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DECLARATION OF CONDOMINIUM OWNERSHIP

FOR

MERRILLVILLAS

MASTER DECLARATION

Merrillville, Indiana

WHEREAS, Merrillvillas, LLC, an Illinois limited liability company ("Declarant"), is the owner of certain real estate located in Lake County, Indiana, more particularly described in Exhibit A, a copy of which Exhibit is attached hereto and by reference made a part hereof (the "Property"); and

WHEREAS, Declarant desires to submit the Property to the provisions of Section 10 of Public Law 2-2002, as amended from time to time and codified at Indiana Code § 32-25-1-1 et seq. ("Act"), and to create thereon a horizontal property regime ("Condominiums"); and

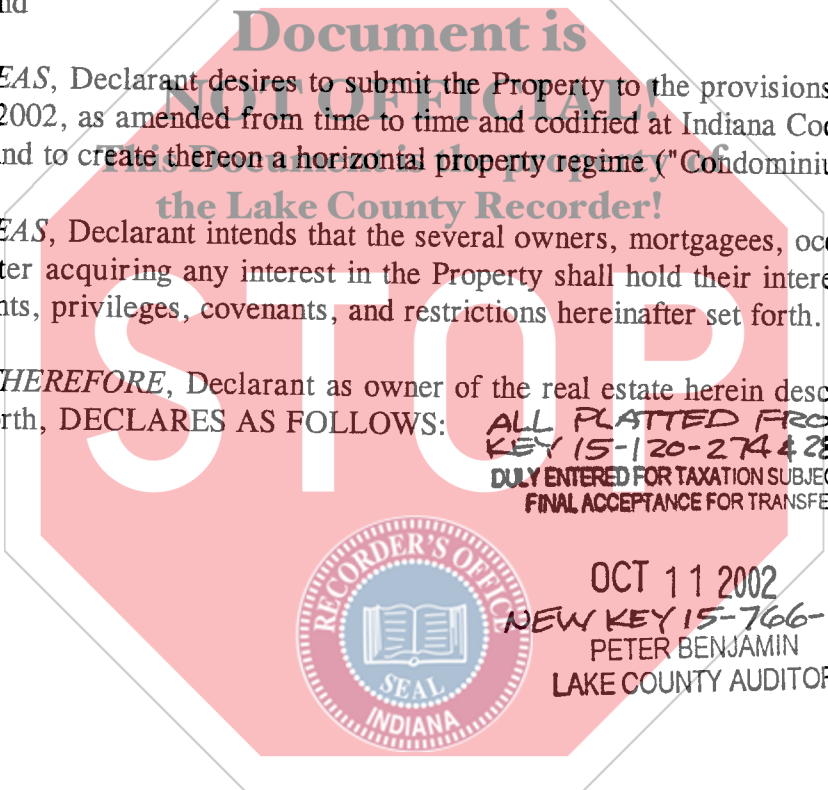
WHEREAS, Declarant intends that the several owners, mortgagees, occupants and other persons hereafter acquiring any interest in the Property shall hold their interests subject to the rights, easements, privileges, covenants, and restrictions hereinafter set forth.

NOW THEREFORE, Declarant as owner of the real estate herein described and for the purposes set forth, DECLARES AS FOLLOWS:

ALL PLATTED FROM
KEY 15-120-274 & 285 & 15-490-4
DULY ENTERED FOR TAXATION SUBJECT TO
FINAL ACCEPTANCE FOR TRANSFER



OCT 11 2002
NEW KEY 15-766-1
PETER BENJAMIN
LAKE COUNTY AUDITOR



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Article I
DEFINITIONS

The terms in this Declaration and in the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below. Additional defined terms may be set forth throughout this Declaration.

1.01 **Age-Qualified Occupant**: Any individual (i) 50 years of age and older who is an owner and Occupies a Condominium Unit and was the original purchaser of the Condominium Unit from the Declarant; or (ii) 55 years of age or older who Occupies a Condominium Unit.

