

THIS INSTRUMENT  
PREPARED  
BY AND SHOULD BE  
RETURNED  
TO:

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MELTZER, PURTILL &  
STELLE LLC  
125 S. Wacker Drive, Suite 2900  
Chicago, Illinois 60606

ABOVE SPACE FOR RECORDER'S USE ONLY

PINs: See Exhibit B

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## DECLARATION FOR EOLA PRESERVE TOWNHOMES

This Declaration is made by Pulte Home Company LLC, a Michigan limited liability company ("Declarant").

### R E C I T A L S

The Development Area is legally described in Exhibit A hereto. Some or all of the Development Area shall be the subject of a phased development called Eola Preserve Townhomes (the "Development"). The Development shall include dwelling units and other areas which will be maintained by the Association.

Initially, the Declarant shall subject the real estate which is legally described in Exhibit B hereto to the provisions of this Declaration as the Premises. From time to time the Declarant may subject additional portions of the Development Area to the provisions of this Declaration as Added Premises or remove portions of the Development Area from the Premises, as more fully described in Article 12.

Certain portions of the Premises not improved with a Home (including outlots owned by the Association and those portions of each Parcel which are not improved with a Home whether owned by an Owner or the Association), shall be designated as a Common Area or Association Maintained Public Areas hereunder. In order to provide for the orderly and proper administration and maintenance of the Premises, the Declarant has formed (or will form) the Association under the Illinois Limited Liability Company Act of 1986. The Association shall have the responsibility for administering and maintaining the Common Area and certain portions of the Parcels and Home Exteriors and shall set budgets and fix assessments to pay the expenses incurred in connection with such duties. Each Owner of a Parcel shall be a member of the Association and shall be responsible for paying assessments with respect to the Parcel owned by such Owner.

During the construction and marketing of the Development, the Declarant shall retain certain rights set forth in this Declaration, which rights shall include, without limitation, the right, prior to the Turnover Date, to manage the affairs of the Association or to designate the Managers of the Association, as more fully described in Article 9 and in the Operating Agreement, the right to come upon the Premises in connection with Declarant's efforts to sell Homes and other rights reserved in Article 9.

NOW, THEREFORE, the Declarant hereby declares as follows:

### ARTICLE 1 DEFINITIONS

For the purpose of brevity and clarity, certain words and terms used in this Declaration are defined as follows:

1.01 ASSOCIATION: The Eola Preserve Townhome Owners' Association LLC, an Illinois limited liability company, and its successors and assigns. As more fully

provided in Section 5.11, the Association may be merged into an Illinois not for profit corporation, which would become the Association hereunder.

1.02        ASSOCIATION MAINTAINED PUBLIC AREA: Those lawn and grass which are located in the dedicated rights of way or other areas owned or controlled by the Municipality which serve the Development, each as further described on Exhibit B and depicted on Exhibit B-1.

1.03        CHARGES: The Common Assessment, any special assessment levied by the Association and/or any other charges or payments, including, but not limited to, insurance deductibles charged to an Owner, which an Owner is required to pay or for which an Owner is liable under this Declaration or the Operating Agreement.

1.04        COMMON AREA: Those portions of the Premises which are designated as "Common Area" in Exhibit B hereto from time to time and all improvements located thereon, including, without limitation, private streets, private drives, parking areas, streetlights, signage, fencing (installed by Declarant), underground utilities, landscaping and retaining walls. The Common Area shall generally consist of all portions of the Premises located outside of the Homes and the Home Exteriors.

1.05        COMMON ASSESSMENT: The amounts which the Association shall assess and collect from the Owners to pay the Common Expenses and accumulate reserves for such expenses, as more fully described in Article 6.

1.06        COMMON EXPENSES: The expenses of operating and administering (including management and professional services) of the Association; the expenses of providing all maintenance, repair and replacement required to be furnished by the Association under this Declaration and the Plat; premiums for insurance policies maintained by the Association hereunder; the cost of general and special real estate taxes, if any, levied or assessed against the Common Area (which is not part of a Parcel) or Association Maintained Public Areas; if not separately metered or charged to the Owners, the cost of waste removal, scavenger services, water, sewer, or other necessary utility services to the buildings; any expenses designated as Common Expenses hereunder. Notwithstanding the foregoing, Common Expenses shall not include any payments made out of Capital Reserves.

1.07        COUNTY: DuPage County, Illinois or any political entity which may from time to time be empowered to perform the functions or exercise the powers vested in the County as of the Recording of this Declaration.

1.08        DECLARANT: Pulte Home Company, LLC, a Michigan limited liability company, its successors and assigns.

1.09        DECLARANT'S DEVELOPMENT PLAN: Declarant's current plan for the Development. Declarant's Development Plan shall be maintained by the Declarant at its principal place of business and may be changed at any time or from time to time without notice.

1.10        DECLARATION: This instrument with all Exhibits hereto, as amended or supplemented from time to time.

1.11        DEVELOPMENT AREA: The real estate described in Exhibit A hereto with all improvements thereon and rights appurtenant thereto, as Exhibit A may be amended as provided in Section 10.01. Exhibit A is attached hereto for informational purposes only and no covenants, conditions, restrictions, easements, liens or changes shall attach to any part of the real estate described therein, except to the extent that portions thereof are described in Exhibit B and expressly made subject to the provisions of this Declaration as part of the Premises.

1.12        FIRST MORTGAGEE: The holder of a bona fide first mortgage, first trust deed or equivalent security interest covering a Parcel.

1.13        HOME: That portion of a Parcel which is improved with a dwelling unit.

1.14        HOME EXTERIOR: The roof, gutters, downspouts, foundation or slab, footings, sidewalks, stoops, steps, and outer surface of exterior walls of a Home. The Home Exterior shall not include windows, window frames, window glass, doors (including garage and storm doors) or screening which are part of a Home.

1.15        MANAGERS: The manager or managers from time to time as appointed or elected as provided in this Declaration or the Operating Agreement, provided, that if the Association is merged into an Illinois not for profit corporation, as more fully provided in Section 5.11 below, the Managers shall be the board of directors of the Association.

1.16        MUNICIPALITY: The City of Aurora, an Illinois municipal corporation, or any political entity which may from time to time be empowered to perform the functions or exercise the powers vested in the Municipality as of the Recording of this Declaration.

1.17        OPERATING AGREEMENT: The Operating Agreement of the Association, a true copy of which is attached hereto as Exhibit C, provided that, if the Association is merged into an Illinois not for profit corporation, as more fully provided in Section 5.11 below, the term Operating Agreement as used herein shall mean the by-laws of the Association.

1.18        OWNER: A Record owner, whether one or more persons, of fee simple title to a Parcel, including a contract seller, but excluding those having such interest merely as security for the performance of an obligation. The Declarant shall be deemed to be an Owner with respect to each Parcel owned by the Declarant.

1.19        PARCEL: Each residential lot in the Premises shall be improved with a building containing at least four (4) dwelling units. Each such dwelling unit shall share a perimeter wall with at least one (1) other dwelling unit. The shared walls are defined as "Party Walls" in Section 13.01 hereof. Each residential lot in the Premises shall be divided into at least four (4) tracts which shall be defined by the Party Walls, as extended to the lot line. Each such tract shall consist of a dwelling unit (including approximately one-half (1/2) of the Party Wall which divides the dwelling unit from adjacent dwelling units) landscapable areas, and portions of driveways and walkways. Each tract shall be legally described in the deed which conveys the tract to the first purchaser thereof from the Declarant and the tract so described, together with all improvements thereon, shall be a "Parcel" hereunder.



1.20        PERSON: A natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

1.21        PLAT: That certain Final Plat of Subdivision of Eola Preserve, Recorded \_\_\_\_\_ as Document No. R\_\_\_\_\_, as corrected or resubdivided from time to time.

1.22        PREMISES: Those portions of the Development Area which are legally described in Exhibit B hereto, with all improvements thereon and rights appurtenant thereto. Declarant shall have the right, but not the obligation, to make additional portions of the Development Area subject to this Declaration as part of the Premises as more fully provided in Article 12.

1.23        RECORD: To record in the office of the Recorder of Deeds for the County.

1.24        RESIDENT: An individual who resides in a Home.

1.25        STORMWATER SEWER PLAN: The utility plan attached hereto as Exhibit D and made a part hereof which depicts the stormwater sewer improvements located on the Premises which shall be maintained by the Association.

1.26        SUBJECT TO ASSESSMENT: A Parcel shall only be “Subject to Assessment” hereunder from and after such time as a temporary, conditional or permanent certificate of occupancy has been issued for the Home constructed thereon and the Parcel is conveyed by the Declarant to the first purchaser thereof.

1.26        TURNOVER DATE: The date on which the right of the Declarant to designate the Managers of the Association is terminated under Section 9.05.

1.27        VOTING MEMBER: The individual who shall be entitled to vote in person or by proxy at meetings of the Owners, as more fully set forth in Article 5.

## ARTICLE 2 SCOPE OF DECLARATION/CERTAIN EASEMENTS

2.01        PROPERTY SUBJECT TO DECLARATION: Declarant, as the owner of fee simple title to the Premises, expressly intends to and by Recording this Declaration, does hereby subject the Premises to the provisions of this Declaration. Declarant shall have the right from time to time to subject additional portions of the Development Area to the provisions of this Declaration as Added Premises or to remove portions of the Development Area from the terms hereof, as provided in Article 12 hereof. Nothing in this Declaration shall be construed to obligate the Declarant to subject to this Declaration as Premises any portion of the Development Area other than those portions which are described in Exhibit B hereto or which are added to Exhibit B by Supplemental Declarations Recorded by Declarant pursuant to Article 12.

2.02        CONVEYANCES SUBJECT TO DECLARATION: All easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits, and privileges

which are granted, created, reserved or declared by this Declaration shall be deemed to be covenants appurtenant, running with the land and shall at all times inure to the benefit of and be binding on any Person having at any time any interest or estate in the Premises, and their respective heirs, successors, personal representatives or assigns, regardless of whether the deed or other instrument which creates or conveys the interest makes reference to this Declaration.

2.03      DURATION: Except as otherwise specifically provided herein the covenants, conditions, restrictions, easements, reservations, liens, and charges, which are granted, created, reserved or declared by this Declaration shall be appurtenant to and shall run with and bind the land for a period of forty (40) years from the date of Recording of this Declaration and for successive periods of ten (10) years each unless revoked, changed or amended in whole or in part as provided in Section 10.02.

2.04      PARCEL CONVEYANCE: Once a Parcel has been conveyed by the Declarant to a bona fide purchaser for value, then any subsequent conveyance or transfer of ownership of the Parcel shall be of the entire Parcel and there shall be no conveyance or transfer of a portion of the Parcel without the prior written consent of the Managers.

2.05      ACCESS EASEMENTS: Each Owner and Resident of a Parcel shall have a non-exclusive perpetual easement for ingress to and egress from his Parcel to public streets and roads over and across the private roads, driveways, pathways and walkways located on the Common Area, which easement shall run with the land, be appurtenant to and pass with title to every Parcel. Any governmental authority which has jurisdiction over the Premises, including without limitation, the Municipality, shall have a non-exclusive easement of access over private roads and driveways located on the Common Area and Parcels for police, fire, ambulance, waste removal, snow removal, or for the purpose of furnishing municipal or emergency services to the Premises. The Association, its employees, agents and contractors, shall have the right of ingress to, egress from, and parking on the Common Area or Association Maintained Public Areas, and the right to store equipment on the Common Area, for the purpose of furnishing any maintenance, repairs or replacements of the Common Area and Home Exteriors, as required or permitted hereunder.

2.06      RIGHT OF ENJOYMENT: Each Owner shall have the non-exclusive right and easement to use and enjoy the Common Area and the exclusive right to use and enjoy the Owner's Home Parcel and Home Exterior. Such rights and easements shall run with the land, be appurtenant to and pass with title to every Parcel, and shall be subject to and governed by the laws, ordinances and statutes of jurisdiction, the provisions of this Declaration, the Operating Agreement, and the reasonable rules and regulations from time to time adopted by the Association, including the right of the Association to come upon a Parcel to furnish services hereunder.

2.07      DELEGATION OF USE: Subject to the provisions of this Declaration, the Operating Agreement, and the reasonable rules and regulations from time to time adopted by the Association, any Owner may delegate his right to use and enjoy the Common Area to Residents of the Owner's Home. An Owner shall delegate such rights to tenants and contract purchasers of the Owner's Parcel who are Residents.

2.08        RULES AND REGULATIONS: The use and enjoyment of the Premises shall at all times be subject to reasonable rules and regulations duly adopted by the Association from time to time.

2.09        UTILITY EASEMENTS: The Municipality and all public and private utilities (including cable companies) serving the Premises are hereby granted the right to lay, construct, renew, operate, repair and maintain conduits, cables, pipes, wires, transformers, switching apparatus and other equipment, into and through the Common Area and Parcels for the purpose of providing utility or other services to the Premises or any other portion of the Development Area.

2.10        EASEMENTS, LEASES, LICENSES AND CONCESSIONS: The Association shall have the right and authority from time to time to lease or grant easements, licenses, or concessions with regard to any portions or all of the Common Area for such uses and purposes as the Managers deem to be in the best interests of the Owners and which are not prohibited hereunder, including, without limitation, the right to grant easements for utilities or any other purpose which the Managers deem to be in the best interests of the Owners. Any and all proceeds from leases, easements, licenses or concessions with respect to the Common Area shall be used to pay the Common Expenses. Also, the Association shall have the right and power to dedicate any part or all of the roads or parking areas located on the Common Area to the Municipality or other governmental authority which has jurisdiction over the Common Area. Each person, by acceptance of a deed, mortgage, trust deed, other evidence of obligation, or other instrument relating to a Parcel, shall be deemed to grant a power coupled with an interest to the Managers, as attorney-in-fact, to grant, cancel, alter or otherwise change the easements provided for in this Section. Any instrument executed pursuant to the power granted herein shall be executed by the Manager of the Association prior to the Turnover Date or by a majority of the Managers thereafter and duly Recorded.

2.11        ASSOCIATION'S ACCESS: The Association shall have the right and power to come onto any Parcel, Home, or Home Exterior for the purpose of furnishing the services required to be furnished hereunder, including, without limitation, the services described in Section 3.02 and Section 3.05 or enforcing its rights and powers hereunder.

2.12        NO DEDICATION TO PUBLIC USE: Except for easements granted or dedications made as permitted in Section 2.10, nothing contained in this Declaration shall be construed or be deemed to constitute a dedication, express or implied, of any part of the Common Area to or for any public use or purpose whatsoever.

2.13        EASEMENT FOR ENCROACHMENT: In the event that by reason of the construction, repair, reconstruction, settlement or shifting of an improvement to a Parcel, any improvement which is intended to service and/or be part of the Parcel shall encroach upon any part of any other Parcel or upon the Common Area or any improvement to the Common Area shall encroach upon any part of a Parcel, then there shall be deemed to be an easement in favor of and appurtenant to such encroaching improvement for the continuance, maintenance, repair and replacement thereof; provided, however, that in no event shall an easement for any encroachment be created in favor of any Owner (other than Declarant), if such encroachment occurred due to the intentional, willful, or negligent conduct of such Owner or his agent.

