

DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS

WHISPERING CREEK HOMEOWNERS ASSOCIATION, INC.

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**DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS**

WHISPERING CREEK HOMEOWNERS ASSOCIATION, INC.

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS ("this Declaration") is made this 16 day of May, 2006 by HD ★ **WHISPERING CREEK, L.L.C.**, a Maryland limited liability company (the "Declarant").

RECITALS

A. The Declarant is the owner of certain real property, including single-family residential building lots located within the subdivision known as "Whispering Creek," in the New Market (9th) Election District of Frederick County, Maryland (the "County"), which lots and other property to be developed for the benefit of the lots, are more particularly described on Exhibit A to this Declaration (the "Land").

B. It is the intention of the Declarant to develop the Land and any additional property hereinafter subjected to this Declaration, as a single-family residential community, and to insure therefor a uniform plan of development for such property.

C. The Declarant desires to reserve the right, but not the obligation, to subject additional land together with the appurtenances thereto to the lieu, operation and effect of this Declaration.

DECLARATION

NOW, THEREFORE, the Declarant does hereby declare that the Land described in Exhibit A, and any future additions thereto, shall be held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied and improved subject to and in accordance with the provisions of this Declaration, and the easements, restrictions and covenants contained herein, which shall run with the title to the Land and any future additions thereto, and be binding on all parties having any right, title or interest in such property, their heirs, personal representatives, successors and assigns.

**ARTICLE I.
DEFINITIONS**

1. Definitions.

As used in this Declaration:

(a) "**Association**" means Whispering Creek Homeowners Association, Inc., a non-profit, non-stock corporation organized and existing under the laws of the State of Maryland for the purpose of exercising the powers and duties set forth herein, and its successors and assigns;

(b) "**Builder**" means each person or entity who acquires a Lot (defined below) not to occupy the Lot as a residence, but in the ordinary course of its business, to construct a residential dwelling on the Lot and to sell or lease the dwelling to a third party who intends to occupy the dwelling as such person's residence;

(c) "**Common Area**" means all those areas of the Property and the improvements thereon, which are intended to be devoted to the common use and enjoyment of the Owners of

the Lots, including any open spaces, storm water management facilities, entrance monuments or signs, parking courts, fencing, landscape buffers, recreational facilities, forest conservation areas, non-tidal wetlands, landscape buffer areas, steep slopes, street trees, sidewalks within common areas or lots along roadways, and any other real property or improvements owned by the Association or in which the Association acquires a right of use or easement for the benefit of the Association and its Members, saving and excepting, however, so much of the Property conveyed or to be conveyed to the County, provided, however, that the Association shall maintain any Property or the improvements thereon shown on the plats as to be conveyed or dedicated to public use until such time as the County, or any agency or unit thereof, shall accept the dedication or conveyance of such Property. The proposed common areas for this community include the following parcels: H. O. A. Parcel A (\pm 2,201,596 square feet or approximately 50.54168 acres); H. O. A. Parcel B (\pm 35,516 square feet or approximately 0.81534 acres); and H. O. A. Parcel C (\pm 29,378 square feet or approximately 0.67442 acres);

(d) **"Declarant"** means HD Whispering Creek, L.L.C., a Maryland limited liability company, and its successors or assigns, to whom such entity expressly conveys or transfers by a written instrument recorded among the Land Records (i) any or all of its right, title and interest under this Declaration as "Declarant," or any amendment or modification hereof, or (ii) all of its right, title and interest in the Property as an entirety, without reservation of any kind;

(e) **"Lot"** or **"Lots"** means any residential building lot now or hereafter on the Property, together with all buildings and improvements thereon, including the Single-Family Lots and the Townhouse Lots, but excluding the Common Area and any property shown on the Plats as dedicated or to be dedicated to the County;

(f) **"Member"** or **"Members"** means those persons entitled to membership in the Association as provided in Article V of this Declaration;

(g) **"Mortgage"** means any mortgage or deed of trust encumbering any Lot or any Common Area, and any other security interest existing by virtue of any other form of security instrument or arrangement, provided that such instrument has been recorded among the Land Records. **"First Mortgage"** shall mean a mortgage with priority over all other Mortgages on the same Lot or portion of the Property;

(h) **"Mortgagee"** means the person secured by, or the beneficiary or holder of, a Mortgage. **"First Mortgagee"** means the person secured by, or the beneficiary or holder of, a First Mortgage;

(i) **"Owner"** means the person or legal entity, or the combination thereof, including contract sellers, holding the record title to a Lot. If more than one person or legal entity, or any combination thereof, holds the record title to any Lot, all of the them shall be deemed a single Owner in the aggregate and shall be a single Member of the Association by virtue of their ownership of such Lot. The term "Owner," however, shall not mean any contract purchaser, or the owner of any redeemable ground rent issuing out of any Lot, the Trustees or any Mortgagee of a Mortgage intended solely for the purpose of securing performance of an obligation or payment of debt;

(j) **"Plats"** means the subdivision plats for the Property referenced in Exhibit A, and any plats recorded among the Land Records of the County in substitution therefor or amendment thereof, and any plats hereafter recorded among the Land Records of the County of any

additional land that may hereafter expressly be made subject to this Declaration as provided by Article II;

(k) "Property" means the Land as described in Exhibit A and any additional land that may hereafter expressly be made subject to this Declaration as provided by Article II, together with all Lots, Common Area and improvements thereon. The Property shall not include any property designated on the Plats to be dedicated or conveyed to the County, or any agency or unit thereof, and such property shall not be subject to the provisions of this Declaration;

(l) "Single-Family Lot" or "Single-Family Lots" means Lots 1 through 16, inclusive, and Lots 47 through 58 inclusive, as shown on the Plats, and any other Lot now or hereafter located within the Property and improved or to be improved with a single-family detached dwelling;

(m) "Structure" means all improvements, structures and appurtenances, the placement of which upon any Lot or the improvements thereon may affect the appearance of the Lot or the exterior appearance of the improvements on the Lot including, by way of illustration and not limitation, any building, trailer, garage, porch, shed, mailbox, greenhouse, bathhouse, gazebo, coop or cage, covered or uncovered patio, deck, awning, heating or air conditioning equipment, solar panels, swimming pool, outdoor play equipment, including a basketball hoop, clothesline, radio, television or other antenna or "dish," exterior lighting, fence, sign, curb, paving, wall, roadway, walkway, planting, landscaping where the trees or shrubbery are intended to grow to a height in excess of four (4) feet, ornamental statute, signboard or temporary or permanent living quarters, and any change or alteration of any previously approved Structure, including any change of exterior appearance, color or texture, and including the removal of existing trees. "Structure" shall also mean (i) any excavation, fill, ditch, diversion, dam or other device which affects or alters the natural flow of surface waters or any waters in any natural or artificial stream, wash or drainage channel, from, upon or across the Property or any Lot; and (ii) any change in the grade of the Property or any Lot of more than six (6) inches from that existing at the time of conveyance of any Lot by the Declarant to another Owner; and

(n) "Townhouse Lot" or "Townhouse Lots" means Lots 17 through 46, inclusive, as shown on the Plats, or any other Lot now or hereafter located within the Property and improved or to be improved with a single-family attached or semi-detached townhouse dwelling.

2. Other Capitalized Terms.

All other capitalized terms used in this Declaration and not otherwise defined in this Article I shall have the meanings given to them elsewhere in this Declaration.

ARTICLE II.

PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO

1. Existing Property.

The Land described on Exhibit A is and shall be transferred, held, sold, conveyed and occupied subject to this Declaration.

2. **Additions to Existing Property.**

(a) **Description of Additional Land.** The Declarant shall have the right, but not the obligation, without the consent of any other Owner, for a period of seven (7) years from the date of this Declaration, to bring additional property within the scheme of this Declaration by subjecting to the operation and effect of this Declaration, and thereby adding to the Property any land adjoining the Property which is then subject to the Declaration, together with the improvements thereon and appurtenances thereto. The general plan of development is shown on the Plats, but the plan shall not bind the Declarant to make the proposed additions, or to adhere to the plan in any subsequent development of the Property shown thereon.

(b) **Other Additions.** Upon approval in writing of the Association by two-thirds (2/3) of the votes of each class of Members of the Association, and including the Declarant if the Declarant still retains the right to annex additional property to the Property subject to this Declaration, any person who desires to add additional property adjoining the Property to the Property subject to this Declaration, may file of record a supplementary declaration as described in subsection (c) hereof.

(c) **Supplemental Declaration.** Any addition to the Property shall be accomplished by filing a supplement to this Declaration in the Land Records which describes the property being annexed and which recites that the scheme of this Declaration shall extend to such property which shall thereupon become part of the Property. Upon the filing of any such supplemental declaration, Owners of Lots situated on the annexed property shall be subject to the same obligations and entitled to the same rights as the Owners of Lots in the Property. Any such supplementary declaration may contain such complementary additions and modifications to the Declaration as may be necessary to reflect the different character, if any, of such property, not inconsistent with the scheme of this Declaration.

3. **Easement Rights.**

Any property subjected to this Declaration shall, upon such addition, be subject to all of the easements reserved in this Declaration and such additional easements as may be set forth in the supplement to the Declaration or on the Plats covering such property.

4. **Deannexation.**

For so long as the Declarant owns any Lot, the Declarant may deannex any property (excluding, however, any Common Area conveyed to the Association by the Declarant) from the Property for a period of seven (7) years from the date of this Declaration for the purpose of withdrawing property previously submitted in error, as necessitated by changes in the development plan for the Property, or for any other reason whatsoever. Such deannexed property shall no longer be subject to the covenants and restrictions of this Declaration except for any easements, rights, reservations, exemptions, power or privileges reserved to the Declarant pursuant to this Declaration which burden the deannexed property for the benefit of the remaining Property. Such deannexation shall be made by recording a supplementary declaration among the Land Records, withdrawing the effect of the covenants and restrictions of this Declaration from the deannexed property. Such deannexed property may be utilized by the Declarant, or any successor, assign or transferee thereof, for any lawful purpose or use.

5. **Amendment.**

This Article shall not be amended without the prior written consent of the Declarant if the Declarant owns any Lot within the Property or any property adjoining the Property.

**ARTICLE III.
ARCHITECTURAL REVIEW COMMITTEE**

1. **Architectural Review Committee.**

(a) The Declarant shall appoint an Architectural Review Committee (the "Architectural Review Committee"), which shall have all the rights, powers and duties granted to it pursuant to this Declaration. In the absence of the appointment of an Architectural Review Committee, the Declarant shall have and shall exercise the rights, powers and duties of the members of the Architectural Review Committee.

(b) The Architectural Review Committee shall consist of not less than three (3) or more than seven (7) persons or entities, which members shall be appointed from time to time by the Declarant, need not be Members of the Association, and may be replaced at any time for any reason with other persons or entities selected by the Declarant. The members of the Architectural Review Committee appointed from time to time by the Declarant shall serve until the last Lot within the Property is conveyed to an Owner other than the Declarant or any Builder, and thereafter until his or her successor shall be duly appointed. At any time after the last Lot within the Property is conveyed to an Owner other than the Declarant or any Builder, a majority of the Board of Directors of the Association shall have the power, by a duly executed instrument filed among the minutes of the Association, to appoint new members to the Architectural Review Committee, provided that the Architectural Review Committee shall at all times be comprised of a minimum of three (3) persons. In the event of the death or resignation of any member of the Architectural Review Committee during the terms of the members appointed by the Declarant, the Declarant shall have the sole right to appoint a successor by designating the name and address of such successor in a document filed among the minutes of the Association. The Declarant may relinquish to the Board of Directors of the Association its rights to designate any successor member of the Architectural Review Committee, in the sole discretion of the Declarant.

2. **Architectural Review.**

(a) Except as otherwise provided in this Declaration or in any rules or regulations adopted by the Board of Directors of the Association, no Structure shall be placed or constructed on any Lot, nor shall any addition (including awnings, screen doors and screens), change or alteration (including any change in exterior paint color or materials or other exterior appearance thereof, but excluding repainting or retreating with the same color or materials and seasonal decorations) (collectively, "Alterations"), be made to the exterior of any Structure or the contour of any Lot until plans and specifications, showing the nature, dimensions (including elevations and roof pitch or change in the grade of the Lot), material, color and location (including proposed front, rear and side setbacks) of the proposed Structure or Alterations, together with the proposed construction schedule, a designation of the party or parties to perform the work, photographs of the existing improvements or area to be improved, and other information requested by the Architectural Review Committee, have been submitted to and approved in

writing by the Architectural Review Committee, and until all necessary permits and other governmental or quasi-governmental approvals shall have been obtained. The approval of the Architectural Review Committee of any Structure or Alterations shall in no way be deemed to relieve the Owner of any Lot from its obligation to obtain any and all governmental permits and approvals necessary for such Structure or Alterations, including but not limited to grading, building and occupancy permits.