1.02 **Articles; Articles of Incorporation**: The Articles of Incorporation of Merrillvillas Condominium Association, Inc., as filed with the Secretary of State of the State of Indiana, as amended from time to time which Articles of Incorporation are attached hereto as Exhibit "D".

1.03 **Association**: Merrillvillas Condominium Association, Inc., an Indiana nonprofit corporation.

1.04 **Base Assessment**: Assessments levied on all Condominium Units subject to assessment under Article VII to fund Common Expenses for the general benefit of all Condominium Units.

1.05 **BCG; Beautiful Communities With Gardens**: Beautiful Communities With Gardens LLC, a Delaware limited liability company, its successors and assigns.

1.06 **BCG Guidelines**: Guidelines, directions, methods and procedures published or which may be published by Beautiful Communities With Gardens regarding the maintenance, care, improvement and upkeep of certain portions of the grounds, landscaping, Private Gardens and Community Gardens for Merrillvillas.

1.07 **BCG Membership**: The authorized membership and participation of the Association of Merrillvillas in BCG Programs in accordance with membership rules, regulations and procedures established by and with the approval of Beautiful Communities With Gardens.

1.08 **BCG Programs**: Programs offered by Beautiful Communities With Gardens to the Association for Residents of Merrillvillas.

1.09 **Board; Board of Directors**: The body responsible for administration of the Association, selected as provided in the By-Laws.

1.10 **Buildings:** The structures shown on the Condominium Plat and/or on the Master Plan including those in which the Condominium Units are located and the Community Center.

1.11 **By-Laws:** The By-Laws of the Association as amended from time to time, which are attached hereto as Exhibit "B" and by reference made a part hereof.

1.12 **Charges:** The Base Assessment, Specific Assessment, and any Special Assessment levied by the Association and any other charges or amounts which an Owner is required to pay or for which an Owner is liable under this Declaration or the By-Laws.

1.13 **Common Area: Common Area and Facilities:** Those portions of the Property which are described and designated as "Common Area(s)" or "Common Area(s) and Facilities" in Exhibit C hereto, and as said Exhibit C may be amended or supplemented from time to time by a Supplemental Declaration, amendment or otherwise, together with all improvements in such designated Common Area located above and below the ground and all rights appurtenant thereto. The Common Area and Facilities shall generally include, without limitation, community wide recreational facilities including the entire Community Center and its furnishings (except those items owned by Declarant or other identified Persons), Community Garden, Limited Common Area(s), landscaping, open space, detention areas, wetlands (if any), green areas, roadways and sidewalks not dedicated to a municipality, the land on which the Buildings are located, the Buildings' exteriors (including exterior lighting), concrete floors, foundations and roofs, that portion of a Building which is not a Condominium Unit, and pipes, wires, cables and utility lines up to their respective meters and not included in a Condominium Unit or used exclusively to service a particular Condominium Unit. The Common Area and Facilities shall not include the individual Condominium Units, nor shall it include any streets, streetlights, water mains or sanitary sewers or utilities and other improvements, if any, that have been dedicated to the Municipality or are intended to remain the property of the provider of services connected with such improvements.

1.14 **Common Expenses:** The expenses of administration (including management and professional services), operation, maintenance, repair, replacement, landscaping and snow removal of the Common Area and Facilities, the cost of insurance, water, electricity, telephone, gas and other necessary utility expenses for the Common Area and Facilities; the cost of water to the Condominium Units unless each Condominium Unit has its own separate water meter or water charges are otherwise separately billed to each Condominium Unit Owner; the cost of general and special real estate taxes and assessments levied or assessed against any portion of the Common Area and Facilities owned by the Association; the cost and expenses incurred for, the maintenance, repair and replacement of personal property acquired and used by the Association in connection with the operation of the Common Area and Facilities; the cost and expenses of maintaining the Association's membership in the BCG Programs including membership fees and the cost and expenses of maintaining and improving the property and providing programs in accordance with BCG Guidelines and/or BCG Programs; any expenses designated as Common Expenses by this Declaration; if not specifically charged to the Owners, the cost of waste removal and scavenger

service to the Property; and other expenses lawfully incurred by the Association for the common benefit of all of the Owners. Common Expenses shall not include Limited Common Area Expenses.

