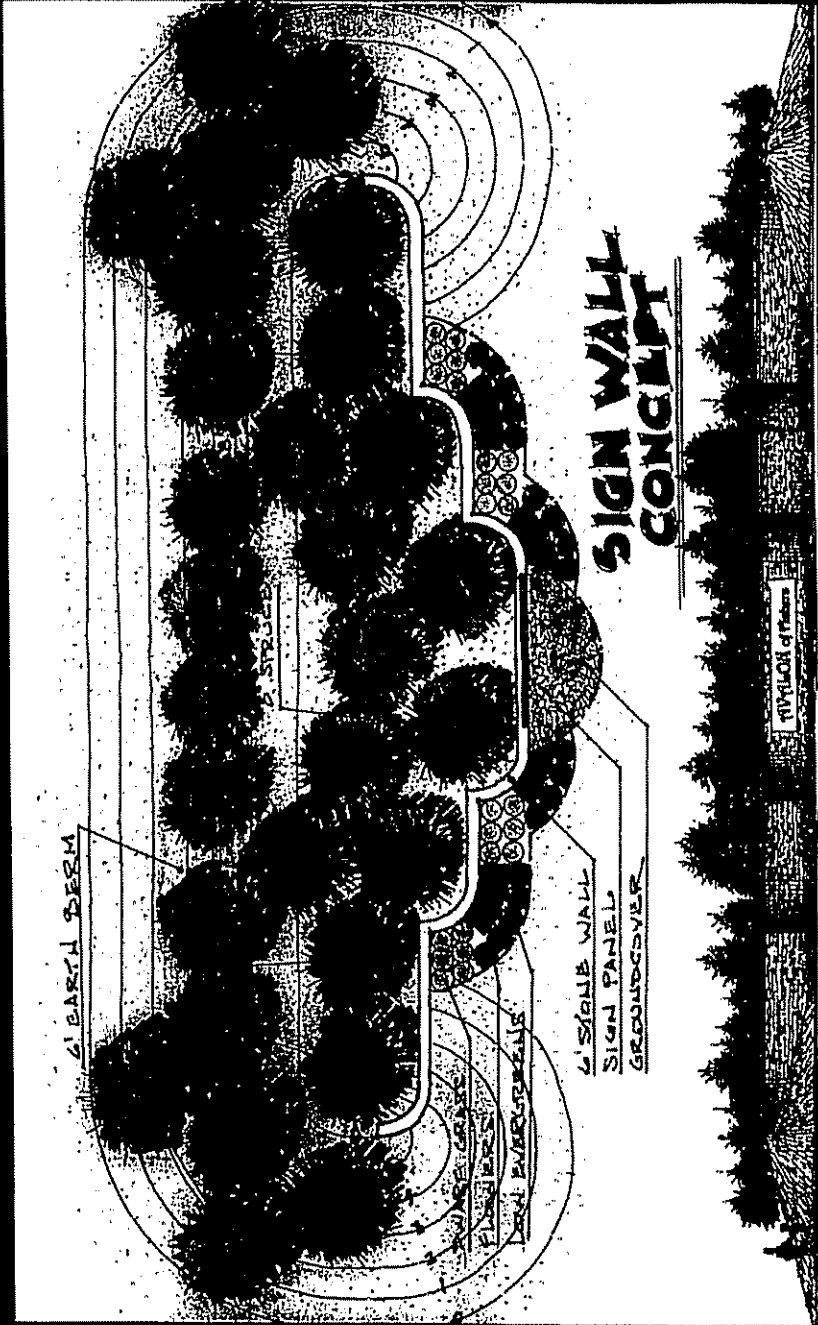


EXHIBIT I

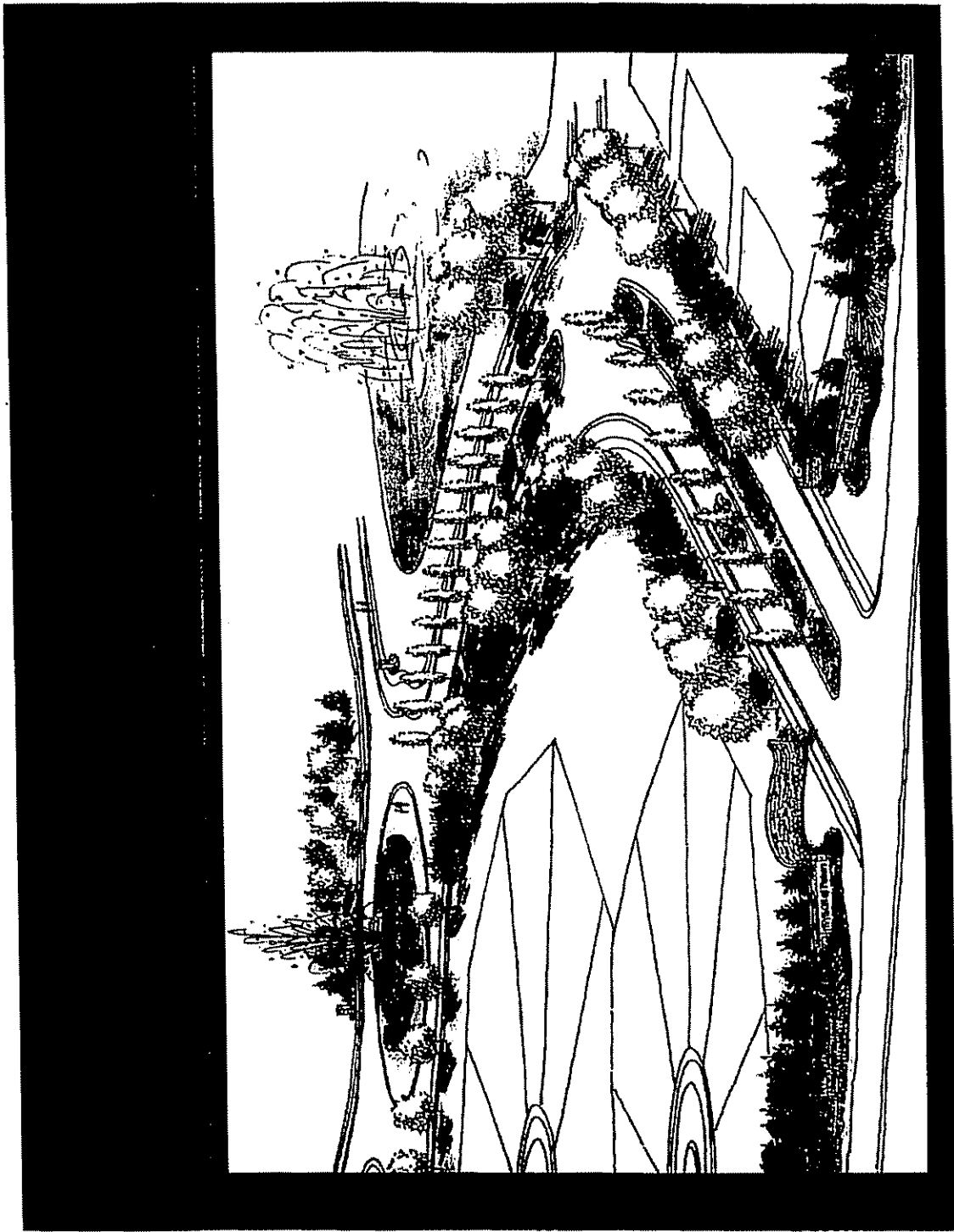


EXHIBIT J

**EXHIBIT K**

**Legal Description for McCord Lease Area**

A part of the West Half of the Southwest Quarter of Section 25, Township 18 North, Range 5 East, Hamilton County, Indiana, more particularly described as follows:

Commencing at the Northwest corner of said Half Quarter Section; thence North 89 degrees 24 minutes 55 seconds East along the North line thereof 37.68 feet to the eastern right-of-way line of Olio Road as described in Instrument No. 9809840529 recorded in the Office of the Recorder of Hamilton County, Indiana; thence along said right-of-way line by the next five (5) calls; 1) thence South 00 degrees 21 minutes 55 seconds West 202.78 feet; 2) South 04 degrees 21 minutes 57 seconds East 459.74 feet; 3) South 10 degrees 02 minutes 31 seconds East 115.99 feet; 4) South 32 degrees 52 minutes 32 seconds East 57.39 feet; 5) South 20 degrees 52 minutes 14 seconds West 177.92 feet to the POINT OF BEGINNING of this description; thence North 87 degrees 50 minutes 11 seconds East 200.00 feet; thence South 01 degrees 54 minutes 42 seconds East 400.00 feet; thence South 87 degrees 50 minutes 11 seconds West 200.00 feet to the eastern right-of-way of said Olio Road; thence along said right-of-way line by the next four (4) calls; 1) North 01 degrees 54 minutes 42 seconds West 71.92 feet; 2) North 00 degrees 57 minutes 02 seconds East 65.70 feet; 3) North 01 degrees 54 minutes 42 seconds West 98.42 feet; 4) North 03 degrees 03 minutes 27 seconds West 164.07 feet to the point of beginning, containing 1.820 acres, more or less.

INDY 1191389v1



93.00  
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MASTER DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS  
OF AVALON

200400007258  
Filed for Record in  
HAMILTON COUNTY, INDIANA  
JENNIFER J HAYDEN  
02-03-2004 At 10:01 am.  
DEC COV RES 93.00

THIS MASTER DECLARATION (hereafter "Master Declaration"), made this 2<sup>nd</sup> day of FEBRUARY, 2004, by PULTE HOMES OF INDINA, LLC (hereafter "Declarant");

WITNESSETH:

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

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

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

**WHEREAS**, the term "Property" shall hereafter mean and refer to the Real Estate together with such portions of the Additional Real Estate as have from time to time been subjected to this Master Declaration.

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

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

Declarant shall have the right, and hereby reserves on to itself the right, at any time, and from time to time, at any time prior to the expiration of the Development Period, to add to the Property and subject to this Master Declaration all or any part of the Additional Real Estate. Any portion of the Additional Real Estate shall be added to the Property, and therefore and thereby becomes a part of the Property and subject in all respects to this Master Declaration and all rights, obligations, and privileges herein, when Declarant places of record in Hamilton County, Indiana an instrument so declaring the same to be part of the Property, which supplementary Master Declaration (hereafter "Supplementary Master Declaration") may be as part of a subdivision plat for any portion of the Additional Real Estate, or by an

amendment or supplement to this Master Declaration. Such Supplementary Master Declaration may contain modifications hereto and additional terms, conditions, restrictions, maintenance obligations, and assessments as may be necessary to reflect the different character, if any, of the Additional Real Estate or improvements to be located thereon.

Upon recording of any such instrument on or before the expiration of the Development Period, the real estate described therein shall, for all purposes, thereafter be deemed a part of the Property and the Owners of any Lots within such real estate shall be deemed for all purposes, to have and be subject to all of the rights, duties, privileges, and obligations of Owners of Lots within the Property. No single exercise of Declarant's right and option to add and expand the Property as to any part or parts of the Additional Real Estate, shall preclude Declarant from thereafter from time to time further expanding and adding to the Property to include other portions of the Additional Real Estate, and such right and option of expansion may be exercised by Declarant from time to time as to all or any portions of the Additional Real Estate so long as such expansion is accomplished on or before the expiration of the Development Period. Such expansion of the Property is entirely at the sole discretion of the Declarant and nothing contained in this Master Declaration or otherwise shall require Declarant to expand the Property beyond the Real Estate, or to any portions of the Additional Real Estate which Declarant may voluntarily and in its sole discretion from time to time subject to this Master Declaration.

## ARTICLE I

### DEFINITIONS

The following are the definitions of the terms as they are used in this Master Declaration:

Section 1.1 "Attached Residence" shall mean a residence which is physically attached to another residence. Examples of Attached Residences are condominiums, townhouses, quads, duplexes, or other multi-plexed dwellings.

Section 1.2 "Builder" means a person or entity engaged in the business of constructing single family residences for sale and engaged in and responsible for the original construction of a residence on a Lot.

Section 1.3 "Town" shall mean the Town of Fishers, Hamilton County, Indiana

Section 1.4 "Commitments" shall mean and refer to (i) the commitments made in connection with the Property and recorded with the Recorder of Hamilton County, Indiana, on the 27<sup>th</sup> day of June, 2003, as Instrument No. 200300061910, as amended by the amendment recorded with the Recorder of Hamilton County, Indiana, on the 25<sup>th</sup> day of August, 2003, as Instrument No. 200300086147 and (ii) the Declaration of Covenants and Restrictions Concerning the Use and Development of Real Estate recorded with the Recorder of Hamilton County, Indiana, on September 24, 2003, as Instrument No. 200300099008.

Section 1.5 "Committee" shall mean the *Development Standards and Architectural Control Committee*, as more fully described in Article VI of this Master Declaration.

Section 1.6 "Common Area" shall mean any Common Area or Limited Common Area, whether a Master Common Area or a Neighborhood Common Area, (i) designated on current and future Plats as a "Block", "Common Area", "C.A.", "Limited Common Area", or "C.C.A.", and (ii) the Pool.

Section 1.7 "Detached Residence" shall mean a residence not physically attached to another residence.

Section 1.8 "Development Period" means the period of time commencing with Declarant's acquisition of the Property and ending when Declarant has completed the development and sale of, and no longer owns, any Lot or any other portion of the Property. The Development Period shall recommence each time the Declarant acquires any part (or all) of the Additional Real Estate.

Section 1.9 "Drainage Board" means the Hamilton County Drainage Board.

Section 1.10 "Lake Area" means any Common Area on which a lake now exists or is later constructed by Declarant and "Lake" means a body of water which now exists or is later constructed by Declarant in a Lake Area.

Section 1.11 "Lot" shall mean and refer to (i) a discreet lot or building parcel for a Residence, as reflected on a Plat, or (ii) to a condominium unit within a condominium within the Property, together with the undivided share of the common elements that are appurtenant to the condominium unit. The term "Lot" shall not include any land that is Master Common Area or Neighborhood Common Area.

Section 1.12 "Master Association" shall mean and refer to the Avalon Master Association, Inc., an Indiana not for profit corporation, which has its principal place of business in Hamilton County, Indiana, and its successors and assigns. Any reference to the Master Association shall also be a reference to the Articles, Minutes, and Bylaws of the Master Association.

Section 1.13 "Master Board of Directors" or "Master Board" shall mean the Board of Directors of the Avalon Master Association, Inc.

Section 1.14 "Master Common Area" shall mean and refer to all real property, easements, rights-of-way, licenses, interest in real property, and private streets that are now, or in the future, designated by the Declarant as a Master Common Area and owned, contracted for, leased, or otherwise held by the Master Association for the common use and enjoyment of the members. Master Common Area may include, without limitation, entrance systems and features, trail systems, lakes, landscaping, signs, gate houses, the Pool, and any other recreational facilities located in a Master common Area.

Section 1.15 "Master Declaration" shall mean this document entitled the "Master Declaration of Covenants, Conditions, and Restrictions of Avalon."

Section 1.16 "Neighborhood" shall mean any portion of the Property which has been granted neighborhood status by the Declarant through the recordation of a Neighborhood Declaration.

Section 1.17 "Neighborhood Association" shall mean any property owners association, condominium association, or other such similar entity, their successors and assigns, which may be formed by the Declarant or the Master Association for any particular Neighborhood.

Section 1.18 "Neighborhood Common Area" shall mean any real property, including any improvements and fixtures thereon, designated by the Declarant as a Neighborhood Common Area and owned, leased, or the use of which has been granted to a Neighborhood Association for the common use and enjoyment of the members of the Neighborhood Association.

Section 1.19 "Neighborhood Declaration" shall mean and refer to any and declaration, covenants, conditions, restrictions and other provisions that may be imposed by a recorded instrument applicable to any Neighborhood.

Section 1.20 "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but otherwise excluding those having such interest merely as security for the performance of an obligation. Unless specifically indicated to the contrary, the term "Owner" shall include the Declarant and a Builder.

Section 1.21 "Person" shall mean an individual, firm, corporation, partnership, Master Association, trust or other legal entity or any combination thereof.

Section 1.22 "Plat" shall mean the subdivision plats of the Property which are recorded with the Recorder of Hamilton County, Indiana.

Section 1.23 "Pool" shall mean the recreational swimming pool and attached bath house which Declarant, in its sole and absolute discretion, may construct on the Property.

Section 1.24 "PUD" shall collectively mean and refer to the PUD Ordinance enacted by the Town of Fishers, Indiana, on the 2<sup>nd</sup> day of June, 2003, as Ordinance No. 020303 and Ordinance No. 021803G.

Section 1.25 "Refuse Collection" shall mean the collection, from each Residence, of trash and garbage, for which the Association contracts.

Section 1.26 "Residence" shall mean an Attached Residence or a Detached Residence.

Section 1.27 "Special Use" shall mean any use defined or identified in any applicable zoning ordinance as a "Special Use".

Section 1.28 "Trail System" means paths or trails so designated by the Master Board and located in a Master Common Area and Neighborhood Common Area.