(b) All questions before the Architectural Review Committee shall be decided by a majority of the Members of the Architectural Review Committee. Any Member who is aggrieved by any action or forbearance from action by the Architectural Review Committee may appeal the decision of the Architectural Review Committee to the Board of Directors and, upon the request of such Member, shall be entitled to a hearing before the Board of Directors of the Association. Such appeal shall be made by the Member in writing to the Board of Directors within fifteen (15) days after the date of the notice that such plans and specifications have been rejected by the Architectural Review Committee. The appeal hearing shall be held at the next regularly scheduled board meeting, but in any event not less than sixty (60) days after the date the notice of the appeal is received in writing by the Board of Directors. The decision of the Board of Directors shall be final and unappealable.

(c) The Architectural Review Committee shall have the right to disapprove any plans and specifications submitted for its review because of any of the following:

(i) failure of the plans or specifications to comply with any provision of this Declaration; applicable law or other guidelines adopted by the Architectural Review Committee;

(ii) failure to include information in the plans and specifications required by this Declaration, or as may have been reasonably requested by the Architectural Review Committee;

(iii) objections to the exterior design, appearance or materials of any proposed Structure or Alterations;

(iv) incompatibility of any proposed Structure or Alterations with the existing Structures on the Lot or other Lots or with the general plan of improvement of the Property;

(v) objections to the location of any proposed Structure or Alterations upon any Lot or with reference to other Lots;

(vi) objections to the grading plan; or

(vii) objections to the color scheme, finish, proportions, style, architecture, workmanship or appearance of any proposed Structure or Alterations.

(d) Written requests for approval shall be submitted by first class mail, or in person, in which case a written receipt shall be obtained, to the "Whispering Creek Homeowners Association Architectural Review Committee," c/o Pulte Home Corporation, Suite K, 1501 South Edgewood Street, Baltimore, Maryland 21227, or such other place designated by the Declarant, the Board of Directors or the Architectural Review Committee in a notice to the Members. The approval request shall include one (1) set of the required plans and specifications, photographs of the existing improvements or area to be improved, and such other information as may be requested by the Architectural Review Committee. The Architectural Review Committee may, in its discretion, establish a reasonable review fee or a schedule of review fees

based on the nature of the request to cover expenses, not to exceed One Hundred Dollars (\$100.00) in the aggregate for each submittal, which sum may be increased from time to time in the reasonable discretion of the Board of Directors. All funds net of out-of-pocket expenses shall be paid over to the Association. In the event the Architectural Review Committee fails to approve or disapprove any plans within sixty (60) days after receipt of the plans and the review fee, if any, such plans shall be deemed approved. In any case where the Architectural Review Committee disapproves any plans and specifications or approves the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. Approval of any particular plans and specifications shall not be construed as a waiver of the right of the Architectural Review Committee to disapprove such plans and specifications, or any elements or features thereof, in the event such plans and specifications are subsequently submitted for use in any other instance.

(e) Construction of any Structure or Alterations pursuant to the provisions of this Article shall be commenced within six (6) months following the date of approval and shall be completed within twelve (12) months from the start of construction, or within such other shorter or longer period as the Architectural Review Committee shall specify in its approval. If construction is not commenced or completed within such period, the approval shall lapse and compliance with the provisions of this Article shall again be required. New approvals shall be obtained within sixty (60) days after the expiration of the approved construction period, otherwise any Structure shall be promptly returned to its original condition. All Structures and Alterations shall be constructed and thereafter maintained in strict conformity with the approved plans and specifications and all applicable laws (*i.e.*, a building permit and zoning variance shall be obtained prior to commencing any work requiring one). Upon completion of construction of any Structure or Alteration in accordance with the provisions hereof, the Architectural Review Committee, upon request of the applicant, shall issue a Certificate of Compliance identifying such Structure and the Lot on which the Structure is placed, stating that the Structure has been approved and completed pursuant to the terms hereof. Preparation and recording of such Certificate shall be at the expense of the applicant. Any Certificate of Compliance issued pursuant hereto shall be *prima facie* evidence of the facts therein stated, and as to any title insurer, such Certificate shall be conclusive evidence that all Structures on the Lot noted in such Certificate comply with the provisions hereof; provided, however, neither the Declarant, the Board of Directors, the Architectural Review Committee nor the Association shall have any liability whatsoever for any loss, cost, claim, damage, liability or expense which any Owner may suffer or incur by reason of (i) the rejection of any plans and specifications submitted to the Architectural Review Committee, (ii) any defects in any plans and specifications revised or approved by the Architectural Review Committee, (iii) any structural or other defects in any work done pursuant to such plans and specifications, or (iv) the failure of any Structure or Alteration to comply with applicable laws.

(f) If construction of any Structure or Alteration is undertaken other than in accordance with the provisions of this Declaration and applicable law, such action shall be deemed to be in violation of the provisions of this Declaration and, in such event, within the time period set forth in a notice from the Declarant, if it is still a Class B Member, the Architectural Review Committee or the Board of Directors, but in any event not less than thirty (30) days, or such shorter period as is expressly provided elsewhere in this Declaration, or such lesser written or oral notice (followed by written confirmation) as may be reasonable in an emergency situation

which presents the threat of imminent danger or harm to persons or property, such Structure or Alteration shall be removed or restored to its condition prior to such action, and use thereof shall cease, so as to terminate such violation. If the Owner of the Lot on which such Structure or Alteration is situated has not terminated the violation within the stated cure period, any agent of the Association may enter upon such Lot and take such steps as are reasonable to terminate such violation and no trespass or other wrongful act by reason of such entry shall be deemed to have been committed; provided, however, that the Association may not alter or demolish any Structure without first obtaining a court order. The Association, through the Board of Directors, may also assess a fine in an amount not to exceed One Hundred Dollars (\$100.00), which amount may be increased from time to time in the reasonable discretion of the Board of Directors of the Association, against any Owner who constructs any Structure or Alteration without having applied for or without obtaining the approval of the Architectural Review Committee, which fine, if not paid within thirty (30) days of demand, shall be subject to enforcement in the same manner as assessments under Article IX. In addition, the Declarant, if it is still a Class B Member, or the Board of Directors, may exercise all legal and equitable remedies to prevent or remove any unauthorized Structure or Alteration or any portion thereof. The Owner of the Lot on which the unauthorized Structure or Alteration is situated shall be personally liable to the Declarant, or the Association, as applicable, for any costs incurred in enforcing the provisions of this Declaration, including but not limited to court costs and attorneys' fees, to the same extent as such Owner is liable for an Assessment levied against such Owner's Lot, and, upon the failure of the Owner to pay such costs within thirty (30) days after such Owner's receipt of written demand for payment from the Declarant or the Association, the Declarant or the Association may establish a lien upon such Owner's Lot in accordance with and subject to the provisions of this Declaration applicable to an assessment lien.

3. Exemptions.

Any Structures, Alterations or other improvements erected or installed on the Property or any Lot by the Declarant or any Builder shall not require the approval of the Architectural Review Committee. The Declarant intends that the provisions of this Article requiring the approval of the Architectural Review Committee shall not apply to a Lot until record title to the Lot is first acquired by a person other than the Declarant or any Builder. The Declarant shall not, by virtue of this Declaration, have any fiduciary or other duty to the Association, or to any Owner, Mortgagee or any other person, including but not limited to any duty to require that any Structure or dwelling be similar in size, architectural style or cost to those existing or planned for any other Lot.

4. Right of Entry.

The Declarant, the Architectural Review Committee, the Board of Directors and the Association shall have an easement to enter any portion of the Property or any Lot for the performance of their respective duties under this Article and the other provisions of this Declaration; provided such easement shall be exercised during daylight hours and shall not permit entry within the interior portion of any dwelling located on any Lot, but (by way of illustration only and not in limitation of the rights granted herein) shall permit the entry into fenced, or other enclosed areas of the Lot or the Property, and no trespass or other wrongful act by reason of such entry shall be deemed to have been committed. The Declarant, the Architectural Review Committee, the Board of Directors or the Association, as applicable, shall

restore any damage caused by such entry; provided, however, to the extent the exercise of such right of entry is for the purpose of removing or restoring any violation of this Declaration, such removal or restoration shall not be deemed to constitute "damage caused by such entry."

ARTICLE IV.
COVENANTS AND RESTRICTIONS

1. Land Use.

(a) All Lots shall be used for private, single family residential purposes only and no dwelling of any kind whatsoever shall be erected, altered or maintained thereon except one private dwelling house for the sole and exclusive use of the Owner or occupant of the Lot. Except as otherwise expressly provided in this Declaration, no industry, business, trade or profession of any kind, whether or not for profit, including but not limited to retail or wholesale shops, other kinds of stores, factories, saloons, beauty parlors, doctors office or other office, professional or otherwise, hospital, asylum or institution of like or similar nature, or charitable institution, shall be conducted, maintained or permitted on any part of the Property without the prior written consent of the Board of Directors. None of the Lots shall be used at any time for apartments or other types of multiple housing units. Garages may not be converted to additional living space.

(b) Nothing herein shall prevent the use of part of a Lot as a right of way for use by other Lots or for the placement of street signs, sidewalks, street trees or entrance monuments or signs in easement areas now or hereafter designated for such purposes.

(c) Any provision of this Declaration to the contrary notwithstanding, the Declarant and any Builder shall have the right to use their respective Lots and any improvements thereon as sales, rental or management offices, as model homes, and for the installation of one or more construction or sales trailers, and for the storage of construction materials and equipment. Any Builder constructing improvements within the Common Area shall have the right to store construction materials and equipment in such Common Area. The Declarant and any Builder shall also have the right to erect upon their respective Lots and, with the consent of the Declarant, upon the Common Area, such advertising and directional signs, flagpoles and other improvements and equipment as may be reasonable for the development, marketing and management of the Lots.

2. Setbacks.

The minimum building restriction lines described in this Declaration and shown on the Plats are hereby declared to represent zoning requirements of the County, and are not intended to create benefits or burdens on the title to any individual Lot. Amendments to any minimum building setback lines as shown on the Plats shall be obtained by an Owner seeking a zoning variance in accordance with the terms of the zoning ordinance in effect at the time of the filing of a petition for a variance.

3. Swimming Pools; Hot Tubs.

Swimming pools and hot tubs shall be permitted only in rear yards of Single Family Lots. Swimming pools shall be completely "in ground" and fenced in accordance with this Declaration and all applicable laws. Hot tubs shall be screened from view. Construction and maintenance

shall be in accordance with all applicable laws. Construction plans and specifications for built-in swimming pools and hot tubs must be approved in advance by the Architectural Review Committee. No above-ground or decked swimming pool of any kind shall be permitted on any Lot. Notwithstanding the foregoing, portable children's pools constructed of plastic material may be maintained on any Lot during the months of May through September of each year.

4. **Driveways.**

All driveways shall be maintained in good condition and in accordance with all applicable laws. Driveways shall be paved and or repaved with the same material as the original construction unless another material is approved in advance by the Architectural Review Committee. Gravel surfaces are prohibited. Every driveway shall provide positive drainage away from the dwelling and garage.

5. **Temporary Structures.**

No temporary Structure, including but not limited to a trailer, shack or other outbuilding, shall be permitted to be erected on any Lot. The foregoing shall not be deemed to prohibit reasonably-sized garden sheds, greenhouses or other similar accessory Structures approved in advance by the Architectural Review Committee.

6. **Clotheslines; Flagpoles.**

No temporary or permanent exterior clothes dryer, clothes pole or similar equipment shall be maintained on any Lot whether or not it forms a part of any Structure or is detachable therefrom and no drying or airing of any clothing shall be permitted outdoors. Freestanding flagpoles, other than in connection with the initial sale or marketing of Lots, are prohibited. One (1) appropriately-sized flagpole may be mounted on the front of a dwelling.

7. **Traffic View.**

No Structure, landscaping, shrubbery or any other obstruction shall be placed on any Lot so as to block the clear view of traffic on any streets.

8. **Yards.**

Except as otherwise expressly permitted in this Declaration, the front and side yards of each Lot shall be kept only as a lawn for ornamental or decorative planting of grass, trees, shrubbery, and flowers. Except for seasonal decorations, lawn statues and similar ornaments are expressly prohibited in front and side yards. No equipment or machinery, including but not limited to equipment or machinery for use in connection with the maintenance of a dwelling, such as lawnmowers, wheelbarrows and similar devices, shall be stored in the front or side yard of any Lot.