Without limiting the foregoing, the Owner of each Parcel shall have an easement appurtenant to his Parcel for the continuance, maintenance, repair and replacement of the following improvements, if any, which encroach onto another Parcel or the Common Area:

- (a) the eaves, gutters, downspouts, fascia, flashings, and like appendages which serve the Home or the Parcel;
- (b) the chimney which serves the Home on the Parcel;
- (c) the air conditioning equipment which serves the Home on the Parcel; or
- (d) balconies, steps, porches, decks, walkways, door entries and patios which serve the Home on the Parcel.

The Person who is responsible for the maintenance of any encroaching improvement for which an easement for continuance, maintenance, repair and replacement thereof is granted under this Section shall continue to be responsible for the maintenance of such encroaching improvement and the Person who is responsible for the maintenance of the real estate upon which such improvement encroaches shall not have the duty to maintain, repair or replace any such encroaching improvement unless otherwise provided in this Declaration.

2.14 OWNERSHIP OF COMMON AREA: Those portions of the Common Area, if any, which are part of a Parcel shall be owned by the Owner of the Parcel subject to the rights of the Association to maintain, repair and replace improvements thereon as provided in Article 3. Those portions of the Common Area which are not part of a Parcel, shall be conveyed to the Association free of mortgages no later than sixty (60) days after the Turnover Date or after being submitted to the terms of this Declaration, whichever is later, subject to the rights of Owners from time to time of the Parcels to use and enjoy such portions made subject hereto or the Common Area as provided herein.

2.15 LEASE OF HOME: Owners shall have the right to lease all (and not less than all) of his Home subject to the provisions of the subsections (a) through (f) below:

- (a) The total number of Homes allowed to be leased shall be limited to no more than thirty percent (30%) of the total number of Homes approved on the final plat of subdivision;
- (b) No Owner shall be allowed to lease more than one (1) Home within the subdivision;
- (c) No Home shall be leased for less than twelve (12) months or for hotel or transient purposes;
- (d) Any lease shall be in writing and shall provide that such lease shall be subject to the terms of this Declaration and that any failure of the lessee to comply with the terms of this Declaration shall be a default under the lease. Each Owner who leases his Home shall promptly provide a complete copy of such lease to the Board, which shall keep a record of the number of Homes leased. A lessee shall be bound by the provisions hereof regardless of whether the lease specifically refers to this Declaration;

(e) The Board may temporarily, for a period not to exceed one (1) year, grant an Owner a temporary exception to the maximum limit on Homes allowed to be leased based on documented and validated Owner medical hardship or an extended leave of absence due to a military deployment; and

(f) Owners renting their Homes are also required to comply with all City of Aurora codes including but not limited to the City's Property Maintenance Code which contains a dwelling unit licensing program.

The terms of this Section 2.15 shall only be amended with the approval or concurrent of the Office of the Mayor, or his designee, prior to the adoption of any such change.

2.16 REAL ESTATE TAXES FOR COMMON AREA AND PARCELS: If a tax bill is issued with respect to Common Area (which is not part of a Parcel) which is made subject to this Declaration in the middle of a tax year (regardless of when it is conveyed to the Association), then the tax bill shall be prorated so that the Declarant shall be responsible for the payment of that portion of the tax bill from January 1<sup>st</sup> of the tax year to the date that such Common Area is made subject to this Declaration, and the Association shall be responsible for the balance of the tax bill for such year, and any tax bills for subsequent years. Each Owner of a Parcel shall be responsible for the payment of real estate taxes levied with respect to the Owner's Parcel (including that portion of the Owner's Parcel which is designated as Common Area hereunder).

### ARTICLE 3 MAINTENANCE

3.01 IN GENERAL: The restrictions and limitations contained in this Article shall be subject to the rights of the Declarant set forth in Article 9.

#### 3.02 MAINTENANCE BY THE ASSOCIATION:

(a) The Association shall furnish the following and the cost thereof shall be Common Expenses:

(i) Maintenance (including street sweeping and snow removal), repair and replacement of the private roads, alleys, drive aisles, individual driveways, parking areas and walkways located on the Common Area;

(ii) Maintenance, repair and replacement of improvements located on the Common Area, including, but not limited to pavers, entry monument, retaining walls, street lighting, landscaped medians, lights and perimeter fencing and monument signage, if any, installed by the Declarant on the Premises;

(iii) Subject to the provisions of Sections 3.06 and 3.07, grass cutting and maintenance of grass and landscaping located on the Premises and the Association Maintained Public Areas; however, the watering of grass, shrubs, trees and other foliage on the portions of each Parcel outside of the Home shall be furnished by the Owners

and/or Residents pursuant to rules, regulations and procedures adopted from time to time by the Association;

(iv) Maintenance (including periodic painting), repairs and replacements to Home Exteriors, excluding, however, exterior window washing which shall be the responsibility of the Owner of each Home, and the cost thereof shall be Common Expenses. Without limiting the foregoing, to the extent there is damage to Home Exteriors which is not covered by insurance, the repair or replacement of such damage and the extent of any such repair or replacement shall be furnished by the Association at the Manager's reasonable discretion.;

(v) Maintenance, repair and replacement of, to the extent not maintained by a utility company, maintenance, repair and replacement of the electric, gas and other utility lines and components of other systems, if any;

(vi) Maintenance, repair and replacement of stormwater sewer improvements located on the Premises and identified on the Stormwater Sewer Plan;

(vii) All maintenance, repair and replacement work required pursuant to this Declaration shall be promptly completed in a good and workmanlike manner consistent with any applicable governmental regulations or standards, or, if no such regulations or standards apply, then consistent with good engineering, forestry, or other similar professional standards so as to ensure the safe and effective condition of the portion of the Development subject to maintenance, repair or replacement. The cost of any maintenance, repairs and replacement furnished by the Association pursuant to this Section shall be Common Expenses. The Declarant reserves the right to add additional responsibilities to be furnished by the Association at such time as any Supplemental Declarations are Recorded from time to time;

(viii) All maintenance, repair and replacement required to be furnished by the Association pursuant to the Plats; and

(ix) To the extent not maintained by the Municipality, the emergency access drive located on Outlot 20 as shown on the Plat.

(b) The Association shall maintain the grass, shrubs, trees, and flowers, if any, installed by the Declarant on the Common Area ("Initial Plantings") in accordance with generally accepted landscape maintenance standards, including mowing, trimming, fertilization, pruning, re-mulching, applications of insect and disease control, as needed, and any other maintenance which will promote the health of the Initial Plantings. If the Association fails to maintain the Initial Plantings in accordance with generally acceptable landscape maintenance standards and Initial Plantings die or decline as a result of this failure, then, the Association shall be responsible for the replacement of the declining or dead Initial Plantings, including, but not limited to replacements required by the Municipality in connection with the Municipality's acceptance of the Initial Plantings. All expenses incurred under this subsection shall be Common Expenses.

(c) The Association shall not be required to provide maintenance to any Parcel which is not yet Subject to Assessment hereunder.

### 3.03 MAINTENANCE BY OWNER:

(a) Except as otherwise specifically provided for in this Declaration, each Owner shall be responsible for the maintenance, repair and replacement of Owner's Home and Parcel and shall keep the same in good condition and repair, and shall be responsible for the maintenance, repair and replacement of such other items as the Association may hereafter deem appropriate.

(b) The maintenance (other than periodic exterior painting which shall be performed by the Association), repairs and replacements of light fixtures (which model and design shall be selected by the Association), light bulbs, windows, window frames, window glass, doors (including garage and storm doors) and screening on a Home shall be the responsibility of the Owner of the Home; however, at the option of the Managers, such work shall be furnished by the Association and the cost thereof charged to the Owner of the Home with respect to which the work is done based on actual cost, as determined by the Managers, in its or their reasonable judgment.

(c) Each Owner shall be responsible to maintain, repair or replace the water faucets or spigots (and any pipes serving the water faucets) adjacent to and serving the Owner's Home and for disconnecting any hose and turning off any exterior water faucets or spigot which serves the Owner's Home and shall be responsible for any damage which occurs as a result of the Owner's failure to do so.

(d) Each Owner shall be responsible to maintain, repair or replace all of the cleaning of dryer vents (including any flaps or other exterior covers), lines and duct work which are located in such Owner's Home or Home Exterior and/or which serve such Owner's Home. All such dryer vents, lines and duct work shall be cleaned at least once every twelve (12) months for purposes including, but not limited to, removing any blockages within the dryer vents such as lint, bird's nests and other debris and items. The Managers may adopt rules and regulations related to such cleaning of dryer vents, lines and duct work which may include, but not be limited to, rules requiring an Owner to provide the Association documentation on an annual basis demonstrating that the dryer vents, lines and duct work located in and/or which serve his/her Home have been cleaned in compliance with this Section.

(e) Each Owner shall be responsible to maintain, repair and replace (i) the sanitary sewer lines located on the Premises from the street stub to each Home Exterior and (ii) the water service lines located on the Premises from the buffalo box to each Home Exterior.

(f) Owners may install patios on their Parcel subject to the provisions of Section 3.07. Such patios shall be of the same dimensions and materials as represented on the developer-optional patios. Patios may only be concrete and no larger than 8.5 feet by 10 feet. Maintenance, repair and replacement of such patios shall be the Owner's sole responsibility.

(g) If, in the judgment of the Managers, an Owner fails to maintain those portions of the Owner's Home or Parcel which the Owner is responsible for maintaining hereunder in good condition and repair or the appearance of such portions is not of the quality of that of other Homes or Parcels in the Development or in compliance with rules and regulations adopted by the Managers, then the Managers may, in its or their discretion, take the following action:

(i) advise the Owner of the work which must be done and allow the Owner at least twenty (20) calendar days (or less in the case of an emergency) to cause the work to be done;

(ii) if the work is not done to the satisfaction of the Managers, in its or their sole judgment, then the Managers may seek injunctive relief, levy a fine and/or cause such work to be done and the cost thereof shall be a Charge payable by the Owner to the Association upon demand; and

(h) Repairs and replacements which are required due to occurrences which are normally covered by insurance required to be obtained by the Association under Section 4.01 shall be made as provided in Section 4.06.

3.04 CERTAIN UTILITY COSTS: Certain utility costs incurred in connection with the use, operation and maintenance of the Common Area, Association Maintained Public Area and Home Exteriors may not be separately metered and billed to the Association. Without limiting the foregoing, the Association shall have the right to use water from taps or spigots which may be located on a Parcel for the purpose of watering landscaping on the Common Areas. Except as otherwise provided in Section 3.05 below, if the cost for such water or other utilities is metered and charged to individual Homes rather than being separately metered and charged to the Association, then the following shall apply:

(a) If, in the opinion of the Managers, each Owner is sharing in a fair and equitable manner the cost for such service, then no adjustment shall be made and each Owner shall pay his own bill; or

(b) If in the opinion of the Managers, the Owner of a Home is being charged disproportionately for costs allocable to the Common Area, Association Maintained Public Area and Home Exteriors, then the Association shall pay, or reimburse such Owner, an amount equal to the portion of the costs which in the reasonable determination of the Managers is properly allocable to the Common Area and Home Exteriors and the amount thereof shall be Common Expenses hereunder.

(c) Notwithstanding the foregoing, the provisions of this subsection (c) shall apply to the water bills for each Home whose outdoor spigot is used by the Association for the purpose of watering landscaping on the Common Areas ("Water Use Home"). The Association shall pay the monthly water bill for each Water Use Home. Each year, the Association shall determine the "Average Winter Monthly Water Bill" for each Water Use Home, which shall be equal to 1/6<sup>th</sup> of the total of the monthly water bills, for the Water Use Home for the six month period from November of the preceding calendar year through April of the current year; provided, that until the Average Winter Monthly Water Bill is first calculated and determined, the Association shall use as the Average Winter Monthly Water Bill an amount equal to the estimate of what such monthly bill should be, as furnished to the Association by the Municipality. The Association shall charge the Owner of each Water Use Home each month an amount equal to the Average Winter Monthly Water Bill until the next Average Winter Monthly Water Bill is determined as provided above, which amount shall be payable by such Owner as a charge hereunder.



Any determinations or allocations made hereunder by the Managers shall be final and binding on all parties.

3.05      DAMAGE BY RESIDENT: If, due to the act or omission of a Resident of a Home, or of a household pet or guest or other authorized occupant or invitee of the Owner of a Parcel, damage shall be caused to any property insured by the Association pursuant to Section 4.01 and maintenance, repairs or replacements shall be required thereby, which would otherwise be a Common Expense, then the Owner of the Parcel shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Managers, to the extent not covered by insurance carried by the Association, including, without limitation, the deductible amount under any applicable insurance policy, or by an Owner.

3.06      ALTERATIONS, ADDITIONS OR IMPROVEMENTS TO THE COMMON AREA:

(a)      Subject to the provisions of Article 9, no alterations, additions or improvements shall be made to the Common Area or Association Maintained Public Areas without the prior approval of the Managers and, if required under applicable Municipality ordinances, rules and regulations, the approval of the Municipality.

(b)      The Association may cause alterations, additions or improvements to be made to the Common Area or may cause modifications to be made to the lawn or grass on the Association Maintained Public Area and the cost thereof shall be paid from a special assessment, as more fully described in Section 6.05.

(c)      If the Association shall alter, in any way, landscaping which was installed by the Declarant on the Common Area in accordance with plans approved by the Municipality, and if the Municipality requires that the altered area be returned to its original state, then the Association shall be responsible for restoring the altered area in accordance with the plans approved by the Municipality and the cost thereof shall be a Common Expense.

3.07      ALTERATIONS, ADDITIONS OR IMPROVEMENTS TO THE PARCELS: No additions, alterations or improvements shall be made to any Parcel (including any part of the Home which is visible from outside the Home) by an Owner without the prior written consent of the Managers and, until the Declarant no longer holds title to any portion of the Development Area, the Declarant. The Managers may (but shall not be required to) condition its or their consent to the making of an addition, alteration or improvement to a Parcel which requires the consent of the Managers upon the Owner's agreement either (i) to be solely responsible for the maintenance of such addition, alteration or improvement, subject to such standards as the Managers may from time to time set, or (ii) if the addition, alteration or improvement is required to be maintained hereunder by the Association as part of the Common Expenses, to pay to the Association from time to time the additional cost of maintenance as a result of the addition, alteration or improvement. If an addition, alteration or improvement which requires consent of the Managers and/or Declarant hereunder is made to a Parcel by an Owner without the prior written consent of the Managers or Declarant, or both, as applicable, then (i) the Managers may, in its or their discretion, take any of the following actions; and (ii)

until such time as the Declarant no longer owns or controls title to any portion of the Development Area, the Declarant may, in its discretion take any of the following actions:

- (a) Require the Owner to remove the addition, alteration or improvement and restore the Parcel to its original condition, all at the Owner's expense; or
- (b) If the Owner refuses or fails to properly perform the work required under (a), the Managers may cause such work to be done and may charge the Owner for the cost thereof as determined by the Managers or the Declarant, as applicable; or
- (c) Ratify the action taken by the Owner, and the Managers may (but shall not be required to) condition such ratification upon the same conditions which it may impose upon the giving of its or their prior consent under this Section.