## ARTICLE II

### CHARACTER OF THE DEVELOPMENT

Section 2.1. In General. No structure shall be erected, placed or permitted to remain upon any Lot except a Residence. All Property located within a plat which has not been designated by numbering shall be used in a manner determined by the Declarant. Lots may be used only for residential purposes and only one Residence may be constructed thereon. No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of Residences in Avalon than the number of Lots depicted on a Plat. Notwithstanding any provision in the applicable zoning ordinance to the contrary, no Lot may be used for any "Special Use" that is not clearly incidental and necessary to single family dwellings.

Section 2.2. Other Restrictions. All Property shall be subject to the easements, restrictions, and limitations of record appearing on a Plat and amendments thereto, on recorded easements, and rights-of-

way, and also to all governmental zoning authority and regulation affecting the Property, all of which are incorporated herein by reference.

### ARTICLE III

#### EASEMENTS

Section 3.1 Designated Easements. The following are easements designated or to be designated, in the Declarant's sole discretion, upon a plat:

(A) Designated Drainage, Utility, and Sewer Easements. There are strips of ground designated on the Plat as drainage easements, utility easements, sewer easements, sanitary sewer easements and storm sewer easements, or any combination thereof, which are hereby reserved to the appropriate governmental entities, public utilities, and private utilities for the installation and maintenance of swales, ditches, pipes, drains, sanitary sewers, manholes, detention and retention areas or other drainage facilities. Purchasers of Lots in this subdivision shall take title subject to such easements hereby created and subject at all times to the rights of proper authorities to service and maintain such drainage facilities and easements, and no permanent structure of any kind and no part thereof, except fences which do not retard or impede the flow of drainage water and which are approved by any entity to which the easement is dedicated and pursuant to Section 5.9 below, shall be built, erected or maintained on said drainage easements, except by the Declarant or its assigns. It shall be the responsibility of the Master Association and the Owners of the areas enclosed within such easements to maintain such areas in such conditions that the flow of storm drainage waters on, across and from said areas shall not be impeded, diverted or accelerated. Such use for storm water movement or retention or detention is hereby declared to be an easement and servitude upon said land for the benefit of the Owners of other land included within the Plat, upstream or downstream, affected by such use and for any proper governmental agency or department or any private or public utility. All proper governmental agencies or departments and public and private utilities are hereby given the right to obtain access to such areas to perform maintenance and to perform such maintenance as may be necessary to protect that easement and servitude rights. It shall be the responsibility of the Master Association and the Owner of any Lot or parcel of land within the Plat to comply at all times with the provisions of the drainage plan as approved for the applicable Plat by the appropriate governmental agency or department and the requirements of all drainage permits for such Plat issued by those agencies. Failure to so comply shall operate as a waiver and release of the Declarant, the developer, or their engineers and agents from all liability as to damage caused by storm waters or storm drainage.

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

(B) Designated Mounding, Landscaping, and Screening and Sign Easements. Any strips of grounds shown or designated on the Plat for landscaping including, but not limited to, landscape easements, landscape maintenance easements, and/or landscape maintenance access easements are hereby reserved unto Declarant, during the Development Period, and, thereafter, unto the Master Association, for the purposes of (i) providing signs which either advertise the

Property and the availability of Lots or identify the Property or, (ii) installing landscaping, mounding, and screening. Declarant reserves unto itself during the Development Period and thereafter unto the Master Association, the exclusive and sole right to erect signs and install landscaping, mounding, and screening within these strips of ground. Notwithstanding anything in this Master Declaration to the contrary, no planting shall be done, and no hedges, walls, fences or other improvements shall be erected or maintained in the area of such easements, except by the Declarant during the Development Period, and thereafter by the Master Association. Furthermore, notwithstanding anything in this Master Declaration to the contrary, no planting shall be done, and no hedges, walls, fences, structures, or other improvements shall be erected between (i) any landscape easement or landscape maintenance easement, and (ii) any perimeter roadway, public highway or right-of-way along the perimeter or boundary of the Property, except by the Declarant during the Development Period and thereafter by the Master Association.

(C) Easement Work Notwithstanding any architectural approval under Article VII below, during the course of any maintenance, service, repair or work upon any easement, the Declarant, the Master Association, any private utility, any public utility, and/or any governmental entity shall have the right and the authority, without any obligation or liability whatsoever to any owner, to remove, damage, or destroy any fence or other structure or landscaping built, created, maintained or planted in any easement described in Section 3.1 (A) above and without any obligation of replacement.

Section 3.2 General Drainage Utility Sewer and other Development Easements. The following rights reserved in this Section shall not be exercised, after the conveyance of any Lot, in a manner that (i) unreasonably and adversely affects any Residence or portion thereof located upon such Lot or the Owner's use or enjoyment thereof, or (ii) unreasonably restricts the rights of ingress and egress to such Lot. The following rights and easements reserved by Declarant in this Section shall run with the land, and Declarant's right to further alter or grant easements shall automatically terminate and pass to the Master Association one (1) year after Declarant shall have conveyed the last Lot within the Property.

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

(B) Declarant reserves unto itself during the Development Period, and thereafter unto the Master Association, an easement ("Lake Easement") and right-of-way in and to any Lake

Area (s) or areas now or hereafter shown on the Plat as a "Block", "Common Area", or "Lake" or any other Common Area within the Property used as a water retention or detention area, or on which a Lake now exists or is later constructed, for the purpose of fulfilling any maintenance obligations set forth in this Master Declaration and/or establishing and maintaining proper surface water drainage throughout the Property, including dewatering maintenance, and an easement of ingress and egress through so much of the remainder of the Property as is reasonably necessary or appropriate, to perform such actions as Declarant or the Master Association deem necessary or appropriate, for the purpose of establishing and maintaining proper surface water drainage throughout the Property, which such actions shall include the construction, repair and maintenance of retention and detention ponds or lakes in accordance with the requirements of applicable law and of all governmental agencies having jurisdiction (without undertaking any obligation or duty to exceed such requirements).

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

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

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

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

## ARTICLE IV

### ADDITIONAL PROVISIONS RESPECTING OF SANITARY SEWER UTILITY

Section 4.1 Sanitary sewer utility easements allow for the construction, extension, operation, inspection, maintenance, reconstruction, and removal of sanitary sewer facilities and give utility companies the right of ingress/egress.

Section 4.2 No trees shall be planted directly over building sewers (laterals). Any landscaping placed within easements or right-of-ways is at risk of being removed, damaged, or destroyed by the applicable utilities without the obligation of replacement.

Section 4.3 No mounding, lighting, fencing, signs, retaining walls, landscaping walls, entrance walls, irrigation lines, or other improvements shall be placed within ten (10) feet of the center of the sanitary sewer infrastructure. Any of these which are placed within easements or right-of-ways is at risk of being removed by the applicable utilities without the obligation of replacement.

Section 4.4 All Owners not serviced by gravity sanitary sewer service are responsible for all maintenance, repair and replacement of all grinder/ejector pumps, force mains and gravity laterals from the residence to its connection to the sanitary sewer main.

Section 4.5 The discharge of clear water sources, including, but not limited to, foundation drains, sump pumps, and roof drains to the sanitary sewers is prohibited.

Section 4.6 Grade changes across sanitary sewer facilities must be approved in writing by the applicable utilities.

## ARTICLE V

### COVENANTS AND RESTRICTIONS

Section 5.1 Land Use. Lots may be used only for single-family residential purposes and only one Residence not to exceed the maximum height permitted by and measured pursuant to the Zoning Ordinance of the Town of Fishers, Indiana, may be constructed thereon. No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of Residences in Summer Ridge than the number of Lots depicted on the Plat. Notwithstanding any provision in the applicable zoning ordinance to the contrary, no Lot may be used for any "Special Use" that is not clearly incidental and necessary to single family dwellings.

Section 5.2 Address Identification. The numbers representing the address of each Residence will be of a uniform appearance and will be displayed in a uniform location and manner, as determined by the Committee.

Section 5.3 Lighting. All homes will have two dusk to dawn lights located on the sides of the garage doors. Street lights may be installed by Declarant in the utility easements on Lots and in the Common Areas. Street lights shall be operated and maintained by the Association. The Association reserves the right to remove street lights deemed no longer necessary by the Board of Directors.



Section 5.4 Temporary Structures No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a dwelling, temporary or permanent, nor may any structure of a temporary character be used as a dwelling.

Section 5.5 Driveways. All driveways shall be concrete in material.

Section 5.6 Water Systems. Each Owner shall connect to the water main maintained by a private or public water utility to provide water for domestic use on the Lot and shall pay all connection, availability, or other charges lawfully established with respect to connections thereto.

Section 5.7 Drainage In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of such downstream Lot to permit such drainage to continue, without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, although no specific drainage easement for such flow of water is provided on the Plat. To the extent not maintained by the Drainage Board, "Drainage Easements" reserved as drainage swales shall be maintained by the Owner of the Lot upon which such easements are located such that water from any adjacent Lot shall have adequate drainage along such swale. Lots may be included in a legal drain established by the Drainage Board. In such event, each Lot will be subject to assessment by the Drainage Board for the costs of maintenance of the portion of the drainage system and the lake control structures included in such legal drain, which assessment will be a lien against the Lot. The elevation of a Lot shall not be changed so as to materially affect the surface elevation or grade of surrounding Lots. Perimeter foundation drains and sump pump drains shall be connected whenever feasible into a subsurface drainage tile. Down spouts and drains shall be designed to disperse runoff for overland flow to street or swale collection systems. Each Owner shall maintain the subsurface drains and tiles located on his Lot and shall be liable for the cost of all repairs thereto or replacements thereof.

Section 5.8 Signs. Except for such signs as Declarant may in its absolute discretion display in connection with the identification of development of Summer Ridge and the sale of Lots therein, no sign of any kind shall be displayed to the public view of any Lot except that one (1) sign of not more than four (4) square feet may be displayed at any time for the purpose of advertising the property for sale, or may be displayed by a builder to advertise the property during construction and sale.

Section 5.9 Fencing. This subsection is applicable to all Lots except those Lots which are used for a sales office or model home by the Declarant or a Builder. No fence, wall, hedge, or shrub planting higher than eighteen (18) inches shall be permitted between the front property line and the front building set back line except where such planting is part of Residence landscaping approved by the Architectural Review Committee and the prime root thereof is within six (6) feet of the Residence. Corner Lots shall be deemed to have two (2) front property lines. Trees shall not be deemed "shrubs" unless planted in such a manner as to constitute a "hedge". All fencing shall be cedar, dog-eared shadow box on both sides of the fence, unless approved by the Committee. All fencing on a Lot shall be uniform in height, style, and color and substantially similar in material. No fence shall be erected or maintained on or within any Landscaping Easement except such as may be installed by Declarant and subsequently replaced by the Association in such manner as to preserve the uniformity of such fence. No fence may be erected on a Lot without prior approval of the Committee, which shall approve or disapprove the location of all fences; provided, however, that all fencing erected on a Lot must be erected either (i) within six (6) inches of the property line of such Lot, or (ii) more than ten (10) feet from the property line of such Lot. Owners of Lots adjoining Lots on which a fence is erected within six (6) inches of the property line shall have the right to connect a fence to the fence on the adjoining Lot if the new fence satisfies all of the criteria expressed herein and is approved by the Committee. The Committee may establish further restrictions

with respect to fences, including limitations on (or prohibition of) the installation of fences in the rear yard of a Lot abutting a Lake and design standards for fences. All fences shall be kept in good repair. No fence, wall, hedge, or shrub planting, or tree foliage which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the Lot lines at the streets and a line connecting points 25 feet from the intersection of said street Lot lines; and, the same rule shall apply to the intersection of a driveway with a street, in which case the edge of the driveway pavement shall be substituted for one of the street Lot lines.

Section 5.10 Nuisances. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood. Violation of any ordinance governing noise, building or lot maintenance, or any other public nuisance shall be deemed to be a nuisance creating rights in every affected Owner, the Declarant, and/or the Association, as the case may be, to enforce the provisions hereof against the offending Owner. Barking dogs shall constitute a nuisance. In the event of successful enforcement by an Owner, the Declarant, or an Owner of the provisions thereof, the offending Owner shall be liable to the prevailing party for attorneys' fees, court costs, and all other costs and expenses of litigation and collection in connection therewith.

Section 5.11 Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers out of public view except not more than 24 hours prior to its removal thereof, when it may be placed at the curb of the Lot. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

Section 5.12 Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purpose. The owners of such permitted pets shall confine them to their respective Lots such that they will not be a nuisance. Owners of dogs shall so control or confine them so as to avoid barking which will annoy or disturb adjoining Owners. Unless permitted by the Board of Directors of the Association, no Owner shall maintain more than two (2) of the same type (dog, cat, bird) of pet nor more than four (4) total pets; provided, however, that fish which are located in indoor aquariums and which pose no risk to the public health shall not be considered pets for the purpose of this restriction. No dangerous or potentially dangerous pets, such as exotic animals (large wild cats, wolves, alligators, snakes which are poisonous or longer than two feet, poisonous spiders, etc.) shall be permitted to exist in a Residence or on a Lot without the unanimous consent of the Architectural Review Committee and the Board of Directors; provided, however, that the decision of the Board of Directors to permit such animal or animals may be overturned by a majority vote of the Members at any meeting.

Section 5.13 Outside Burning. No trash, leaves, or other materials shall be burned upon a Lot unless the smoke therefrom would not blow upon any other Lot. Owners shall use appropriate incinerators and shall at all times be in compliance with all applicable legal requirements for outside burning.

Section 5.14 Antennas and Receivers. No antenna, satellite dish, or other device for the transmission or reception of radio, television, or satellite signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors and above ground, whether attached to a building or otherwise, on any part of the Property, including Lots, without the written approval of the Architectural Review Committee, which approval shall not be unreasonably withheld; provided, however, that any such device may be installed and maintained on any Lot without the necessity of such written approval if: (a) it

is not visible from the neighboring Lots, streets or Common Area; or (b) the Owner, prior to installation, has received the written consent of the Owners of all Lots who would have views of the device from their Lots; or (c) the device is virtually indistinguishable from structures, devices, or improvements, such as heat pumps, air-conditioning units, barbecue grills, patio furniture, and garden equipment, which are not prohibited by these covenants or Bylaws, or (d) it is a satellite dish 1 meter or less in diameter and not affixed to the roof of a residence; or (e) if prohibition of the installation, use, and maintenance of such device is specifically preempted and superseded by applicable governmental authority.

Section 5.15 Exterior Lights. Except on Lots on which there is maintained a sales office or model home by the Declarant or a Builder, no exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Lot.

Section 5.16 Electric Bug Killers. Electric Bug Killers, "zappers", and other similar devices shall not be installed at a location or locations which result in the operation thereof becoming a nuisance or annoyance to other Owners, and shall be operated only when outside activities require the use thereof and not continuously.

Section 5.17 Vacant Lots. It shall be the duty and obligation of the Owner of a vacant Lot to maintain such Lot and mow the lawn thereof. Declarant and the Association shall have the right, but not the duty, to enter upon each vacant Lot and to maintain the appearance thereof by cutting weeds, mowing grass, trimming trees, removing debris, installing erosion control devices, and performing any other act reasonable under the circumstances. The Owner shall be responsible for payment of all such expenses upon demand and the Declarant or the Association, as the case may be, shall have a lien on such Lot for the payment of such expenses, together with attorneys' fees and all other costs and expenses of litigation and collection which may be incurred in connection therewith.

Section 5.18 Association's Right to Perform Certain Maintenance. In the event that the Owner of any Lot shall fail to maintain his or her Lot and any improvements situated thereon in accordance with the provisions of this Declaration, the Association shall have the right, but not the obligation, by and through its agents or employees or contractors, to enter upon said Lot and repair, mow, clean 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 these restrictions. The cost incurred by the Association shall be assessed to the Owner. The Owner shall reimburse the Association within thirty (30) days of the date on which the Owner is invoiced by the Association. The Association shall have the right to collect any outstanding maintenance assessments in the manner described in Article XI. Neither the Association nor any of its agents, employees, or contractors shall be liable for any damage that may result from any maintenance work performed hereunder.

Section 5.19 Awnings. Except on Lots on which there is maintained a sales office or model home by the Declarant or a Builder, or as approved by the Committee, no metal, wood, fabric, fiberglass or similar type material awnings or patio covers will be permitted anywhere on the Property.

Section 5.20 Diligence in Construction. Subject to inclement weather, every Residence shall be completed within twelve (12) months after the beginning of such construction or placement. No improvement which has partially or totally been destroyed by fire or otherwise shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage or, if approval of the applicable casualty insurance is pending, then within three (3) months after such approval is forthcoming.

Section 5.21 HVAC Units. No heat pumps, air conditioning units or gas meters will be installed in the front of the Residence.