9. **Fences and Walls.**

Fences and walls or other similar enclosures may be built on any Lot in rear or side yards only, and only with the prior written approval of the Architectural Review Committee; provided, however, that such fences and walls as may be installed or constructed by the Declarant or any Builder simultaneously with the initial construction of a dwelling on a Lot shall not require Architectural Review Committee approval. Fencing for Townhouse Lots shall be six-foot board-on-board wood fencing stained to coordinate with the dwelling or to weather to a natural grey

tone, and shall match the fencing installed initially by the Declarant or any Builder. Fencing for Single-Family Lots shall not exceed forty-eight (48) inches in height unless a greater height is required by law, and shall be cedar, stained or painted to coordinate with the dwelling or to weather to a natural grey tone. Fencing for Single-Family Lots shall (except for approved privacy fences) be of such open design that it does not obstruct the view of the dwelling from any Lot or roadway. In addition to or in lieu of the fencing described above, the Architectural Review Committee may designate one or more fence designs as the "standard designs" and may require that all fences conform to these standards. All fencing shall comply with the height, setback and other requirements of applicable law. Chain link and chicken wire fencing is expressly prohibited; provided, however, that vinyl coated green wire mesh fencing shall be permitted along the interior of an approved fence on Single-Family Lots only. All gates must open inward onto a Lot and shall not open onto another Lot or the Common Area. The foregoing shall not prohibit the growth of an ornamental hedge fence, which shall be kept neatly trimmed, and shall not exceed three (3) feet in height in front yards, or side yards of corner lots.

10. Repair and Maintenance of Lots.

Owners shall maintain their Lots and the exteriors of their dwellings in good order and repair, including but not limited to the seeding, watering and mowing of all lawns and yards, keeping all sidewalks (other than those maintained by the Association as provided in Article VII, Section 4), if any, neat, clean and in good repair, and free of ice and snow, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all Structures on the Lot, including, without limitation, roofs, gutters and downspouts, all in a manner and with such frequency as is consistent with good property management and maintenance. Dead trees, shrubs and unsightly landscaping shall be removed promptly.

11. Nuisances.

No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be placed upon a Lot which may become an annoyance or nuisance to the neighborhood or any adjoining Owners. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such properly maintained and operated devices as may be used exclusively for security purposes, shall be installed upon or audible from the exterior of any Structure. No snowmobiles, go-carts, motorbikes, trail bikes, loud-engine recreational vehicles or skateboard ramps shall be run or operated upon any Lot, the Common Area or any roadways serving the Property.

12. Animals.

No animals of any kind, including pigeons, or other non-domestic or exotic animals, shall be raised, bred or kept on any Lot, except that dogs, cats or any household pets, not to exceed four (4) in the aggregate, may be kept, provided they are not kept, bred or maintained for any commercial purpose, and provided they do not become a nuisance to the neighborhood or to any other Owners. Animals must be restrained with a lead at all times and cannot be chained or left to roam unattended on the Property or any Lot (other than within a fenced area on a Lot). Pets shall be registered, licensed and inoculated as required by law. Owners shall be responsible for the immediate clean-up and removal of their pet's waste on any of the Property including their own Lot. Puppies and kittens in excess of the numbers set forth above may be kept until they reach the age of twelve (12) weeks. The Board of Directors or, upon resolution of the Board of

Directors, the Architectural Review Committee, shall have the authority, after hearing, to determine whether a particular pet is a nuisance or a source of annoyance to other Members, and such determination shall be conclusive.

13. Vehicles.

No commercial vehicles with a rated cargo capacity exceeding 3/4 ton, trailers, boats (other than in areas specifically designated therefor), buses, campers, recreational vehicles, limousines, hearses, ambulances, multi-purpose passenger vehicles designed to carry ten (10) or more persons, tractors, junked, unlicensed or inoperable passenger vehicles or any other vehicle, other than licensed private passenger vehicles in regular operation, shall be parked regularly on any roads within the Property or on any Lot unless garaged (except for such machinery and equipment as may be reasonable, customary or usual in connection with the maintenance of any dwelling or the Common Area) nor (except for bona fide emergencies) shall the repair or extraordinary maintenance of vehicles be carried out anywhere on the Property. For the purposes hereof, a vehicle shall be deemed inoperable unless it is licensed, contains all parts and equipment, including properly inflated tires, and is in such good condition and repair as may be necessary to drive the vehicle on a public roadway. The foregoing restriction shall not prohibit temporary parking for washing and polishing of vehicles or for a visiting motor home or house trailer, which shall be permitted to remain for no more than two (2) consecutive weeks in any six (6) month period. No carports shall be permitted to be constructed on any Lot. No commercial vehicles shall remain parked on any street or Lot longer than is necessary to perform the business function of such vehicle in the area. Notwithstanding the foregoing, the Declarant, any Builder and their respective agents and designees, may maintain trailers and commercial vehicles on the Property in connection with the development, sale, marketing and management of the Property. These restrictions are intended to apply to those portions of the Property which may hereafter be dedicated as public streets or roads.

14. Lighting and Wiring; Antenna.

(a) Exterior lighting on Lots shall be directed downward and shielded to minimize the casting of light from such fixture onto neighboring Lots. All wiring on each Lot shall be underground.

(b) Except as specifically permitted by applicable governmental regulations, no exterior antennas of any type, including, but not limited to, satellite dishes for reception or transmission, may be erected or maintained on any Lot; provided, however, that satellite dishes not in excess of one (1) meter in diameter are permitted. The Board of Directors may impose reasonable rules and regulations regarding the location and screening of any such satellite dish, subject to applicable governmental regulations. Antennas situated entirely within a dwelling and not visible from the exterior of the dwelling are permitted.

15. Subdivision.

No Lot shall be divided or subdivided and no portion of any Lot shall be transferred or conveyed for any purpose; provided, however, that this shall not prohibit transfers of parts of Lots between adjoining Lot Owners where the transfer is for the purpose of adjusting the boundary between such Lots. The provisions of this subsection shall not apply to the Declarant and shall not be construed to prohibit the granting of any easement or right of way to any person for any purpose.

16. Signage.

(a) Except for entrance signs, directional signs, signs for traffic control or safety, community "theme areas," or "For Sale" or "For Rent" signs (not larger than six (6) square feet), no signs or advertising devices shall be erected, posted or displayed upon, in or about any Lot or Structure without the approval of the Architectural Review Committee. The provisions and limitations of this subsection shall not apply to any signs used by the Declarant or any Builder (which signage shall be approved in advance by Declarant) in connection with the construction, development, sale or marketing of the Property, or to any Mortgagee of any Lot which comes into possession of the Lot by reason of any proceeding, arrangement, assignment or deed in lieu of foreclosure.

(b) Notwithstanding the prohibitions on signage contained in clause (a) above, an Owner may post or display on its Lot (but not in any Common Area), one or more signs on behalf of a candidate for public office or a slate of candidates for public office, or a sign that advertises the support or defeat of any question submitted to the voters in accordance with Article 33 of the Maryland Annotated Code, for a period of time not to exceed thirty (30) days before and seven (7) days after the primary election, general election or vote on the proposition, or such longer or shorter period as may be specified by applicable Federal, State or local law. The Board of Directors may adopt any other restriction with respect to such signage consistent with applicable Federal, State or local law. The foregoing provisions of this Section are intended to be a restatement of the provisions of Section 11B-111.2 of the Real Property Article of the Maryland Annotated Code (the "Code"), and any future amendments or modifications thereto shall be deemed incorporated by reference herein as a part hereof.

17. Lease Agreements.

No Owner may lease such Owner's Lot or the improvements thereon for motel, hotel or transient purposes. All leases shall be in writing, and shall state that the lease agreement shall be subject to this Declaration and that the tenant shall be directly liable to the Association, and shall be subject to enforcement actions hereunder and pursuant to such Lease (although the Association shall have no obligation to bring any such enforcement action), for any breach or violation by the tenant of the provisions of this Declaration. The Owner leasing his Lot or the improvements thereon shall provide a true copy of the lease and all amendments thereof to the Board of Directors promptly after execution thereof. The minimum term of all leases shall be one (1) year. Owners who do not reside on their Lot shall provide current addresses and phone numbers to the Association.

18. Trash and Other Materials.

No lumber, metals, bulk materials, refuse or trash shall be kept, stored or allowed to accumulate on any Lot, except (i) building material during the course of construction of any approved Structure, and (ii) firewood, in rear yards only, which shall be cut and neatly stored at least twelve (12) inches away from any wooden Structure. No burning of trash shall be permitted on any Lot or the Common Area. Trash shall be disposed of in metal or plastic containers covered by a lid and shall be maintained in a sanitary condition. If trash or other refuse is to be disposed of by being picked up and carried away on a regular basis, closed or covered containers only may be placed in the open on any day that a pick-up is to be made at such place on the Lot as to provide access to persons making such pick-up. The foregoing

provisions regarding trash disposal shall not apply to the disposal of recyclables in accordance with local governmental regulations. At all other times trash and recycling containers shall be stored so as not to be visible from the roadway, other Lots or any Common Area.

19. Non-Interference With Utilities.

No Structure, fence, planting or other improvement shall be placed or permitted to remain upon any Lot which may damage or interfere with any easement for the installation or maintenance of utilities, or in any private or public access easement, utility easement or buffer area (except as noted on the Plats or permitted by applicable authorities), or which may unreasonably change, obstruct or retard direction or flow of any drainage channels. Fences may be constructed in easement areas only with the prior written consent of the County.

20. No Hunting.

No hunting or discharge of firearms or weapons of any nature whatsoever shall be permitted on any portion of the Property or any Lot.

21. No Excavation.

No excavation shall be made on any Lot except for the purpose of building thereon at the time when the initial building operations are commenced, or thereafter, upon the approval of the Architectural Review Committee and all applicable governmental authorities, and no earth or sand shall be removed from any Lot except as a part of such operations.

22. Tree Removal.

The prior approval of the Architectural Review Committee shall be required for the removal of any live trees four inch (4") caliper or larger; provided, however, that no live trees may be removed from any forest conservation easement or buffer area designated on the Plats except in accordance with any recorded easement, applicable laws, the terms of any site development or subdivision plat approval, or of any other permit or approval in connection with the development of the Property. All existing or planted forest, woodland and trees shall be retained in accordance with the final development plans on file with the County. Dead trees or scrub trees (weed type trees with a trunk less than one inch (1") in diameter) may be removed without Architectural Review Committee approval from any Lot, except within any forest conservation easement area.

23. Sheds; Accessory Structures.

Sheds or other similar accessory structures, such as greenhouses, shall be permitted only with the approval of the Architectural Review Committee; provided that such Structures shall not exceed one (1) story in height. Sheds shall be of the same color and material as the exterior of the dwelling on the Lot and shall be sized proportionately to be in keeping with the size of the dwelling. No metal shed of any kind shall be located on any Lot.

24. Chimneys and Flues.

All chimneys and flues shall consist of masonry or another material compatible with the style and color of the dwelling of which they are a part (and may include prefabricated fireplaces and chimneys).

25. Play Equipment.

All outdoor play equipment shall consist of cedar, redwood or pressure-treated wood materials, or hi-grade plastic materials, shall be situated in rear yards only, and shall be placed in order to minimize its visibility from neighboring Lots. The Architectural Review Committee may, in its sole and absolute discretion, consider other materials for play equipment. Children's play and similar equipment shall not be allowed to remain overnight within any front yard of any Lot or at any time within the Common Area. No play equipment, including but not limited to basketball backboards, basketball hoops or other equipment associated with either adult or juvenile recreation, shall be attached in any manner to the front or sides of any dwelling. Basketball backboards may be affixed to permanent or semi-permanent free-standing poles with the following stipulations: (i) poles must be located at least fifteen (15) feet from the front lot line, (ii) poles must be painted a solid earth tone, (iii) no court markings may be painted, drawn or otherwise affixed to the playing surface, and (iv) the Owner of the Lot shall obtain a signed acknowledgment from the adjoining Lot Owners stating that there are no objections to the installation of the equipment.

26. Grading; Drainage.

No Lots shall be used or maintained so as to cause excessive erosion of soil or sediment. During the grading and construction of any improvements upon any Lot, adequate arrangements shall be made to insure that no erosion of soil or sediment shall take place. Drainage from roof areas shall be channeled to downspouts and appropriately discharged.