3.08 SPECIAL SERVICES: The Managers may furnish to an Owner or Owners special services relating to the use and occupancy of a Parcel or Parcels and may charge the cost of providing such services to the Owner or Owners who benefit from the service. Without limiting the foregoing, the Association may contract with a provider of a special service, such as satellite TV service, cable TV service, internet access or other similar service, either make such service available to all Parcels or offer such service to each of the Owners on a voluntary basis. The Managers may charge the Owner of each Parcel which receives any such service for the reasonable cost of providing such service, which may be allocated in equal shares for each of the Parcels which is served or on such other reasonable basis as the Managers may deem appropriate. Any amount charged to an Owner for services furnished pursuant to this Section shall be due and payable at such time or times as designated by the Managers, and failure to pay any such amount shall give rise to a lien provided for in Section 7.01.

#### ARTICLE 4 INSURANCE/CONDEMNATION

4.01 HAZARD INSURANCE: Except as otherwise provided in Section 4.04 hereof, the Managers shall have the authority to and shall obtain what is currently commonly referred to as "bare wall" insurance for the Premises and all improvements thereto against loss or damage by fire and such other hazards as may be required under applicable requirements of Fannie Mae from time to time, as the Managers may deem desirable, or as reasonably required by First Mortgagees, for the full insurable replacement cost of the Homes, and all improvements thereto. Premiums for such insurance shall be Common Expenses. Such insurance coverage shall be written in the name of, losses under such policies shall be adjusted by, and the proceeds of such insurance shall be payable to, the Managers or the Association, as trustee for each of the Owners. All such policies of insurance (i) shall contain standard mortgage clause endorsements in favor of the First Mortgagees as their respective interests may appear, (ii) shall provide that the insurance shall not be invalidated by any act or neglect of any Owner, (iii) to the extent possible, shall provide that such policy shall not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days' written notice to the Association and the First Mortgagee of each Parcel, and (iv) shall contain waivers of subrogation with respect to the Association and its Managers, directors, officers, employees and agents (including the managing agent), Owners, occupants

of the Home, First Mortgagees, the Declarant and/or shall name all such parties as additional insured parties as their interests may appear.

4.02      INSURANCE TRUSTEE/USE OF PROCEEDS: The Managers may engage the services of any bank or trust company authorized to do trust business in Illinois to act as trustee, agent or depository on behalf of the Managers for the purpose of receiving and disbursing the insurance proceeds resulting from any loss, upon such terms as the Managers shall determine consistent with the provisions of this Declaration. The fees of such corporate trustee shall be Common Expenses. In the event of any loss in excess of \$100,000.00 in the aggregate, the Managers shall engage a corporate trustee as aforesaid. In the event of any loss resulting in the destruction of the major portion of one or more Homes, the Managers shall engage a corporate trustee as aforesaid upon the written demand of the First Mortgagee or any Owner of any Home so destroyed. The rights of First Mortgagees under any standard mortgage clause endorsement to such policies shall, notwithstanding anything to the contrary therein contained, at all times be subject to the provisions of this Declaration with respect to the application of insurance proceeds to the repair or reconstruction of the Homes. Payment by an insurance company to the Managers or to such corporate trustee of the proceeds of any policy, and the receipt of a release from the Managers of the company's liability under such policy, shall constitute a full discharge of such insurance company, and such company shall be under no obligation to inquire into the terms of any trust under which proceeds may be held pursuant hereto, or to take notice of any standard mortgage clause endorsement inconsistent with the provisions hereof, or see to the application of any payments of the proceeds of any policy by the Managers or the corporate trustee.

4.03      OTHER INSURANCE: The Managers shall also have the authority to and shall obtain the following insurance:

(a)      Comprehensive public liability and property damage insurance, which shall include and name Declarant as an additional insured, against claims for personal injury or death or property damage suffered by the public or by any Owner occurring in, on or about the Premises or upon, in or about the streets, private drives and passageways and other areas adjoining the Premises, in such amounts as the Managers shall deem desirable (but not less than \$1,000,000 covering all claims for personal injury and/or property damage arising out of a single occurrence).

(b)      Such workers compensation insurance as may be necessary to comply with applicable laws.

(c)      Employer's liability insurance in such amount as the Managers shall deem desirable.

(d)      Fidelity bond indemnifying the Association, the Managers and the Owners for loss of funds resulting from fraudulent or dishonest acts of any employee of the Association or of any other person handling the funds of the Association, the Managers or the Owners in such amount as the Managers shall deem desirable and as required applicable regulations of Fannie Mae.

(e)      Directors and officers liability insurance (or the equivalent thereof) covering the Managers.

(f) Such other insurance in such reasonable amounts as is required under applicable regulations of Fannie Mae or the Managers shall deem desirable.

Such insurance coverage shall include cross liability claims of one or more insured parties against other insured parties. To the extent possible, all of such policies shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days' prior written notice to the Association and First Mortgagees who specifically request such notice. The premiums for such insurance shall be Common Expenses.

4.04 OWNER'S RESPONSIBILITY: Unless expressly advised to the contrary by the Managers, each Owner shall obtain his or her own insurance on the contents of the Owner's Home and the fixtures, furnishings and personal property therein, through what is currently commonly referred to as an "HO-6 policy", which shall include all items inside the primer on the drywall of the Owner's Home, including, without limitation, floor coverings, wall coverings, ceiling coverings, built in cabinets, fixtures, appliances, air conditioning equipment, furnace/hot water heaters and sump and ejector pumps, regardless of from whom or when such items were acquired. Such HO-6 policy shall also include the Owner's personal liability to the extent not covered by the liability insurance for all of the Owners obtained as part of the Common Expenses as above provided. The Managers shall have no obligation whatsoever to obtain any such HO-6 insurance coverage on behalf of an Owner.

4.05 WAIVER OF SUBROGATION: The Association and each Owner hereby waive and release any and all claims which it or he may have against any other Owner, the Association and its Managers, the Declarant and the managing agent, if any, and their respective employees and agents, for damage to the Home or to any personal property located in a Home or to the Common Area caused by fire or other casualty, to the extent that such damage is covered by fire or other form of casualty insurance, and to the extent this release is allowed by policies for such fire or other casualty insurance.

4.06 REPAIR OR RECONSTRUCTION:

(a) In the case of damage by fire or other disaster to any Home (a "Damaged Improvement") where the insurance proceeds are sufficient to repair or reconstruct the Damaged Improvement, then the proceeds shall be used by the Association to repair or reconstruct the Damaged Improvement.

(b) In the case of damage by fire or other disaster to any Home or building which contains Homes where the insurance proceeds are insufficient to repair or reconstruct the Damaged Improvement or the Damaged Improvement cannot be reconstructed as originally designed and built because of zoning, building or other applicable laws, ordinances or regulations, the following procedure shall be followed:

(i) A meeting of the Owners shall be held not later than the first to occur of (i) the expiration of thirty (30) days after the final adjustment of the insurance claims or (ii) the expiration of ninety (90) days after the occurrence which caused the damage.

(ii) At the meeting, the Managers shall present a plan for the repair or reconstruction of the Damaged Improvement and an estimate of the cost of repair or

reconstruction, together with an estimate of the amount thereof which must be raised by way of special assessment and a proposed schedule for the collection of a special assessment to pay the excess cost.

(iii) A vote shall then be taken on the question of whether or not the Damaged Improvement shall be repaired or reconstructed based on the information provided by the Managers under (ii) above, including the proposed special assessment. The Damaged Improvement shall be repaired or reconstructed and the proposed special assessment shall be levied only upon the affirmative vote of Voting Members representing at least three-fourths (3/4) of the votes cast.

(iv) If the Voting Members do not vote to repair or reconstruct the Damaged Improvement at the meeting provided for in (i) above, then the Managers may, at its or their discretion, call another meeting or meetings of the Owners to reconsider the question of whether or not the Damaged Improvement shall be repaired or reconstructed.

(v) If the Voting Members do not vote to repair or reconstruct the Damaged Improvement under subsection (iv) above, then the Managers may, with the consent of Owners representing 75% of the Homes in the damaged building and First Mortgagees representing 75% of the Homes (by number) subject to Mortgages in the building, amend this Declaration to withdraw the building which includes the Damaged Improvement from the terms hereof (except as provided below). The payment of just compensation, or the allocation of any insurance or other proceeds to any withdrawing or remaining Owner shall be made to such Owner and his First Mortgagee, as their interests may appear, on an equitable basis, determined by the Managers. From and after the effective date of the amendment referred to above in this paragraph, the Owner of a Home located in the building which is withdrawn shall have no responsibility for the payment of assessments which would have been payable with respect to the Parcel if the amendment had not been Recorded; provided, that, the Parcel shall continue to be subject to the provisions of Section 3.07 hereof and upon issuance of an occupancy permit for a residential unit constructed on a Parcel removed from the terms hereof as provided above, the Parcel shall thereupon be subject to the terms hereof.

(c) If the Damaged Improvement is repaired or reconstructed, it shall be done in a workmanlike manner and the Damaged Improvement, as repaired or reconstructed, shall be substantially similar in design and construction to the improvements on the Premises as they existed prior to the damage, with any variations or modifications required to comply with applicable law.

(d) If the Damaged Improvement is not repaired or reconstructed, then the damaged portion of the building shall be razed, or secured and otherwise maintained in conformance with the rules or standards adopted from time to time by the Managers. Any reconstruction of the building shall be subject to the provisions of Section 3.07.

4.07 CONDEMNATION: In the case of a taking or condemnation by competent authority of any part of the Common Area (which is not part of a Parcel), the proceeds awarded

in such condemnation shall be paid to the Association and such proceeds, together with any Common Area Capital Reserve being held for such part of the Common Area, shall, in the discretion of the Board, either (i) be applied to pay the Common Expenses, (ii) be distributed to the Owners and their respective First Mortgagees, as their interests may appear, in equal shares, or (iii) be used to acquire additional real estate to be used and maintained for the mutual benefit of all Owners, as Common Area under this Declaration. Any acquisition by the Association pursuant to this Section of real estate which shall become Common Area hereunder shall not become effective unless and until a supplement to this Declaration, which refers to this Section and legally describes the real estate affected, is executed by a majority of the Managers of the Association and Recorded.

4.08        INSURANCE DEDUCTIBLES:        The Managers may, in their sole discretion, in the case of a claim for damage to any property insured by the HOA pursuant to Section 4.01(i) pay any deductible amounts as a Common Expense or from a separate line item established for deductibles in the Capital Reserve (defined in Section 6.06 below), (ii) after notice and an opportunity for a hearing, assess the deductible amount against the Owners who caused the damage or from whose Home the damage or cause of loss originated, or (iii) require the Owners of the Homes affected to pay the deductible amount. Any deductible amounts assessed to an Owner pursuant to this Section shall be a Charge hereunder.

## ARTICLE 5 THE ASSOCIATION

5.01        IN GENERAL: Declarant has caused or shall cause the Association to be organized as a limited liability company under the laws of the State of Illinois. The Association shall be the governing body for all of the Owners for the administration and operation of the Common Area and Association Maintained Public Area and for the maintenance repair and replacement of the Common Area and certain portions of the Home Exteriors as provided herein.

5.02        MEMBERSHIP: Each Owner shall be a member of the Association. There shall be one membership per Parcel (or in the case of an unimproved, residential lot owned by the Declarant, per each portion of an unimproved, residential lot to be improved with a Home as described on the Declarant's Development Plan ("Unimproved Parcel")). There shall be two (2) classes of membership. Each Owner of a Parcel (other than Declarant) shall be a "Class A Member"; and the Declarant shall be a "Class B Member" with respect to its ownership of (a) a Parcel or (b) an Unimproved Parcel. Membership shall be appurtenant to and may not be separated from ownership of a Parcel or an Unimproved Parcel. Ownership of a Parcel or an Unimproved Parcel shall be the sole qualification for membership. The Association shall be given written notice of the change of ownership of a Parcel within ten (10) days after such change.

5.03        VOTING MEMBERS: Subject to the provisions of Section 9.05, voting rights of the members of the Association shall be vested exclusively in the Voting Members. One individual shall be designated as the "Voting Member" for each Parcel or Unimproved Parcel (as defined in Section 5.02 above). The Voting Member or his proxy shall be the

individual who shall be entitled to vote at meetings of the Owners. If the Record ownership of a Parcel shall be in more than one person, or if an Owner is a trustee, corporation, partnership or other legal entity, then the Voting Member for the Parcel shall be designated by such Owner or Owners in writing to the Managers and, if in the case of multiple individual Owners, no designation is given, then the Managers at its or their election may recognize an individual Owner of the Parcel as the Voting Member for such Parcel.

5.04        MANAGERS: Prior to the Turnover Date, the Managers shall be the Declarant, or one or more entities or persons designated by the Declarant from time to time, who need not be Owners or Voting Members. Initially the Declarant shall be the sole Manager of the Association. After the Turnover Date, the Managers shall consist of that number of individuals provided for in the Operating Agreement, each of whom shall be an Owner or Voting Member.

5.05        VOTING RIGHTS: Prior to the Turnover Date, all of the voting rights at each meeting of the Association shall be vested exclusively in the Class B Member, the Declarant, and the Owners (other than Declarant) shall have no voting rights. From and after the Turnover Date, all of the voting rights at any meeting of the Association shall be vested in the Voting Members, and each Voting Member who represents a Class A Membership shall have one (1) vote for each Parcel which the Voting Member represents, and the Declarant, as the Class B Member, shall have ten (10) votes for each Parcel or Unimproved Parcel (as defined in Section 5.02 above) which it owns. From and after the Turnover Date any action may be taken by the Voting Members at any meeting at which a quorum is present (as provided in the Operating Agreement) upon an affirmative vote of a majority by the votes represented by Voting Members and the Declarant, except as otherwise provided herein or in the Operating Agreement.

5.06        MANAGERS LIABILITY: The Managers, the committee members or the officers of the Association shall not be personally liable to the Association or the Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such Managers, committee member or officer except for any acts or omissions found by a court to constitute criminal conduct, gross negligence or actual fraud. The Association shall indemnify and hold harmless the Declarant and each of the Managers, committee members or officers, and its or their heirs, executors or administrators, against all contractual and other liabilities to the Association, the Owners or others arising out of contracts made by or other acts of the Managers, the committee members or the officers on behalf of the Owners or the Association or arising out of their status as Managers, committee members or officers unless any such contract or act shall have been made criminally, fraudulently or with gross negligence. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, counsel fees, amounts of judgments paid and amounts paid in settlement) actually and reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative, or other in which any such Manager, committee member or officer may be involved by virtue of such person being or having been such Manager, committee member or the officer; provided, however, that such indemnity shall not be operative with respect to (i) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for criminal conduct, gross negligence or actual fraud in the performance of his duties as such Manager, committee

member or the officer or (ii) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Managers there is not reasonable ground for such person being adjudged liable for criminal conduct, gross negligence or actual fraud in the performance of his duties as such Manager, officer or committee member

5.07 MANAGING AGENT: The Declarant (or an entity affiliated with the Declarant) may be engaged by the Association to act as the managing agent for the Association and as managing agent shall be paid a reasonable fee for its services as fixed by a written agreement between the Association and the Declarant (or an entity controlled by the Declarant). Any management agreement entered into by the Association prior to the Turnover Date shall have a term of not more than two years and shall be terminable by the Association without payment of a termination fee with ninety (90) days written notice.