Section 5.22 Lake and Lake Area(s). Except as otherwise provided, no individual using a Lake, if any, has the right to cross another Lot or trespass upon shoreline not within a Common Area owned by the Association, subject to the rights of the Declarant, the Association, their employees, heirs, successors and assigns as set forth in the Declaration. No one shall do or permit any action or activity which could result in pollution of any Lake, diversion of water, elevation of any Lake level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality, drainage or proper Lake management except as provided in the Declaration. A Lake may not be used for swimming, ice skating, boating, or for any other purpose, except for drainage of the Property, unless expressly and specifically approved by the Board of Directors in writing and allowed by law. Lakes and Lake Areas may or may not exist on the Property, and the reference throughout this Declaration to Lakes and Lake Areas is made in order to address Lakes and Lake Areas, if any, which now exist or are later constructed upon the Property. The installation on the Property of any Lake or Lake Area shall be within the sole discretion of the Declarant, and under no circumstances shall the Declarant be required or obligated to install any Lake or Lake Area. Only the Declarant and the Association shall have the right to store items or develop recreational facilities upon any Common Area owned by the Association adjacent to a Lake.

Section 5.23 Mailboxes. All mailboxes and posts must be approved by the Committee and, within each Section of the Development, shall be standard as to size, location, post, design, height, material, composition and colors. The builder upon the initial Lot closing to the homeowner shall install the initial mailbox for each Lot, which meets the above criteria. The Owner agrees to maintain and paint said mailbox and post in conformance with all other mailboxes.

Section 5.24 Maintenance of Lots and Improvements. Each Owner shall at all times maintain the Lot and any improvements situated thereon in such a manner as to prevent the lot or improvements from becoming unsightly and, specifically, such Owner shall:

- (A) Mow the Lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds;
- (B) Remove all debris or rubbish from the Lot;
- (C) Prevent the existence of any other condition that tends to detract from or diminish the aesthetic appearance of the Property;
- (D) Cut down and remove dead trees from the Lot; and,
- (E) Within sixty (60) days following completion of a Residence, the Owner shall landscape the lot in accordance with the provisions set forth in this Declaration, weather permitting.

Section 5.25 Miscellaneous. No clotheslines may be erected on any Lot.

Section 5.26 Outbuildings and Animal Quarters. Any and all forms of outbuildings, including but not limited to, sheds, storage sheds, animal quarters, and play houses, which are not directly connected to the main house on any Lot are prohibited, unless the same are necessary or incident to the

Declarant's, Builder's or Association's business or activities upon the Property. Animal quarters or kennels which are connected to the Residence must be approved by the Committee

Section 5.27 Play Equipment. Children's play equipment such as sandboxes, temporary swimming pools having a depth of eighteen (18) inches or less, swing and slide sets, and trampolines shall not require approval by the Committee, provided that (i) such equipment is not more than eight (8) feet high (to the highest point of the structure) and properly painted and maintained by the Owner in good repair, (ii) such equipment is located in the rear yard of the Lot between the parallel lines defined by extending the side lines of the residence into the rear yard of the Lot, and (iii) such swing and slide sets are constructed of wood. Metal swing and slide sets are prohibited. Equipment higher than eight (8) feet shall require approval of the design, location, color, material and use by the Committee, and aluminum or metal play equipment is prohibited.

Section 5.28 Plumbing. All plumbing vent stacks are to be located on the rear of the Residence.

Section 5.29 Sidewalks. Each Residence shall have a continuous 4-foot wide by a minimum of four (4) inches thick concrete sidewalk adjacent to all interior dedicated street frontage. Sidewalks shall be installed by the Builder and included in the purchase price of the Residence. If an approved asphalt bike/walking path is approved on the Property in place of the sidewalk, no additional concrete sidewalk will be required.

Section 5.30 Subsurface Drains and Sump Pump Discharges. Subsurface drains have been provided in certain areas within drainage easements as additional storm and ground water drainage sources and are part of the public storm drainage system. Subsurface drain laterals have been provided on specific Lots, and the Builder on such Lots shall connect all sump pump discharge lines to such laterals. All maintenance and repair of all sump pump discharge lines and subsurface drain laterals shall be the responsibility of each Lot Owner in accordance with the following:

(A) The limits of Owner responsibility include all sump pump lines and subsurface drain laterals between the connection at the sump pump within the home and the connection with the publicly maintained storm sewer or subsurface drain within the drainage easement.

(B) In cases where subsurface drain laterals are connected along a common property line before connecting to the storm sewer, maintenance and repair of the common lateral will be shared equally by the adjacent Owners unless an individual Owner caused the lateral to be damaged, changed or altered.

(C) Any Owner or Builder damaging, changing, or altering these subsurface drains and/or common subsurface drain laterals will be held responsible for such action and will be given ten (10) days notice, by registered mail, to repair said damage, after which time, if no action is taken, the appropriate jurisdictional agency, Declarant or the Association will cause said repairs to be accomplished and the invoice for such repairs will be sent to the responsible Owner(s) and/or Builder(s) for immediate payment. If immediate payment is not received, the Declarant and/or the Association shall have all the rights and remedies to collect any outstanding amounts as outlined hereafter in Article X of this Declaration.

(D) In no case will maintenance and repair of sump pump discharge lines and subsurface drain laterals be the responsibility of the Town.

Section 5.31 Swimming Pools and Hot Tubs. Only permanent, in-ground pools with professional construction, approved by the Committee, shall be permitted upon a Lot. All submittals to the Committee shall include landscape plans. All backyard pools should be oriented to minimize the potential effect on neighboring properties. All fencing shall conform to county or municipal regulations and shall be of harmonious design and subject to Committee approvals. Hot Tubs must also be approved by the Committee.

Section 5.32 Tennis Courts, Racquetball Courts, Paddleball Courts, etc. Tennis courts, racquetball courts, paddle ball courts, basketball courts, squash courts, and other recreational facilities or sporting facilities will not be permitted without approval from the Committee. All submittals to the Committee shall include landscape plans. Basketball goals may be installed on a lot adjacent to driveway without Committee approval provided that they have white fiberglass or translucent fiberglass or glass backboards. Independent basketball courts may not be constructed on a Lot without written Committee approval. No basketball goal or backboard shall be permitted to hang from or be affixed to the Residence or garage. Lighted courts of any kind are prohibited. Temporary or portable basketball courts will not be permitted to be located on streets or in cul-de-sacs.

Section 5.33 Vents. All metal and PVC roof or range vents will be painted to blend with roof color.

Section 5.34 Windows-Doors. If storm doors are installed, they must be painted to match exterior of the Residence. No unfinished aluminum doors or windows will be allowed.

Section 5.35 Street Signs. Decorative street signs that do not conform to Town of Fishers, Indiana, standards may be installed by Declarant in Avalon. Such decorative street signs shall be maintained by the Association, and shall be repaired or replaced by the Association if damaged in accordance with applicable rules and regulations of the Town of Fishers, Indiana. The Association assumes all liability in the installation, maintenance and repair of the decorative street signs and agrees to hold the Town of Fishers, Indiana, harmless related thereto.

Section 5.36 Fuel Tanks. All above or below ground storage tanks, with the exception of gas storage tanks used solely in connection with gas grills for the purpose of grilling or cooking food, shall be and hereby are prohibited.

Section 5.37 Garbage and Other Refuse. No Lot Owner in the Development shall burn or permit the burning out-of-doors of garbage or other refuse, nor shall any such Owner accumulate or permit the accumulation out-of-doors of such refuse, including compost on his or her Lot.

Section 5.38 Home Occupations. No Lot or Lots shall be used by an Owner, other than a Builder or Declarant, for any purpose other than as a single-family residence, except that a home occupation, which satisfies the following definition as well as all requirements of the applicable zoning ordinance, may be permitted: any use conducted entirely within the Residence and participated in solely by a member of the immediate family residing in said Residence, which use is clearly incidental and secondary to the use of the Residence for dwelling purposes and does not change the character thereof and in connection with which there is: a) no sign or display that will indicate from the exterior that the Residence is being utilized in whole or in part for any purpose other than that of a dwelling; b) no commodity sold upon the premises; c) no person is employed other than a member of the immediate family residing in the Residence; and d) no manufacture or assembly operations are conducted. Provided however, that in no event shall the following or similar activities be conducted or considered to be a

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

Section 5.39 Open Drainage Ditches and Swales. The following shall apply to open ditches and swales:

(A) Drainage swales (ditches) along dedicated roadways and within the right-of-way, or on dedicated drainage easements, are not to be altered, dug out, filled in, tiled, or otherwise changed, without the written permission of the appropriate jurisdictional agency and the Declarant. Property Owners must maintain these swales as grassways or other non-eroding surfaces. Any damage to swales or drainage structures must be repaired or replaced by the Lot Owner.

(B) Any Owner or Builder altering, changing, or damaging these drainage swales or ditches will be held responsible for such action and will be given ten (10) days notice, by registered mail, to repair said damage, after which time, if no action is taken, the appropriate jurisdictional agency, Declarant or the Association will cause said repairs to be accomplished and the invoice for such repairs will be sent to the responsible Owners for immediate payment. If immediate payment is not received by the Association, the Association shall have all the rights and remedies to collect any outstanding amounts as outlined hereafter in Article X of this Declaration.

Section 5.40 Roofing Materials. The roofing materials on all Residences within each Section of the Development shall be similar in color, and shall be of a quality, style and composition acceptable to the Declarant during the Development Period and, thereafter, the Committee.

Section 5.41 Signs. No signs or advertisements shall be displayed or placed on any Lot or other structures in the Property, except Residence or Lot sales signs and directional sales signs, except with the approval of the Committee.

Section 5.42 Solar Panels. No solar panels shall be permitted on any Residence.

Section 5.43 Temporary Structures. No temporary house, trailer, garage or other outbuilding shall be placed or erected on any Lot, except by Declarant or a Builder.

Section 5.44 Utility Services. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat.

Section 5.45 Vehicles Parking. No trucks one (1) ton or larger in size, campers, trailer, motor homes, boats, snowmobiles, jet ski or similar vehicles shall be parked on any street in the Property. Any recreational vehicle or trailer, camper, snowmobile, jet ski, or boat shall not be permitted to remain on any driveway or Lot except within a closed garage and shall not be regularly parked upon unpaved areas. There shall be no outside storage of commercial trucks, trailers, boats, junk cars, or fuel tanks.

Section 5.46 Visual Obstructions. No fence, wall, gate, hedge, tree or shrub planting which obstructs sight lines and elevations between three (3) and twelve (12) feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street right-of-way lines

and line connecting points twenty-five (25) feet from the intersection of said street lines or in the case of a rounded property corner, from the intersection of the street right-of-way lines extended. The same sight-line limitations shall apply to any Lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement or alley line.

Section 5.47 Wells. Water wells shall not be drilled on any of the Lots except as required to irrigate common areas.

Section 5.48 Occupancy or Residential Use of Partially Completed Residence Prohibited. No Residence constructed on any Lot shall be occupied or used for residential purposes or human habitation until a certificate of occupancy has been issued.

Section 5.49 Streets, Sidewalks, and Street Landscaping

(A) Maintenance. Declarant shall maintain all streets and curbs in good condition satisfactory for the purpose for which they were constructed until they have been accepted by the public.

(B) Landscaping. All landscaping within the street rights-of-way is subject to the approval of the appropriate governmental authority. Each Owner shall cut all grass and trim all other landscaping in the rights-of-way adjoining his Lot lines and shall maintain all sidewalks in the rights-of-way nearest his Lot lines. Each Owner shall immediately replace any street trees and lighting required by this Declaration, the Plat, or any other document controlling maintenance of Lots.

(C) Street Lights and Decorative Street Signs. All street lights and decorative street signs located within the right-of-way of any street shall be maintained by the Association.

Section 5.50 Construction and Landscaping: Time Requirements; Divestiture; Penalties. All construction upon, landscaping of, and other improvements to a Lot shall be completed strictly in accordance with a lot development plan approved by the Committee.

Section 5.51 Septic Systems. No septic tank, absorption field, or any other on-site sewage disposal system (other than a lateral main connected to a sanitary sewage collection system operated by a public agency or public or private utility) shall be installed or maintained on any Lot.

Section 5.52 Notice of Commitments. Notice is hereby given of the Commitments

**ARTICLE VI**

**ARCHITECTURAL CONTROLS**

Section 6.1 Approvals. Approvals, determination, permissions, or consents required herein shall be deemed given only if they are given in writing and signed, with respect to the Declarant or the Master Association, by an officer thereof, and with respect to the Committee, by one (1) member thereof.

Section 6.2 Committee: Development Standards and Committee. A Development Standards and Architectural Control Committee (the "Committee"), composed of at least three (3) members, shall exist and shall be appointed by the Declarant. Until after the Development Period, such members shall be



subject to removal by the Declarant at any time, with or without cause, and any vacancies from time to time shall be filled by appointment of the Declarant. The Declarant may, at its sole option, at any time hereafter, relinquish for a period of time to the Master Association the power to appoint and remove one or more members of the Committee; provided, however, that any such relinquishment must be in writing and shall be only on the terms and conditions expressed in such writing.

Section 6.3 Continuation of Committee. When the Declarant provides written notification to the Master Association of discontinuance of this Committee, then the Directors of the Master Association, or their designees, shall continue the actions of the Committee with like powers and duties.

Section 6.4 Duties of Committee. The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. The Committee for its permanent files shall retain one copy of submitted material. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, the requesting applicant may re-apply with changes. If however, approval has not been received by applicant in writing within thirty (30) days, then said request shall be considered DENIED.

Section 6.5 Exercise of Discretion. Declarant intends that the members of the Committee exercise discretion in the performance of their duties consistent with the provisions hereof, and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members. In any judicial proceeding challenging a determination by the Committee and in any action initiated to enforce this Master Declaration in which an abuse of discretion by the Committee is raised as defense, abuse of discretion may be established only if a reasonable person, weighing the evidence and drawing all inferences in favor of the Committee, could only conclude that such determination constituted an abuse of discretion.

Section 6.6 Inspection. The Committee may inspect work being performed without the Owner's permission to assure compliance with these restrictions and applicable regulations.

Section 6.7 Liability of Committee, Declarant, Developer. Neither the Committee nor any agent thereof, nor the Declarant, or Master Association shall be liable in any way for any costs, fees, damages, delays, or any charges or liability whatsoever relating to the approval or disapproval of any plans submitted to it, nor shall the Committee, Master Association or Declarant be responsible in any way for any defects in any plans, specifications or other materials submitted to it, or for any defects in any work done according thereto. Further, the Committee, Master Association and/or Declarant make no representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used. All parties should seek professional construction advise, engineering, and inspections on each Lot prior to proposing construction.

Section 6.8 Common Areas, Entrances, Street Signs, and Landscape Easements. None of the following shall be installed or constructed without prior written approval thereof by the Committee: (i) any and all landscaping, fences, structures, lighting, walking trails, sidewalks, or other improvements located in any Common Area, landscape maintenance access easement, and/or sign landscape easement, (ii) any entrance monument or signage identifying the Development or any section thereof and/or (iii) street signage.

Section 6.9 Lot Improvements. No dwelling, building structure, fence, deck, driveway, swimming pool, rear yard tennis or basketball courts, or improvement of any type or kind (including significant landscaping or stacking of wood) shall be constructed or placed on any Lot without the prior

approval of the Committee. Such approval shall be obtained only after the Owner of the Lot requesting authorization from the Committee has made written application to the Committee at least thirty (30) days prior to the proposed construction. Such written application shall be in the manner and form prescribed from time to time by the Committee, and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing (i) the location of the improvements existing upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated and (ii) all easements, set backs, and rights-of-way and (iii) any landscape plans required by the Committee. Such plans and specifications shall further set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other materials, photographs, or information, which the Committee may require. All building plans and drawings required to be submitted to the Committee shall be drawn to a scale of  $\frac{1}{4}'' = 1'$  and all plot plans shall be drawn by a professional to a scale of  $1'' = 30'$ , or to such other scale as the Committee shall deem appropriate. It is also recommended that a certified survey be prepared to insure that a resident is not encroaching on an adjacent homeowner or in a Common Area. If Owner has encroached on an adjacent Owner's property or in a common area, the encroaching Owner will, at his or her own expense, move any fence or other improvement(s) so as to eliminate the encroachment. Notwithstanding anything to the contrary in the foregoing, upon receipt of any written application which is in form and content acceptable to the Committee in the Committee's sole and absolute discretion, the Committee may pre-approve a Builder's plans and specifications for the original construction of a Residence and, in the event of such pre-approval, the Builder shall then be authorized to construct the pre-approved Residence on different Lots without further approvals from the Committee.

No fence or screen of any kind will be permitted if its installation will obstruct necessary site lines for vehicular traffic. Undue obstruction of view of other amenities from adjoining properties shall be considered by the Committee when reviewing applications for approval.