27. Decks and Porches; Awnings; Storm Doors.

Decks, patios and screened porches may be built on any Lot only with the approval of the Architectural Review Committee and upon obtaining a valid building permit. Decks and porches shall not extend forward of the rear foundation wall into any front or side yard, shall not impede surface drainage and shall comply in all respects with the height, setback and other requirements of the appropriate authorities. Decks and porches shall be decorative in character and shall be constructed of pressure-treated lumber or long-life cedar, redwood, Trex or other similar material. Decks and porches may be painted or stained to match the color of the dwelling. Awnings (other than as part of an approved screened porch) are discouraged and must be approved in advance by the Architectural Review Committee on a case-by-case basis. Patios shall be constructed of the same materials as decks or porches, or of slate, stone or concrete, or such other materials as may be specified or approved by the Architectural Review Committee. Storm doors (or screen doors) shall be full view and anodized aluminum and shall be painted the same color as either the door or the trim of the house, or of such other materials and colors as may be specified by the Architectural Review Committee.

28. Auctions, Flea Markets, Yard Sales.

Other than auctions held in conjunction with foreclosure or tax sales, no auctions will be permitted on any portion of the Property without the prior written consent of the Architectural Review Committee. Flea markets or yard sales not exceeding two (2) per year for not more than two (2) days in duration are permitted in the front or side yard of any Lot. All other such events are prohibited unless it is part of a coordinated event approved by the Architectural Review Committee.

29. Utilities.

All exterior mechanical and electrical equipment other than heat pumps and utility meters must be housed or screened from view from streets, home entries and neighboring Lots. No window unit air conditioners shall be permitted.

30. Non-Tidal Wetlands, Buffer Areas and Forest Conservation Areas.

Any portion of the Common Area or Lots designated and shown on the Plats as floodplains, wetlands, critical areas, steep slopes, buffer areas, preservation areas or forest conservation easement or retention areas shall remain in a natural, undisturbed state and shall not be cleared, developed or improvements erected thereupon by the Declarant, any Builder, the Association, any Owner or any other person, except as permitted by applicable law and approved by the Association, the County and any other applicable governmental authorities. The removal of hazardous trees, limbs, branches or trunks is allowed.

31. Family Day Care.

Notwithstanding anything herein to the contrary, pursuant to Section 11B-111.1(d) of the Code, "Family Day Care Homes" (a unit registered under Title 5, Subtitle 5 of the Family Law Article of the Maryland Annotated Code) are permitted upon the Lots, subject to the following requirements:

(a) The Owner or "Day Care Provider" (the adult who has primary responsibility for the operation of a "Family Day Care Home"), operating the Family Day Care Home shall be registered with and have a license issued by the Maryland Department of Human Resources, in accordance with the registration and licensing provisions set forth in Title 5, Subtitle 5 of the Family Law Article of the Maryland Annotated Code. The Owner shall provide a copy of the license to the Board of Directors prior to establishing and operating the Family Day Care Home and upon each renewal thereof.

(b) The Owner or Day Care Provider shall obtain the liability insurance described in Article 48A, Section 481D of the Maryland Annotated Code, in at least the minimum amount described in that Section. The Owner or Day Care Provider may not operate the Family Day Care Home without the liability insurance described herein, and shall present proof of insurance to the Board of Directors before establishing and operating the Family Day Care Home and upon any renewal of the policy. The Association may not require the Owner or Day Care Provider to obtain insurance in an amount greater than the minimum amounts set forth in the Code Section set forth above.

(c) The Owner or Day Care Provider shall pay, on a prorata basis with other Family Day Care Homes then in operation at the Property, any increase in the Association's insurance costs attributable solely to the establishment and operation of the Family Day Care Home, and upon presentation of a statement from the Board setting forth the increased insurance costs and requesting payment of same. The increased insurance costs shall be considered an assessment against the Lot, and may be collected in the same manner as collection of Annual Assessments as set forth in Article IX.

(d) The Owner or Day Care Provider shall be responsible for payment of a fee determined by the Board of Directors, for the Family Day Care Home's entitlement to use of the Common Area. The Board shall establish the fee and shall advise all Owners or Day Care

Providers operating Family Day Care Homes of the amount due on an annual basis. The fee shall not be in an amount in excess of Fifty Dollars (\$50.00) or any greater amount permitted by the Code. Upon presentation of a statement for the annual fee and demand for payment, the Owner or Day Care Provider shall promptly remit payment to the Board of Directors. The fee shall be considered an assessment against the Lot, and may be collected in the same manner as collection of Annual Assessments as set forth in Article IX.

32. Home-Based Businesses.

(a) Notwithstanding any provision of this Declaration to the contrary, pursuant to Section 11(B)-111.1 of the Code, "No-Impact Home-Based Businesses" are permitted upon the Lots, subject to the following requirements:

(i) Owners shall notify the Association before opening a No-Impact Home-Based Business;

(ii) No-Impact Home-Based Businesses are expressly prohibited in any Common Area; and

(iii) Such additional requirements as may be specified by the Board of Directors of the Association, to the extent permitted by applicable law.

(b) For purposes of this Declaration, a "No-Impact Home Based Business" shall have the meaning given to such term from time to time in Section 11B-111.1 of the Code, which currently means a business that:

(i) Is consistent with the residential character of the dwelling unit;

(ii) Is subordinate to the use of the dwelling unit for residential purposes and requires no external modifications that detract from the residential appearance of the dwelling unit;

(iii) Uses no equipment or process that creates noise, vibration, glare, fumes, odors, or electrical or electronic interference detectable by neighbors or that causes an increase of common expenses that can be solely and directly attributable to a no-impact home-based business; and

(iv) Does not involve use, storage, or disposal of any grouping or classification of materials that the United States Secretary of Transportation or the State of Maryland or any local governing body designates as a hazardous material.

33. Firing Ranges.

The CRESAP Firing Range and the City of Frederick Firing Range are both located immediately north of the Land and Linganore Creek. There may be no limit on the days or hours of operation or the permitted users of the firing ranges.

34. Frederick County Municipal Airport.

The Land is located within the flight path of the Frederick County Municipal Airport, which is located west of the Monocacy River. There may be no limit on the days or hours of operation of the airport.

35. Moderately Priced Dwelling Units.

Certain Townhouse Lots shall be "Moderately Priced Dwelling Units" subject to the restrictions, terms and conditions of Chapter 6A of the Frederick County Code, as amended from time to time, and to the regulations promulgated pursuant thereto, and to the restrictions, terms and conditions of the Moderately Priced Dwelling Unit Declaration of Covenants Owner Occupied Units, which is intended to be recorded in the Land Records of Frederick County. The form of the MPDU Declaration is attached as Exhibit B to this Declaration. The specific lots included in this program will be identified in the MPDU Declaration that is recorded in the land records of Frederick County.

36. Compliance With Federal Fair Housing Act.

In order to comply with the requirements of the Federal Fair Housing Act (as heretofore and hereafter amended):

(a) The Architectural Review Committee or the Board of Directors of the Association shall, to the extent permitted by law, make reasonable accommodations in the rules and regulations of the Association (including those set forth in this Article and those adopted pursuant to the bylaws of the Association), to the extent such accommodations are required under the Federal Fair Housing Act or otherwise appropriate to afford persons with disabilities an equal opportunity to use and enjoy the dwelling located upon any Lot, which accommodations may include waivers and modifications of such rules and regulations only for a particular person with a disability or for a particular category of persons with disabilities. The Architectural Review Committee or the Board of Directors need not follow the procedural requirements of this Article or the bylaws of the Association in making such waivers and modifications, and such waivers and modifications need not be approved by the membership of the Association.

(ii) No rule or regulation of the Association shall be interpreted or enforced in such a way as to make unavailable or deny a dwelling to any person, or to discriminate against any person in the provision of services or facilities in connection with the sale or rental of a dwelling to such person, because of the familial status of such person, as the term "familial status" is defined under the Federal Fair Housing Act.

37. Compliance With Laws.

The provisions of this Article shall not be taken as permitting any action or thing prohibited by applicable zoning laws, or the laws, rules or regulations of any governmental authority.

38. Waivers.

The Architectural Review Committee may, in the exercise of its reasonable discretion, upon submission of a written request therefor by the Owner of a Lot, and to the extent not prohibited by law, waive any one or more of the provisions of this Article or any portion thereof with respect to any Lot. The granting of a waiver with respect to any Lot shall not require the granting of a waiver with respect to any other Lot.

ARTICLE V.
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

1. Membership.

Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

2. Classes of Membership.

The Association shall have two (2) classes of voting membership:

(a) Class A. The Class A Members shall be all of the Owners of the Lots except for the Declarant and any Builder for so long as the Declarant and any Builders are Class B Members; provided, however, that if more than one person or legal entity holds the record title to any Lot, such persons shall constitute a single Member of the Association and shall, collectively, be entitled to only one (1) vote per Lot for each Lot owned by them in which action shall be taken by Members of the Association. Any Mortgagee or any other person or entity who holds such interest solely as security for performance of an obligation shall not be a Class A Member solely on account of such interest.

(b) Class B. The Class B Members shall be the Declarant and any Builder. The Class B Member shall be entitled to three (3) votes per Lot for each Lot owned by the Declarant or any Builder in all proceedings in which actions shall be taken by Members of the Association. Each Builder shall be conclusively presumed, by its having accepted the conveyance of legal title to a Lot, to have given the Declarant an irrevocable and exclusive proxy entitling the Declarant to cast all votes which such Builder holds, which proxy is coupled with an interest.

3. Conversion.

The Class B membership in the Association shall cease and be converted to Class A membership in the Association, subject to being revived upon additional property being annexed to the Property pursuant to Article II, upon the earliest to occur of (i) seven (7) years from the date of this Declaration; (ii) thirty (30) days after the date when the total number of votes entitled to be cast by the Class A Members equals or exceeds the total number of votes entitled to be cast by the Class B Members; (iii) upon the surrender of the Class B membership by the then holders thereof for cancellation on the books of the Association. The Declarant and any Builder shall thereafter remain a Class A Member of the Association as to each and every Lot owned by the Declarant or any Builder.

ARTICLE VI.
**RESERVED DEVELOPMENT RIGHTS AND EASEMENTS; PRIVATE STORM
WATER MANAGEMENT EASEMENTS**

1. Grant of Easements and Rights.

The Declarant hereby reserves unto itself, its successors and assigns, and to any Builder, but only to the extent necessary for the construction of improvements on a Builder's Lot, and only to the extent noted and as limited below, including any contractor or subcontractor, their respective agents, employees and invitees, the following rights, reservations and easements:

(a) Perpetual, irrevocable and nonexclusive easements and rights of way under, over and through the Common Area, and any drainage, utility or other easement areas designated on the Plats, and over six (6) foot wide strips of land running along the front, rear, side and other lot lines of each Lot (except for that portion of any Townhouse Lot where abutting townhouses are constructed to the side lot line and except that where the building restriction lines are less than six (6) feet, any drainage and utility easement shall be reduced to the width of the building restriction line) for proper surface water drainage, for ingress and egress, and for the installation, construction, maintenance, reconstruction, repair and use of public and private utilities to serve the Property and the Lots, including but not limited to the mains, conduits, lines, meters and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by the Declarant necessary or advisable to provide service to any Lot, or the Property, together with the right and privilege of entering upon the Lots and, with the Declarant's consent, the Common Area, for such purposes and for making openings and excavations thereon, which openings and excavations shall be restored in a reasonable period of time, and, with the Declarant's consent, for such alterations of the contour of the land as may be necessary or desirable to effect such purposes. Within such easement areas, no Structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or change the direction or the flow of drainage channels or obstruct or retard the flow of water through drainage channels. The reserved easement areas of each Lot and all improvements thereon, except improvements for which a public authority or utility company is responsible, shall be maintained continuously by the Owner of the Lot. The Declarant and any Builder, as applicable, shall restore any damage to any Lot or to any permitted Structure or the Property arising from the Declarant's or such Builder's exercise of the foregoing easement and right of way.

(b) The right to grade, regrade and improve the streets, roads and courts within the Property including the creation or extension of slopes or banks, or excavation in connection therewith, and the construction and installation of drainage and utility structures therein; and the right at or after the time of grading of any street, Common Area, storm water management area or drainage or utility easement, or any part thereof, for any purpose, to enter upon any adjoining Lot and grade a portion of such Lot adjacent to such area, provided such grading does not materially interfere with the use or occupancy of any Structure built on such Lot, but Declarant shall not be under any obligation or duty to do such grading or to maintain any slope.

(c) The right (which right shall also run to the Association) to enter upon any Lot during normal business hours for the purpose of mowing the lawn thereon and trimming such greenery as the Declarant, the Association or a Builder deems appropriate, but neither the Declarant, any Builder, or the Association shall be under any obligation to do so.

(d) The right to make amendments to any plat or plats relating to the development of the Property as shall be advisable in the Declarant's reasonable judgment and as shall be acceptable to public authorities having the right to approval thereof without the consent of any Owner; provided such amendments do not change the Lot lines of any Owner's Lot other than Lots owned by the Declarant or any Builder.