5.08 REPRESENTATION: The Association shall have the power and right to represent the interests of all of the Owners in connection with claims and disputes affecting the Common Area, Parcels and Home Exteriors. Without limiting the foregoing, the Association shall have the power after the Turnover Date to settle warranty disputes or other disputes between the Association, the Owners, and the Declarant affecting the construction, use or enjoyment of the Common Area, Parcels and Home Exteriors and any such settlement shall be final and shall bind all of the Owners.

5.09 DISSOLUTION: To the extent permissible under applicable law, in the event of the dissolution of the Association, any Common Area owned by the Association shall be conveyed to the Owners as tenants in common.

5.10 LITIGATION: No judicial or administrative proceedings shall be commenced or prosecuted by the Association without first holding a special meeting of the members and obtaining the affirmative vote of Voting Members representing at least seventy-five percent (75%) of the total votes represented by all Voting Members to the commencement and prosecution of the proposed action. This Section shall not apply to (a) actions brought by the Association to enforce the provisions of this Declaration, the Operating Agreement or rules and regulations adopted by the Managers (including, without limitation, an action to recover unpaid assessments or other charges or to foreclose a lien for unpaid assessments or other charges) or (b) counterclaims brought by the Association in proceedings instituted against it.

5.11 MERGER: Prior to the Turnover Date, the Declarant, or after the Turnover Date, the Managers shall have the right, power and authority to convert the Association from an Illinois Limited Liability Company to an Illinois Not for Profit Corporation ("NFP Conversion"), as permitted under applicable laws of the State of Illinois, as amended from time to time ("IL Law"). In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant and/or the Managers, as applicable, to make, consent to, and execute such documents as may be required under IL Law on behalf of each Owner and the Association. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Parcel and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power of the Declarant and/or the Managers to make, consent to, and execute the NFP Conversion and take such other actions as the Declarant and/or the Managers deem necessary or appropriate to carry out the intent of the



NFP Conversion, including, without limitation, adopting By-Laws for the Association to replace the Operating Agreement hereunder.

## ARTICLE 6 ASSESSMENTS

6.01 PURPOSE OF ASSESSMENTS: The assessments levied by the Association shall be exclusively to administer the affairs of the Association, to pay the Common Expenses, and to accumulate reserves for any such expenses.

6.02 COMMON ASSESSMENT: Each year on or before December 1, the Managers shall adopt and furnish each Owner with a budget for the ensuing calendar year, which shall show the following with reasonable explanations and itemizations:

- (a) The estimated Common Expenses;
- (b) The estimated amount, if any, to maintain adequate reserves for Common Expenses including, without limitation, amounts to maintain the Capital Reserve;
- (c) The estimated net available cash receipts from the operation and use of the Common Area, plus the estimated excess funds, if any, from the current year's assessments;
- (d) The amount of the "Common Assessment" payable by the Owners, which is hereby defined as the amount determined in (a) above, plus the amount determined in (b) above, minus the amount determined in (c) above;
- (e) That portion of the Common Assessment which shall be payable by the Owner of each Parcel which is subject to assessment hereunder each month until the next Common Assessment or revised Common Assessment becomes effective, which monthly amount shall be equal to the Common Assessment, divided by the number of Parcels, divided by twelve (12), so that each Owner shall pay equal Common Assessments for each Parcel owned. The Common Assessment shall be paid in periodic installments as determined by the managers from time to time, but no less than once each calendar year.

Anything herein to the contrary notwithstanding the provisions of this paragraph shall apply with respect to the period prior to the Turnover Date. Any budget ("Stabilized Budget") prepared by the Managers prior to the Turnover Date shall be based on the assumptions that (i) the Development has been fully constructed as shown on Declarant's Development Plan and (ii) all proposed Homes have been sold, are occupied and are Subject to Assessment. Prior to the Turnover Date, each owner of a Parcel (other than Declarant) which is Subject to Assessment shall pay a Common Assessment equal to the total cash needs, as shown on the Stabilized Budget, divided by the total number of proposed Homes, as shown on the Declarant's Development Plan, divided by 12, so that each Owner (other than Declarant) will pay, with respect to each Parcel which is Subject to Assessment and owned by the Owner, a monthly Common Assessment equal to what such Owner would be paying with respect to the Owner's Parcel if the Development were fully constructed pursuant to the Declarant's Development Plan and all proposed Homes have been built, are occupied and are Subject to Assessment. Each Owner shall pay such assessment at such times as determined by the Managers, but not less frequently than once each year. The Declarant

shall not be obligated to pay any Common Assessments to the Association prior to the Turnover Date. However, if with respect to the period commencing on the date of the Recording of this Declaration and ending on the Turnover Date, the amount of Common Assessments levied (as opposed to paid) plus working capital contributions under Section 6.07 payable (whether or not paid) by Owners (other than Declarant) less the portions thereof which are to be added to Capital Reserve is less than the Common Expenses actually incurred with respect to such period, then the Declarant shall pay the difference to the Association. From time to time prior to the Turnover Date, the Declarant may (but shall not be obligated to) advance to the Association funds to be used by the Association to pay its expenses ("Advanced Funds"). A final accounting and settlement of the amount, if any, owed by Declarant to the Association shall be made as soon as practicable after the Turnover Date. If, and to the extent that, the final accounting determines that the Advanced Funds, if any, are less than the amount owed by the Declarant to the Association pursuant to this Section, the Declarant shall pay the difference to the Association. If, and to the extent that, the final accounting determines that the Advanced Funds, if any, exceed the amount owed by the Declarant to the Association pursuant to this Section, then the Association shall pay such excess to the Declarant.

6.03      PAYMENT OF COMMON ASSESSMENT: On or before the first day of January of the ensuing calendar year, and on the first day of each month thereafter until the effective date of the next annual or revised Common Assessment, each Owner of a Parcel which is Subject to Assessment shall pay to the Association, or as the Managers may direct, that portion of the Common Assessment which is payable by each Owner of a Parcel under Section 6.02(e) or Section 6.08, as applicable, at such times as the Managers shall determine from time to time. For purposes hereof, a Parcel shall only be subject to assessment hereunder from and after such time as a temporary, conditional or permanent occupancy certificate has been issued with respect to the Home constructed thereon and the transfer and sale of the Home and Parcel to a third party purchaser.

6.04      REVISED ASSESSMENT: If the Common Assessment proves inadequate for any reason (including nonpayment of any Owner's assessment) or proves to exceed funds reasonably needed, then the Managers may increase or decrease the assessment payable under Section 6.02(e) by giving written notice thereof (together with a revised budget and explanation for the adjustment) to each Owner not less than ten (10) days prior to the effective date of the revised assessment.

6.05      SPECIAL ASSESSMENT: After the Turnover Date, the Managers may levy a special assessment as provided in this Section (i) to pay (or build up reserves to pay) expenses other than Common Expenses incurred (or to be incurred) by the Association from time to time for a specific purpose including, without limitation, to make alterations, additions or improvements to the Common Area, or any other property owned or maintained by the Association; or (ii) to cover an unanticipated deficit under the prior year's budget. Any special assessment shall be levied against all of the Parcels which are Subject to Assessment in equal shares for each such Parcel. No special assessment shall be adopted without the affirmative vote of Voting Members representing at least two-thirds (2/3) of the votes cast on the question and only those Owners of Parcels against which the proposed special assessment shall be levied may vote on the question. The Managers shall serve notice of a special assessment on all Owners by a statement in writing giving the specific purpose and reasons therefor in reasonable

detail, and the special assessment shall be payable in such manner and on such terms as shall be fixed by the Managers. Any assessments collected pursuant to this Section (other than those to cover an unanticipated deficit under the prior year's budget) shall be segregated in a special account and used only for the specific purpose set forth in the notice of assessment.

6.06        CAPITAL RESERVE: The Association shall segregate and maintain a special reserve account to be used solely for making capital expenditures in connection with the Common Area, Association Maintained Public Area and those portions of the Parcels and Home Exteriors with respect to which the Association is responsible for repair and replacement (the "Capital Reserve"). The Managers shall determine the appropriate level of the Capital Reserve based on a periodic review of the useful life of improvements to the Common Area, Association Maintained Public Area, the portions of the Parcels and Home Exteriors for which the Association is responsible and other property owned by the Association and periodic projections of the cost of anticipated major repairs or replacements to the Common Area, the portions of the Parcels and Home Exteriors for which the Association is responsible and the purchase of other property to be used by the Association in connection with its duties hereunder. The Capital Reserve may be built up by separate or special assessments or out of the Common Assessment as provided in the budget. Special accounts set up for portions of the Capital Reserve to be used to make capital expenditures with respect to the Common Area, and those portions of the Home Exteriors for which the Association is responsible and other property owned by the Association, shall be held by the Association as agent and trustee for the Owners of Homes with respect to which the Capital Reserve is held and such accounts shall be deemed to have been funded by capital contributions to the Association by the Owners. The budgets which will be adopted from time to time by the Managers prior to the Turnover Date shall include such reserve buildups which the Managers deem to be appropriate based on information available to the Managers, which may include, without limitation, a separate line item for insurance deductibles. Managers elected by the Owners after the Turnover Date may use different approaches from those used by Managers appointed by the Declarant prior to the Turnover Date, for the buildup of reserves or may choose not to provide for the buildup of reserves for certain capital expenditures or deferred maintenance for repairs or replacements of the Common Area, and those portions of the Home Exteriors for which the Association is responsible and other property owned by the Association. If the Managers choose not to provide for the buildup of reserves for a particular anticipated expenditure or if the buildup of reserves that the Managers do provide for in the budget does not result in sufficient funds to pay for the expenditure when the expenditure must be made, then (i) neither the Managers nor any of its past or present members shall be liable to the Association or the Owners for failing to provide for sufficient reserves and (ii) the Managers shall have the right and power to either levy a separate or special assessment to raise the funds to pay the expenditure or to borrow funds to pay the expenditure and repay the borrowed funds out of future Common Assessments, separate assessments or special assessments. The final accounting and settlement calculation between the Declarant and the Association (provided for in Section 6.02 above) shall not include any amounts allocated to, or deposited in, the Capital Reserve.

6.07        INITIAL CAPITAL CONTRIBUTION: Upon the closing of the sale of each Home by the Declarant to a purchaser for value, the purchasing Owner shall make a capital contribution to the Association in an amount equal to three (3) monthly installments of the then current Common Assessment for that Home and an amount equal to the current annual

fire and extended coverage insurance premium allocable to the Home, which amounts shall be held and used by the Association for its working capital needs (and not as an advance payment of the Common Assessment). In addition, the purchasing Owner shall pay to the Association the sum of One Hundred Dollars (\$100.00), which shall be added to the Capital Reserve.

6.08        PAYMENT OF ASSESSMENTS: Assessments levied by the Association shall be collected from each Owner by the Association and shall be a lien on the Owner's Parcel and also shall be a personal obligation of the Owner in favor of the Association, all as more fully set forth in Article 7. At closing of the initial or any subsequent sale of a Home, the purchasing Owner shall pay to the Association the monthly Common Assessment due for the month after the closing in advance and such payment shall be credited to the purchasing Owner's account.

## ARTICLE 7

### COLLECTION OF CHARGES AND REMEDIES FOR BREACH OR VIOLATION

7.01        CREATION OF LIEN AND PERSONAL OBLIGATION: The Declarant hereby covenants, and each Owner of a Parcel by acceptance of a deed therefor (whether or not it shall be so expressed in any such deed or other conveyance) shall be and is deemed to covenant and hereby agrees to pay to the Association all Charges made with respect to the Owner or the Owner's Parcel. Each Charge, together with interest thereon and reasonable costs of collection, if any, as hereinafter provided, shall be a continuing lien upon the Parcel against which such Charge is made and also shall be the personal obligation of the Owner of the Parcel at the time when the Charge becomes due. The lien or personal obligation created under this Section shall be in favor of and shall be enforceable by the Association.

7.02        COLLECTION OF CHARGES: The Association shall collect from each Owner all Charges payable by such Owner under this Declaration.

7.03        NON-PAYMENT OF CHARGES: Any Charge which is not paid to the Association when due shall be deemed delinquent. Any Charge which is delinquent for thirty (30) days or more shall bear interest at the rate of eighteen percent (18%) per annum or the maximum rate permitted by law, whichever is less, from the due date to the date when paid. The Association may (i) bring an action against the Owner personally obligated to pay the Charge to recover the Charge (together with interest, costs and reasonable attorney's fees for any such action, which shall be added to the amount of the Charge and included in any judgment rendered in such action), and (ii) enforce and foreclose any lien which it has or which may exist for its benefit. In addition, the Managers may add a reasonable late fee to any installment of an assessment which is not paid within thirty (30) days of its due date. No Owner may waive or otherwise escape personal liability for the Charges hereunder by nonuse of the Common Area or by abandonment or transfer of his Parcel.

7.04        LIEN FOR CHARGES SUBORDINATED TO MORTGAGES: The lien for Charges, provided for in Section 7.01, shall be subordinate to the First Mortgagee's mortgage on the Parcel which was Recorded prior to the date that any such Charge became due. Except as hereinafter provided, the lien for Charges, provided for in Section 7.01, shall not be affected by any sale or transfer of a Parcel. Where title to a Parcel is transferred pursuant

to a decree of foreclosure of the First Mortgagee's mortgage or by deed or assignment in lieu of foreclosure of the First Mortgagee's mortgage, such transfer of title shall extinguish the lien for unpaid Charges which became due prior to the date of the transfer of title. However, the transferee of the Parcel shall be personally liable for his share of the Charges with respect to which a lien against his Parcel has been extinguished pursuant to the preceding sentence where such Charges are reallocated among all the Owners pursuant to a subsequently adopted annual or revised Common Assessment or special assessment, and non-payment thereof shall result in a lien against the transferee's Parcel, as provided in this Article.

7.05      SELF-HELP BY MANAGERS: In the event of a violation or breach by an Owner of the provisions, covenants or restrictions of the Declaration, the Operating Agreement, or rules or regulations of the Managers where such violation or breach may be cured or abated by affirmative action, then the Managers upon not less than ten (10) days' prior written notice to the Owner, shall have the right to enter upon that part of the Premises where the violation or breach exists to remove or rectify the violation or breach; provided, that, if the violation or breach exists within a Home, judicial proceedings must be instituted before any items of construction can be altered or demolished.

7.06      OTHER REMEDIES OF THE MANAGERS: In addition to or in conjunction with the remedies set forth above, to enforce any of the provisions contained in this Declaration or any rules and regulations adopted hereunder the Managers may levy a fine or the Managers may bring an action at law or in equity in the name of the Association against any person or persons violating or attempting to violate any such provision, either to restrain such violation, require performance thereof, to recover sums due or payable (including fines) or to recover damages, and against the Parcel to enforce any lien created hereunder; and failure by the Association to enforce any provision shall in no event be deemed a waiver of the right to do so thereafter.