Section 6.10 Power of Disapproval. The Committee may refuse to grant permission to construct, place or make the requested improvement with or without cause. Common grounds for denial include, but are not limited to, a lack or absence of the following:

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

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

Section 6.11 Power to Grant Variances. The Committee may allow reasonable variances or adjustments of this Master Declaration where literal application would result in unnecessary hardship, but any such variance or adjustment shall be granted in conformity with the general intent and purposes of this Master Declaration, no variance or adjustment shall be granted which is materially detrimental or injurious to other Lots in the Development, and any such variance granted shall not be considered as precedent setting.

Section 6.12 Statement of Purposes and Powers. Subject to this Master Declaration and the restrictions contained herein, the Committee shall regulate the external design, appearance, use, location and maintenance of lands and improvements thereon in such a manner as to preserve and enhance values

and maintain a harmonious relationship among structures and the natural vegetation and topography, and in keeping with the intent of the Declarant.

## ARTICLE VII

### CONTIGUOUS LOTS

#### Section 7.1 Rules Governing Building on Several Contiguous Lots Having One Owner.

Whenever two or more contiguous Lots shall be owned by the same person, and such Owner shall desire to use two or more of said Lots as a site for a single-dwelling house, such Owner must apply in writing to the Committee for permission to so use said Lots. If permission for such a use shall be granted, the Lots constituting the site for such single-dwelling house shall be treated as a single Lot for the purpose of applying this Master Declaration to said Lots, so long as the Lots remain improved with one single-dwelling house. In addition, the Owner must obtain from the Town of Carmel all requisite and necessary permits and approvals.

## ARTICLE VIII

### USE AND OWNERSHIP OF COMMON AREA

Section 8.1 Ownership. A license upon such terms, conditions, rules and regulations as the Declarant, and successor, assigns or licensees of the Declarant, shall from time to time grant, for the use and enjoyment of the Common Area, is granted to the persons who are from time to time members of the Master Association; provided, however, that no residential development shall occur in the Common Area. Every Owner shall have a nonexclusive right and easement of enjoyment in common with all other Owners, in and to the Common Areas which nonexclusive right and easement of enjoyment shall be appurtenant to and pass with the title to every Lot; provided, however, that any area identified on a Plat as a Limited Common Area shall be for the exclusive use and benefit of Owners whose Lots abut the Limited Common Area, subject to (i) the right of the Association to perform and undertake maintenance of the Limited Common Area and (ii) all easements granted in this Declaration. The Common Areas shall be conveyed by quitclaim deed to the Master Association. Such conveyance shall be deemed to have been accepted by the Master Association and those persons who shall from time to time be members thereof upon the recording of a deed or deeds conveying such Common Area to the Master Association.

Section 8.2 Use. Common Area shall be used for such purposes as deemed appropriate by the Declarant until the end of the Development Period. Following the end the Development Period, the Common Area shall be used for such purposes as deemed appropriate by the Master Association. Any Common Area depicted on the recorded plats of the Development or designated by the Declarant as a Common Area shall remain for the exclusive use of the Owner(s), and their family members, guests, tenants, or contract purchaser who reside on the Lot(s). Neither the Declarant's execution or recording of the plats nor the doing of any other act by the Declarant is, or is intended to be, or shall be construed as, a dedication to the public of the Common Area.

## ARTICLE IX

### AVALON MASTER ASSOCIATION, INC.

Section 9.1 Master Association Duties. The duties of the Master Association shall include the following: (i) the promotion of the recreation, health, safety, and welfare of the residents in the property,

(ii) the maintenance and repair of the Master Common Areas including, but not limited to, any and all lighting, landscaping, pools, amenity areas, the Trail System, and sidewalks located thereon, (iii) the maintenance and repair of any and all entrance monuments and signage, and the landscaping surrounding such entrances monuments and signage, (iv) maintenance and repair of all street signage, street lighting, and all improvements and landscaping existing in any landscape maintenance access easement and/or any sign landscape easement, (v) the performance of any other obligations and duties of the Master Association specified herein.

Section 9.2 Board of Directors. The Owners shall elect a Board of Directors of the Master Association as prescribed by the Master Association's Articles and Bylaws. The Board of Directors shall manage the affairs of the Master Association. Directors need not be members of the Master Association.

Section 9.3 Classes of Membership and Voting Rights. The Master Association shall have the following two classes of voting membership:

(A) Class A. Class A members shall be all Owners with the exception of the Declarant. Class A members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as the members holding an interest in such Lot determine among themselves, but in no event shall more than one vote be cast with respect to any Lot.

(B) Class B. The Class B member shall be the Declarant. The Declarant shall be entitled to five (5) 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 (hereafter "Effective Date"):

(i) December 31, 2020; or

(ii) When the total number of votes outstanding in the Class A Membership is equal to the total number of votes outstanding in the Class B Membership; provided, however, that the Class B Membership shall recommence in the event that the Declarant records a plat of part of or all of the Additional Real Estate and, by virtue thereof, total number of votes outstanding in the Class A Membership is no longer equal to the total number of votes outstanding in the Class B Membership.

Section 9.4 Membership. Initially, the person(s) who serve as incorporator(s) of the Master Association shall be the member(s) (the "Initial Member(s)"). The Initial Member(s) shall remain member(s) of the Master Association until the Master Association Articles of Incorporation are accepted by the Indiana Secretary of State, at which time the Initial Member(s) shall cease to be member(s) unless they also qualify as Class A or Class B members. Every Owner of a Lot which is subject to assessment shall be a member of the Master Association. Apart from the Initial Member(s), a membership in the Master Association shall be appurtenant to and may not be separated from ownership of any Lot.

Section 9.5 Professional Management. The Association shall employ the services of a professional manager or management company to assist the Board of Directors in the management and administration of the Association. No contract or agreement for professional management of the Master Association, nor any other contract between Declarant and the Master Association, shall be for a term in

excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause and without payment of any termination fee upon written notice of ninety (90) days or less.

Section 9.6 Master Association Insurance The Master Association shall purchase the following coverage:

(A) Liability Insurance The Master Association shall purchase and pay the costs of the policy or policies of insurance in the form generally known as Public Liability and/or owners policies insuring the Master Association against any and all claims and demands made by any person or persons whomsoever for injuries received in connection with the fulfillment by the Master Association of its obligations specified in the Master Declaration, or for any other risk insured against by such policies which the Master Association, in its sole discretion, determines to insure against, including, without limitation, claims arising out of the Master common Areas. Each policy purchased by the Master Association shall have limits of not less than One Million Dollars (\$1,000,000.00) covering all claims for personal injury and One Hundred Thousand Dollars (\$100,000.00) for property damage arising out of a single occurrence. The coverage of the liability insurance policies purchased by the Master Association shall include protection against liability for property damage, bodily injuries and deaths of persons in connection with the fulfillment by the Master Association of its obligations specified in the Master Declaration, liability for non-owned and hired automobiles, liability for property of others and liability arising out of the Master Common Areas. All such policies will name the Master Association as the insured under such policy or policies. The insurance purchased shall contain a "severability of interest endorsement," or equivalent coverage, which would preclude the insurer from (i) denying the claims of an Owner because of the negligent acts of either the Master Association, the Declarant or any other Owners or (ii) denying the claims of either the Declarant or the Master Association because of the negligent acts of an Owner.

(B) Casualty Insurance The Master Association may purchase and pay the costs of a policy or policies of insurance to allow the Master Association to insure from the fulfillment by the Master Association of its obligations specified in the Master Declaration. Such casualty insurance may insure, without limitation, any improvements located within the Master Common Areas.

(C) Fidelity Coverage The Master Association shall purchase adequate (i) errors and omissions insurance protecting and insuring the Master Association and its officers and directors against liability for negligence in the fulfillment of their obligations and duties, and (ii) fidelity coverage to protect against dishonest acts of the officers and employees of the Master Association and the Directors and all others who handle and are responsible for handling funds of the Master Association, such coverage to be in the form of fidelity bonds which meet the following requirements unless one or more of such requirements are waived by the Board of Directors.

- (i) Such bonds shall name the Master Association as an obligee;
- (ii) Such bonds shall be written in an amount equal to at least one hundred fifty percent (150%) of the estimated annual Master Association expense; and,

- (iii) Such amounts shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

Section 9.7 Limitations on Rights of the Master Association As long as there is a Class B Member, the Master Association may not use its resources, nor take a public position in opposition to future phases of *Avalon* proposed by the Declarant or changes to current phases of *Avalon* proposed by the Declarant. Nothing in this paragraph shall be construed to limit the rights of the members acting as individuals or in affiliation with other members or groups as long as they do not employ the resources of the Master Association or identify themselves as acting in the name, or on the behalf of the Master Association.

## ARTICLE X

### ASSESSMENTS

Section 10.1 Creation of Lien and Personal Obligation of Assessments. Each Owner of any Lot, except the Declarant and any Builder, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Master Association the following:

- (A) Annual Assessments (hereafter defined);
- (B) One-Time Assessment (hereafter defined);
- (C) Special Assessments (hereafter defined) for costs of enforcement of the Master Declaration, capital improvements and operating deficits, copies of Master Association documents if requested by a member, and such assessments to be established and collected as hereinafter provided or established by the Board;
- (D) Violation Assessments (hereafter defined) levied for a violation of this Master Declaration; and
- (E) Any additional assessments specified in a Neighborhood Declaration.

Section 10.2 Annual Budget. By majority vote of the Board of Directors, the Board of Directors shall adopt an annual budget for the subsequent fiscal year, which shall provide for the allocation of expenses in such a manner that the obligations imposed by the Master Declaration and all Supplemental Master Declarations can effectively be met.

Section 10.3 Annual Assessment.

(A) Amount. The Annual Assessment provided for herein shall be per calendar year and shall commence for each Lot on the date of closing of the sale of a Lot to an Owner other than Declarant or a Builder. The Annual Assessment, commencing during the calendar year in which the first Lot is conveyed to an Owner other than the Declarant or a builder, shall be \$360.00 per Lot per year. The Annual Assessment for the calendar year shall be pro-rated to year-end. The Board of Directors shall fix any increase in the amount of the Annual Assessment at least thirty (30) days in advance of the effective date of such increase. The initial due date for annual assessments shall be January 1<sup>st</sup>, and such assessment shall be subject to collection and late charges beginning on January 31<sup>st</sup>.

(B) Purpose of Assessments. The annual assessment levied by the Master Association shall be used in the reasonable discretion of the Board of Directors to fulfill the

duties and obligations of the Master Association specified in this Master Declaration, including, without limitation, the cost of maintaining and repairing Common Areas, as well as the cost of insurance, Refuse Collection and Professional Management.

(C) Method of Assessment. By a vote of a majority of the Board of Directors, the Board of Directors shall, on the basis specified in Section 11.7 below, fix the Annual Assessment for each assessment year at an amount sufficient to meet the obligations imposed by this Master Declaration upon the Master Association. The Board during any calendar year shall be entitled to increase the Annual Assessment for that year if it should determine that the estimate or current assessment is insufficient for that year, provided that the Board shall give at least thirty (30) days advance notice thereof to the Owners. The Board of Directors shall establish the date(s) the Annual Assessment shall become due, and the manner in which it shall be paid.

Section 10.4 One-time Assessment. Upon (i) the closing of the initial conveyance of each Lot by Declarant to an Owner other than a Builder, or (ii) the sale of each Lot by a Builder (either by deed or by installment sale, conditional sale or land-contract sale), the purchaser of such Lot shall pay to the Master Association, in addition to any other amounts then owed or due to the Master Association, as a contribution to its working capital and start-up fund, an amount of Fifty Dollars (\$50.00) against such Lot, which payment shall be non-refundable and shall not be considered as an advance payment of any assessment or other charge owed the Master Association with respect to such Lot. Such working capital and start-up fund shall be held and used by the Master Association for payment of, or reimbursement to Declarant for advances made to pay, expenses of the Master Association for its early period of operation of the Development, to enable the Master Association to have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary by the Board.

Section 10.5 Special Assessment. In addition to such other Special Assessments as may be authorized herein, the Board of Directors may levy in any year a Special Assessment(s) for the purpose of enforcing these covenants and restrictions, for legal expenses, for collection expenses, other activity that is the responsibility of an Owner hereunder but which such Owner has not undertaken as required hereunder, for defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Master Association is required to maintain and/or for operating deficits which the Master Association may from time to time incur, provided that any such assessment shall have the assent of a majority or the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 10.6 Violation Assessment. In addition to all other assessments as be authorized herein, the Board of Directors may levy a Violation Assessment to an Owner, (i) for a violation against this Master Declaration or (ii) for damages if any portion of the Common Area that the Master Association is obligated to maintain, repair and/or replace is damaged due to the willful or negligent act or omission of such Owner or Owner's guest or invitee. In the event of such damage, the Board shall have the right to undertake the necessary maintenance, repair or replacement. The choice between repair or replacement is in the sole discretion of the Board.

Section 10.7 Basis for Assessment.

(A) Lots Generally. Each Lot owned by a person other than Declarant or a Builder shall be assessed at a uniform rate without regard to whether a Residence has been constructed upon the Lot.

(B) Lots Owned by Declarant or Builder. Declarant and any Builder shall not pay the Annual Assessment and Special Assessment so long as any Residence constructed upon a Lot by Declarant or a Builder has not been either conveyed to an Owner intending to occupy or rent said Residence as a residence or leased to an individual or an entity for use as a Residence.

Section 10.8 Notice and Due Date. Written notice of special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be delivered to every Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors.

Section 10.9 Collection. All Assessments, together with interest thereon, attorneys fees, and other costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which each Assessment is made until paid in full. Each Assessment, together with interest thereon and costs of collection thereof, including reasonable attorney fees, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due.

Section 10.10 Effect of Nonpayment of Assessments; Remedies of the Master Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at twelve percent (12%) per annum plus a late charge not exceeding Fifty Dollars (\$50.00). The Master Association shall be entitled to initiate any lawful action to collect delinquent assessments plus any expenses or costs, including attorneys' fees, incurred by the Master Association in collecting such assessment(s). If the Master Association has provided for collection of any assessment in installments, upon default in the payment of any one or more installments, the Master Association may accelerate payment and declare the entire balance of said assessment due and payable in full. No Owner may waive or otherwise avoid liability for the assessment provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 10.11 Suspension of Privileges of Membership. Notwithstanding any other provision contained herein, the Board of Directors shall have the right to suspend the voting rights, if any, and the services to be provided by the Master Association, together with the right to use the Common Areas of any member:

- (A) for any period during which any of the assessments or any fines/fees assessed under this Master Declaration owed by such member remains unpaid;
- (B) during the period of any continuing violation of this Master Declaration; and
- (C) during the period of any violation of the Articles of Incorporation, By-Laws, or regulations of the Master Association

Section 10.12 Certificates The Master Association shall, upon reasonable request by an Owner, at any time, furnish a letter in writing signed by an officer of the Master Association, indicating the accounting status of assessments on a Lot showing the balance due the Master Association, if any.

Section 10.13 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein against a Lot shall be subordinate to the lien or any recorded first mortgage covering such Lot and to any valid tax or special assessment lien on such Lot in favor of any governmental taxing or assessing authority. Sale or transfer of any Lot shall not affect the lien of assessments levied under this Article XI. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall, however, extinguish the lien of such assessments which became due or are attributable to



the period of time prior to such sale or transfer. No sale transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

## ARTICLE XI

### NEIGHBORHOOD DECLARATION AND NEIGHBORHOOD ASSOCIATIONS

Section 11.1 Neighborhood The Declarant reserves the right, in its sole discretion, to grant neighborhood status to any portion of the Property Declarant may in the future elect to subject to this Master Declaration. The Declarant may designate a Neighborhood as a separate community within the Property with ingress and egress to such community limited to Owners within such Neighborhood.

Section 11.2 Neighborhood Association. The Declarant reserves the right to form a property owner's association, condominium association, or other such similar entity for a neighborhood granted such status by the Declarant and as permitted under this Master Declaration.

Section 11.3 Neighborhood Common Area. The Master Association may contract with a Neighborhood Association, if any, to provide for the operation and maintenance of its Neighborhood Common Area.

(A) The cost and expense of maintaining the Neighborhood Common Area shall not be a Common Expense, but shall be borne by the Owners of the Plots located in the Neighborhood as set forth in the Neighborhood Declaration.

(B) The Declarant reserves the right to cause portions of the Master common Area(s) to become Neighborhood Common Area(s) by recording an instrument containing such provision with the Recorder of Hamilton County, Indiana. Upon recording such an instrument, the real property described in such instrument shall no longer be Master Common Area and, in lieu thereof, the use and easement rights and the obligations pertaining thereto, including, but not limited to, maintenance administration obligations, shall be those pertaining to such Neighborhood Common Area and not Master Common Area, and the expense for maintenance and administration shall no longer be a Common Expense, but shall be an expense of the Neighborhood Association.