1.15 Community Center: That certain Building, if any, designated as the "community center" located in the Common Area and Facilities, not containing any Condominium Units and constructed for the use and enjoyment of all Residents, subject to this Declaration, the By-Laws, the Rules and Regulations and any other applicable covenants.

1.16 Community Gardens: Those gardens and areas reserved for or intended to be used as gardens and related uses located in the Common Area and Facilities maintained by or through the Association for the use and enjoyment of all Residents, excluding, however, any Private Garden.

1.17 Community-Wide Standard: The standard of conduct, maintenance, or other activity generally prevailing throughout the Property. Such standards may be defined in the Rules and Regulations and/or other rules and regulations of the Board. Such standards may be specifically determined, and modified, by the Declarant at any time during the Declarant Control Period and thereafter by the Board or as delegated by the Board.

1.18 Condominium Plat: Collectively, the site plan of the Property and the floor plans of all Condominium Units submitted to the provisions of the Act, which are attached hereto, made a part hereof as Exhibit "C" or as may be attached to and incorporated into one or more Supplemental Declarations or amendments to this Declaration.

1.19 Condominium Unit: That part of the Property described with a Condominium Unit Number in the Condominium Plat situated within a Building (excluding the Community Center) constituting a Condominium and including one or more rooms, occupying all or part of a floor or floors including the garage attached to and directly accessed from the particular Condominium as depicted on the Condominium Plat, and together with the undivided interest in the Common Area and Facilities appertaining to that unit of space.

1.20 Declarant: Merrillvillas, LLC, an Illinois limited liability company, or any successor, successor-in-title, or assign who takes title to any portion of the real estate described on Exhibit "A" for the purpose of development and /or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant.

1.21 Declarant Control Period: The period commencing upon the recording of this Declaration and ending upon the first to occur of:

- (a) The end of the Development Period;
- (b) The expiration of ten (10) years from the date of recording hereof; or

- (c) The date designated in a written notice from the Declarant to each of the Owners as being the end of the Declarant Control Period.

1.22 Declaration: This instrument, by which the Property is submitted to the provisions of the Act, which shall include (a) such amendments, if any, to this instrument as from time to time may be adopted to the terms hereof, and (b) Supplemental Declarations, if any.

1.23 Development Period: The period of time commencing upon the recording of this Declaration and ending at such time as Declarant no longer holds or controls title to any portion of the real estate which is legally described in Exhibit A, as Exhibit A may be amended from time to time.

1.24 Eligible Holder: As defined in Section 15.01.

1.25 Governing Documents: A collective term including this Declaration, any supplemental declaration, the By-Laws, the Articles, the Rules and Regulations and any other rules and regulations adopted by the Board, as any such documents may be amended from time to time.

1.26 Limited Common Area: That area depicted as "Limited Common Area" on the Condominium Plat, as amended from time to time, intended to be a semi-private portion of the Common Area reserved for the exclusive use and enjoyment of the Owner and/or Residents of a Condominium Unit adjacent to or assigned by the Condominium Plat to a specific Condominium Unit which area may include a patio or garden area but excludes the fence or other manmade barrier around the Limited Common Area. The Limited Common Area is sometimes referred to as the Private Garden, and unless modified or amended in a Supplement or amendment to this Declaration shall refer one and the same area or areas and the term "Private Garden" shall have the same meaning as "Limited Common Area".