7.07      COSTS AND EXPENSES: All costs and expenses incurred by the Managers in connection with any action, proceedings or self-help in connection with the exercise of its or their rights and remedies under this Article, including, without limitation, court costs, attorneys' fees and all other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the rate of eighteen percent (18%) per annum or the maximum rate permitted by law, whichever is less, until paid, shall be charged to and assessed against the defaulting Owner, and the Association shall have a lien for all the same, upon his Parcel as provided in Section 7.01.

7.08      ENFORCEMENT BY OWNERS: Enforcement of the provisions contained in this Declaration and the rules and regulations adopted hereunder may be by any proceeding at law or in equity by any aggrieved Owner against any person or persons violating or attempting to violate any such provisions, either to restrain such violation or to recover damages, and against a Parcel to enforce any lien created hereunder.

## ARTICLE 8 USE RESTRICTIONS

8.01      INDUSTRY/SIGNS: No industry, business, trade, occupation or profession of any kind shall be conducted, maintained or permitted on any part of the Common Area nor shall any “For Sale” or “For Rent” signs or any other advertising be maintained or permitted on any part of the Common Area or any Home Exterior, except as permitted by the Managers or as permitted under Article 9. No advertising signs, billboards, or objects of unsightly appearance or nuisances shall be erected, placed or permitted to remain on any portion of any Parcel. The foregoing restrictions shall not apply to the signs and billboards, if any, of Declarant or its designees. Notwithstanding the foregoing, during the two (2) week period prior to and during the one (1) week period subsequent to a primary or general election, one (1) political sign (not to exceed 2 feet by 2 feet in size) may be placed in the window of a Home

8.02      UNSIGHTLY USES/REFUSE: No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out on any portion of any Home Exterior or the Common Area. The Premises shall be kept free and clear of all rubbish, debris and other unsightly materials and no waste shall be committed thereon. The Managers shall have the right to adopt reasonable rules and regulations concerning window treatment or other decorating within a Home which is visible from outside the Home. Refuse and refuse containers must be stored in the garage of each Home, except that refuse and refuse containers (to the extent permitted by the Municipality and the Managers) may be placed in such areas as shall be designated from time to time by the Managers or the Municipality between dusk on the evening before the day of the scheduled pick up and dusk on the evening of the day of the scheduled pickup.

8.03      SATELLITE DISHES/ANTENNAE: Subject to applicable federal, state and local regulations, laws and ordinances, no satellite dish, television antenna or other similar device shall be attached to or installed (i) on any portion of the Common Area, (ii) on the roof of a Home, or (iii) on any portion of a Home Exterior which is visible from the front of the Home. The installation of satellite dishes, television antennae and other similar devices shall be subject to additional reasonable rules and regulations adopted from time to time by the Managers. The restrictions set forth in this Section shall not apply to the Association with respect to the installation of equipment necessary for a master antenna system, cable television system or other similar systems within the Premises.

### 8.04      RESIDENTIAL USE ONLY:

(a)      Except as provided in Article 9 or in subsections (b) and (c) of this Section, each Home shall be used only as a residence and no industrial business, trade, occupation or profession of any kind shall be conducted, maintained or permitted on any part of the Premises.

(b)      No Resident shall be precluded with respect to his Home, from (i) maintaining a personal professional library, (ii) keeping his personal business records or accounts therein, or (iii) handling his personal business or professional calls or correspondence therefrom.

(c) To the extent permitted under applicable laws and ordinances, a Resident may conduct an in-home business in a Home.

8.05 PARKING: The parking of vehicles on the Premises shall be subject to rules and regulations adopted by the Managers from time to time, which rules and regulations may provide for the removal of any violating vehicles at the vehicle owner's expense or for the imposition of a fine for a violation of the rules and regulations. Without limiting the foregoing, the following shall apply:

(a) There shall be no parking permitted on the private roads or, except as specifically provided in subparagraph (b) below, the private driveways which serve the Premises.

(b) The garage which is part of each Home and that portion of the driveway which is adjacent to and extends approximately twenty (20) feet beyond the garage door ("Resident Reserved Parking Area") shall be used for parking only by the Resident of the Home and the Resident's guests; provided, however, that no vehicle may be parked in a Resident Reserved Parking Area for more than fourteen (14) consecutive nights.

(c) Residents shall not be permitted to park any vehicle (which has "D" or equivalent plates, more than two (2) axles, more than four (4) tires and/or a gross weight when fully loaded in excess of 8,000 pounds), recreational vehicle, boat, trailer or other similar vehicle on any portion of the Premises, other than within a garage which is part of a Home. In no event can any portion of a vehicle which is permitted to be parked on the Premises hereunder (including any ladder or other equipment attached thereto) block or overhang any portion of a sidewalk located on the Premises.

(d) Parking on Lot \_\_\_\_ of the Common Area shall be on the first come, first served basis.

(e) Except for emergencies, no repairs or maintenance work shall be performed on any vehicle on the Premises, other than within a garage which is part of a Home. Inoperable vehicles must be stored within a garage.

8.06 OBSTRUCTIONS: Except as permitted under Section 9.03 there shall be no obstruction of the Common Area, and nothing shall be stored in the Common Area without the prior written consent of the Managers.

8.07 PETS: No animals, livestock or poultry of any kind shall be raised, bred, or kept on the Common Area. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Parcel except for dogs, cats, birds or fish, as household pets ("Pets") but not for breeding purposes. Farm animals, snakes, other reptiles, exotic animals and wild animals are prohibited. Owners shall keep no more than the maximum number of Pets which is allowable under the ordinances of the Municipality, as may be amended from time to time; and if there is no ordinance in the Municipality, then no more than three (3) dogs, or three (3) cats, or a combination of dogs and cats not to exceed three (3) in total in any Home. The owner of any Pet shall immediately remove any bodily waste deposited by its pet on any Parcel, Common Area, parkways, cul-de-sac islands or dedicated streets. The Managers may from time to time adopt rules and regulations governing (a) the keeping of Pets in the Home, which

may include prohibiting certain species of Pets from being kept in the Home and (b) the use of the Common Area by Pets.

8.08 NO NUISANCE: No noxious or offensive activity shall be carried on in the Premises nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the Residents.

8.09 STRUCTURAL IMPAIRMENT: Nothing shall be done in, on or to any part of the Premises which would impair the structural integrity of any Home located thereon.

8.10 WATERING: The Managers may adopt rules and regulations governing the watering of grass, shrubs, trees and other foliage on the Common Areas located on a Parcel outside a Home. Without limiting the foregoing, the Managers may require the Owner of a particular Parcel to be responsible for watering specific portions of the Common Area located on his Parcel as designated from time to time by the Managers.

8.11 BALCONIES / GRILLS: The use and placement of gas and electric grills and other seasonal items on balconies and patios shall be subject to applicable ordinances of the Municipality and rules and regulations adopted by the Managers from time to time. The use of charcoal grills on the Premises is prohibited. Gas and electric grills are not permitted on decks.

8.12 USE AFFECTING INSURANCE: Nothing shall be done or kept in any Home or on the Common Areas which will increase the rate of insurance on the Premises, without prior written consent of the Managers. No Owner shall permit anything to be done or kept in his Home on the Common Areas which will result in the cancellation of insurance on the Premises or which would be in violation of any law.

8.13 FENCE RESTRICTIONS. No fencing shall be installed on the Premises, except as may be installed by the Declarant or Association.

8.14 PROHIBITION OF SWIMMING POOLS AND HOT TUBS: No swimming pools or hot tubs shall be installed on any Parcel within the Premises.

8.15 PROHIBITION OF RECREATION EQUIPMENT AND OUTDOOR STORAGE: Playgrounds, trampolines, sandboxes, swing sets and other recreation equipment are not permitted anywhere on a Parcel. Outside storage and furniture is prohibited in front or side yards.

8.16 PROHIBITION OF WINDOW AIR CONDITIONERS OR WINDOW FANS: No window air conditioners or window fans shall be placed in any Home constructed on the Premises.

8.17 CLEARANCE OF UTILITIES: The Owner of a Parcel, and not the Association, shall be responsible for the clearance and relocation of any utilities that must be made in connection with the installation of any improvements by the Owner on his Parcel.



8.18 COMPLIANCE WITH U.S. POSTAL SERVICE REGULATIONS: All mailboxes located in any right-of-way shall be in compliance with U.S. Postal Service Regulations and (ii) the Municipality's ordinances, rules and regulations, and must be approved by the Municipality.

8.19 PLANTS: No plants, seeds, or other things or conditions harboring or breeding infectious plant diseases or noxious insects shall be introduced or maintained upon any part of the Premises.

8.20 TEMPORARY STRUCTURES: Subject to the right of the Declarant to promote the sale of Parcels and Homes, no structure of a temporary character, including, without limitation, any trailer, tent, shack, garage or other building, shall be permitted on any part of the Premises at any time, whether temporarily or permanently, except with the prior written consent of the Managers.

8.21 TRASH: All rubbish, trash, or garbage shall be kept so as not to be seen from neighboring Homes and roads, and shall be regularly removed from the Premises, and shall not be allowed to accumulate thereon. Garbage may not be burned on a Parcel. Trash containers shall be placed on the curb for collection and empty containers shall be removed on the pick-up day at such times as provided in the current Municipal Ordinance, as may be amended from time to time.

8.22 SEASONAL DECORATIONS: Seasonal decorations (statues, artifacts, and lighting) customarily associated with any national, state, local, or religious holiday celebrations may be erected or displayed no earlier than thirty (30) days before the holiday and must be removed no later than fourteen (14) days after the holiday. During the winter months, this period may be extended by the Board due to extreme weather conditions. During such extended periods, any lighting shall not be illuminated.

8.23 COMMON AREA LANDSCAPING: All landscaped areas surrounding the Homes in the Development will be Common Areas, maintained by the Association. Residents of the Development are prohibited from planting or altering the landscaping within the Common Areas. Residents are permitted to plant container gardens within the Common Areas in the immediate vicinity of their individual Homes, in accordance with the rules and regulations adopted by the Association from time to time.

8.24 GROUND WATER: All Residents are strictly prohibited from accessing groundwater or installing any wells within the Development. Water used by Residents is restricted to the use of municipal water provided to the Development by the Municipality.

ARTICLE 9  
DECLARANT'S RESERVED RIGHTS AND  
SPECIAL PROVISIONS COVERING DEVELOPMENT PERIOD

9.01 IN GENERAL: In addition to any rights or powers reserved to the Declarant under the provisions of this Declaration or the Operating Agreement, the Declarant shall have the rights and powers set forth in this Article. Anything in this Declaration or the Operating Agreement to the contrary notwithstanding, the provisions set forth in this Article shall govern. If not sooner terminated as provided in this Article, the provisions of this Article shall terminate and be of no further force and effect five (5) years after the Declarant is no longer vested with or controls title to any portion of the Development Area (Declarant Rights Period”).

9.02 PROMOTION OF PROJECT: Subject to applicable ordinances of the Municipality, the Declarant shall have the right and power, within its sole discretion, to (i) construct such temporary or permanent improvements, or to do such acts or other things in, on, or to the Premises as the Declarant may, from time to time, determine to be necessary or advisable, (ii) construct and maintain model homes, sales or leasing offices, parking areas, advertising signs, lighting and banners, or other promotional facilities at such locations and in such forms as the Declarant may deem advisable and to use such model homes (including model homes which are sold and leased back to the Declarant), sales or leasing offices or other facilities for the purpose of selling or leasing Homes on the Development Area or at other properties in the general location of the Development Area which are being offered for sale by the Declarant or any of its affiliates, without the payment of any fee or charge whatsoever to the Association. Declarant, its agents, prospective purchasers and tenants, shall have the right of ingress, egress and parking in and through, and the right to use and enjoy the Common Area, at any and all reasonable times without fee or charge. The Declarant shall have the right and power to lease any Home owned by it to any person or entity which it deems appropriate in its sole discretion and it need not comply with the provisions of Section 2.15.

9.03 CONSTRUCTION ON PREMISES: In connection with the construction of improvements to any part of the Premises, the Declarant, its agents and contractors, shall have the right, at the Declarant's own expense, (but shall not be obligated) to make such alterations, additions or improvements to any part of the Premises including, without limitation, the construction, reconstruction and/or alteration of any temporary or permanent improvements to any structure which shall contain Homes or the Common Area which the Declarant deems, in its sole discretion, to be necessary or advisable, and the landscaping, sodding or planting and replanting of any unimproved portions of the Premises. In connection with the rights provided in the preceding sentence, the Declarant, its agents and contractors, shall have the right of ingress, egress and parking on the Premises and the right to store dirt, construction equipment and materials on the Premises without the payment of any fee or charge whatsoever.

9.04 GRANT OF EASEMENTS AND DEDICATIONS: Declarant shall have the right to dedicate portions of the Common Area and Parcels to the County, Municipality or other governmental authority which has jurisdiction over such portions. Declarant shall also have the right to reserve or grant easements over the Common Area to any governmental

authority, public utility or private utility for the installation and maintenance of electrical and telephone conduit and lines, gas, sewer, water lines and cable television, or any other utility services serving any Parcel.

9.05        DECLARANT CONTROL OF ASSOCIATION: Prior to the Turnover Date, the Managers shall be the Declarant, or one or more entities or persons designated by the Declarant from time to time who need not be Owners or Voting Members. Initially the Declarant shall be the sole Manager. The rights and powers of the Declarant to manage the affairs of the Association, or designate the managers, which persons may, but need not be, members under Section 5.02, of the Association shall terminate on the first to occur of (i) such time as Declarant no longer holds or controls title to any portion of the Development Area, (ii) the giving of written notice by Declarant to the Association of Declarant's election to terminate such rights, (iii) ten (10) years from the date of Recording hereof or (iv) the date required under applicable statute. The date on which the Declarant's rights under this Section shall terminate shall be referred to as the "Turnover Date". From and after the Turnover Date, the Managers shall be constituted and elected as provided in the Operating Agreement. Prior to the Turnover Date, all of the voting rights at each meeting of the Owners shall be vested exclusively in the Declarant and the Owners (other than Declarant) shall have no voting rights.

9.06        OTHER RIGHTS: The Declarant shall have the right and power to execute all documents and do all other acts and things affecting the Premises which, in Declarant's opinion, are necessary or desirable in connection with the rights of Declarant under this Declaration.

9.07        ASSIGNMENT BY DECLARANT: All rights which are specified in this Declaration to be rights of the Declarant are mortgageable, pledgeable, assignable or transferable, in whole or in part. Any successor to, or assignee of, the rights of the Declarant hereunder (whether as the result of voluntary assignment, foreclosure, assignment in lieu of foreclosure, or otherwise) shall hold or be entitled to exercise the rights of Declarant hereunder as fully as if named as such party herein. No such successor assignee of the rights of Declarant hereunder shall have or incur any liability for the acts of any other party which previously exercised or subsequently shall exercise such rights.