Section 11.4 Neighborhood Declaration. The Declarant reserves the right to amend specific provisions of this Master Declaration as it may apply to one or more Neighborhoods without amending those provisions with respect to all Neighborhoods and to supplement this Master Declaration by recording separate covenants, conditions, restrictions and other provisions applying to any specific Neighborhood. Separate covenants, conditions and restrictions may be recorded as a supplement to this Master Declaration or as a Neighborhood Declaration. The Declarant also reserves the right to determine the consistency of all Neighborhood Declarations in comparison with the Master Declaration and the plan of development of the Property and to approve and consent to all Neighborhood Declarations prior to the same being recorded with the Recorder of Hamilton County, Indiana. So long as the Declarant Membership exists, Neighborhood Declarations shall not be effective until the Declarant approves and consents to the same in writing. Any Neighborhood Declaration shall be supplemental to this Master Declaration and in no way shall be construed to supersede or override the provisions of the Master Declaration. In the event of a conflict between this Master Declaration and any Neighborhood Declaration, the Master Declaration shall control.

## ARTICLE XII

### REMEDIES

Section 12.1 Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of covenants, conditions, and restrictions in this Master Declaration shall be held to be a waiver by that party or an estoppel of that party of any right available to such party upon the occurrence, reoccurrence or continuation of such violation or violations of this Master Declaration.

Section 12.2 Enforcement by the Town or the Town's Plan Commission. These Restrictions may be enforced by the Town, the Town's Plan Commission, or its successors or assigns, pursuant to whatever powers or procedures are statutorily available to it for such purposes.

Section 12.3 In General. The Master Association or any party to whose benefit this Master Declaration inures, including the Declarant and/or any Owner, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, or to compel compliance with these Restrictions and Covenants, and shall be entitled to recover costs of collection and reasonable attorney's fees; however, neither the Declarant, nor the Master Association, shall be liable for damages of any kind to any person for failing either to abide by, enforce, or carry out any terms, conditions, or restrictions contained in this Master Declaration.

## ARTICLE XIII

### EFFECT ON BECOMING AN OWNER

Section 13.1 The Owner(s) of any Lot subject to this Master Declaration, by acceptance of a deed conveying title thereto, or by virtue of the execution of a contract for the purchase thereof, whether from Declarant, a Builder, or a subsequent Owner of such Lot, shall accept such deed and execute such contract subject to each and every covenant, condition, and restrictions contained in this Master Declaration. By acceptance of such deed or execution of such contract each Owner acknowledges the rights and powers of the Declarant, Committee, and Master Association contained in this Master Declaration, and also, for themselves, their heirs, personal representatives, successors and assigns, such Owner(s) covenant and agree and consent to and with the Declarant, Committee and the Master Association and to and with the other Owners and subsequent Owners of each of the Lots affected by this Master Declaration to keep, observe, comply with and perform such covenants, conditions, and restrictions contained in this Master Declaration.

## ARTICLE XIV

### TITLES

Section 14.1 The titles preceding the various paragraphs and subparagraphs of this Master Declaration are for convenience of reference only and none of them shall be used as an aid to the construction of any provisions of this Master Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

**ARTICLE XV**

**SEVERABILITY**

Section 15.1 Invalidation of any one of the covenants, restrictions or provisions contained in this Master Declaration by judgment or court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect. No delay or failure by any person to enforce any of the restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that person of the right to do so thereafter, or as estoppel of that person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the restrictions.

**ARTICLE XVI**

**DECLARANT'S RIGHTS**

Section 16.1 Any and all of the rights and obligations of the Declarant set forth in this Declaration may be transferred, in whole or in part, to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration. No such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded with the Recorder of Hendricks County, Indiana.

Section 16.2 Nothing in this Declaration shall be construed in a manner that limits or restricts the Declarant and/or any Builders in their development of the Property and construction of residences thereon. Therefore, notwithstanding anything herein to the contrary, the Declarant and/or any Builders authorized by Declarant may maintain and carry upon portion of the Common Area, and other portions of the Property owned by the Declarant, such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Residences including, but not limited to, business offices, signs, model units, sales offices, and sales trailers.

**ARTICLE XVII**

**AMENDMENT TO THIS MASTER DECLARATION**

Section 17.1 This Master Declaration and the covenants, conditions and restrictions set forth in this Master Declaration, as from time to time amended in the manner hereafter set forth, shall run with the land and shall be binding upon the persons owning any portion of the Property and all parties closing under them. This Master Declaration may be amended or modified at any time by an instrument recorded in the Office of the Recorder of Hamilton County, Indiana, approved and signed by persons together holding seventy-five percent (75%) of all votes entitled to be cast by Class A Members and Class B Members, combined. 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. This Master Declaration may also be amended by Declarant, if it then has any ownership interest in the Property, at any time within five (5) years after the recordation hereof. Any amendment must be recorded.

IN TESTIMONY WHEREOF, witness the signature of the Declarant of this Master Declaration as of the date first above written

DECLARANT:

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

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

STATE OF INDIANA            )  
  ) SS:  
COUNTY OF Hamilton )

Before me, a Notary Public, in and for said County and State, personally appeared Gregory Huff, Division President, Indiana Division, of Pulte Homes of Indiana, LLC, an Indiana limited liability company, as the Declarant herein, and acknowledged the execution of the foregoing Master Declaration of Covenants, Conditions, and Restrictions of Avalon this 2nd day of February, 2004.

My Commission Expires:  
June 7, 2010

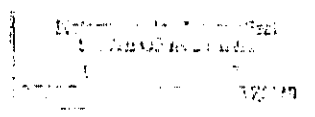
Linda S. Kelce  
Notary Public

Resident of Hamilton County, Indiana

Printed: Linda S. Kelce

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

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Parcel 1

A part of the West Half of the Southwest Quarter of Section 25, Township 18 North, Range 5 East, Hamilton County, Indiana, more particularly described as follows:

Commencing at the Northwest corner of said Half Quarter Section; thence North 89 degrees 24 minutes 55 seconds East along the North line thereof 37.68 feet to the eastern right-of-way line of Ohio Road as described in Instrument No. 98-09840529 recorded in the Office of the Recorder of Hamilton County, Indiana; thence continue North 89 degrees 24 minutes 55 seconds East along said North line 1,283.99 feet to the Northeast corner of said Half Quarter Section; thence South 00 degrees 18 minutes 02 seconds East along the East line of said Half Quarter Section; 1,757.55 feet to the POINT OF BEGINNING of this description; thence continuing South 00 degrees 18 minutes 02 seconds East along the East line 900.82 feet to the Southeast corner thereof; thence South 89 degrees 15 minutes 10 seconds West along the South line of said Half Quarter Section 110.98 feet; thence North 00 degrees 44 minutes 06 seconds West 39.81 feet to the northern right-of-way line of 126<sup>th</sup> Street as described in Instrument No. 90-09840529; thence along said right-of-way line by the next twelve (12) calls; 1) South 89 degrees 15 minutes 54 seconds West 328.08 feet; 2) North 85 degrees 01 minutes 28 seconds West 362.69 feet; 3) North 89 degrees 10 minutes 22 seconds West 361.02 feet; 4) North 79 degrees 25 minutes 30 seconds West 50.19 feet; 5) North 20 degrees 58 minutes 02 seconds West 34.93 feet; 6) North 01 degrees 03 minutes 13 seconds West 362.32 feet; 7) North 00 degrees 35 minutes 26 seconds West 147.94 feet; 8) North 05 degrees 02 minutes 02 seconds West 180.71 feet; 9) North 01 degrees 54 minutes 42 seconds West 524.93 feet; 10) North 00 degrees 57 minutes 02 seconds East 65.70 feet; 11) North 01 degrees 54 minutes 42 seconds East 98.42 feet; 12) North 03 degrees 03 minutes 27 seconds West 164.07 feet; thence North 87 degrees 50 minutes 11 seconds East 200.00 feet; thence South 01 degrees 54 minutes 42 seconds East 444.77 feet; thence North 89 degrees 46 minutes 08 seconds East 544.32 feet; thence South 00 degrees 13 minutes 52 seconds East 213.86 feet; thence South 52 degrees 07 minutes 47 seconds East 180.30 feet; thence North 89 degrees 15 minutes 55 seconds East 369.28 feet to the place of beginning, containing 31.631 acres, more or less.

Parcel 2

A part of the West Half of the Southwest Quarter of Section 25, Township 18 North, Range 5 East, Hamilton County, Indiana, more particularly described as follows:

Commencing at the Northwest corner of said Half Quarter Section; thence North 89 degrees 24 minutes 55 seconds East along the North line thereof 37.68 feet to the eastern right-of-way line of Ohio Road as described in Instrument No. 98-09840529 recorded in the Office of the Recorder of Hamilton County, Indiana and the POINT OF BEGINNING of this description; thence continuing North 89 degrees 24 minutes 55 seconds East along said North line 1,283.99 feet to the Northeast corner of said Half Quarter Section; thence South 00 degrees 18 minutes 02 seconds East along the East line of said Half Quarter Section 1,757.55 feet; thence South 89 degrees 15 minutes 55 seconds West 369.28 feet; thence North 52 degrees 07 minutes 47

seconds West 180.30 feet; thence North 00 degrees 13 minutes 52 seconds West 213.86 feet; thence South 89 degrees 46 minutes 08 seconds West 544.32 feet; thence North 01 degrees 54 minutes 42 seconds West 444.77 feet; thence South 87 degrees 50 minutes 11 seconds West 200.00 feet to the eastern right-of-way line of Ohio Road as described in said Instrument No. 98-09840529; thence along said eastern right-of-way line by the next five (5) calls; 1) North 20 degrees 52 minutes 14 seconds East 177.92 feet; 2) North 32 degrees 52 minutes 32 seconds West 57.39 feet; 3) North 10 degrees 02 minutes 31 seconds West 115.99 feet; 4) North 04 degrees 21 minutes 57 seconds West 459.74 feet; 5) North 00 degrees 21 minutes 55 seconds East 202.78 feet to the place of beginning, containing 43.062 acres, more or less.

Parcel 3

A part of the East Half of the Southwest Quarter of Section 25, Township 18 North, Range 5 East, Hamilton County, Indiana, more particularly as described as follows:

Commencing at the Southeast corner of said Half Quarter Section; thence South 89 degrees 15 minutes 10 seconds West along the South line of said Half Quarter Section 1,324.68 feet to the Southwest corner of said Half Quarter Section; thence North 00 degrees 18 minutes 02 seconds West along the West line of said Half Quarter Section 1,340.76 feet to the POINT OF BEGINNING of this description; thence continuing North 00 degrees 18 minutes 02 seconds West along said West line 1,317.62 feet to the Northwest corner of said Half Quarter Section; thence North 89 degrees 24 minutes 55 seconds East along the North line of said Half Quarter Section 1,321.67 feet to the Northeast corner of said Half Quarter Section; thence South 00 degrees 21 minutes 54 seconds East along the East line of said Half Quarter Section 1,317.61 feet; thence South 89 degrees 24 minutes 55 seconds West parallel with the North line of said Half Quarter Section 1,323.15 feet to the place of beginning, containing 40.000 acres, more or less.

Parcel 4

A part of the East Half of the Northwest Quarter of Section 25, Township 18 North, Range 05 East, and being a part of land described in Deed Book 243, Page 31 recorded in the Office of the Recorder of Hamilton County, Indiana being more particularly described as follows:

Beginning at a point on the west line of said Half Quarter Section South 00 degrees 12 minutes 49 seconds East a distance of 100.19 feet from the northwest corner of said Half Quarter Section, being a point on the southwestern boundary of State Road 238 as described in said Deed Book 243, Page 31 recorded in the Office of the Recorder of Hamilton County, Indiana; thence continuing South 00 degrees 12 minutes 49 seconds East along said West line a distance of 1,864.60 feet; thence North 83 degrees 50 minutes 37 seconds East a distance of 33.94 feet; thence South 66 degrees 15 minutes 04 seconds East a distance of 73.50 feet; thence North 57 degrees 21 minutes 17 seconds East a distance of 39.19 feet; thence North 13 degrees 42 minutes 54 seconds East a distance of 107.07 feet; thence North 28 degrees 34 minutes 21 seconds East a distance of 139.38 feet; thence North 63 degrees 41 minutes 44 seconds East a distance of 43.89 feet; thence South 49 degrees 04 minutes 00 seconds East a distance of 67.76 feet; thence North

75 degrees 23 minutes 47 seconds East a distance of 126.95 feet; thence North 86 degrees 00 minutes 02 seconds East a distance of 206.12 feet; thence North 63 degrees 46 minutes 59 seconds East a distance of 260.67 feet; thence North 88 degrees 31 minutes 04 seconds East a distance of 168.84 feet; thence North 68 degrees 59 minutes 45 seconds East a distance of 160.43 feet; thence North 16 degrees 54 minutes 53 seconds West a distance of 90.16 feet; thence North 47 degrees 08 minutes 18 seconds East a distance of 32.32 feet; thence South 42 degrees 35 minutes 52 seconds East a distance of 42.51 feet; thence North 55 degrees 01 minute 27 seconds East a distance of 41.31 feet; thence North 07 degrees 40 minutes 17 seconds West a distance of 44.37 feet; thence North 60 degrees 34 minutes 32 seconds East a distance of 45.93 feet; thence South 65 degrees 10 minutes 09 seconds East a distance of 31.02 feet to the east line of the aforesaid Half Quarter Section; thence North 00 degrees 12 minutes 26 seconds West along said East line a distance of 546.39 feet to the centerline of State Road 238, the following two (2) courses are along said centerline; (1) North 60 degrees 00 minutes 43 seconds West a distance of 1,097.61 feet to a point of curvature of a curve to the right having a radius of 4,971.02 feet, the radius point of which bears North 29 degrees 59 minutes 17 seconds East; (2) northwesterly along said curve on arc distance 147.42 feet to a point that bears South 31 degrees 41 minutes 18 seconds West from said radius point; thence South 31 degrees 48 minutes 55 seconds West a distance of 17.05 feet to the aforesaid southwestern boundary of State Road 238; the following two (2) courses are along said southwestern boundary; (1) North 71 degrees 09 minutes 40 seconds West a distance of 31.31 feet; (2) North 58 degrees 11 minutes 05 seconds West a distance of 223.64 feet to the Point of Beginning, containing 37.114 acres, more or less.

Parcel 5

Part of the Northeast Quarter and all of the Northwest Quarter of the Southeast Quarter of Section 25, Township 18 North, Range 5 East in Hamilton County, Indiana as described as follows:

Beginning at the southwest corner of said Northeast Quarter, thence North 00 degrees 12 minutes 26 seconds West (assumed bearing) along the west line of said Northeast Quarter 1615.05 feet; thence North 89 degrees 34 minutes 25 seconds East parallel with the north line of said Quarter Section 314.75 feet to the centerline of State Road 238 (the next 5 courses following said centerline); (1) thence South 57 degrees 58 minutes 16 seconds East 402.64 feet to the point of curvature of a curve to the right having a radius 535.00 feet, the radius point of which bears South 32 degrees 01 minute 44 seconds West; (2) thence southwesterly along said curve an arc distance of 186.19 feet to a point which bears North 51 degrees 58 minutes 08 seconds East from said radius point; (3) thence South 38 degrees 01 minute 52 seconds East 567.98 feet to the point of curvature of a curve to the left having a radius of 1230.00 feet, the radius point which bears North 51 degrees 58 minutes 08 seconds East; (4) thence southeasterly along said curve an arc distance of 391.53 feet to a point which bears South 34 degrees 01 minute 21 seconds West from said radius point; (5) thence South 55 degrees 38 minutes 39 seconds East 111.06 feet; thence South 00 degrees 25 minutes 35 seconds East parallel with the east line of the Southwest Quarter of said Northeast Quarter a distance of 273.95 feet to a point 214.50 feet north of the south line of said Quarter Section; thence South 89 degrees 23 minutes 45 seconds West parallel with the south line of said Northeast Quarter a distance of 196.30 feet to a point on said east line; thence South 00 degrees 25 minutes 35 seconds East along said east line 214.50 feet to the Northeast

corner of the Northwest Quarter of said Southeast Quarter; thence South 00 degrees 21 minutes 45 seconds East along the east line of said Northwest Quarter Section 1325.33 feet to the southeast corner thereof; thence South 89 degrees 19 minutes 40 seconds West along the south line of said Northwest Quarter Quarter Section 1322.80 feet to the southwest corner thereof; thence North 00 degrees 21 minutes 03 seconds West along the west line of said Northwest Quarter Quarter Section 1326.80 feet to the northeast corner thereof and the Point of Beginning, containing 80.815 acres, more or less. EXCEPTING THEREFROM THE FOLLOWING part of the Southeast Quarter of the Northeast Quarter of Section 25, Township 18 North, Range 5 East, in Hamilton County, Indiana, as conveyed to James E. and Glenna L. Fetters by deed recorded February 26, 2003 as Instrument No. 200300020033 in the Office of the Recorder of Hamilton County, Indiana, described as follows: Commencing at the Southwest corner of said Quarter Quarter; thence North 00 degrees 25 minutes 35 seconds West along the West line of said Quarter Quarter a distance of 214.50 feet to the Point Of Beginning; thence continuing North 00 degrees 25 minutes 35 seconds West on and along the West line a distance of 417.66 feet to the centerline of State Road 238 and North line a of tract of land as described in Instrument No. 91-16843 in the Office of the Recorder of Hamilton County, Indiana, and a non-tangent curve to the left having a radius of 1,250.00 feet, the radius point of which bears North 40 degrees 04 minutes 24 seconds East; thence Southeasterly along said line an arc distance of 132.01 feet to a point which bears South 34 degrees 01 minute 21 seconds West from said radius point; thence South 55 degrees 58 minutes 39 seconds East a distance of 111.06 feet to the East line of said tract of land; thence South 00 degrees 25 minutes 35 seconds East along said line parallel with the West line of said Quarter Quarter a distance of 273.95 feet to a 5/8 inch rebar with yellow cap stamped "Schneider Firm #0001"; thence South 89 degrees 23 minutes 45 seconds West parallel with the South line of said Quarter Quarter to the Point Of Beginning, containing 1.55 acres, more or less.