(e) The right to grant easements, rights of way and licenses to any person, corporate body or municipality, to install and maintain pipelines, underground or above-ground lines, with the appurtenances necessary thereto, for public utilities, or quasi-public utilities or cable services,

or to grant such other licenses or permits, in all cases, as the Declarant may deem necessary or desirable for the improvement of the Property in, over, through, upon and across any and all of the Common Area and over, through, upon and across each and every Lot in the easement areas set forth in this Declaration or as shown on the Plats. In addition, any gas and electric company, telephone company and any cable television company or fiber optic cable company shall have the right to place upon the Lots, at such locations as deemed necessary by such utility company, electrical transformers, transformer pads and telephone and cable television pedestals.

(f) The right to dedicate all of the roads, streets, alleys, rights of way or easements within the Property, as shown on the Plats, to public use. An easement for the use and enjoyment of each of such roads, streets, alleys, rights of way and easement areas is hereby granted to the Declarant, any Builder, the Association and the Owners, and their respective heirs, personal representatives, successors and assigns, until such time as the same are deeded to the County and dedicated to public use. The Declarant further reserves unto itself and its successors and assigns, the bed, in fee, of all streets within the Property as shown on the Plats.

(g) A perpetual, irrevocable easement over, through, upon and across the Common Area, as the servient tenement, for the purpose of reasonable ingress to and egress from, and utility service to and from, any other property now or hereafter owned by Declarant, adjoining or near the Property, regardless of whether such property is annexed to the Property, including but not limited to the right, for the benefit of the Declarant, its designee(s), successors or assigns, to connect to and use any such utilities which may exist or be located within the Property, and to grant specific easements, both temporary and permanent, to any person or entity to accomplish the foregoing, all for any purpose consistent with applicable law in connection with the construction, maintenance, repair, development, marketing, sale or leasing of such property.

(h) The right to use any and all portions of the Property other than those Lots conveyed to Owners (but including any easement areas on any Lot specifically reserved herein) and including any Common Area; provided, however, that Builders must obtain the consent of the Declarant before using any Common Area, unless a Builder is responsible for constructing improvements within Common Area, in which case no consent shall be required with respect to such Common Area, for all reasonable purposes necessary or appropriate to the full and final completion of construction of the Property and any other property now or hereafter owned by the Declarant, adjoining or near the Property, regardless of whether such property is annexed to the Property, including the right to store materials and construction debris on the Property during the development thereof and the construction of improvements on such property. Such activities shall include, but not be limited to, clearing, grading, paving, construction and installation of utilities, landscaping, construction of requisite public or private roads, storm drains, stormwater management facilities, repair and maintenance of any public or private utilities and facilities, construction of Structures upon the Property, and any other activity reasonably related thereto. Such reserved easement shall not unreasonably interfere with the use of any Lot by the then Owner thereof.

(i) The right, but not the obligation, to construct an entrance monument or sign identifying the Property on any Lot or the Common Area. Any entrance monument or sign constructed by or on behalf of the Declarant shall thereafter be maintained, repaired and/or replaced, as needed, by the Association.

Except as otherwise expressly provided in this Article, the foregoing rights, easements and reservations shall remain in effect for so long as the Declarant or any Builder owns any Lot or other land within the Property or, as to the Declarant only, other adjoining or nearby property which may be benefited by such rights and easements, and for such additional time as may be required for the Declarant or any Builder to perform any construction, warranty or repair work with respect to such property.

2. Easements in Favor of Frederick County.

(a) Forest Conservation Easement. The Declarant hereby grants to Frederick County, Maryland (the "County"), its agents and contractors, a non-exclusive easement and right-of-way in, through, over and across any area designed on the Plats as a "Forest Conservation Easement," whether located on any Lot or the Common Area, for all purposes reasonably associated with the inspection and maintenance of such areas; and provided further, in the event that after reasonable notice to the owner of such property, such owner shall fail to maintain any Forest Conservation Easement in accordance with applicable law and regulations, then the County may do and perform all necessary repair and/or maintenance work and may assess the owner of such property for the cost of the work and any applicable penalties and enforce the same, in the manner tax liens are enforced.

(b) Storm Water Management Easement. Until such time as the storm water management facilities servicing the single family portion of the Property are dedicated to and accepted by the County, the owner of such facilities (whether or not located on the Property) shall be responsible for the maintenance thereof in accordance with the rules and regulations of the County.

(c) Frederick County Access Easement. The duly authorized employees and representatives of the County shall have the right to enter upon the Property for the purpose of performing necessary inspection, maintenance and repair to any completed storm water management facility, and until such time as the storm water management facility is dedicated to the County, when such maintenance or repair is not satisfactorily completed by the owner thereof within a reasonable time, to assess such owner for the costs thereof.

(d) Private Storm Drain Easement and Maintenance Covenant. The Declarant hereby transfers to the Association the obligation to maintain certain storm drainage facilities located on the Property, as such facilities and obligations are described and set forth in that certain Deed of Easement/Maintenance Covenants and Agreement Private Storm Drains dated SEPTEMBER 27th, 2005, by and between Declarant, as grantor, and the County, as grantee, and recorded among the Land Records in Liber 5641, folio 611 (the "Storm Drain Easement"). A copy of the Storm Drain Easement is attached to this Declaration and incorporated herein by reference as Exhibit C. Such obligations shall include the obligations contained in the Storm Drain Easement, except that the Declarant and the subsequent Owners of the Lots, and not the Association, shall perform necessary grass cutting and trash removal in any easement area located on a Lot.

(e) Maintenance of Storm Water Management Facilities. The Association and the County, their agents and employees, or other public agency, as applicable, shall have an irrevocable right and easement to enter all of the Lots for the purpose of gaining access to the storm water management facilities located on the Common Areas or the Lots in order to perform

construction, inspections, maintenance, repairs, or replacement of said storm water management facilities. Owners may not change, remove or otherwise alter or erect permanent structures over their Lots that would prevent access to the storm water management facilities. Owners are hereby notified that any landscaping that may be planted on, over or near any such required access to the public or private storm water management facilities shall be subject to being removed and replanted in the event that the Association, the County, or other public agency shall require access to the storm water management facilities for the purposes set forth in this Section. The Association, the County, or other public agency, and their respective agents and employees, shall not be liable or responsible for any damage caused to such landscaping or to any improvements that the Owners construct that obstruct access to the storm water management facilities. Except for the private storm water management facilities located on Lots 17 through 25 and 23 through 34, the Association shall establish a reserve fund for costs anticipated for maintenance, inspection and repair of the referenced storm water management facilities, if such maintenance and repair is not otherwise performed by the County. With respect to the storm water management facilities located on Lots 17 through 25 and Lots 32 through 34, such facilities shall be maintained by the Owner(s) of such Lots.

3. Assignment by Declarant.

Any or all of the rights, powers and reservations of the Declarant contained in this Declaration may be assigned by the Declarant to any person, corporation or association or other legal entity which will assume the duties of the Declarant pertaining to the particular rights, powers and reservations assigned, and upon any such person, corporation, entity or association evidencing its consent in writing to accept such assignment and assumption of such duties, such assignee shall have, to the extent of the assignment, the same rights and powers and be subject to the same obligations and duties as are given to and assumed by the Declarant in this Declaration. The term "Declarant" as used herein includes all such assignees so designated by the Declarant and their heirs, successors and assigns, and shall also include any person or legal entity acquiring all of the Declarant's right, title or interest in the Property without reservation of any kind. If at any time a Declarant ceases to exist and has not made such an assignment, a successor Declarant may be appointed by the written consent of the Owners of fifty-one percent (51%) of the votes of the Members of the Association. Any assignment or appointment made under this Section shall be in recordable form and shall be recorded in the Land Records.

4. Incorporation by Reference; Further Assurances.

Any and all grants made to the Association with respect to any of the Common Area or to any Owner with respect to any Lot shall be conclusively deemed to incorporate the foregoing rights, easements and reservations, as applicable, whether or not specifically set forth in such instruments. At the request in writing of the Declarant, the Association or any Owner shall from time to time execute, acknowledge and deliver to the Declarant such further assurances of the foregoing as the Declarant may reasonably request.

ARTICLE VII.
COMMON AREA

1. Grant of Common Area.

The Declarant shall grant and convey to the Association from time to time, and the latter shall take and accept from the former, the Common Area, if any, shown on the Plats, free of all monetary liens and encumbrances except real property taxes and assessments not yet due and payable (which taxes shall be prorated as of the date of conveyance), nonmonetary title exceptions of record, and this Declaration, which is hereby imposed upon the Common Area for the benefit of the Declarant, the Association and the Owners, and their respective personal representatives, successors and assigns.

2. Member's Right of Enjoyment.

Every Member of the Association shall have a nonexclusive right and easement for the use, benefit and enjoyment, in common with all other Members, in and to the Common Area, and the improvements thereon, and including each main, drain, pipe, meter or other device located within the Common Area (or within another Lot) which provides utility service to such Lot, and such nonexclusive right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the provisions of this Declaration, including but not limited to the restrictions set forth in Sections 5 and 6 below. No portion of the Common Area may be used by any Owner for personal vegetable gardens, storage facilities, leaves, compost or trash disposal, or other private uses unless approved by the Board of Directors. If ingress or egress to any Lot is through the Common Area, any conveyance or encumbrance of such Common Area shall be and is hereby subject to an easement for ingress and egress for the benefit of such Lot.

3. Nuisance.

No noxious or offensive activity shall be carried on upon the Common Area nor shall anything be done thereon which will become an annoyance or nuisance to the neighborhood.

4. Maintenance of Common Area.

The Association shall repair, replace, restore, maintain, manage, operate and insure the Common Area and the improvements thereon in good order, condition and repair and in a neat and attractive condition, including but not limited to periodically mowing all grass in the Common Area, maintaining any entrance monument, street trees and sidewalks (but not leadwalks) adjacent to roadways (but excluding snow removal of on-Lot sidewalks) and the landscaped berm behind Lots 31 through 35, whether or not located on the Common Area, and maintaining all stormwater management facilities within the Common Area, keeping them clean and free of debris; and shall levy against each Member of the Association a proportionate share of the aggregate cost and expense required for the care, maintenance and improvement thereof, which proportionate share shall be determined based on the ratio which the number of Lots owned by the Member bears to the total number of Lots then laid out or established on the Property, provided, however, any item of maintenance or repair pertaining to Parcel B, Parcel C, or any other Common Area for the exclusive use and benefit of the Townhouse Lots shall be allocated proportionately only among the Townhouse Lots. The Association shall also maintain and care for, as a common expense of the Association, any property dedicated or to be dedicated to the County and located within or adjoining the Property, including but not limited to, rights of

way, stormwater management areas and local open space, as deemed necessary or desirable by the Board of Directors or the Architectural Review Committee for the preservation or enhancement of the appearance of the Property until such time as such property is dedicated to and accepted by the County or any agency or unit thereof.

5. Permitted Action by the Association.

While the Association holds the legal title to any or all of the Common Area, it may take any or all of the following actions upon approval of such action by the Board of Directors:

(a) make an express confirmatory conveyance to any Owner, including the Declarant, of such easements in and other rights with respect to the Common Area as under the provisions of this Declaration are held by such Owner;

(b) grant, convey or dedicate to the County, the State of Maryland or to any one or more public or quasi-public governmental bodies, utility companies or cable television companies, any and all licenses, easements or rights of way in, over and through the Common Area for the construction, operation, maintenance, repair and replacement of any and all sanitary, sedimentary control or storm sewer lines, ponds or pumping stations, water lines, electrical lines, telephone lines, gas lines, cable television lines and other similar facilities, all as the Association considers appropriate for the provision of any utility or utility service to the Property. Notwithstanding a grant, conveyance or dedication of any such license, easement or right of way, the land subject thereto shall remain a part of the Common Area and the Association shall continue to maintain such land (except for any improvements thereon owned by the County, the State of Maryland or such public or quasi-public governmental body, such utility company or such cable television company) in accordance with the provisions of this Declaration;

(c) convey the legal title to, or any interest in, any or all of the Common Area to or at the direction of any governmental or quasi-governmental authority either through the condemnation thereof, or under threat of such condemnation (after which grant, conveyance or dedication, that portion of the Common Area which is the subject of the same shall not be part of the Common Area); provided, however, that no such dedication or transfer shall be effective unless two-thirds ($\frac{2}{3}$) of the then Members of the Association (excluding the Declarant and any Builder) consent to such dedication or transfer;

(d) grant or reserve, by or to the Declarant for the benefit of any parcel of land which may be added to the Property or any portion thereof (whether or not it then or thereafter is part of the Property), an easement in, over and through the Common Area for the construction, installation, use, operation, maintenance, repair and replacement of any facility of the type enumerated in subsection (b) hereof; and

(e) notwithstanding anything to the contrary contained herein, the approval of the Board of Directors shall not be required for the conveyance to the County or to the State of Maryland of any portion of the Common Area which has, prior to the conveyance to the Association, been offered for dedication to such governmental body. The Association shall, upon the request of the Declarant, execute all necessary documents required to convey such portions of the Common Area to the County or to any other governmental body.