1.27 Limited Common Area Expense: The costs and expenses incurred by the Association to maintain an Owner's Limited Common Area including the Private Garden in compliance with the Governing Documents whether such cost and expense is incurred by the Association as a result of the failure of the Owner of the Condominium Unit appurtenant thereto to maintain the Limited Common Area in accordance with the Governing Documents or otherwise. The Limited Common Area Expense shall not be included as Common Expense.

1.28 Master Plan: A term for Declarant's conceptual land use and development plan for the development of Merrillvillas, as it may be amended from time to time, which plan shall include the real estate described in Exhibit A and may include a portion or all of the real estate described in Exhibit B and other real estate. Inclusion of real estate on the Master Plan shall not, under any circumstances, obligate Declarant to subject such real estate to this Declaration as part of the Property, nor shall the exclusion of real estate from the Master Plan bar its later inclusion therein. The Master Plan is attached hereto as Exhibit "C" and by reference made a part hereof. The

Master Plan may be further defined or expressed on site plans, planned unit development drawings, surveys, sketches, marketing materials, orally, a combination thereof or otherwise.

1.29 Member: A Person entitled to membership in the Association pursuant to Section 8.02.

1.30 Mortgage: A first mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Condominium Unit. A "Mortgagee" shall refer to a beneficiary or holder of a Mortgage.

1.31 Municipality: The Town of Merrillville, Indiana or its successor.

1.32 Occupy, Occupies or Occupancy: Staying overnight in a particular Condominium Unit or on the Property for at least (90) days in a consecutive twelve (12) month period.

1.33 Owner: One or more Persons, which may include the Declarant, who hold the record fee simple title to a Condominium Unit, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.34 Person: A natural person, individual, firm, corporation, partnership, association, trust, limited liability company or other legal entity or any combination thereof capable of holding title to real property.

1.35 Private Garden: A patio or garden intended for the exclusive use and enjoyment of the Owner or Residents of a Condominium Unit adjacent to or assigned by the Condominium Plat to a specific Condominium Unit. The term Private Garden is inclusive of the meaning "Limited Common Area" but not all Limited Common Area is a Private Garden.

1.36 Property: All the real estate described in Exhibit A, as amended from time to time, including such additional real estate as is annexed to this Declaration and added to Exhibit "A" after the initial recording hereof by Supplemental Declaration as provided in Article II, all improvements and structures constructed or contained therein, thereon, or therebelow, and all easements, rights and appurtenances belonging thereto.

1.37 Public Areas: The part or portion, if any, of which the Declarant proposes to dedicate to the Municipality for the public use and benefit and which is depicted on Exhibit "C".

1.38 Public Records: The Office of the County Recorder of Lake County, Indiana.

1.39 Resident or Qualified Resident: Any of the following Persons Occupying a Condominium Unit:

- (a) any Age-Qualified Occupant;