Parcel 6

Part of the Northeast Quarter of the Southeast Quarter of Section 25, Township 18 North, Range 5 East, in Fall Creek Township, Hamilton County, Indiana, described as follows: Beginning at the Southeast corner of said Quarter-Quarter Section, said Southeast corner being North 00 degrees 00 minutes 09 seconds East (assumed bearing) 1323.81 feet from the Southeast corner of said Section 25; thence South 89 degrees 42 minutes 07 seconds West along the South line of said Quarter-Quarter Section 1323.01 feet to an iron pin at the Southwest corner of said Quarter-Quarter Section; thence North 00 degrees 00 minutes 33 seconds East along the West line of said Quarter-Quarter Section 741.21 feet to a 5/8 inch rebar with red cap; thence North 89 degrees 46 minutes 13 seconds East 1322.92 feet to the intersection of the East line of said Quarter-Quarter Section with the centerline of State Road 238; thence South 00 degrees 00 minutes 09 seconds West 739.63 feet to the Point of Beginning. Containing 22.487 acres, more or less.

Parcel 7

Part of the West Half of the Southwest Quarter of Section 30, Township 18 North, Range 6 East, in Fall Creek Township, Hamilton County, Indiana, described as follows: Commencing at the Southwest corner of said Quarter Section; thence North 00 degrees 00 minutes 09 seconds East (assumed bearing) on and along the West line of said Quarter Section, 1295.44 feet to the Point of Beginning; thence continue North 00 degrees 00 minutes 09 seconds East along said West line, 739.63 feet to the centerline of State Road 238; thence South 34 degrees 22 minutes 38 seconds East along said centerline, 780.04 feet; thence South 77 degrees 43 minutes 33 seconds West 450.78 feet to the Point of Beginning. Containing 3.740 acres, more or less.

Parcel 8

A part of the Northwest Quarter of Section 25, Township 18 North, Range 5 East, Hamilton County, Indiana, being more particularly described as follows:

Commencing at the southwest corner of said Northwest Quarter Section; thence North 89 degrees 26 minutes 34 seconds East (assumed bearing) along the south line thereof a distance of 355.10 feet to the Point of Beginning; thence continuing North 89 degrees 26 minutes 34 seconds East along said line a distance of 966.84 feet to the southeast corner of the Southwest Quarter of said Northwest Quarter; thence North 00 degrees 12 minutes 49 seconds West along the east line of said Quarter Quarter Section a distance of 695.45 feet; thence South 72 degrees 40 minutes 35 seconds West a distance of 110.89 feet; thence North 67 degrees 32 minutes 10 seconds West a distance of 135.16 feet; thence North 34 degrees 48 minutes 52 seconds West a distance of 37.49 feet; thence North 71 degrees 50 minutes 30 seconds West a distance of 34.32 feet; thence South 81 degrees 22 minutes 00 seconds West a distance of 56.78 feet; thence South 42 degrees 35 minutes 33 seconds West a distance of 49.97 feet; thence North 82 degrees 44 minutes 37 seconds West a distance of 61.23 feet; thence South 77 degrees 03 minutes 56 seconds West a distance of 157.14 feet; thence North 43 degrees 11 minutes 29 seconds West a distance of 30.88 feet; thence South 54 degrees 00 minutes 44 seconds West a distance of 124.77 feet; thence South 75 degrees 38 minutes 56 seconds West a distance of 38.15 feet; thence South 18 degrees 13 minutes 16 seconds West a distance of 59.91 feet; thence South 68 degrees 30 minutes 44 seconds West a distance of 49.64 feet; thence North 65 degrees 37 minutes 11 seconds West a distance of 54.71 feet; thence South 25 degrees 22 minutes 03 seconds West a distance of 33.29 feet; thence South 28 degrees 15 minutes 13 seconds East a distance of 100.05 feet; thence South 28 degrees 24 minutes 40 seconds East a distance of 73.00 feet; thence South 14 degrees 13 minutes 49 seconds West a distance of 60.21 feet; thence South 46 degrees 03 minutes 29 seconds West a distance of 34.77 feet; thence South 02 degrees 11 minutes 14 seconds West a distance of 43.65 feet; thence South 14 degrees 50 minutes 16 seconds West a distance of 53.52 feet; thence South 31 degrees 47 minutes 00 seconds West a distance of 42.20 feet; thence South 45 degrees 43 minutes 29 seconds West a distance of 82.13 feet; thence South 59 degrees 29 minutes 32 seconds West a distance of 41.32 feet; thence South 20 degrees 47 minutes 53 seconds West a distance of 36.51 feet; thence South 00 degrees 50 minutes 37 seconds East a distance of 34.54 feet; thence South 22 degrees 00 minutes 38 seconds East a distance of 39.17 feet to the south line of said Quarter and the Point of Beginning, containing 13.66 acres, more or less.

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Parcel 9

A part of the Southeast Quarter of Section 25, Township 18 North, Range 6 East, Hamilton County, Indiana, more particularly described as follows:

Beginning at the Southeast corner of said Southeast Quarter Section; thence South 89 degrees 18 minutes 25 seconds West along the South line of said Quarter Section 713.13 feet; thence North 00 degrees 44 minutes 05 seconds West 62.00 feet; thence South 89 degrees 15 minutes 25 seconds West parallel to said South line 300.00 feet; thence North 45 degrees 44 minutes 35 seconds West 49.50 feet; thence North 00 degrees 44 minutes 05 seconds West 335.44 feet to the point of curvature of a curve concave westerly, the radius point of said curve being South 89 degrees 15 minutes 25 seconds West 325.00 feet from said point; thence northerly along said curve 188.50 feet to the point of tangency of said curve, said point being North 55 degrees 50 minutes 55 seconds East 325.00 feet from the radius point of said curve; thence North 44 degrees 17 minutes 55 seconds East 410.41 feet; thence North 74 degrees 14 minutes 35 seconds East 55.48 feet; thence North 89 degrees 38 minutes 23 seconds East 780.69 feet to the East line of said Quarter Section; thence South 00 degrees 22 minutes 55 seconds East along said East line 512.46 feet to the place of beginning.

Parcel 10

A part of the Southwest Quarter of Section 25, Township 18 North, Range 6 East, Hamilton County, Indiana, more particularly described as follows:

Commencing at the Southeast corner of said Southwest Quarter Section; thence South 89 degrees 18 minutes 10 seconds West along the South line of said Quarter Section 1,324.58 feet to the Southwest corner of the East Half of said Quarter Section; thence North 00 degrees 18 minutes 02 seconds West along the West line of said Half Quarter Section 648.26 feet to the POINT OF BEGINNING of this description; thence continuing North 00 degrees 18 minutes 02 seconds West along said West line 692.51 feet; thence North 89 degrees 24 minutes 55 seconds East parallel to the North line of said Half Quarter Section 692.51 feet; thence South 00 degrees 18 minutes 02 seconds East parallel to West line of said Half Quarter Section 692.51 feet; thence South 89 degrees 24 minutes 55 seconds West parallel to the North line of said Half Quarter Section 692.51 feet to the place of beginning.

Parcel 11

The East One Half of the Northwest Quarter of Section 25, Township 18 North, Range 5 East, in Hamilton County, Indiana, containing 80.65 acres, more or less.

EXCEPT:

A part of the East Half of the Northwest Quarter of Section 25, Township 18 North, Range 5 East, in Hamilton County, Indiana, described as follows:

Commencing at the Northwest corner of Section 25, thence 89 degrees 08 minutes 38 seconds East 1,211.91 feet along the North line of said Section to the centerline of S.R. 238; thence South 58 degrees 39 minutes 01 second East 418.04 feet along said line of said Section to the centerline of S.R. 238; thence North 31 degrees 20 minutes 59 seconds East 16.50 feet to the Northeastern boundary of S.R. 238 and point of beginning of this description; thence North 58 degrees 15 minutes 55 seconds West 292.60 feet along said Northeastern boundary to the West line of the Owner's land; thence North 3 degrees 34 minutes 13 seconds West 32.33 feet along said West line to the South boundary of 136th Street; thence North 89 degrees 08 minutes 38 seconds East 22.52 feet along said South boundary; thence South 17 degrees 51 minutes 44 seconds West 30.85 feet; thence South 58 degrees 39 minutes 01 second East 235.00 feet; thence South 46 degrees 46 minutes 50 seconds East 50.94 feet to the point of beginning and containing 0.069 acres, more or less.

Also Except, a part of the East half of the Northeast Quarter of Section 25, Township 18 North, Range 5 East, in Hamilton County, Indiana, described as follows:

Commencing at the Northwest corner of Section 25, thence North 89 degrees 08 minutes 38 seconds East 1,211.91 feet along the North line of said Section to the centerline of S.R. 238; thence South 58 degrees 39 minutes 01 seconds East 418.04 feet along said centerline; thence South 31 degrees 20 minutes 59 seconds West 16.50 to the Southwestern Boundary of S.R. 238 and point of beginning of this description; thence North 71 degrees 37 minutes 36 seconds West 51.31 feet; thence North 58 degrees 39 minutes 01 second West 223.12 feet to the West line of the Owner's Land; thence North 4 degrees 54 minutes 56 seconds West 16.65 feet along said West line to the Southwestern Boundary of S.R. 238; thence South 58 degrees 15 minutes 55

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seconds East 282.97 feet along said Southwestern Boundary to the point of beginning and containing 0.073 acres, more or less.

Also Except, a part of the East half of the Northwest Quarter of Section 25, Township 18 North Range 5 East in Hamilton County, Indiana and being more particularly described as follows:

Beginning at the Northeast corner of the said Half Quarter; thence on and along the East line thereof, South 00 degrees 08 minutes 48 seconds West (assumed bearing) 852.63 feet to the centerline of State Road 238; thence on and along the said centerline North 59 degrees 39 minutes 29 seconds West 1,097.61 feet; thence continuing on and along the said centerline, Northwesterly 147.47 feet on a curve to the right (concave to the Northeast) said curve having a radius of 4,971.02 feet and being subtended by a long chord having a bearing of North 58 degrees 48 minutes 30 seconds West and a length of 147.46 feet; thence leaving the said centerline, North 32 degrees 02 minutes 30 seconds East 16.50 feet to the Northeasterly R/W line - of State Road 238 as conveyed to the State of Indiana in D.R. Book 202, Pages 159-161 in the Office of the Recorder of Hamilton County; thence on and along said R/W line, North 45 degrees 55 minutes 28 seconds West 50.94 feet; thence continuing on and along the said R/W line, North 57 degrees 57 minutes 30 seconds West 235.00 feet; thence continuing on and along the said R/W line, North 18 degrees 43 minutes 06 seconds East 32.93 feet to the South R/W line of 136th Street; thence North 00 degrees 00 minutes 00 seconds East 16.50 feet to a point on the North line of the said Half Quarter, said point being 30.12 feet East of the Northwest corner thereof; thence on and along the said North line, North 90 degrees 00 minutes 00 seconds East 1,292.00 feet to the point of beginning. Contains 13.900 acres, more or less.

AND ALSO EXCEPT that part conveyed to Crossman Communities Partnership by deed recorded February 19, 2003 as Instrument No. 2003-17581 in the Office of the Recorder of Hamilton County, Indiana, to-wit:

Part of the East Half of the Northwest Quarter of Section 25, Township 18 North, Range 05 East, and being a part of land described in Deed Book 243, Page 31 recorded in the Office of the Recorder of Hamilton County, Indiana being more particularly described as follows:

Beginning at a point on the west line of said Half Quarter Section South 00 degrees 12 minutes 49 seconds East a distance of 100.19 feet from the northwest corner of said Half Quarter Section, being a point on the southwestern boundary of State Road 238 as described in said Deed Book 243, Page 31 recorded in the Office of the Recorder of Hamilton County, Indiana; thence

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continuing South 00 degrees 12 minutes 49 seconds East along said West line a distance of 1,864.60 feet; thence North 83 degrees 50 minutes 37 seconds East a distance of 33.94 feet; thence South 66 degrees 15 minutes 04 seconds East a distance of 73.50 feet; thence North 57 degrees 21 minutes 17 seconds East a distance of 39.19 feet; thence North 13 degrees 42 minutes 54 seconds East a distance of 107.07 feet; thence North 28 degrees 34 minutes 21 seconds East a distance of 139.38 feet; thence North 63 degrees 41 minutes 44 seconds East a distance of 43.89 feet; thence South 49 degrees 04 minutes 00 seconds East a distance of 67.76 feet; thence North 75 degrees 23 minutes 47 seconds East a distance of 126.95 feet; thence North 86 degrees 00 minutes 02 seconds East a distance of 206.12 feet; thence North 63 degrees 46 minutes 59 seconds East a distance of 260.67 feet; thence North 88 degrees 31 minutes 04 seconds East a distance of 168.84 feet; thence North 68 degrees 59 minutes 45 seconds East a distance of 160.43 feet; thence North 16 degrees 54 minutes 53 seconds West a distance of 90.16 feet; thence North 47 degrees 08 minutes 18 seconds East a distance of 32.32 feet; thence South 42 degrees 35 minutes 52 seconds East a distance of 42.51 feet; thence North 55 degrees 01 minute 27 seconds East a distance of 41.31 feet; thence North 07 degrees 40 minutes 17 seconds West a distance of 44.37 feet; thence North 60 degrees 54 minutes 32 seconds East a distance of 45.93 feet; thence South 65 degrees 10 minutes 09 seconds East a distance of 31.02 feet to the east line of the aforesaid Half Quarter Section; thence North 00 degrees 12 minutes 26 seconds West along said East line a distance of 546.39 feet to the centerline of State Road 238, the following two (2) courses are along said centerline; (1) North 60 degrees 00 minutes 43 seconds West a distance of 1,097.61 feet to a point of curvature of a curve to the right having a radius of 4,971.02 feet, the radius point of which bears North 29 degrees 59 minutes 17 seconds East; (2) northwesterly along said curve on arc distance 147.42 feet to a point that bears South 31 degrees 41 minutes 18 seconds West from said radius point; thence South 31 degrees 48 minutes 55 seconds West a distance of 17.05 feet to the aforesaid southwestern boundary of State Road 238; the following two (2) courses are along said southwestern boundary; (1) North 71 degrees 09 minutes 40 seconds West a distance of 51.31 feet; (2) North 58 degrees 11 minutes 05 seconds West a distance of 223.64 feet to the Point of Beginning.

Excluding, however, the real estate described on page 1 of Exhibit "Y", from all of the real estate described above (Parcel 1 through Parcel 11) in this Exhibit "X".

**EXHIBIT "Y" – Page 1 of 5**

**Legal Description**

**Parcel 1**

A part of the West Half of the Southwest Quarter of Section 25, Township 18 North, Range 5 East, Hamilton County, Indiana, more particularly described as follows:

Commencing at the Northwest corner of said Half Quarter Section; thence North 89 Degrees 24 minutes 55 seconds East along the North line thereof 37.68 feet to the Eastern right-of-way line of Olio Road as described in Instrument No. 9809840529 Recorded in the Office of the Recorder of Hamilton County, Indiana; thence along said Right-of-way line by the next five (5) calls; 1) thence South 00 degrees 21 minutes 55 Second West 202.78 feet; 2) south 04 degrees 21 minutes 57 seconds East 459.74 feet; 3) South 10 degrees 02 minutes 31 seconds East 115.99 feet; 4) South 32 degrees 52 minutes 32 seconds East 57.39 feet; 5) South 20 degrees 52 minutes 14 seconds West 177.92 feet to the POINT OF BEGINNING of this description; thence North 87 degrees 50 minutes 11 seconds East 200.00 feet; thence South 01 degrees 54 minutes 42 seconds East 400.00 feet; thence South 87 degrees 50 minutes 11 seconds West 200.00 feet to the eastern right-of-way line of said Olio Road; thence along said right-of-way line by the next four (4) calls; 1) North 01 degrees 54 minutes 42 seconds West 71.92 feet; 2) North 00 degrees 57 minutes 02 seconds East 65.70 feet; north 01 degrees 54 minutes 42 seconds West 98.42 feet; 4) North 03 degrees 03 minutes 27 seconds West 164.07 feet to the point of beginning, containing 1.820 acres, more or less.