9.08        MATTERS AFFECTING COMMON AREA: During the Declarant Rights Period, the Association shall not cause or permit a lien or encumbrance to be placed or imposed on any portion of the real estate legally describe in Section II of Exhibit B hereto (each a "Common Area Lot") without the prior written consent of the Declarant. Any such lien or encumbrance placed or imposed on a Common Area Lot without Declarant's consent shall be null and void. In order to reflect or conform to a change in the Declarant's Development Plan, any time prior to the end of the Declarant Rights Period, the Declarant shall have the right and power to (i) Record a Supplemental Declaration pursuant to Article 12 to withdraw and remove any portion or portions of a Common Area Lot from the Common Area, and (ii) require the Association to convey such portion or portions of a Common Area Lot which are so withdrawn and removed from the Common Area to Declarant or its nominee, free and clear of any liens or encumbrances other than those created by or consented to by the Declarant pursuant to this Section.

9.09      ARCHITECTURAL CONTROLS: Prior to such time as the Declarant no longer holds or controls title to any portion of the Development Area, no additions, alterations or improvements (including, without limitation, changes in the exterior color of a Home or construction or installation of a shed, outbuilding, deck, patio, terrace, antennae, satellite dish or similar changes) shall be made to the exterior of any Home or any part of the Home which is visible from outside the Home by an Owner without the prior written consent of the Declarant. If an addition, alteration or improvement which requires Declarant approval hereunder is made to a Home without the prior written consent of the Declarant, then the Declarant may seek injunctive relief to cause the Owner to cease construction of and/or remove the addition, alteration or improvement. Declarant's decision to approve or disapprove an alteration, addition or improvement in one instance shall not in any way create or establish a precedent for how the Declarant must respond to a request for an alteration, addition or improvement subsequently made, it being understood that circumstances, situations and standards may change and the Declarant reserves the right and power to grant or deny requests as Declarant believes are appropriate in Declarant's sole and absolute discretion.

## ARTICLE 10 AMENDMENTS

10.01      SPECIAL AMENDMENTS: Anything herein to the contrary notwithstanding, Declarant reserves the right and power to Record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration (i) to comply with requirements of Fannie Mae, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Veteran's Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (ii) to induce any of such agencies or entities to make, purchase, sell, insure, guarantee or otherwise deal with first mortgages covering Parcels, (iii) to correct omissions, errors, ambiguities or inconsistencies in the Declaration or any Exhibit, (iv) to bring the Declaration into compliance with applicable laws, ordinances or governmental regulations, (v) to amend Exhibit A to include additional real estate, (vi) to amend Exhibit B to remove real estate from the Premises and the terms of this Declaration, and (vii) to reflect a change in the Declarant's Development Plan. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to make or consent to a Special Amendment on behalf of each Owner. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Parcel and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to make, execute and Record Special Amendments. The right and power of the Declarant to Record a Special Amendment hereunder shall terminate five (5) years after such time as Declarant no longer holds or controls title to a portion of the Development Area.

10.02      AMENDMENT: Subject to Section 10.01 and Article 11, the provisions of this Declaration may be amended, abolished, modified, enlarged, or otherwise changed in whole or in part by the affirmative vote of Voting Members representing at least Seventy-Five percent of the total votes or by an instrument consented to, in writing, executed by Owners of at least Seventy-Five Percent (75%) of the Parcels; except, that (i) the provisions of this Section 10.02 may be amended only by an instrument executed by all of the Owners and all First

Mortgagees; (ii) the provisions of Section 2.15 may be amended only with the approval or concurrence of the Mayor or his designee, and (iii) until such time as the rights and powers of the Declarant under this Declaration terminate this Declaration may only be amended with the written consent of the Declarant. No amendment which removes Premises from the provisions of this Declaration shall be effective if as a result of such removal, an Owner of a Parcel shall no longer have the legal access to a public way from his Parcel. No amendment shall become effective until properly Recorded.

## ARTICLE 11 FIRST MORTGAGEES RIGHTS

11.01      NOTICE TO FIRST MORTGAGEES: Upon the specific, written request of First Mortgagee or the insurer or guarantor of a First Mortgagee's mortgage, such party shall receive some or all of the following and these notices can be delivered by any means the Managers determines which is not contrary to the provisions of the Act:

(a)      Copies of budgets, notices of assessment, or any other notices or statements provided under this Declaration by the Association to the Owner of the Parcel covered by the First Mortgagee's mortgage;

(b)      Any audited or unaudited financial statements of the Association which are prepared for the Association and distributed to the Owners; provided, that, if an audited statement is not available, then upon the written request of the holder, insurer or guarantor of a Mortgage, the Association shall permit such party to have an audited statement for the preceding fiscal year of the Association prepared at such party's expense;

(c)      Copies of notices of meetings of the Owners;

(d)      Notice of any proposed action that requires the consent of a specified percentage of Eligible First Mortgagees;

(e)      Notice of any substantial damage to any part of the Common Area or the Parcel subject to the First Mortgagee's mortgage;

(f)      Notice of the commencement of any condemnation or eminent domain proceedings with respect to any part of the Common Area or the Parcel subject to the First Mortgagee's mortgage;

(g)      Notice of any default by the Owner of the Parcel which is subject to the First Mortgagee's mortgage under this Declaration, the Operating Agreement or the rules and regulations of the Association which is not cured within 30 days of the date of the default;

(h)      The right to examine the books and records of the Association at any reasonable times;

(i)      In the case of a First Mortgagee, the right to be listed on the records of the Association as an "Eligible First Mortgagee" for purpose of Section 11.02 below; and

(j) A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

The request of any such party shall specify which of the above it desires to receive and shall indicate the address to which any notices or documents shall be sent by the Association.

#### 11.02 CONSENT OF FIRST MORTGAGEES:

(a) In addition to any requirements or prerequisites provided for elsewhere in this Declaration, the consent of First Mortgagees holding, in the aggregate, the first mortgages on at least two-thirds (2/3) of the Parcels (by number) which are subject to first mortgages held by First Mortgagees which specifically request to be treated as “Eligible First Mortgagees” under Section 11.01(i) above will be required for the Association to do or permit to be done any of the following:

(i) Adoption of an amendment to this Declaration which (i) changes Article 6 or otherwise changes the method of determining the Common Assessments or other Charges which may be levied against an Owner; (ii) changes Section 7.04 or Article 10, (iii) changes this Article 11 or any other provision of this Declaration or by Operating Agreement which specifically grants rights to First Mortgagees, (iv) materially changes insurance and fidelity bond requirements, (v) changes voting rights, or (vi) imposes a right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his Parcel;

(ii) The withdrawal of the Premises from the provisions of this Declaration; provided, that, such consent of Eligible First Mortgagees shall not be required with respect to any action under (i) above which occurs as a result of any action taken pursuant to Article 12.

(b) Whenever required, the consent of an Eligible First Mortgagee shall be deemed granted unless the party seeking the consent is advised to the contrary, in writing, by the Eligible First Mortgagee within sixty (60) days after making the request for consent.

11.03 INSURANCE PROCEEDS/CONDEMNATION AWARDS: In the event of (i) any distribution of any insurance proceeds hereunder as a result of damage to, or destruction of, any part of the Premises or (ii) any distribution of the proceeds of any award or settlement as a result of condemnation or eminent domain proceedings with respect to any part of the Common Area, any such distribution shall be made to the Owners and their respective First Mortgagees, as their interests may appear, and no Owner or other party shall be entitled to priority over the First Mortgagee of a Parcel with respect to any such distribution to or with respect to such Parcel; provided, that, nothing in this Section shall be construed to deny to the Association the right (i) to apply insurance proceeds to repair or replace damaged improvements or (ii) to apply proceeds of any award or settlement as a result of eminent domain proceedings as provided in Article 4.

ARTICLE 12  
ANNEXING/REMOVING PROPERTY

12.01     IN GENERAL: Declarant reserves the right at any time and from time to time prior to twenty (20) years from the date of Recording of this Declaration to (i) annex, add and subject additional portions of the Development Area to the provisions of this Declaration as additional Premises or (ii) remove certain portions of the Development Area from the Premises by recording a supplement to this Declaration (a “Supplemental Declaration”), as hereinafter provided. Any portion of the Development Area which is made subject to this Declaration by a Supplemental Declaration shall be referred to as “Added Premises”; any portion of any Added Premises which is made part of the Common Area shall be referred to as “Added Common Area”; and any Parcels contained in the Added Premises shall be referred to as “Added Parcels”. Any portion of the Development Area which is removed from the terms of this Declaration by a Supplemental Declaration shall be referred to herein as “Removed Real Estate”. The Removed Real Estate may only include (i) a Parcel planned to be improved with Home (as shown on the Declarant’s Development Plan), provided that no portion of such Parcel is Subject to Assessment hereunder, and (ii) portions of the Common Area, if any, which, in Declarant’s sole and absolute determination, serve the Parcels being removed. After the expiration of said twenty (20) year period, Declarant may exercise the rights described herein to annex, add and subject additional portions of the Development Area to the provisions of this Declaration or remove portions of the Development Area from the Premises, provided that the consent the Owners (by number) of two-thirds (2/3) of all Parcels then subject to this Declaration is first obtained. If any portion of the Added Premises or Removed Real Estate, as the case may be, is owned by an owner other than the Declarant, then such owner shall join in the Supplemental Declaration for the purpose of making the Added Premises owned by it subject to this Declaration or removing the portion of the Removed Real Estate owned by it from the terms of this Declaration, as applicable.

12.02     POWER TO AMEND: Declarant hereby retains the right and power to Record a Supplemental Declaration, at any time and from time to time as provided in Section 12.01, which amends or supplements Exhibit B. Exhibit B may only be amended or supplemented pursuant to this Article to (i) either add portions of the Development Area to Exhibit B or (ii) remove from the Premises real estate which is described in Exhibit B immediately prior to the Recording of such Supplemental Declaration. A Supplemental Declaration may contain such additional provisions affecting the use of the Added Premises or the rights and obligations of owners of any part or parts of the Added Premises or the Removed Real Estate as the Declarant deems necessary or appropriate.

12.03     SUPPLEMENTAL DECLARATION TO ADD PREMISES: Upon the Recording of a Supplemental Declaration by Declarant which annexes and subjects Added Premises, Added Common Area, or Added Parcels to this Declaration, as provided in this Article, then:

(a)     The easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits and privileges set forth and described herein shall run with and bind the Added Premises and inure to the benefit of and be binding on any Person having at any time any interest or estate in the Added Premises in the same manner, to the same extent and with the same force

and effect that this Declaration applies to the Premises, and Persons having an interest or estate in the Premises, subjected to this Declaration prior to the date of the Recording of the Supplemental Declaration;

(b) Each Added Parcel shall be a Parcel hereunder and each Owner of an Added Parcel shall be a member of the Association on the same terms and subject to the same qualifications and limitations as those members who are Owners of Parcels immediately prior to the Recording of such Supplemental Declaration;

(c) Every Owner of an Added Parcel shall be a member of the Association on the same terms and subject to the same qualifications and limitations as those members who are Owners of Parcels immediately prior to the Recording of such Supplemental Declaration;

(d) The provisions of Article 3 shall be revised to add any new obligations or responsibilities of the Association or Parcel Owners with regards to the maintenance, repair or replacement of the Added Common Areas, if any;

(e) In all other respects, all of the provisions of this Declaration shall include and apply to the Added Premises (including the Added Common Area, or the Added Parcels, if any) made subject to this Declaration by any such Supplemental Declaration and the Owners, First Mortgagees, and lessees thereof, with equal meaning and of like force and effect and the same as if such Added Premises were subjected to this Declaration at the time of the Recording hereof;

(f) The Recording of each Supplemental Declaration shall not alter the amount of the lien for any Charges made to a Parcel or its Owner prior to such Recording;

(g) The Declarant shall have and enjoy with respect to the Added Premises all rights, powers and easements reserved by the Declarant in this Declaration, plus any additional rights, powers and easements set forth in the Supplemental Declaration; and

(h) Each Owner of an Added Parcel which is Subject to Assessment hereunder shall be responsible for the payment of the Common Assessment pursuant to Section 6.02(e) or Section 6.08, but shall not be responsible for the payment of any special assessment which was levied prior to the time that the Added Parcel became Subject to Assessment hereunder.

12.04 SUPPLEMENTAL DECLARATION TO REMOVE REAL ESTATE:  
Upon the Recording of a Supplemental Declaration by Declarant which removes Removed Real Estate from the terms of this Declaration, as provided in this Article, then:

(a) Except as specifically provided in the Supplemental Declaration, none of the easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits and privileges set forth and described herein shall apply to or affect any portion of the Removed Real Estate;

(b) The owner or owners from time to time of any portion of the Removed Real Estate shall not be members of the Association;



(c) The Supplemental Declaration may grant or reserve easements or covenants with respect to a portion of all of the Removed Real Estate or may impose upon a portion or all of the Removed Real Estate, the obligation to share in certain costs incurred by the Association which benefit such portion or all of the Removed Real Estate, as determined by the Declarant in its sole and absolute judgment; and

(d) The provisions of Section 9.08 shall apply to any Common Area Lot or portion thereof which is part of the Removed Real Estate.

### ARTICLE 13 PARTY WALLS

13.01 PARTY WALL: Every wall, including the foundations therefor, which is built as a part of the original construction of a building and placed on the boundary line between separate Homes shall constitute and be a "Party Wall", and the Owner of a Parcel immediately adjacent to a Party Wall shall have the obligation and be entitled to the rights and privileges of these covenants and, to the extent not inconsistent herewith, the general rules of law regarding party walls.

13.02 RIGHTS IN PARTY WALL: Each Owner of a Parcel, which is adjacent to a Party Wall, shall have the right to use the Party Wall for support of the structure originally constructed thereon and all replacements thereof and shall have the right to keep, maintain, repair and replace therein all pipes, conduit, and ducts originally located therein and all replacements thereof.

13.03 DAMAGE TO PARTY WALL:

(a) If any Party Wall is damaged or destroyed through the act or acts of any Owner of a Parcel which is adjacent to such Party Wall, or his agents, servants, tenants, guests, invitees, licensees, or members of his family, whether such act is willful, negligent or accidental, such Owner shall, with prior notice to the Association and the Owner of the other adjoining Parcel, forthwith proceed to rebuild or repair the same to as good a condition as in which such Party Wall existed prior to such damage or destruction without costs therefor to the Owner of the other adjoining Parcel.

(b) Any Party Wall damaged or destroyed by some act or event other than one caused by the Owner of a Parcel which is adjacent to such Party Wall, or his agents, servants, tenants, guests, invitees, licensees, or members of his family, shall be rebuilt or repaired by the Owners of the adjacent Parcels to as good a condition as in which such Party Wall existed prior to such damage or destruction at joint and equal expense of such Owners, and as promptly as is reasonably possible; provided that the cost of repairing or replacing any portion thereof which is part of a Home Exterior with respect to which the Association is responsible for furnishing maintenance, repairs or replacements hereunder shall be paid by the Association as a Common Expense to the extent not covered by insurance.

(c) In the event that any Owner shall fail, within a reasonable time after the occurrence of damage or destruction referred to in this Section, to perform the necessary repair or rebuilding,

then, the Managers may cause such repairs or rebuilding to be performed in the manner as provided in this Section and the cost thereof shall be charged to such Owner as his personal obligation and shall be a continuing lien on the Owner's Parcel.