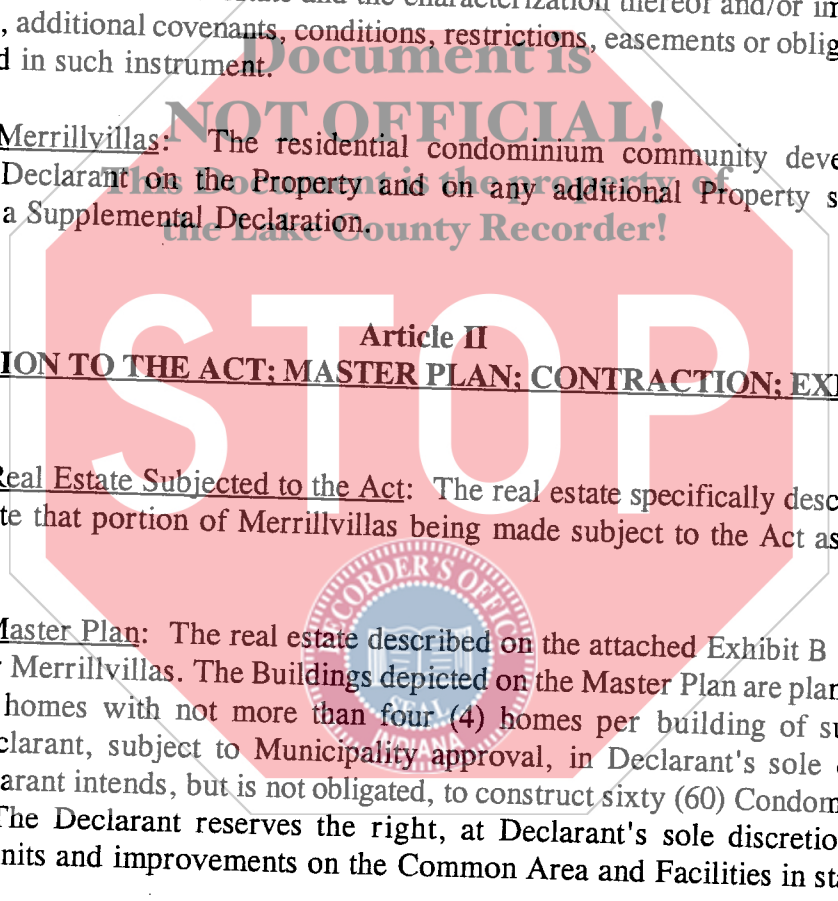
- (b) any Person nineteen (19) years of age or older Occupying a Condominium Unit with an Age-Qualified Occupant; and
- (c) any Person nineteen (19) years of age or older who Occupied a Condominium Unit with an Age-Qualified Occupant and who continues, without interruption, to occupy the same Condominium Unit after termination of the Age-Qualified Occupant's Occupancy thereof.

An individual who Occupies, occupies, or lives in a Condominium Unit but does not satisfy the criteria of (a), (b) or (c) above shall not be deemed to be a Resident and shall not be entitled to any rights or privileges granted to a Resident hereunder.

1.40 Rules and Regulations: The rules and regulations adopted from time to time by the Board or by the Association in accordance with this Declaration.

1.41 Supplement: Supplemental Declaration: An amendment to this Declaration filed in the Public Records pursuant to Article II and Article XVIII which subjects additional real estate to this Declaration as part of the Property, identifies any Common Area and Facilities, Limited Common Area and Condominium Units within the additional real estate, amends Exhibit A to reflect the addition of such real estate and the characterization thereof and/or imposes, expressly or by reference, additional covenants, conditions, restrictions, easements or obligations on the real estate described in such instrument.

1.42 Merrillvillas: The residential condominium community developed or to be developed by Declarant on the Property and on any additional Property subjected to this Declaration by a Supplemental Declaration.



Article II
SUBMISSION TO THE ACT; MASTER PLAN; CONTRACTION; EXPANSION

2.01 Real Estate Subjected to the Act: The real estate specifically described in Exhibit A shall constitute that portion of Merrillvillas being made subject to the Act as a result of this Declaration.

2.02 Master Plan: The real estate described on the attached Exhibit B is the subject of a Master Plan for Merrillvillas. The Buildings depicted on the Master Plan are planned to be single family attached homes with not more than four (4) homes per building of such design and materials as Declarant, subject to Municipality approval, in Declarant's sole discretion shall determine. Declarant intends, but is not obligated, to construct sixty (60) Condominium Units on the Property. The Declarant reserves the right, at Declarant's sole discretion, to build the Condominium Units and improvements on the Common Area and Facilities in stages or phases.

The number of stages or phases, start up dates for construction and pace of construction and completion are within the sole discretion of the Declarant.

Subject to the approval of the Municipality where such approval is required, Declarant may, at its election, modify, amend, alter, or cancel the Master Plan or any improvements described therein. Declarant reserves the right to change, without the approval of the Owners, the Board or the Association, but subject to the approval of the Municipality where such approval is required, landscaping, improvements, structures, easements, utilities, roadways, and the number, layout, size, footprint, location, dimensions, design, and construction details of the Buildings, Condominium Units, Common Area and Facilities, and Limited Common Area and Facilities shown on the Master Plan which are not yet constructed. The Master Plan includes Building sizes depicted on conceptual footprints which will change in accordance with the models actually chosen by purchasers, Declarant's actual construction and for other reasons.