6. Restrictions.

The right of each Member of the Association to use the Common Area shall be subject to the following:

(a) any rule or regulation now or hereafter set forth in this Declaration and any rule or regulation now or hereafter adopted by the Association for the Common Area;

(b) the right of the Association, acting by and through its Board of Directors, in accordance with its articles of incorporation and bylaws, to borrow money for the purpose of improving the Common Area in a manner designed to promote the enjoyment and welfare of the Members, and in aid thereof to mortgage any of the Common Area with the consent of two-thirds (2/3) of the Members of the Association (excluding the Declarant and any Builder);

(c) the right of the Association to take such steps as are reasonably necessary to protect the Common Area against mortgage default and foreclosure;

(d) the right of the Association to suspend the voting rights and the rights to use of the Common Area for any period of time during which any Assessment remains unpaid and for any period not to exceed sixty (60) days for any violation of this Declaration or infraction of any of the published architectural guidelines or rules and regulations of the Association, after notice and a hearing; provided, however, that the Association shall have no right to suspend the right of any Owner to use any Common Area or private streets and roadways for necessary, ordinary and reasonable vehicular and pedestrian access to and from such Owner's Lot or any easement over the Common Area for telephone, electrical, sewer or other utility service;

(e) the right of the Association to dedicate or transfer all or any part of the Common Area to any public or municipal agency, authority or utility for purposes consistent with this Declaration and subject to such conditions as may be agreed to by the Members; provided, however, that no such dedication or transfer or determination as to the purposes or as to the conditions thereof, shall be effective unless two-thirds (2/3) of the then Members of the Association (excluding the Declarant and any Builder) consent to such dedication, transfer, purpose and conditions; and

(f) the right of the Association, acting by and through its Board of Directors, to grant licenses, rights of way and easements for access or for the construction, reconstruction, maintenance and repair of any utility lines or appurtenances, whether public or private, to any municipal agency, public utility, the Declarant, any Builder or any other person; provided, however, that no such license, right of way or easement shall be unreasonably and permanently inconsistent with the rights of the Members to the use and enjoyment of the Common Area.

7. Delegation of Right of Use.

Any Owner may delegate its rights to the use and enjoyment of the Common Area to family members who reside permanently with such Owner and to its tenants, contract purchasers, invitees and guests.

8. Rules and Regulations.

Each Owner shall fully and faithfully comply with the rules, regulations and restrictions applicable to use of the Common Area, as such rules, regulations and restrictions are from time to time adopted by the Association for the safety, care, maintenance, good order and cleanliness

of the Common Area. Further, each Owner shall comply with the covenants imposed by this Declaration on the use and enjoyment of the Common Area.

9. **Limitation of Liability.**

Neither the Declarant or the Association shall be liable for the failure of any services obtained by the Declarant or the Association or paid for out of the common expense funds, or for injury or damage to person or property caused by the elements, the topography of the Property, fallen trees, water which may leak or flow from any portion of the Common Area, or from any wire, pipe, drain, conduit or the like, or to any Owner or its designees for loss or damage, by theft or otherwise, of articles stored upon any Common Area. No diminution or abatement of Annual Assessments or Special Assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Area, or from any action taken by the Declarant or the Association to comply with any of the provisions of this Declaration or applicable law, or with the order or directive of any municipal or other governmental authority.

ARTICLE VIII.
PARTY WALLS; ENCROACHMENTS

1. **Party Walls.**

Each wall which is built as part of the original construction of the dwelling upon each Townhouse Lot and placed on the dividing line between Townhouse Lots, or partly on one Townhouse Lot and partly on another, shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto.

2. **Repairs and Maintenance.**

The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in equal shares. Nothing shall be done by any Owner which impairs the structural integrity of any party wall or which diminishes the fire protection afforded by any party wall. No Owner shall use any party wall for any purpose which creates a hazard or nuisance for any other Owner who makes use of the party wall.

3. **Destruction by Fire of Other Casualty.**

If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use; without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

4. **Waterproofing.**

Notwithstanding any other provision of this Article, any Owner who by his negligent or willful act causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

5. **Right to Contribution Runs With Land.**

The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

6. **Dispute Resolution.**

In the event of any dispute arising concerning a party wall, or under the provisions of this Article, which dispute cannot be resolved by all of the Owners of interest therein, the matter shall be referred to the Board of Directors for resolution. The decision of the Board concerning such dispute shall be final, and may be implemented in accordance with the provisions of this Article.

7. **Privacy Fences.**

The provisions of this Article shall apply to each privacy fence which is built as part of the original construction of the improvements upon the Property and placed on the dividing line between any Townhouse Lots, or partly on one Townhouse Lot and partly on another.

8. **Encroachments.**

If any Structure or any part thereof, now or at any time hereafter, encroaches upon an adjoining Lot or Common Area, whether such encroachment is attributable to construction, settlement or shifting of the Structure or any other reason whatsoever beyond the control of the Board of Directors or any Owner, there shall forthwith arise, without the necessity of any further or additional act or instrument, a good and valid easement for the maintenance of such encroachment, for the benefit of the Owner, its heirs, personal representatives and assigns, to provide for the encroachment and non-disturbance of the Structure. Such easement shall remain in full force and effect so long as the encroachment shall continue. The conveyance or other disposition of a Lot shall be deemed to include and convey, or be subject to, any easements arising under the provisions of this Article without specific or particular reference to such easement.

9. **Easement For Exterior Maintenance.**

If any dwelling is situated on or near a Lot line such that proper exterior maintenance and repair of the dwelling cannot reasonably be accomplished exclusively on such Owner's Lot, then that Owner shall have an easement over that portion of the adjoining Lot as is reasonably necessary for such exterior maintenance and repair, including, but not limited to, painting, cleaning and washing and repairing windows.

**ARTICLE IX.
ASSESSMENTS**

1. **Covenant For Assessments.**

The Declarant, for each Lot owned by it within the Property, hereby covenants, and each Owner, by acceptance of a deed conveying any Lot to it, whether or not so expressed in such deed, shall be deemed to have covenanted and agreed to pay the Association (i) in advance, an annual assessment (the "Annual Assessment") equal to each Member's proportionate share of the sum required by the Association, as estimated by the Board of Directors, for annual assessments or charges, and (ii) special assessments or charges ("Special Assessments") to be established and collected as hereinafter provided. The Annual Assessment and Special Assessments, together

with interest, late charges, costs of collection and attorneys' fees as hereinafter provided, shall be a continuing lien upon each of the Lots against which the assessment is made, and this Article shall be construed as a real covenant running with the land and a contract of a lien under the terms of the Maryland Contract Lien Act. Such assessments or charges, together with interest, late charges, costs of collection, and attorneys' fees incurred or expended by the Association in the collection thereof, shall also be the personal obligation of the Owner holding title to any Lot at the time when the assessment fell due or was payable. The personal obligation for any delinquent assessment or charge, together with interest, late charges, costs and attorneys' fees shall not pass to the Owner's successors or assigns in title unless expressly assumed by such a successor or assign.

2. Use of Assessments.

The assessments levied by the Association shall be used for the purpose of promoting the recreation, health, safety and welfare of the Owners and the Property, including but not limited to (a) the payment of taxes on the Common Area, if any; (b) the payment of insurance premiums for such insurance as is maintained by the Association on the Common Area or otherwise; (c) the maintenance, repair, replacement and improvement of the Common Area, including but not limited to parking courts, sidewalks, grassy areas, recreational facilities, if any, and any off-site facilities maintained by or for the benefit of the Association, and specifically including the cost of maintaining street trees throughout the Property, whether or not such street trees and/or sidewalks are located in the Common Area; (d) the cost of utilities and other services which may be provided by the Association; (e) the cost of labor, equipment, materials, management, administration and supervision incurred in performing all of the foregoing, including but not limited to legal and accounting fees, and specifically including legal fees incurred by the Association in enforcing the provisions of this Declaration; and (f) the cost of funding all reserves established by the Board of Directors of the Association.

3. Maximum Annual Assessment.

Until the end of the fiscal year during which the first Lot was conveyed to an Owner other than the Declarant or any Builder, the Annual Assessment shall not exceed One Thousand One Hundred Seventy Two Dollars (\$1,172.00) for such year for each Single-Family Lot and One Thousand Three Hundred Twelve Dollars (\$1,312.00) for such year for each Townhouse Lot. Thereafter, Annual Assessments may be increased in the manner provided for in Section 6 of this Article. The Annual Assessment shall be payable annually unless the Board of Directors shall by resolution designate that the assessments shall be payable in semi-annual, quarterly or monthly installments.

4. Special Assessments.

In addition to the Annual Assessment authorized above, if a Special Assessment shall first be approved by at least two-thirds ($\frac{2}{3}$) of the Members of the Association, the Association may levy in any assessment year a Special Assessment applicable for that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement located on the Common Area, including fixtures and personal property related thereto, or to meet any other deficit of the Association or any emergency or unforeseen expenses of the Association; provided, however, that if the Special Assessment pertains solely to the Townhouse Lots, it shall require only the approval of two-

thirds ($\frac{2}{3}$) of the votes of the Owners of the Townhouse Lots and shall be payable only by the Owners of the Townhouse Lots, and if the Special Assessment pertains only to the Single-Family Lots, it shall require only the approval of two-thirds ($\frac{2}{3}$) of the Owners of the Single-Family Lots and shall be payable only by the Owners of the Single-Family Lots. No Lots owned by the Declarant or any Builder shall be subject to a special assessment imposed by the Association.

5. Commencement Date of Assessments.

(a) The Annual Assessment shall commence as to all Members of the Association upon a date set forth in a resolution of the Board of Directors, but in any event no earlier than the date a deed for the first Lot is delivered to an Owner other than the Declarant or any Builder.

(b) The first installment of each Annual Assessment shall be prorated for the balance of the year (or applicable installment period) in which such Lot is conveyed to an Owner, and shall be due and payable on the date the Lot is conveyed to the Owner of the Lot. The installments of each such assessment for any Lot for any installment period after the first installment period shall become due and payable on the first day of each successive installment period.

(c) The due date of any Special Assessment under Section 4 shall be fixed in the resolution authorizing such Special Assessment; provided, however, that such due date shall be at least thirty (30) days after the date of such resolution. Special Assessments shall also be prorated for the balance of the year in which a Lot is conveyed to an Owner, and shall be due and payable on the date the Lot is conveyed to the Owner of the Lot.

(d) If during an assessment year the Property is expanded, the Association shall be deemed automatically and without the necessity of further action, to have levied for such assessment year against each Lot added to the Property by virtue of the expansion each assessment which the Association has levied against the other Lots for such assessment year, subject to and in accordance with the provisions of the Declaration, such assessment to be prorated based upon the number of days remaining in such assessment year as of the date of such expansion.

6. Duties of the Board of Directors.

(a) The Board of Directors shall determine the amount of the Annual Assessment annually, but may do so at more frequent intervals should circumstances so require. Upon resolution of the Board of Directors, installments of the Annual Assessment may be levied and collected on a monthly, quarterly, semiannual or annual basis. Any Member may prepay one or more installments of any assessment levied by the Association, without premium or penalty.

(b) The Board of Directors shall prepare, or cause to be prepared, an annual operating budget for the Association, and shall make reasonable efforts to fix the amount of the Annual Assessment for each assessment period at least thirty (30) days in advance of the beginning of such period. The Board of Directors shall thereupon cause a copy of the budget, and the amount of the assessments to be levied against each Lot for the following year, to be delivered to each Owner. The budget and the assessments shall become effective unless a special meeting of the Association is duly held and at such special meeting the budget and the assessments are disapproved by a vote of at least a majority of the Class A Members of the Association. If the Board of Directors shall fail to fix the amount of the Annual Assessment prior to the commencement of any assessment period, or if the Class A Members shall disapprove the

budget, the same shall not be deemed a waiver or modification of the provisions of this Article or a release of any Member from the obligation to pay the assessments for that or any subsequent assessment period; and the assessments fixed for the preceding period shall continue until a new assessment is fixed. The Association shall, upon written demand, furnish to any Owner a certificate in writing signed by an officer of the Association setting forth whether such Owner's assessments have been paid, which certificate shall be conclusive evidence of payment of any assessment therein stated as having been paid. A charge not to exceed Fifty Dollars (\$50.00), which may be increased from time to time in the reasonable discretion of the Board of Directors, may be levied in advance by the Association for each certificate so delivered.