13.04     CHANGE IN PARTY WALL: Any Owner of a Parcel who proposes to modify, rebuild, repair or make additions to any structure upon his Parcel in any manner which requires the extension, alteration or modification of any Party Wall shall first obtain the written consent thereto, as to said Party Wall, of the Owner of the other adjacent Parcel and the Managers, in addition to meeting any other requirements which may apply including, without limitation, those of the Municipality. In the event that a Party Wall is altered, regardless of whether all required consents have been obtained, any express or implied warranties made by the Declarant or the Original Declarant concerning the structural integrity of the Party Wall or either of the Homes adjacent to the Party Wall shall be null and void and the Owner who alters the Party Wall shall be responsible for any and all damage caused to either of the adjacent Homes or improvements thereto.

13.05     ARBITRATION: In the event of a disagreement between Owners of Parcels adjoining a Party Wall with respect to their respective rights or obligations as to such Party Wall, upon the written request of either of said Owners to the other the matter shall be submitted to the Managers and the decision of the Managers shall be final and binding.

#### ARTICLE 14 MISCELLANEOUS

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

14.02     CAPTIONS: The Article and Section headings are intended for convenience only and shall not be construed with any substantive effect in this Declaration. In the event of any conflict between statements made in recitals to this Declaration and the provisions contained in the body of this Declaration, the provisions in the body of this Declaration shall govern.

14.03     SEVERABILITY: Invalidation of all or any portion of any of the easements, restrictions, covenants, conditions, or reservations, by legislation, judgment or court order shall in no way affect any other provisions of this Declaration which shall, and all other provisions, remain in full force and effect.

14.04     PERPETUITIES AND OTHER INVALIDITY: If any of the options, privileges, covenants or rights created by this Declaration would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the

rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provisions shall continue only until twenty-one (21) years after the death of the survivor of the now living lawful descendants of the President of the United States at the time this Declaration is Recorded.

14.05     TITLE HOLDING LAND TRUST: In the event title to any Parcel is held by a title holding trust, under the terms of which all powers of management, operation and control of the Parcel remain vested in the trust beneficiary or beneficiaries, then the beneficiaries thereunder from time to time shall be responsible for payment of all Charges and for the performance of all agreements, covenants and undertakings chargeable or created under this Declaration against such Parcel. No claim shall be made against any such title holding trustee personally for payment of any lien or obligation hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against such lien or obligation. The amount of such lien or obligation shall continue to be a charge or lien upon the Parcel and the beneficiaries of such trust notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title to such Parcel.

14.06     WAIVER OF IMPLIED WARRANTY OF HABITABILITY AND OTHER WARRANTIES: Illinois courts have held that every contract for the construction of a new home in Illinois carries with it a warranty that when completed, the home will be free of defects and will be fit for its intended use as a home. The courts have also held that this “Implied Warranty of Habitability” does not have to be in writing to be a part of the contract and that it covers not only structural and mechanical defects such as may be found in the foundation, roof, masonry, heating, electrical and plumbing, but it also covers any defect in workmanship which may not easily be seen by the buyer. However, the courts have also held that a seller-builder and buyer may agree in writing that the Implied Warranty of Habitability is not included as a part of their particular contract. Each buyer of a Home from Declarant agreed in the purchase contract that the Declarant has excluded and disclaimed the Implied Warranty of Habitability and all other implied warranties, whether created judicially, statutorily or by common law, including the implied warranty of fitness for a particular purpose. Such exclusion and disclaimer shall apply to and bind any subsequent Owner of a Home and, accordingly, no Owner of a Home shall be able to assert a claim against Declarant for a breach of the Implied Warranty of Habitability or any other implied warranty.

14.07     JURISDICTION. This Agreement and its validity, enforcement and interpretation shall be governed by the law of the State of Illinois (without regard to any conflict of laws, principles) and applicable United States federal law.

[Signature Page Follows]

Dated: February 18, 2020

**DECLARANT:**

PULTE HOME COMPANY, LLC, a Michigan  
limited liability company

By:\_\_\_\_\_

Name: Marc Lewison

Title: Vice President of Finance

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

I, JoAnne M. Bowers, a Notary Public in and for said County and State, do hereby certify that Marc Lewison, as Vice President of Finance for Pulte Home Company, LLC a Michigan limited liability company (the “Company”), appeared before me this day in person and acknowledged that he signed, sealed and delivered said instrument as his free and voluntary act, and as the free and voluntary act of the Company for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 18th day of February 2020.

Notary Public

SIGNATURE AND NOTARY PAGE TO  
DECLARATION FOR EOLA PRESERVE TOWNHOMES

**EXHIBIT A TO  
DECLARATION FOR EOLA PRESERVE TOWNHOMES**

The Development Area

LOTS 1 THROUGH \_\_\_\_, BOTH INCLUSIVE, AND LOTS \_\_\_\_ IN THE FINAL PLAT OF SUBDIVISION FOR EOLA PRESERVE BEING PART OF THE SOUTHWEST QUARTER OF SECTION 17 AND THE SOUTHEAST QUARTER OF SECTION 18, BOTH IN TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN IN DUPAGE COUNTY, ILLINOIS ACCORDING TO THE PLAT THERE OF RECORDED \_\_\_\_\_ AS DOCUMENT NO. \_\_\_\_\_ (“EOLA PRESERVE SUBDIVISION”).

**EXHIBIT B TO  
DECLARATION FOR EOLA PRESERVE TOWNHOMES**

The Premises

I. Parcels:

The following described lots shall be divided into Parcels as described in Section 1.19 of the Declaration to which this Exhibit is attached:

Lots 1 through \_\_\_\_\_, both inclusive, in Meadow Ridge Subdivision

II. Common Area:

A. All portions of each Parcel listed in Section I. above outside of the Home on the Parcel.

B. Lots \_\_\_\_\_, and \_\_\_\_\_ in Meadow Ridge Subdivision

III. Association Maintained Public Area

A. Landscaping on those portions of \_\_\_\_\_ and \_\_\_\_\_

Addresses: Various addresses, all in Aurora, Illinois.

**EXHIBIT C TO  
DECLARATION EOLA PRESERVE TOWNHOMES**

Operating Agreement

[See attached]

**OPERATING AGREEMENT  
OF  
PRESERVE TOWNHOME OWNERS' ASSOCIATION, LLC**

This Operating Agreement is entered into as of \_\_\_\_\_ in Schaumburg, Illinois, between Eola Preserve Townhome Owners' Association, LLC, an Illinois limited liability company (the "Association"), and Pulte Home Company, LLC, a Michigan limited liability company, its sole Member (sometimes referred to herein as the "Declarant").

A. Articles of Organization for the Association were filed with the Secretary of State of Illinois on \_\_\_\_\_; and

B. Declarant desires to set forth the terms and conditions governing the management, operation and affairs of the Association.

THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the sufficiency of which are hereby acknowledged, the parties agree as follows:

**ARTICLE I  
NAME OF ASSOCIATION**

The full legal name of the Association is Eola Preserve Townhome Owners' Association, LLC.

**ARTICLE II  
PURPOSE AND POWERS**

2.01 **PURPOSES**: The purposes of the Association are to act on behalf of its Members (as defined in 4.01 below) collectively, as their governing body, with respect to the preservation, care, maintenance, replacement, improvement, enhancement, operation and administration of both real and personal property, for the promotion of the health, safety and welfare and the common use and enjoyment thereof by Members of the Association. This Operating Agreement is subject to the provisions of the Declaration for Eola Preserve Townhome Owners' Association LLC ("Declaration") recorded with the Office of the Recorder of Deeds for DuPage County, Illinois, as amended or supplemented from time to time. All terms used herein (if not otherwise defined herein) shall have the meanings set forth in the Declaration.

2.02 **POWERS**: The Association shall have and exercise all powers as are now or may hereafter be granted by the Illinois Limited Liability Company Act (the "Act"), the Declaration and this Operating Agreement.

2.03 **TAX STATUS**: It is intended that the Association shall be treated as an association taxable as a corporation and, to the extent determined from time to time by the Board (as hereafter

**EXHIBIT C TO  
DECLARATION EOLA PRESERVE TOWNHOMES**



defined), shall elect to be treated as a “homeowners association” under Section 528 of the Internal Revenue Code, or any successor provision thereto.

### ARTICLE III OFFICES

3.01 REGISTERED OFFICE: The Association shall have and continuously maintain in the State of Illinois a registered office and a registered agent whose office is identical with such registered office, and may have other offices within or without the State of Illinois as the Board may from time to time determine.

3.02 PRINCIPAL OFFICE: The Association’s principal office shall be maintained on the Development Area or at the office of the managing agent employed by the Association, if any.

### ARTICLE IV MEETINGS AND ACTIONS OF MEMBERS

4.01 MEMBERSHIP: The Owner from time to time of each Parcel shall automatically be a “Member” of the Association. There shall be one membership per Parcel. There shall be two (2) classes of membership. The Declarant shall be the “Class B Member” with respect to Parcels which it owns from time to time. Each Owner other than the Declarant shall be a “Class A Member” with respect to each Parcel the Owner owns. Membership shall be appurtenant to and may not be separated from ownership of a Parcel.

4.02 VOTING RIGHTS: Any or all Members may be present at any meeting of the Members, but the voting rights shall be vested exclusively in the representative designated by the Owner of each Parcel, in writing or by electronic notice to the Association, and such representative shall be deemed a “Voting Member”, as defined in the Declaration; provided, that, prior to the First Meeting (as defined in Section 4.04 below), the voting rights shall be vested exclusively in the Class B Member (the Declarant) and Owners other than Declarant shall have no voting rights. From and after the First Meeting, all of the voting rights at any meeting of the Association shall be vested in the Voting Members and each Voting Member who represents a Parcel owned by a Class A Member shall have one vote for each Parcel which the Voting Member represents, and the Declarant, as the Class B Member, shall have ten (10) votes for each Parcel which it owns. The Voting Members may vote in person or by proxy. All proxies shall be in writing, revocable, valid only for eleven (11) months from the date of execution and filed with the Secretary.

4.03 PLACE OF MEETING; QUORUM: Meetings of the Members shall be held at the principal office of the Association or at such other place in DuPage County, Illinois, as may be designated in any notice of a meeting. All meetings shall be conducted in accordance with the rules and provisions set forth in Roberts Rules of Order as from time to time published. Voting Members representing at least twenty percent (20%) of the total vote shall constitute a quorum; provided, however, that in the event quorum is not met for a particular meeting, the number of Voting Members required for quorum shall be reduced by fifty percent (50%) and shall continue to be reduced by fifty percent (50%) until such time as quorum is met and a meeting can be held.

### EXHIBIT C TO DECLARATION EOLA PRESERVE TOWNHOMES

Unless otherwise expressly provided herein or in the Declaration, any action may be taken at any meeting of the Members at which a quorum is present upon the affirmative vote of a majority of the Voting Members present at such meeting, including any matter which, under the Act, would otherwise require the unanimous consent of the Members.

4.04 ANNUAL MEETINGS: The first meeting of the Members (“First Meeting”) shall be held upon not less than twenty-one (21) days’ written notice given by the Declarant to the Members. If not called earlier by the Declarant, the First Meeting shall be held no later than thirty (30) days after the Turnover Date. Thereafter, there shall be an annual meeting of the Members (“Annual Meeting”) on the anniversary of the First Meeting, or at such other reasonable time or date (not more than sixty (60) days before or after such date) upon not less than twenty-one (21) days written notice given by the Board to the Members.

4.05 SPECIAL MEETINGS: A special meeting of the Members may be called at any time for the purpose of considering matters which, by the terms of the Declaration, require the approval of all or some of the Voting Members or for any other reasonable purpose. A special meeting shall be called by written notice to the Members by Declarant (prior to the First Meeting), a majority of the Board (after the First Meeting), or by twenty percent (20%) of the Voting Members (after the First Meeting), and delivered not less than twenty-one (21) days prior to the date fixed for said meeting. The notices shall specify the date, time, and place of the meeting and the matters to be considered.

4.06 NOTICE OF MEETINGS: Notices of meetings required to be given herein may be delivered either personally, by U.S. Mail or by E-mail to the Members, addressed to such Member at the address given by such Member to the Board for the purpose of service of such notice or to the Parcel of the Member, if no address has been given to the Board or by using a “prescribed delivery method” (as defined in the Illinois Common Interest Community Association Act). A notice of meeting may include an agenda of business and matters to be acted upon or considered at the meeting.

4.07 NO DUTY OWED BY MEMBERS: Except as otherwise provided herein or in the Declaration, a Member who is not also a Manager (as hereafter defined) owes no duty to the Association or to the other Members solely by reason of being a Member.

4.08 NO SERVICES DUE FROM MEMBERS: No Member shall be required to perform any services for the Association solely by reason of being a Member. No Member shall be entitled to any compensation for any services performed by such Member for the Association unless otherwise determined by the Board.

4.09 INDEMNIFICATION: The Association shall indemnify each Member for all authorized acts performed by such Member in respect of the Association, to the full extent permitted by the Act, but in no event for a Member’s material breach of this Operating Agreement, criminal conduct, gross negligence or any fraudulent act committed by the Member.

ARTICLE V  
EXHIBIT C TO  
DECLARATION EOLA PRESERVE TOWNHOMES

## BOARD OF MANAGERS

5.01 IN GENERAL: After the First Meeting, the affairs of the Association shall be vested in the board of managers (the “Board”), which shall consist of three (3) persons (each a “Manager” and, collectively, the “Managers”), or such other number of persons as shall be fixed from time to time by the affirmative vote of not less than fifty percent (50%) of the Voting Members.

5.02 DECLARANT AS MANAGER: Anything herein to the contrary notwithstanding, the Declarant shall be the sole Manager and sole member of the Board until the First Meeting.

5.03 DELIVERY OF DOCUMENTS: Within sixty (60) days of the First Meeting, the Declarant shall deliver to the Board:

(a) Original copies of the Declaration, this Operating Agreement and the Association’s Articles of Organization and any other documents filed with the Secretary of State of the State of Illinois.

(b) An accounting of all receipts and expenditures made or received on behalf of the Association by the Declarant.

(c) All Association funds and bank accounts.

(d) A schedule of all personal property, equipment and fixtures belonging to the Association, including documents transferring the property to the Association.

5.04 ELECTION: At the First Meeting, the Voting Members shall elect a full Board to replace the Declarant as the sole Manager. The two (2) candidates receiving the greatest number of votes shall each serve a two-year term and the candidate receiving the next greatest number of votes shall serve a one-year term. Thereafter, each Manager shall serve a two-year term. Each Manager shall hold office until his term expires or until his successor has been elected and qualified. Managers may succeed themselves in office. In all elections for Managers, each Class A Member shall be entitled to the number of votes equal to the number of Managers to be elected, and the Class B Member shall be entitled to the number of votes equal to the number of Managers to be elected times ten (10). Cumulative voting shall not be permitted for Class A Members; but cumulative voting shall be permitted for the Class B Member.