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July 11, 2003  
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**Parcel 2**

A parcel of real estate, not to exceed 30 acres in size, which is contiguous to and located in the southwest corner of the real estate described on pages 3, 4, and 5 of this Exhibit "Y".



**Parcel 3**

A part of Section 25, Township 18 North, Range 5 East, in Fall Creek Township, Hamilton County, Indiana, more particularly described as follows:

Beginning at the Southeast corner of the Southwest Quarter of said Section 25; thence South 89 degrees 15 minutes 10 seconds West along the South line thereof 1,435.66 feet; thence North 00 degrees 44 minutes 06 seconds West 39.81 feet; thence South 89 degrees 15 minutes 54 seconds West 328.08 feet; thence North 85 degrees 01 minutes 28 seconds West 362.69 feet; thence North 89 degrees 10 minutes 22 seconds West 361.02 feet; thence North 79 degrees 25 minutes 30 seconds West 50.19 feet; thence North 20 degrees 58 minutes 02 seconds West 34.93 feet; thence North 01 degrees 03 minutes 13 seconds West 362.32 feet; thence North 00 degrees 35 minutes 26 seconds West 147.94 feet; thence North 05 degrees 02 minutes 02 seconds West 180.71 feet; thence North 01 degrees 54 minutes 42 seconds West 524.93 feet; thence North 00 degrees 57 minutes 02 seconds East 65.70 feet; thence North 01 degrees 54 minutes 42 seconds West 98.42 feet; thence North 03 degrees 03 minutes 27 seconds West 164.07 feet; thence North 20 degrees 52 minutes 14 seconds East 177.92 feet; thence North 32 degrees 52 minutes 32 seconds West 57.39 feet; thence North 10 degrees 02 minutes 31 seconds West 115.99 feet; thence North 04 degrees 21 minutes 57 seconds West 459.74 feet; thence North 00 degrees 21 minutes 55 seconds East 202.78 feet to the Northwest corner of said Southwest Quarter; thence North 89 degrees 24 minutes 55 seconds East along the North line thereof 311.21 feet to a point on the thread of Mud Creek; thence along said thread of Mud Creek by the next 12 calls; (1) North 01 degrees 55 minutes 21 seconds East 89.60 feet; (2) North 46 degrees 57 minutes 19 seconds East 141.43 feet; (3) North 19 degrees 35 minutes 06 seconds East 199.77 feet; (4) North 22 degrees 31 minutes 09 seconds West 208.14 feet; (5) South 88 degrees 51 minutes 19 seconds East 102.43 feet; (6) North 24 degrees 55 minutes 52 seconds East 82.64 feet; (7) South 75 degrees 30 minutes 08 seconds East 89.91 feet; (8) North 26 degrees 18 minutes 12 seconds East 78.93 feet; (9) North 81 degrees 36 minutes 21 seconds East 210.32 feet; (10) North 66 degrees 46 minutes 59 seconds East 111.54 feet; (11) South 66 degrees 46 minutes 41 seconds East 212.34 feet; (12) North 77 degrees 54 minutes 03 seconds East 114.11 feet to the East line of the aforesaid Quarter, Quarter Section; thence North 00 degrees 12 minutes 43 seconds West along the West line of the East Half of the Northwest Quarter of said Section 25 a distance of 1,865.46 feet to the South right-of-way line of State Road 238; thence South 58 degrees 11 minutes 05 seconds East along said right-of-way line 223.64 feet; thence South 71 degrees 09 minutes 40 seconds East along said right-of-way line 51.31 feet; thence North 31 degrees 48 minutes 55 seconds East 17.05 feet to a point on the centerline of State Road 238, said point being on a curve concave northeasterly, the radius point of said curve being North 31 degrees 41 minutes 07 seconds East 4,971.02 feet from said point; thence southeasterly along said curve and

EXHIBIT "Y" – Page 4 of 5

along said centerline 147.52 feet to the point of tangency of said curve, said point being South 29 degrees 59 minutes 06 seconds West 4,971.02 feet from the radius point of said curve; thence South 60 degrees 00 minutes 37 seconds East along the centerline of State Road 238 a distance of 1,097.46 feet to a point on the East line of the Northwest Quarter of said Section 25; thence South 00 degrees 12 minutes 00 seconds East along said East line 186.28 feet; thence North 89 degrees 34 minutes 25 seconds East 315.17 feet to the centerline of State Road 238; thence along said centerline by the next four (4) courses; (1) South 57 degrees 58 minutes 16 seconds East 402.64 feet to the point of curvature of a curve concave southwesterly, the radius point of said curve being South 32 degrees 01 minutes 44 seconds West 535.00 feet from said point; (2) southeasterly along said curve 186.19 feet to the point of tangency of said curve, said point being North 51 degrees 58 minutes 08 seconds East 535.00 feet from the radius point of said curve; (3) South 38 degrees 01 minutes 52 seconds East 567.98 feet to the point of curvature of a curve concave northeasterly, the radius point of said curve being North 51 degrees 58 minutes 08 seconds East 1,250.00 feet from said point; (4) southeasterly along said curve 259.58 feet to a point on said curve, said point being South 40 degrees 04 minutes 14 seconds West 1,250.00 feet from the radius point of said curve; thence South 00 degrees 25 minutes 27 seconds East 631.78 feet to the Northwest corner of the Northeast Quarter of the Southeast Quarter of said section 25; thence South 00 degrees 21 minutes 37 seconds East along the East line of said Half Quarter Section 1,325.52 feet to the Southeast corner said Quarter, Quarter Section; thence North 89 degrees 20 minutes 30 seconds East along the North line of the Southeast Quarter of the Southeast Quarter of said Section 25 a distance of 1,323.01 feet to a point on the East line of said Quarter, Quarter Section; thence South 00 degrees 22 minutes 01 seconds East along said East line 1,323.39 feet to the Southeast corner thereof; thence South 89 degrees 15 minutes 25 seconds West along the South line of said Quarter, Quarter Section 2,646.13 feet to place of beginning, containing 394.996 acres, more or less.

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December 12, 2002  
(R) KRG (F) GDK

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**EXHIBIT "Y" – Page 5 of 5**

**Parcel 4**

Part of the Northeast Quarter of the Southeast Quarter of Section 25, Township 18 North, Range 5 East, in Fall Creek Township, Hamilton County, Indiana, described as follows:

Beginning at the Southeast corner of said Quarter-Quarter Section, said Southeast corner being North 00 degrees 00 minutes 09 seconds East (assumed bearing) 1323.81 feet from the Southeast corner of said Section 25; thence South 89 degrees 42 minutes 07 seconds West along the South line of said Quarter-Quarter Section 1323.01 feet to an iron pin at the Southwest corner of said Quarter-Quarter Section; thence North 00 degrees 00 minutes 33 seconds East along the West line of said Quarter-Quarter Section 741.21 feet to an 5/8" rebar with red cap; thence North 89 degrees 46 minutes 13 seconds East 1322.92 feet to the intersection of the East line of said Quarter Quarter Section with the centerline of State Road 238; thence South 00 degrees 00 minutes 09 seconds West 739.63 feet to the point of beginning and containing 22.487 acres, more or less.

**Parcel 5**

Part of the West Half of the Southwest Quarter of Section 30, Township 18 North, Range 6 East, in fall Creek Township, Hamilton County, Indiana, described as follows:

Commencing at the Southwest corner of said Quarter Section; thence North 00 degrees 00 minutes 09 seconds East (assumed bearing), on and along the West line of said quarter Section, 1295.44 feet to the Point of Beginning; thence continue North 00 degrees 00 minutes 09 seconds East, along said West line, 739.63 feet to the centerline of State Road 238; thence South 34 degrees 22 minutes 38 seconds East, along said centerline, 780.04 feet; thence South 77 degrees 43 minutes 33 seconds West 450.78 feet to the point of beginning and containing 3.740 acres, more or less.

Excluding, however, the real estate described in Exhibit "X", from all of the real estate described above in this Exhibit "Y".

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③

200400011310  
Filed for Record in  
HAMILTON COUNTY, INDIANA  
JENNIFER J HAYDEN  
02-24-2004 At 11:19 am.  
DEC CDV RES 14.00

**CROSS REFERENCE** - Master Declaration of Covenants, Conditions, and Restrictions of Avalon recorded with the Recorder of Hamilton County, Indiana, as Instrument No. 200400007258.

**SUPPLEMENT TO DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF AVALON**

Pulte Homes of Indiana, LLC, an Indiana limited liability company, the Declarant in the Declaration of Covenants, Conditions and Restrictions of Avalon recorded with the Recorder of Hamilton County, Indiana, as Instrument No. 200400007258 (hereafter referred to as the "Master Declaration"), states that the capitalized terms set forth herein shall have the same meaning as specified in the Declaration and hereby declares that the real estate located in Hamilton County, Indiana; and more particularly described in what is attached hereto and incorporated herein by reference as Exhibit "A" shall and hereby is made part of and annexed to the Property and is subject in all respects to the Master Declaration and all rights, obligations, and privileges specified therein.

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

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

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF HAMILTON )

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Gregory Huff, Division President, Indiana Division, of Pulte Homes of Indiana, LLC, an Indiana limited liability company, and having been duly sworn, acknowledged execution of this *Supplement to Declaration of Covenants, Conditions and Restrictions of Avalon*.

Witness my hand and Notarial Seal this 13<sup>th</sup> day of February, 2004.

My Commission Expires:  
June 7, 2010

Residing in HAMILTON County

Linda S. Kelch  
Notary Public

Linda S. Kelch  
Printed Name

Prepared By:

**Charles D. Frankenberg**  
NELSON & FRANKENBERGER  
3105 East 98th Street, Suite 170  
Indianapolis, Indiana 46280  
(317) 844-0106

CHARLES D. FRANKENBERG  
Notary Public - Notary Seal  
STATE OF INDIANA  
HAMILTON COUNTY  
MY COMMISSION EXP. JUNE 7, 2010

EXHIBIT A

SHAW TAKEDOWN TRACT A-2C

A part of the East Half of the Southwest Quarter of Section 25, Township 18 North, Range 5 East, Hamilton County, Indiana, being more particularly described as follows:

Commencing at the Southwest corner of the said Half Quarter Section; thence North 00 degrees 18 minutes 02 seconds West (Assumed Bearing) along the West line of the said Half Quarter Section, 648.25 feet; thence North 89 degrees 24 minutes 55 seconds East 31.35 feet to the POINT OF BEGINNING of this description; thence continuing North 89 degrees 24 minutes 55 seconds East along said line, a distance of 661.15 feet; thence North 00 degrees 18 minutes 02 seconds West 110.20 feet to a point on a curve concave northerly, the radius point of said curve being North 18 degrees 36 minutes 01 seconds East 20.00 feet from said point; thence easterly along said curve 22.50 feet to a point on said curve, said point being North 18 degrees 36 minutes 01 seconds East 20.00 feet from the radius point of said curve; thence South 45 degrees 51 minutes 53 seconds East 50.00 feet; thence South 44 degrees 08 minutes 07 seconds West 64.55 feet; thence South 45 degrees 51 minutes 53 seconds East 120.00 feet; thence South 44 degrees 08 minutes 07 seconds West 53.26 feet; thence North 60 degrees 56 minutes 53 seconds West 24.80 feet; thence South 29 degrees 03 minutes 07 seconds West 121.82 feet; thence South 60 degrees 56 minutes 53 seconds East 34.80 feet; thence South 29 degrees 03 minutes 07 seconds West 170.00 feet; thence North 60 degrees 56 minutes 53 seconds West 60.00 feet; thence North 65 degrees 44 minutes 04 seconds West 50.41 feet; thence North 74 degrees 43 minutes 32 seconds West 307.79 feet; thence North 48 degrees 50 minutes 06 seconds West 165.50 feet; thence North 34 degrees 04 minutes 43 seconds West 121.99 feet to the place of beginning. Containing 3.700 acres, more or less, subject to all legal highways, rights-of-ways, easements, and restrictions of record.

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02/02/2009 09:28:31A 11 PGS  
Jennifer J Hayden  
HAMILTON County Recorder IN  
Recorded as Presented

**AMENDMENT TO THE MASTER DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS OF AVALON**

This Amendment (the "Amendment") to the Master Declaration of Covenants, Conditions, and Restrictions of Avalon is made this 30<sup>th</sup> day of JANUARY, 2009, by Pulte Homes of Indiana, LLC;

**WITNESSETH:**

**WHEREAS**, Pulte Homes of Indiana, LLC is the Declarant in the Master Declaration of Covenants, Conditions, and Restrictions of Avalon recorded with the Recorder of Hamilton County, Indiana, as Instrument No. 200400007258 (the "Master Declaration");

**WHEREAS**, unless otherwise expressly defined in this Amendment, all capitalized words and terms in this Amendment shall have the meaning ascribed to them in the Declaration; and

**WHEREAS**, Declarant is desirous of amending the Declaration as set forth below.

**NOW, THEREFORE**, the Declaration is hereby amended as set forth below:

Section 1. The Real Estate. The real estate legally described in what is attached hereto and incorporated herein by reference as Exhibit A (the "Parcel") is hereby (i) removed and withdrawn from the Real Estate described in Exhibit X of the Declaration and (ii) relocated to and included within the Additional Real Estate described in Exhibit Y of the Declaration. From and after the date of this Amendment, the Parcel shall be treated in all respects as Additional Real Estate for all purposes of the Master Declaration until such time, if ever, that the Parcel is added and annexed by the Declarant to the Property, as provided in the Master Declaration, and is thereby made subject in all respects to the Master Declaration.

Section 2 Definitions. Article I of the Declaration is hereby amended and supplemented to add the following definitions:

- A. "Amenity Area" shall mean Block A located in Avalon of Fishers Section Four A, as per the plat thereof recorded with the Recorder of Hamilton County, Indiana as Instrument No. 2008055177 ("Block A") and any and all improvements which may be located within Block A including, without limitation, swimming pools, a wading pool, a bath house, basketball courts and tennis courts.
- B. "Annual Operating Costs" shall mean the annual costs of operating, repairing, and maintaining the Amenity Area as determined on an annual basis by the Master Board, in its sole discretion, and may include, without limitation, a reserve sufficient to meet the cost of significant capital repairs, renewals and replacements.

- C. "Annual Amenity Assessment" shall mean sixteen percent (16%) of the Annual Operating Costs.
- D. "Single-family residential" shall mean detached single family residences, townhomes and other dwellings allowed by the PUD, and all buildings and uses accessory thereto including, without limitation, Common Areas and the Amenity Area.
- E. The "South Avalon Declaration" shall mean and refer to the Amended and Restated Declaration of Covenants, Conditions and Restrictions of South Avalon Estates recorded with the Recorder of Hamilton County, Indiana, on February 1, 2006 as Instrument No. 200600005105.
- F. The "South Avalon Association" shall mean the homeowners association which is a non-profit corporation and which is identified in the South Avalon Declaration.
- G. "South Avalon" shall mean and refer to the residential subdivision (i) which was established by the South Avalon Declaration but (ii) which shall be limited to and shall not extend beyond the residential subdivision which has been and may continue to be developed upon and within the boundaries of the sixty eight (68) acres of real estate, more or less, described in what is attached hereto and incorporated herein by reference as Exhibit B and, as such, the term "South Avalon", as used throughout this Amendment, shall not refer to or include any development or residences now or hereafter located upon real estate which has been or might later be added, annexed or made subject to the South Avalon Declaration, per the terms of the South Avalon Declaration, from and after February 1, 2006.

Section 3. Amenity Area. On the terms and conditions set forth below in this Section 3, the residents of South Avalon, along with their guests and invitees, shall be allowed to use the Amenity Area.

- A. The use and enjoyment of the Amenity Area shall be conditioned upon the payment, by the South Avalon Association to the Association, of the Annual Amenity Assessment.
- B. The Annual Amenity Assessment shall be timely paid by the South Avalon Association to the Association on or before the 30<sup>th</sup> day of April of each calendar year and, absent receipt of such payment, in full, the Association may, in the sole discretion of the Master Board (i) suspend the right of any and all residents of South Avalon, along with their guests and invitees, to use the Amenity Area and/or (ii) make the Amenity Area available only to those residents of South Avalon, along with their guests and invitees, who make payments to the Association in amounts and at times as determined by the Master Board in its sole discretion.



C. The use of the Amenity Area by residents of South Avalon, and their guests and invitees, shall be per the terms of uniform rules and regulations promulgated by the Master Board, in its sole discretion, which rules shall uniformly apply, may limit the number of guests and invitees and may, from time to time, be amended by the Master Board in its sole discretion.

Section 4. Amendment. The second to the last sentence of Article 27 of the Master Declaration is hereby amended to provide that the Master Declaration may be amended by Declarant at any time prior to December 31, 2015.

Section 5. Amended Declaration. The Master Declaration, as hereby amended, shall remain in full force and effect.