7. Nonpayment of Assessments.

(a) Any Annual Assessment or Special Assessment or installment thereof not paid when due shall be delinquent and, if not paid within thirty (30) days after the due date, shall bear interest from the due date at the rate of (i) twelve percent (12%) per annum, or (ii) two percent (2%) over the prime rate announced by Bank of America, N.A., or any successor thereto, whichever is greater, and shall be subject to a late charge of Fifteen Dollars (\$15.00), or one-tenth (1/10) of the total amount of the delinquent assessment or installment, whichever is greater; provided the late charge may not be imposed more than once for the same delinquent payment and may be imposed only if the delinquency has continued for at least thirty (30) calendar days, which late charge may be increased from time to time in the reasonable discretion of the Board of Directors. The Association may proceed to establish and enforce the assessment lien in accordance with the provisions of the Maryland Contract Lien Act or bring an action at law against the Owner personally obligated to pay the assessments, or in equity to foreclose the lien against the Lot, in the same manner and subject to the same requirements as are specified by the law of Maryland for the foreclosure of mortgages or deeds of trust containing a power of sale or an assent to a decree, and there shall be added to the amount of such assessment interest and late charges on the assessment as provided hereinabove, court costs and attorneys' fees of not less than twenty percent (20%) of the sum claimed, whether or not a judgment is obtained, in each case without waiving any other right or remedy. By the acceptance of title to or the ownership of a Lot, each Owner shall be deemed to have expressly (i) authorized the enforcement and foreclosure of the lien by the Association or other person entitled thereto, in the same manner, and subject to the same requirements, as the foreclosure of mortgages on real property in this state, containing a power or sale or an assent to a decree; (ii) assented to the passage of a decree for the sale of the Lot; and (iii) covenanted, agreed and declared that the party authorized to exercise the power of sale shall have the absolute power, right and privilege to sell the Lot of the defaulting Owner in accordance with the public general laws of the State of Maryland and the Maryland Rules of Procedure relating to foreclosure of mortgages, as such laws and rules are from time to time amended and supplemented. No Member may exempt itself from liability for assessments by abandonment of such Owner's Lot or by the abandonment of such Owner's right to the use and enjoyment of the Lot or the Common Area, or by conveying the Lot after the assessment became due, and no offsets against assessments shall be permitted for any reason, including but not limited to a claim that the Association is not properly exercising its duties or powers or that any Owner is not satisfied with the scope or quality of any services or amenities.

(b) If the Board of Directors establishes that the Annual Assessment or any Special Assessment shall be paid in regular installments, and an Owner fails to pay an installment when

due, the Association, acting through the Board of Directors, may demand payment of the remaining installments coming due within that fiscal year. Such demand shall state that if the Owner fails to pay the installment within thirty (30) days after the demand, full payment of the remaining assessment will then be due and payable in full, without further notice or demand and shall constitute a lien on the Lot as provided in this Article.

8. Subordination of Lien to Taxes and Mortgages.

The lien of the assessments provided for herein shall be subordinate to the lien for taxes imposed by any lawful authority and to the lien of any First Mortgage (unless before such First Mortgage was recorded a statement of lien covering such assessment is recorded among the Land Records). The sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure, or any proceeding in lieu thereof shall extinguish the lien of assessments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof nor shall such sale or transfer release the Owner of the Lot from its personal obligation for any unpaid assessments.

9. Exemptions.

(a) The Common Area and all Lots owned by the Association or any charitable organization or dedicated to and accepted by a governmental or quasi-governmental authority shall be exempt from the assessments created herein; provided, however, that no Lot improved with a dwelling and used for residential purposes shall be exempt from assessments.

(b) Neither the Declarant, any Builder or any Lot owned by the Declarant or any Builder shall be exempt from any assessment hereunder; provided, however, that assessments shall not be due and payable with respect to any such Lot until such time as the Lot has been conveyed to an Owner other than the Declarant or any Builder or a certificate of occupancy is issued for such Lot and the dwelling thereon is occupied, whichever shall first occur.

10. Reserves.

(a) The Association may establish and maintain a reserve fund or funds for repairs and capital improvements to the Common Area and for such other purposes as the Board of Directors of the Association may deem reasonably necessary or appropriate, by the allocation and payment from the assessments to such reserve fund or funds of an amount to be designated from time to time by the Board of Directors. Such fund(s) shall be conclusively deemed to be a common expense of the Association and shall be deposited and invested in a manner that achieves a prudent balance of safety, liquidity and rate of return, taking into account short-term and long-term cash flow requirements.

(b) The Association may establish such other reserves for such other purposes as the Board of Directors may from time to time consider to be necessary or appropriate. The proportional interest of any Member of the Association in any such reserves shall be considered an appurtenance of such Owner's Lot and shall not be separately withdrawn, assigned or transferred or otherwise separated from any Lot, and shall be deemed to be transferred with such Lot.

11. Initial Working Capital Contribution.

Upon the transfer of a Lot from the Declarant or a Builder to an Owner (other than a Builder), an initial capital contribution shall be payable to the Association. The initial capital contribution shall be Three Hundred Fifty Dollars (\$350.00) for all Lots. Such working capital contribution is a onetime charge, is not refundable, and will not be credited against Annual or Special Assessments. The working capital contributions may be used in the discretion of the Board of Directors of the Association, to fund the start-up and initial operating expenses of the Association, to fund unforeseen expenditures, or to purchase additional equipment, personal property or services for the Association or for any other purpose.

**ARTICLE X.
INSURANCE; CASUALTY AND CONDEMNATION LOSSES**

1. Types of Insurance Maintained by Association.

The Board of Directors shall have the authority to, and shall obtain and continue in effect, commencing not later than the date of the first conveyance of a Lot to an Owner other than the Declarant or a Builder, to the extent available at reasonable rates, the following types of insurance:

(a) Insurance on all insurable improvements on the Common Area against loss or damage by fire or other hazards, including standard extended and all-risk coverage, vandalism and malicious mischief, in an amount sufficient to cover the full replacement cost of such improvements (exclusive of land, foundation and excavation) without deduction or allowance for depreciation, as determined annually by the Association with the assistance of the insurance company affording such coverage, with a deductible amount not in excess of One Thousand Dollars (\$1,000.00);

(b) A public liability insurance policy covering the Association, its officers, directors, committee members and managing agents, covering such risks as shall customarily be covered with respect to projects similar in construction, location and use, including but not limited to contractual liability coverage, having at least a One Million Dollar (\$1,000,000.00) limit per total claims that arise from the same occurrence or in an amount not less than the minimum amount required by applicable law, ordinance or regulation;

(c) Worker's compensation insurance, if and to the extent required by law;

(d) From and after the date when there is no longer a Class B membership of the Association, or earlier, in the discretion of the Board of Directors, fidelity bonds covering all directors, officers, employees and other persons handling or responsible for the funds of the Association, naming the Association as obligee or named insured, as the circumstances may require, and in such amounts as the Board of Directors deems appropriate or as otherwise required by applicable law or regulation, and which shall contain waivers of any defense based on the exclusions of persons who serve without compensation; provided, where the Association has delegated some or all of the responsibility for the handling of funds to a management agent, such management agent shall maintain its own fidelity bond, at its sole expense, which shall name the Association as an additional obligee;

(e) Directors' and officers' liability insurance including a "Legal Expense Indemnity Endorsement," affording coverage for expenses incurred in defending any suit or settling any claim, judgment or action to which such officer or director is a party by reason of service as such officer or director; and

(f) Such other insurance for the benefit of the Association as the Board of Directors shall deem reasonably necessary or prudent, or if required by applicable law.

2. Premiums For Insurance Maintained by Association.

Premiums for all insurance and bonds required to be carried under Section 1 of this Article or otherwise obtained by the Association shall be an expense of the Association, and shall be included in the Annual Assessment. Premiums on any fidelity bond maintained by a third-party manager shall not be an expense of the Association. The Association shall maintain and make available for inspection a copy of all insurance policies maintained by the Association.

3. Policy Provisions.

All insurance policies shall provide that they shall not be canceled or substantially modified without at least thirty (30) days prior written notice to the Declarant and the Association. Such insurance shall also contain, where applicable, a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or the Owners. All insurance policies shall be written by financially responsible carriers licensed to transact business within the State of Maryland, with a Best's Rating of "A" "XI" or better.

4. Casualty and Condemnation.

(a) Casualty. In case of loss or damage to the Common Area by fire or other casualty, the Board of Directors or its agent shall, on behalf of the Association and the Members, settle and adjust any claim under insurance policies which insure against such risks and deduct therefrom costs and expenses of collection (including attorneys' fees and expenses), and collect any such insurance proceeds. Each Owner hereby assigns, transfers and sets over unto the Association, all insurance proceeds, rights of action or other claims with respect to any damage or destruction of the Common Area. Any and all insurance proceeds received by the Association by reason of any damage or destruction of the Common Area, after deducting therefrom all of its expenses, including attorneys' fees, shall be used for the cost of the rebuilding or restoration of the Common Area to substantially the condition it was in prior to the casualty, unless at least seventy-five percent (75%) of the votes of each class of the Members of the Association shall decide not to repair or reconstruct at a meeting of the membership duly called for such purpose. If the improvements are not to be repaired or reconstructed and no alternative improvements are authorized by the Members, the damaged Common Area shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition. In such event, any excess insurance proceeds shall be paid over to the Association for the benefit of the Property, which proceeds may be used or distributed as determined by the Board of Directors, in its reasonable discretion.

(b) Condemnation. The Board of Directors, immediately upon obtaining knowledge of the threat of the institution or the institution of any proceeding for the condemnation of the Common Area or any portion thereof, shall notify all Owners in writing of the pendency thereof.

Each Owner hereby assigns, transfers and sets over unto the Association, all compensation, rights of action, the entire proceeds of any award and any claim for damages for any of the Common Area taken or damaged under the power of eminent domain or by condemnation or by sale in lieu thereof. The Association may, at its option, commence, appear in and prosecute, in its own name and on behalf of all of the Members, any action or proceeding with respect to the Common Area, or make any compromise or settlement in connection with such condemnation or taking under the power of eminent domain or sale in lieu thereof. After deducting therefrom all of its expenses, including attorneys' fees, the Association may elect to apply the proceeds of the award to the restoration or rebuilding of the Common Area. If the improvements are not to be rebuilt or restored pursuant to a vote by the Members as provided in subsection (a) above, and no alternative improvements are authorized by the Members, then and in that event the remaining Common Area shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition. In such event, any excess award shall be paid over to the Association for the benefit of the Property, which proceeds may be used or distributed as determined by the Board of Directors, in its reasonable discretion.

5. Repair and Reconstruction of Common Area.

If any improvements on the Common Area are damaged or destroyed, and the proceeds of insurance (or, in the event of a condemnation, any award) received by the Association are not sufficient to pay in full the cost of the repair and reconstruction of the improvements, the Board of Directors shall, without the necessity of a vote of the Members, levy a Special Assessment in order to cover the deficiency (including but not limited to any deductible amount) in the manner provided in Article IX. If the proceeds of insurance or the condemnation award exceed the cost of repair, such excess shall be retained by the Association and used for such purposes as the Board of Directors shall determine in its reasonable discretion.

6. Hazard Insurance on Improved Lots.

Each Owner of an improved Lot at all times shall maintain fire and extended coverage insurance or other appropriate damage and physical loss insurance, in an amount equal to not less than one hundred percent (100%) of the current replacement value of the improvements on the Lot, excluding land, foundation and excavation.

7. Obligation of Lot Owner to Repair and Restore.

(a) In the event of any damage or destruction of the improvements on a Lot, the insurance proceeds from any insurance policy on an improved Lot, unless retained by a Mortgagee of a Lot, shall be applied first to the repair, restoration or replacement of the damaged or destroyed improvements. Any such repair, restoration or replacement shall be done in accordance with the plans and specifications for such improvements originally approved by the Declarant or the Architectural Review Committee unless the Owner desires to construct improvements differing from those so approved, in which event the Owner shall submit plans and specifications for the improvements and such other information as shall be required by the Architectural Review Committee and obtain its approval prior to commencing the repair, restoration or replacement. If any Mortgagee does not permit insurance proceeds to be used to restore any damaged or destroyed improvements, and the Owner does not otherwise restore such

improvements, then the Owner of such Lot shall raze the improvements and return the Lot to its natural condition free of all debris.