5.05 BOARD MEETINGS: After the First Meeting, regular meetings of the Board shall be held at such time and place as shall be determined at the Annual Meeting or, from time to time, by a majority of the Board, provided that (i) the Board shall hold its first meeting within thirty (30) days of the First Meeting, and (ii) not less than four (4) Board meetings shall be held during each fiscal year. Notice of regular meetings of the Board shall be given to each Manager, personally, by email, or by mail, at least two (2) days prior to the day named for any such meeting and such notice shall state the time and place of such regular meeting and such notice shall be posted conspicuously on the Premises so as to inform the Members of such meetings.

## EXHIBIT C TO DECLARATION EOLA PRESERVE TOWNHOMES

5.06 SPECIAL MEETINGS: After the First Meeting, a special meeting of the Board may be called by the President or at least one-third (1/3) of the Managers then serving.

5.07 WAIVER OF NOTICE: Before or at any meeting of the Board, any Manager may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Manager at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the Managers are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

5.08 QUORUM: A majority of the Managers serving from time to time shall constitute a quorum for the election of officers and for the transaction of business at any meeting of the Board, provided, that if less than a majority of the Managers are present at said meeting, a majority of the Managers present may adjourn the meeting from time to time without further notice. Except as otherwise expressly provided herein or in the Declaration, any action may be taken upon the affirmative vote of a majority of the Managers present at a meeting at which a quorum is present ("Board Action").

5.09 POWERS AND DUTIES OF THE BOARD: The Board shall have all of the powers and duties granted to it or imposed upon it by the Declaration, this Operating Agreement, and the Act, including, without limitation, the following powers and duties:

(a) To engage the services of a managing agent upon such terms and with such authority as the Board may approve;

(b) To provide for the designation, hiring and removal of such employees and such other personnel, including attorneys and accountants, as the Board may, in its discretion, deem necessary or proper;

(c) To provide for any maintenance, repair, alteration, addition, improvement or replacement of the Common Area for which the Association is responsible under the Declaration and this Operating Agreement;

(d) To procure insurance as provided for under the Declaration;

(e) To estimate and provide each Member with an annual budget showing the Common Expenses;

(f) To set, give notice of, and collect from the Members, Common Assessments and other assessments, as provided in the Declaration;

(g) To pay the Common Expenses;

(h) Subject to the provisions of the Declaration, to own, convey, encumber or otherwise deal with any real property conveyed to or purchased by the Association;

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(i) To adopt and, from time to time, to amend such reasonable rules and regulations as the Board may deem advisable for the use, enjoyment, administration, management, maintenance, conservation and beautification of the Common Area, and for the health, comfort, safety and general welfare of the Members and Residents. Written notice of any such rules and regulations or amendments thereto shall be given to all Residents affected thereby;

(j) To delegate the exercise of its power to committees appointed pursuant to Article Seven of this Operating Agreement;

(k) To borrow money and pledge the assets of the Association, including the right to receive future assessments, as collateral for repayment thereof; and

(l) To convey all or substantially all of the Association's assets to, merge with, or convert to, another entity, including a not-for-profit corporation, to the extent permitted by law.

5.10 COMPENSATION/REIMBURSEMENT FOR EXPENSES: Managers shall receive no compensation, except as expressly provided in a resolution duly adopted by not less than 75% of the Voting Members. Upon the presentation of receipts or other appropriate documentation, a Manager shall be reimbursed by the Association for reasonable out-of-pocket expenses incurred in the course of the performance of his or her duties as a Manager.

5.11 REMOVAL OR RESIGNATION OF A MANAGER: Prior to the First Meeting, the Declarant may not be removed as Manager without the Declarant's written consent. After the First Meeting, any Manager may be removed from office, with or without cause, by the affirmative vote of at least two-thirds (2/3) of the Managers then serving at any Annual Meeting or at a special meeting called for such purpose. Any Manager may resign at any time by submitting his written resignation to the Board. If after the First Meeting, a Manager ceases to be a Member or Voting Member, he or she shall be deemed to have resigned as of the date of such cessation. A successor to fill the unexpired term of a Manager who resigns or is removed may be appointed by a majority of the remaining Managers at any regular meeting or a special meeting called for such purpose and any successor so appointed shall serve the balance of his or her predecessor's term.

5.12 NO EXCLUSIVE DUTY: Except as otherwise provided in this Operating Agreement, the Managers shall not be required to manage the Association as their sole and exclusive function and the Managers may have other business interests and engage in other activities in addition to those relating to the Association. Neither the Association nor any Member shall have any right to share or participate in such other investments or activities of the Managers or to the income or proceeds derived therefrom.

5.13 LIMITATION OF LIABILITY: The Managers shall perform the duties of the Manager in good faith, in a manner which the Managers believe to be in the best interests of the Association, and with such care as an ordinarily prudent individual in a like position would use under similar circumstances. See Section 5.06 of the Declaration for provisions concerning limitations on the liability of Managers and other indemnification provisions.

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5.14 INDEMNIFICATION: The Association shall indemnify each Manager for all acts performed by the Manager in respect of the Association, to the full extent permitted by the Act, but in no event for fraud, deceit, theft, misappropriation, embezzlement, willful misconduct or gross negligence relating to the Association.

5.15 UNANIMOUS CONSENT WITHOUT MEETING. Any action required or permitted by the Articles of Organization or this Operating Agreement or any provision of law to be taken by the Board at a meeting or by resolution may be taken without a meeting if a consent in writing setting forth the actions so taken shall be signed by all of the Managers then in office.

5.16 TELEPHONIC/ELECTRONIC MEETINGS. Any action required or permitted by the Articles of Organization or this Operating Agreement or any provision of law to be taken by the Board at a meeting may be taken through the use of any means of communication by which (a) all participating Managers may simultaneously hear each other during the meeting, or (b) all communication during the meeting is immediately transmitted to each participating Manager and each participating Manager is able to immediately send messages to all other participating Managers.

## ARTICLE VI OFFICERS

6.01 OFFICERS: The officers of the Association shall be a President, one or more Vice Presidents, a Secretary, Treasurer, and such assistants to such officers as the Board may deem appropriate and shall hold office at the discretion of the Board. After the First Meeting, officers shall be Managers and shall be elected annually at the first Board meeting following the Annual Meeting.

6.02 VACANCY OF OFFICE: Any officer may be removed at any meeting of the Board by the affirmative vote of the majority of the Managers in office, either with or without cause. Any officer may resign at any time by submitting his or her written resignation to the Board. If after the First Meeting, an officer ceases to be a Member or Voting Member, he or she shall be deemed to have resigned as of the date of such cessation. A successor to fill the unexpired term of an officer who resigns or is removed may be appointed by the Board at any regular meeting or a special meeting called for such purpose and any successor so appointed shall serve the balance of his or her predecessor's term.

6.03 POWERS OF OFFICERS: The respective officers of the Association shall have such powers and duties as are from time to time prescribed by the Board and as are usually vested in such officers, including but not limited to, the following:

(a) The President shall be the Chief Executive Officer of the Association and shall preside at all meetings of the Members and at all meetings of the Board and shall execute amendments to the Declaration and this Operating Agreement as provided in the Declaration and this Operating Agreement.

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(b) The Vice President shall, in the absence or the disability of the President, perform the duties and exercise the powers of such office;

(c) The Secretary shall keep minutes of all meetings of the Members and of the Board and shall have charge of such other books, papers and documents as the Board may prescribe;

(d) The Treasurer shall be responsible for Association funds and securities and for keeping full and accurate accounts of all receipts and disbursements in the Association books of accounts kept for such purpose.

6.04 OFFICERS' COMPENSATION: The officers shall receive no compensation for their services, except as expressly provided by a resolution duly adopted by not less than 75% of the Voting Members.

## ARTICLE VII COMMITTEES DESIGNATED BY BOARD

7.01 BOARD COMMITTEES: The Board may, by Board Action, designate one or more committees, each of which shall consist of two or more Managers, which committees, to the extent consistent with law and as provided in said resolution, shall have and exercise the authority of the Board in the management of the Association; but the designation of such committees and delegation thereto of authority shall not operate to relieve the Board, or any individual Manager, of any responsibility imposed by law upon the Board or any individual Manager.

7.02 SPECIAL AND STANDING COMMITTEES: Other committees not having and exercising the authority of the Board in the management of the Association may be designated by a resolution adopted by Board Action. Except as otherwise provided in such resolution, members of each such special committee shall be Members or Voting Members and the President shall appoint the members of such special committee, as well as a Manager to act as the liaison between the special committee and the Board. Any member of such special committee may be removed by the President whenever in his or her judgment the best interests of the Association shall be served by such removal. The powers and the duties of any standing committee shall be as set from time to time by resolution of the Board. The President shall designate a Manager (who shall act as the liaison between the standing committee and the Board) to serve as the chairman of each standing committee, and the other members of the standing committee (who need not be Managers) shall be appointed and removed from time to time by such chairman.

7.03 TERM: Each member of a committee shall continue as such until the next Annual Meeting of the Board and until his or her successor is appointed, unless the committee shall be sooner terminated, or unless such member shall be removed from such committee, or unless such member shall cease to qualify as a member thereof.

7.04 CHAIRPERSON: Except as otherwise provided in Section 7.02 above, one member of each committee shall be appointed chairperson.

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7.05 VACANCIES: Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments to such committee.

7.06 QUORUM: Unless otherwise provided in the resolution of the Board designating a committee, a majority of the whole committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

7.07 RULES: Each committee may adopt rules for its own governance not inconsistent with the Declaration, this Operating Agreement or with rules adopted by the Board.

## ARTICLE VIII CONTRACTS, CHECKS, DEPOSITS AND FUNDS

8.01 CONTRACTS: The Board may authorize any officer or officers, agent or agents of the Association, in addition to the officers so authorized by this Operating Agreement, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association and such authority may be general or confined to specific instances. In an emergency and in the absence of any such authorization by the Board, any such contract or instrument shall be executed by the President or a Vice President and attested to by the Secretary or an Assistant Secretary of the Association.

8.02 PAYMENTS: All checks, drafts, vouchers or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Association shall be signed by such officer or officers, agent or agents of the Association, and in such manner as shall from time to time be determined by resolution of the Board. In the absence of such determination by the Board, such instruments shall be signed by the Treasurer or an Assistant Treasurer and countersigned by the President or a Vice President of the Association.

8.03 BANK ACCOUNTS: All funds of the Association not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Board shall elect.

8.04 SPECIAL RECEIPTS: The Board may accept on behalf of the Association any contribution, gift, bequest, or devise for the general purposes or for any special purpose of the Association.

## ARTICLE IX FISCAL MANAGEMENT

9.01 FISCAL YEAR: Prior to the First Meeting the fiscal year of the Association shall be a calendar year. At the First Meeting or at any Board meeting thereafter, the fiscal year of the Association shall be established by the Association and may be changed from time to time by a resolution adopted by two-thirds (2/3) of the Board.

## EXHIBIT C TO DECLARATION EOLA PRESERVE TOWNHOMES



9.02 ANNUAL STATEMENT: Within a reasonable time after the close of each fiscal year, the Board shall furnish each Member with a statement of the income and disbursements of the Association for such fiscal year.

9.03 SPECIAL STATEMENT: Within ten (10) days after receipt of a written request from a Member, the Board shall provide the Member with a statement containing the following information:

(a) The status of the Member's account and the amount of any unpaid assessments or other charges due and owing from the Member; and

(b) The status and amount of any and all Capital Reserves.

9.04 ASSESSMENT PROCEDURE: Common Assessments and special assessments shall be made and collected as provided in the Declaration.

## ARTICLE X TRANSFER OF MEMBERSHIP

10.01 MEMBERSHIP: The Owner of each Parcel shall automatically be a Member of the Association. There shall be one membership per Parcel. Membership shall be appurtenant to and may not be separated from ownership of a Parcel. Ownership of a Parcel shall be the sole qualification for membership. The Association shall be given written notice of a proposed change of ownership of a Parcel within ten (10) days prior to such change. Any attempt to transfer membership in the Association separate from ownership of a Parcel shall be invalid, null and void, and of no force and effect.

10.02 NO VOLUNTARY DISSOCIATION: Except as otherwise provided by Section 10.01 above, a Member shall not be permitted to voluntarily dissociate from the Association.

## ARTICLE XI BOOKS AND RECORDS

The Association shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its Members, the Board, and committees having any of the authority of the Board, and shall keep at the registered or principal office of the Association a record including the following: (i) the names and last known address of the Members, setting forth the date on which each became a Member; (ii) a copy of the Articles of Organization of the Association, as amended or restated, together with executed copies of any powers of attorney pursuant to which any articles, applications, or certificates have been executed; (iii) copies of the Association's financial statements and federal, state, and local income tax returns and reports for the three (3) most recent years, where applicable; and (4) copies of the Operating Agreement and any amendments thereto. All books and records of the Association may be inspected and copied by any Member, or his or her mortgagee, agent or attorney, at any reasonable time. The Member shall reimburse the Association for all costs and expenses incurred by the Association in connection with that Member's inspection and copying of such records.

## EXHIBIT C TO DECLARATION EOLA PRESERVE TOWNHOMES

ARTICLE XII  
MISCELLANEOUS PROVISIONS

12.01 GOVERNING LAW: This Operating Agreement shall be interpreted in accordance with the internal laws of the State of Illinois, without regard to its rules governing conflict of laws.

12.02 VALIDITY: The provisions of this Operating Agreement are intended to be interpreted and construed in a manner which renders them valid and enforceable. In the event that any provision of this Operating Agreement is found to be invalid or unenforceable, such provision shall be deemed excised from this Operating Agreement without affecting the validity or enforceability of any of the remaining provisions hereof.

12.03 JURISDICTION AND VENUE: All disputes arising under or in connection with this Operating Agreement shall be resolved and disposed of by the federal and state courts located in the County where the Declaration is recorded, and the Association, Managers, and Members irrevocably consent to the exclusive personal jurisdiction of such courts and venue therein.

ARTICLE XIII  
AMENDMENTS

This Operating Agreement may be amended or modified at any time, or from time to time, by the affirmative vote of two-thirds of the Managers then serving provided, that (a) no provision of this Operating Agreement may be amended or modified so as to conflict with the provisions of the Declaration or the Act, and (b) no provision of this Operating Agreement which affects the rights of the Class B Member may be amended or modified without the written consent of the Class B Member.

(Signature Page immediately follows)

IN WITNESS WHEREOF, the parties have executed this Operating Agreement as of the first date set forth above.

**ASSOCIATION:**

Eola Preserve Townhome Owners' Association, LLC, an Illinois limited liability company

By: PULTE HOME COMPANY, LLC, a Michigan limited liability company, its Manager

By: \_\_\_\_\_  
Name: Marc Lewison  
Title: Vice President of Finance

**MEMBER/DECLARANT:**

PULTE HOME COMPANY, LLC, a Michigan limited liability company

By: \_\_\_\_\_  
Name: Marc Lewison  
Title: Vice President of Finance

**EXHIBIT D TO  
DECLARATION FOR EOLA PRESERVE TOWNHOMES**

**STORMWATER SEWER PLAN**

**[see attached]**