IN TESTIMONY WHEREOF, witness the signature of the Declarant of this Master Declaration as of the date first above written

“DECLARANT”

PULTE HOMES OF INDIANA, LLC  
An Indiana limited liability company

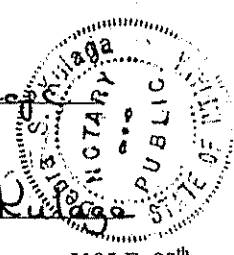
By: [Signature]  
Tony Barbee, Division President,  
Indiana Division

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HAMILTON )

Before me, a Notary Public, in and for said County and State, personally appeared Tony Barbee Division President, Indiana Division, of Pulte Homes of Indiana, LLC, an Indiana limited liability company, and acknowledged the execution of the foregoing Amendment to the Master Declaration of Covenants, Conditions, and Restrictions of Avalon, for and on behalf of Pulte Homes of Indiana, LLC this 30<sup>th</sup> day of January, 2009.

My Commission Expires:  
June 27, 2014

[Signature]  
Notary Public



Resident of HAMILTON County, Indiana Printed: Debra S. Kulaga

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

Pursuant to IC 36-2-11-15(b)(2), 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 –  
Charles D. Frankenberger

## EXHIBIT A

A part of the East Half of the Northwest Quarter of Section 25, Township 18 North, Range 05 East, and being a part of land described in Deed Book 243, Page 31 recorded in the Office of the Recorder of Hamilton County, Indiana being more particularly described as follows:

Beginning at a point on the west line of said Half Quarter Section South 00 degrees 12 minutes 49 seconds East a distance of 100.19 feet from the northwest corner of said Half Quarter Section, being a point on the southwestern boundary of State Road 238 as described in said Deed Book 243, Page 31 recorded in the Office of the Recorder of Hamilton County, Indiana; thence continuing South 00 degrees 12 minutes 49 seconds East along said West line a distance of 1,864.60 feet; thence North 83 degrees 50 minutes 37 seconds East a distance of 33.94 feet; thence South 66 degrees 15 minutes 04 seconds East a distance of 73.50 feet; thence North 57 degrees 21 minutes 17 seconds East a distance of 39.19 feet; thence North 13 degrees 42 minutes 54 seconds East a distance of 107.07 feet; thence North 28 degrees 34 minutes 21 seconds East a distance of 139.38 feet; thence North 63 degrees 41 minutes 44 seconds East a distance of 43.89 feet; thence South 49 degrees 04 minutes 00 seconds East a distance of 67.76 feet; thence North 75 degrees 23 minutes 47 seconds East a distance of 126.95 feet; thence North 86 degrees 00 minutes 02 seconds East a distance of 206.12 feet; thence North 63 degrees 46 minutes 59 seconds East a distance of 260.67 feet; thence North 88 degrees 31 minutes 04 seconds East a distance of 168.84 feet; thence North 68 degrees 59 minutes 45 seconds East a distance of 160.43 feet; thence North 16 degrees 54 minutes 53 seconds West a distance of 90.16 feet; thence North 47 degrees 08 minutes 18 seconds East a distance of 32.32 feet; thence South 42 degrees 35 minutes 52 seconds East a distance of 42.51 feet; thence North 55 degrees 01 minutes 27 seconds East a distance of 41.31 feet; thence North 07 degrees 40 minutes 17 seconds West a distance of 44.37 feet; thence North 60 degrees 54 minutes 32 seconds East a distance of 45.93 feet; thence South 65 degrees 10 minutes 09 seconds East a distance of 31.02 feet to the east line of the aforesaid Half Quarter Section; thence North 00 degrees 12 minutes 26 seconds West along said East line a distance of 546.39 feet to the centerline of State Road 238, the following two (2) courses are along said centerline; (1) North 60 degrees 00 minutes 43 seconds West a distance of 1,097.61 feet to a point of curvature of a curve to the right having a radius of 4,971.02 feet, the radius point of which bears North 29 degrees 59 minutes 17 seconds East; (2) northwesterly along said curve on arc distance 147.42 feet to a point that bears South 31 degrees 41 minutes 18 seconds West from said radius point; thence South 31 degrees 48 minutes 55 seconds West a distance of 17.05 feet to the aforesaid southwestern boundary of State Road 238; the following two (2) courses are along said southwestern boundary; (1) North 71 degrees 09 minutes 40 seconds West a distance of 51.31 feet; (2) North 58 degrees 11 minutes 05 seconds West a distance of 223.64 feet to the Point of Beginning, containing 37.114 acres, more or less.

### **ALSO:**

Part of the Northeast Quarter and all of the Northwest Quarter of the Southeast Quarter of Section 25, Township 18 North, Range 5 East in Hamilton County, Indiana as described as follows:

Beginning at the southwest corner of said Northeast Quarter, thence North 00 degrees 12 minutes 26 seconds West (assumed bearing) along the west line of said Northeast Quarter 1615.05 feet; thence North 89 degrees 34 minutes 25 seconds East parallel with the north line of said Quarter Section 314.75 feet to the centerline of State Road 238 (the next 5 courses following said centerline); (1) thence South 57 degrees 58 minutes 16 seconds East 402.64 feet to the point of curvature of a curve to the right having a radius 535.00 feet, the radius point of which bears South 32 degrees 01 minutes 44 seconds West; (2) thence southwesterly along said curve an arc distance of 186.19 feet to a point which bears North 51 degrees 58 minutes 08 seconds East from said radius point; (3) thence South 38 degrees 01 minutes 52 seconds East 567.98 feet to the point of curvature of a curve to the left having a radius of 1250.00 feet, the radius point which bears North 51 degrees 58 minutes 08 seconds East, (4) thence southeasterly along said curve an arc distance of 391.53 feet to a point which bears South 34 degrees 01 minutes 21 seconds West from said radius point; (5) thence South 55 degrees 58 minutes 39 seconds East 111.06 feet; thence South 00 degrees 25 minutes 35 seconds East parallel with the east line of the Southwest Quarter of said Northeast Quarter a distance of 273.95 feet to a point 214.50 feet north of the south line of said Quarter Section; thence South 89 degrees 23 minutes 45 seconds West with the south line of said Northeast Quarter a distance of 196.30 feet to a point on said east line; thence South 00 degrees 25 minutes 35 seconds East along said east line 214.50 feet to the Northeast corner of the Northwest Quarter of said Southeast Quarter; thence South 00 degrees 21 minutes 45 seconds East along the east line of said Northwest Quarter Section 1325.33 feet to the southeast corner thereof; thence South 89 degrees 19 minutes 40 seconds West along the south line of said Northwest Quarter Quarter Section 1322.80 feet to the southwest corner thereof; thence North 00 degrees 21 minutes 03 seconds West along the west line of said Northwest Quarter Quarter Section 1326.80 feet to the northeast corner thereof and the Point of Beginning containing 80.815 acres, more or less EXCEPTING THEREFROM THE FOLLOWING part of the Southeast Quarter of the Northeast Quarter of Section 25, Township 18 North, Range 5 East, in Hamilton County, Indiana, as conveyed to James E. and Glenna L. Fetters by deed recorded February 26, 2003 as Instrument No. 200300020033 in the Office of the Recorder of Hamilton County, Indiana, described as follows: Commencing at the Southwest corner of said Quarter Quarter, thence North 00 degrees 25 minutes 35 seconds West along the West line of said Quarter Quarter a distance of 214.50 feet to the Point Of Beginning; thence continuing North 00 degrees 25 minutes 35 seconds West on and along the West line a distance of 417.66 feet to the centerline of State Road 238 and North line a tract of land as described in Instrument No. 91-16843 in the Office of the Recorder of Hamilton County, Indiana, and a non-tangent curve to the left having a radius of 1,250.00 feet, the radius point of which bears North 40 degrees 04 minutes 24 seconds East; thence Southeasterly along said line an arc distance of 132.01 feet to a point which bears South 34 degrees 01 minutes 21 seconds West from said radius point; thence South 55 degrees 58 minutes 39 seconds East a distance of 111.06 feet to the East line of said tract of land; thence South 00 degrees 25 minutes 35 seconds East along said line parallel with the West line of said Quarter Quarter a distance of 273.95 feet to a 5/8 inch rebar with yellow cap stamped "Schneider Firm #0001"; thence South 89 degrees 23 minutes 45 seconds West parallel with the South line of said Quarter Quarter to the Point Of Beginning, containing 1.55 acres, more or less.

**EXHIBIT B**

**TRACT B-1**

A part of the West Half of the Northeast Quarter of Section 30, Township 18 North, Range 5 East, Hamilton County, Indiana, more particularly described as follows:

Commencing at the Northwest corner of said Half Quarter Section; thence North 89 degrees 15 minutes 25 seconds East along the North line of said Half Section 308.81 feet to the Point of Beginning of this description; thence continuing North 89 degrees 15 minutes 25 seconds East along said North line 608.15 feet; thence South 00 degrees 17 minutes 26 seconds East parallel with the East line of said Half Quarter Section 325.00 feet; thence North 89 degrees 15 minutes 25 seconds East parallel with the North line of said Half Quarter Section 425.00 feet to the East line of said Half Quarter Section; thence South 00 degrees 17 minutes 26 seconds East along said East line 721.59 feet; thence South 63 degrees 07 minutes 51 seconds West 629.60 feet; thence South 00 degrees 10 minutes 26 seconds East 292.64 feet; thence South 89 degrees 49 minutes 31 seconds West 395.00 feet; thence North 00 degrees 10 minutes 26 seconds West 425.71 feet; thence North 32 degrees 01 minutes 02 seconds East 41.54 feet; thence North 53 degrees 33 minutes 00 seconds East 233.10 feet; thence North 38 degrees 27 minutes 00 seconds West 473.73 feet; thence North 10 degrees 10 minutes 20 seconds East 309.55 feet; thence North 89 degrees 15 minutes 25 seconds East parallel with the North line of said Half Quarter Section 73.68 feet; thence North 38 degrees 27 minutes 00 seconds West 447.17 feet to the Point of Beginning of this description; containing 20.000 acres, more or less.

The foregoing was acquired by deed dated July 9, 2003, and recorded July 11, 2003, as Instrument No. 2003-00067049 in the Office of the Recorder of Hamilton County, Indiana

**A part of the West Half of the Northeast Quarter of Section 36, Township 18 North, Range 5 East, Hamilton County, Indiana, more particularly described as follows:**

**Commencing at the Northwest corner of said Half Quarter Section; thence South 00 degrees 10 minutes 29 seconds East along the West line of said Half Quarter Section 363.13 feet to the POINT OF BEGINNING of this description; thence North 89 degrees 15 minutes 25 seconds East parallel with the North line of said Half Quarter Section 580.85 feet; thence South 10 degrees 10 minutes 20 seconds West 309.55 feet; thence South 36 degrees 27 minutes 00 seconds East 473.73 feet; thence South 53 degrees 33 minutes 00 seconds West 233.10 feet; thence South 32 degrees 01 minutes 02 seconds West 41.54 feet; thence South 00 degrees 10 minutes 29 seconds East 260.18 feet; thence South 89 degrees 15 minutes 25 seconds West 595.49 feet to the West line of said Half Quarter Section; thence North 00 degrees 10 minutes 29 seconds West along said West line 1,119.81 feet to the place of beginning, containing 16.000 acres, more or less.**

The foregoing was acquired by deed dated July 9, 2003, and recorded July 23, 2003, as Instrument No. 2003-00071876 in the Office of the Recorder of Hamilton County, Indiana.

A part of the Northeast Quarter of Section 36, Township 18 North, Range 5 East, Hamilton County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of said Northeast Quarter; thence North 00 degrees 10 minutes 29 seconds West along the West line of said Northeast Quarter 671.01 feet to the POINT OF BEGINNING of this description; thence continuing North 00 degrees 10 minutes 29 seconds West 517.30 feet; thence North 89 degrees 15 minutes 25 seconds East 595.49 feet; thence South 00 degrees 10 minutes 29 seconds East parallel to the West line of said Northeast quarter 165.53 feet; thence North 89 degrees 49 minutes 31 seconds East 305.00 feet; thence North 00 degrees 10 minutes 29 seconds West parallel to the said West line 292.64 feet; thence North 53 degrees 07 minutes 51 seconds East 529.60 feet to the East line of the West Half of said Northeast Quarter Section; thence South 00 degrees 17 minutes 26 seconds East along said East line 757.45 feet; thence South 89 degrees 41 minutes 29 seconds West 36.41 feet; thence North 00 degrees 18 minutes 31 seconds West 120.00 feet; thence South 89 degrees 41 minutes 29 seconds West 213.00 feet; thence North 00 degrees 18 minutes 31 seconds West 3.53 feet; thence South 89 degrees 41 minutes 29 seconds West 170.00 feet; thence South 00 degrees 18 minutes 31 seconds East 92.09 feet; thence South 89 degrees 41 minutes 29 seconds West 162.59 feet; thence North 37 degrees 41 minutes 06 seconds West 9.40 feet; thence South 52 degrees 18 minutes 54 seconds West 170.00 feet; thence South 13 degrees 31 minutes 12 seconds East 58.61 feet; thence South 00 degrees 18 minutes 31 seconds East 68.79 feet; thence South 89 degrees 07 minutes 34 seconds West 617.75 feet to the place of beginning, containing 19.053 acres, more or less. Subject to all legal highways, rights-of-ways, easements, and restrictions of record.

The foregoing was acquired by deed dated April 7, 2004, and recorded May 19, 2004, as Instrument No. 2004-00034134 in the Office of the Recorder of Hamilton County, Indiana.

A part of the West Half of the Northeast Quarter of Section 36, Township 18 North, Range 5 East, Hamilton County, Indiana, more particularly described as follows:

Commencing at the Northwest corner of said Half Quarter Section; thence North 89 degrees 15 minutes 25 seconds East along the North line of said Half Quarter Section 898.06 feet to the POINT OF BEGINNING of this description; thence continuing North 89 degrees 15 minutes 25 seconds East along said North line 425.00 feet to the Northeast corner of said Half Quarter Section; thence South 00 degrees 17 minutes 26 seconds East along the East line of said Half Quarter Section 325.00 feet; thence South 89 degrees 15 minutes 25 seconds West parallel with the North line of said Half Quarter Section 425.00 feet; thence North 00 degrees 17 minutes 26 seconds West parallel with the East line of said Half Quarter Section 325.00 feet to the place of beginning, containing 3.170 acres, more or less.

The foregoing was acquired by deed dated November 26, 2004, and recorded December 22, 2004, as Instrument No. 2004-00000085681 in the Office of the Recorder of Hamilton County, Indiana.



A part of the Northeast Quarter of Section 36, Township 18 North, Range 5 East, Hamilton County, Indiana, being more particularly described as follows:

Commencing at the Southwest corner of said Quarter Section; thence North 00 degrees 10 minutes 29 seconds West along the West line of said Quarter Section 630.85 feet to the POINT OF BEGINNING of this description; thence North 89 degrees 03 minutes 05 seconds East parallel with the South line of said Quarter Section 405.98 feet; thence South 00 degrees 10 minutes 29 seconds East parallel with the West line of said Quarter Section 353.35 feet; thence North 89 degrees 03 minutes 05 seconds East parallel with the aforesaid South line 434.25 feet; thence South 00 degrees 10 minutes 29 seconds East parallel with the aforesaid West line 277.49 feet to the South line of said Quarter Section; thence North 89 degrees 03 minutes 05 seconds East along said South line 488.29 feet to the Southeast corner of the West half of said Northeast Quarter Section; thence North 00 degrees 17 minutes 26 seconds West along the East line of said Half Quarter Section 852.40 feet; thence South 89 degrees 41 minutes 29 seconds West 36.41 feet; thence North 00 degrees 18 minutes 31 seconds West 120.00 feet; thence South 89 degrees 41 minutes 29 seconds West 213.00 feet; thence North 00 degrees 18 minutes 31 seconds West 3.53 feet; thence South 89 degrees 41 minutes 29 seconds West 170.00 feet; thence South 00 degrees 18 minutes 31 seconds East 92.09 feet; thence South 89 degrees 41 minutes 29 seconds West 162.59 feet; thence North 37 degrees 41 minutes 06 seconds West 9.40 feet; thence South 52 degrees 18 minutes 54 seconds West 170.00 feet; thence South 13 degrees 31 minutes 12 seconds East 58.67 feet; thence South 00 degrees 18 minutes 31 seconds East 68.79 feet; thence South 89 degrees 07 minutes 34 seconds West 617.75 feet to the West line of said Quarter Section; thence South 00 degrees 10 minutes 29 seconds East along said West line 40.16 feet to the place of beginning, containing 16.000 acres, more or less, subject to all legal highways, rights-of-ways, easements, and restrictions of record.

The foregoing was acquired by deed dated March 31, 2005, and recorded April 18, 2005, as Instrument No. 2005-00022774 in the Office of the Recorder of Hamilton County, Indiana.

INDS01 DEW 815576v1