(b) If any Owner of an improved Lot fails to maintain the insurance required by Section 6 of this Article, the Association may, but shall not be obligated to, obtain such insurance and pay any premiums required in connection with obtaining such insurance. Such Owner shall be personally liable to the Association for any costs incurred by the Association in obtaining such insurance, to the same extent as such Owner is liable for assessments levied against its Lot, and, upon the failure of the Owner to pay such costs within thirty (30) days after such Owner's receipt of a written demand therefor from the Association, the Association may establish a lien therefor upon the Owner's Lot in accordance with and subject to the provisions of this Declaration applicable to an assessment lien.

ARTICLE XI. RIGHTS OF MORTGAGEES

Regardless of whether a Mortgagee in possession of a Lot is its Owner, (i) such Mortgagee in possession shall have all of the rights under the provisions of this Declaration, the Plats, the articles of incorporation and the bylaws of the Association and applicable law, which would otherwise be held by such Owner, and (ii) the Association and each other Owner or person shall be entitled, in any matter arising under the provisions of this Declaration and involving the exercise of such rights, to deal with such Mortgagee in possession as if it were the Owner of the Lot. Any Mortgagee in possession of a Lot shall (subject to the operation and effect of the provisions of this Declaration, the articles of incorporation and the bylaws of the Association and applicable law) bear all of the obligations under the provisions thereof which are borne by the Owner of such Lot; provided, however, that nothing in the foregoing provisions of this Section shall be deemed in any way to relieve any Owner of any such obligation, or of any liability to such Mortgagee on account of any failure by such Owner to satisfy any of the same.

ARTICLE XII. MISCELLANEOUS

1. Term.

Except where permanent easements or other permanent rights or interests are herein created, this Declaration shall run with and bind the title to the Property (including the Lots) for a period of forty (40) years from the date this Declaration is recorded, after which time this Declaration shall automatically be extended for successive periods of ten (10) years each, unless and until an instrument adopted pursuant to the amendment procedure set forth in Section 8 of this Article and consented to by the County has been recorded stating that this Declaration shall expire at the end of the then current term or on such other earlier date as may be specified in a duly adopted amendment to this Declaration.

2. Enforcement.

(a) The provisions of this Declaration shall be enforceable by the Declarant (regardless of whether it owns any Lot), the Association, each Owner and their respective legal representatives, successors and assigns, by proceedings at law or in equity against any person or persons violating or attempting to violate any provision of this Declaration, either to restrain the

violation or to recover damages, or both. The Declarant shall not, however, be obligated to enforce the provisions of this Declaration on behalf of itself or at the request of any other Owner.

(b) In acquiring title to any Lot, the purchaser or purchasers violating or attempting to violate any provision of this Declaration, agree to reimburse the Declarant and the Association, within thirty (30) days after written demand, for all costs and expenses incurred as a result of such violation or attempted violation, including but not limited to court costs and attorneys' fees, to the same extent that an Owner is liable for an assessment levied against its Lot. The liability for such costs shall also be the personal obligation of such Owner.

(c) The Association, acting through the Architectural Review Committee, the Board of Directors or the Declarant, and any manager for the Association, shall each also have the right, but not the obligation upon (i) thirty (30) days prior written notice to any Owner with respect to the exterior of any dwelling; (ii) five (5) days for yard maintenance; and (iii) twenty-four (24) hours for snow removal, and, in any case, such shorter period as may be necessary if an emergency situation exists which poses imminent danger to persons or property, to abate and remove any breach or violation of the provisions of this Declaration by any Owner or other person or entity at the cost and expense of the defaulting party, all in accordance with the provisions of Article IX; provided, that if any such abatement or removal requires altering or demolishing any item of construction, a court order shall be obtained prior to such alteration or demolition. The Association and the Declarant shall have the further right, but not the obligation, through their respective agents, employees, contractors or committees, including but not limited to the Architectural Review Committee, upon ten (10) days' notice, or such shorter period as may be reasonable under the circumstances, to enter upon and inspect the exterior of any Lot at any reasonable time, for the purpose of ascertaining whether any violation of the provisions of this Declaration exist. The date and time of inspections at the request of an Owner in connection with the issuance of a Certificate of Compliance shall be arranged with the Owner of the Lot without the need for advance notice. Such right of entry shall be exercised in accordance with the provisions of Article III, Section 4 of this Declaration. Neither the Association, the Declarant or any of their respective agents, employees or contractors shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

(d) As long as the Declarant has an interest in developing any of the Property described on Exhibit A or shown on any Plats, the Association may not use its financial resources, directly or indirectly, to defray the costs of opposing any development activities reasonably consistent with the general intention of the development plan for the Property, as amended from time to time. Nothing in this Section shall be construed to limit the rights of Members to act as individuals or in affiliation with other Members or groups.

3. No Waiver.

The failure or forbearance by the Declarant or the Association to enforce any covenant, restriction or provision herein contained shall in no event be deemed a waiver of the right to thereafter enforce such covenants, restrictions or provisions.

4. Covenants to Run With Land.

Each conveyance of a Lot, or of any interest in a Lot, or of the Common Area, or any portion thereof, by the Declarant, any Builder or any Owner, shall be deemed to be subject to this Declaration, whether or not the instrument of conveyance shall so state, to the effect that the

covenants, conditions, restrictions and easements contained herein shall run with the title to each Lot and the Common Area, and be binding on and benefit all parties having or acquiring any right, title or interest in such real property; provided that they shall not be deemed to be part of a general plan or scheme of development and use for, or to be covenants running with, binding upon, benefiting or burdening the title to (or otherwise to be enforceable at law or in equity with respect to), any parcel of land retained by the Declarant or any other person that has not been expressly subjected to the provisions of this Declaration pursuant to the provisions of Article II, except to the extent expressly provided for elsewhere in the Declaration.

5. Notices.

Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, by ordinary mail, postage paid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing. Any notice to be sent to the Declarant shall be deemed to have been properly sent when mailed, postage prepaid, c/o Pulte Home Corporation, Suite K, 1501 South Edgewood Street, Baltimore, Maryland 21227, or to any other address that the Declarant may specify in a notice mailed to the Association.

6. Severability.

Invalidation of any one of the provisions of this Declaration by judgment, decree or order shall in no way affect any other provisions hereof, each of which shall remain in full force and effect.

7. Captions and Genders.

The captions contained in this Declaration are for convenience only and are not a part of this Declaration and are not intended in any way to limit or enlarge the terms and provisions of this Declaration. All references in this Declaration to Articles or Sections are to Articles or Sections in this Declaration, unless otherwise expressly indicated. Whenever in this Declaration the context so requires, the singular number shall include the plural and the converse, and the use of any gender shall be deemed to include all genders.

8. Amendment.

(a) For so long as there is a Class B membership of the Association, this Declaration may be amended by the affirmative vote (in person or by proxy), or written consent or any combination thereof, of (i) at least two-thirds (2/3) of the Class A Members of the Association, and (ii) the Declarant; provided, in either case, notice of the proposed amendment shall have been given to all Members of the Association as required by the bylaws of the Association. Following the lapse of the Class B membership in the Association, this Declaration may be amended with the vote (in person or by proxy) at a meeting of the Association duly called for such purpose, or written consent or any combination thereof, of at least two-thirds (2/3) of the Class A Members of the Association; provided, in either case, notice of the proposed amendment shall have been given to all Members of the Association as required by the bylaws of the Association; provided, however, the percentage of votes necessary to amend specific clauses shall not be less than the prescribed percentage of affirmative votes required by this Declaration for action to be taken under that clause. Notwithstanding anything to the contrary contained herein, in no event may any of the Declarant's rights or privileges under the articles of

incorporation or bylaws of the Association or this Declaration be terminated, altered or amended, nor may any amendment impose on the Declarant any obligation which is not also imposed on all Owners, without the Declarant's prior written consent.

(b) For so long as there is a Class B membership, the consent of the Declarant shall be required in order for any other person or entity to record any other covenants, restrictions or easements with respect to any of the Property.

(c) An amendment or modification shall be signed and acknowledged by the President or Vice President and Secretary of the Association, who shall certify that the amendment or modification has been approved as hereinabove provided, and by the Declarant, if the Declarant is still a Member of the Association, or such other consent as is otherwise required by the provisions of this Declaration. The amendment shall be recorded in the Land Records. Unless a later date is specified in any such instrument, any amendment to this Declaration shall become effective on the date of recording. For the purpose of recording such instrument, each Owner, other than the Declarant, hereby grants to the President or Vice President and Secretary of the Association, an irrevocable power of attorney to act for and on behalf of each and every Owner in certifying, executing and recording such instrument.

(d) For as long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration, the Veterans Administration and the Department of Housing and Urban Development: annexation of additional properties; dedication of Common Areas; and amendment of this Declaration.

9. **Joinder of Association.** The Association is joining herein to evidence its consent to the provisions of this Declaration, including but not limited to any provisions imposing obligations upon the Association, and the Association hereby agrees to assume such obligations.

WITNESS the hand and seal of the Declarant on the date first written above.

WITNESS:

HD WHISPERING CREEK, L.L.C., a Maryland limited liability company, Declarant

[Handwritten signature]

By: Pulte Home Corporation, Sole Member

By: *[Handwritten signature]* (SEAL)
Name: MICHAEL FITZGERALD
Title: ATTORNEY-IN-FACT

WHISPERING CREEK HOMEOWNERS ASSOCIATION, INC.

[Handwritten signature]

By: *[Handwritten signature]* (SEAL)
Name: Amy E. Fagan
Title: President

STATE OF MARYLAND; County OF Howard, TO WIT:

I HEREBY CERTIFY that on this 16th day of May, 2005, before the subscriber, a Notary Public of the State of Maryland, personally appeared Michael Fitzgerald, the Attorney In Fact of Pulte Home Corporation, a Michigan corporation and the sole member of HD Whispering Creek, L.L.C., a Maryland limited liability company, and that he/she, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself/herself as such officer, and he/she acknowledged execution of such instrument to be the act and deed of such limited liability company.

IN WITNESS WHEREOF, I hereunto set my hand and affix my notarial seal.

[SEAL]

[Handwritten signature]
Notary Public

My commission expires: 10/01/06

[NOTARIES CONTINUE ON NEXT PAGE]

Howard

STATE OF MARYLAND, COUNTY OF PRINCE GEORGES, TO WIT:

I HEREBY CERTIFY that on this 16 day of May, 2006 before me, the subscriber, a Notary Public of the Sate of Maryland, personally appeared Amy Fagan, who acknowledged himself/herself to be the duly authorized President of Whispering Creek Homeowners Association, Inc., and as such officer, being authorized to do so, executed the foregoing Declaration of Covenants, Conditions, Restrictions and Easements for the purposes therein contained on behalf of said entity.

IN WITNESS WHEREOF, I hereunto set my hand and affix my notarial seal.

[SEAL]

Nancy G. Copps
Notary Public

My commission expires: 10/01/06

I, the undersigned, an attorney duly admitted to practice law before the Court of Appeals of Maryland, do hereby certify that the foregoing instrument has been prepared by an attorney or under an attorney's supervision.

Nancy Haas
Nancy Haas

EXHIBIT A

DESCRIPTION OF THE LAND

Lots 17-24 and 44-46, inclusive, as shown on the plat titled "Final Plat, Lots 17-24 and 44-46, Meandering Woods Court, WHISPERING CREEK P. U. D.," Plat 1 of 5, recorded among the Land Records of Frederick County, Maryland in Plat Book No. 81, Page 149;

Lots 47-58, inclusive, and H. O. A. Parcel B (containing approximately 0.81534 acres), as shown on the plat titled "Final Plat, Lots 47-58 and Parcel B, WHISPERING CREEK P. U. D.," Plat 2 of 5, recorded among the Land Records of Frederick County, Maryland in Plat Book No. 81, Page 150;

Lots 1-16, inclusive, and H. O. A. Parcel C (containing approximately 0.67442 acres), as shown on the plat titled "Final Plat, Lots 1-16 and Parcel C, WHISPERING CREEK P. U. D.," Plat 3 of 5, recorded among the Land Records of Frederick County, Maryland in Plat Book No. 81, Page 151;

Lots 25-43, inclusive, as shown on the plat titled "Final Plat, Lots 25-43, Meandering Woods Court, WHISPERING CREEK P. U. D.," Plat 4 of 5, recorded among the Land Records of Frederick County, Maryland in Plat Book No. 81, Page 152; and

H. O. A. Parcel A (containing approximately 50.54168 acres), as shown on the plat titled "Final Plat, Parcel A, WHISPERING CREEK P. U. D.," Plat 5 of 5, recorded among the Land Records of Frederick County, Maryland in Plat Book No. 81, Page 153.

EXHIBIT B
MPDU DECLARATION