Except with Municipality approval, Declarant shall not materially reduce the amount of open-space depicted on the Master Plan presented to the Municipality as part of the Municipality's approval of the amendment to the PUD underlying Merrillvillas.

Declarant reserves the right to amend the Master Plan and this Declaration by Supplemental Declaration or otherwise to add to the Property and/or to add as additional Condominium Units hereto a certain presently existing condominium development known as Sycamore Cove Condominium pursuant to a certain Declaration of Condominium recorded December 2, 1994, in Book 77, page 79 in the Public Records consisting of twenty-four (24) condominium units located in one (1) building, and further reserves the right to enter into agreements, covenants and easements with the owners and/or condominium association of Sycamore Cove Condominium for ingress, egress, joint maintenance and use of Common Area and Facilities and/or the common areas and facilities of the Sycamore Condominium Association, to create a master association and declaration or as Declarant shall in its sole discretion determine and on such terms as Declarant shall determine.

2.03 Contractible Condominium Area: The Property, or any portion thereof, shall constitute the land which Declarant, at its sole election may withdraw from submission to the Act, pursuant to I.C. § 32-25-8-14; provided, no real estate shall be withdrawn (i) which includes a Condominium Unit after the Condominium Unit has been conveyed by Declarant to any Person other than an affiliate of the Declarant or Person that expressly consents in writing to such withdrawal, or (ii) after the expiration of ten (10) years from the date of recordation of this Declaration, except that, should the law allow contractibility beyond this time limit, nothing in this Declaration shall be deemed prohibitive of contraction of the real estate submitted to the Act. If such real estate is Common Area and Facilities, the Association shall consent to such withdrawal upon the request of the Declarant. All or any part of the real estate described in Exhibit A may be withdrawn at one time or portions thereof withdrawn at different times and from time to time.

2.04 Expansion and Annexation of Condominium Area: The Declarant may unilaterally subject to the provisions of this Declaration as part of the Property all or any portion or portions of the real estate described in Exhibit B, as amended from time to time pursuant to I.C. § 32-25-8-13. The Declarant reserves the right, but shall not be obligated, to amend Exhibit B to add thereto additional real estate which is adjacent to real estate then described in Exhibit B or separated from such real estate by a dedicated right of way, nature preserve or other real estate which is dedicated to or owned by a governmental entity. Any portion of the real estate described in Exhibit B which is not made part of the Property may be developed and used for any purposes not prohibited by law. Declarant may transfer or assign this right to annex property, provided that such transfer is memorialized in a written instrument executed by Declarant and filed in the Public Records. Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the real estate set forth in Exhibit B, or any other real estate in the vicinity of Merrillvillas owned by Declarant or an affiliate of the Declarant in any manner whatsoever.

Annexation shall be accomplished by filing in the Public Records a Supplemental Declaration describing the real estate being annexed and amending Exhibit A to reflect the annexation of such real estate. Such Supplemental Declaration shall not require the consent of the Members, Association or Board, but shall require the consent of the owner of such real estate, if other than Declarant. Each Condominium Unit subject to this Declaration, whether initially described on Exhibit A or annexed and added to Exhibit A pursuant to a Supplemental Declaration, shall have an equal, pro rata share of liability for Base Assessments and a liability for other Charges levied with respect to the Condominium Units.

Any Supplemental Declaration may contain covenants, conditions, restrictions and easements which apply only to the real estate being annexed and/or may create exceptions to, or otherwise modify, the terms of this Declaration as they may apply to the real estate being annexed in order to reflect the different or unique character and/or intended use of such real estate.

2.05 Dedication of Public Areas: The Declarant may dedicate to the Municipality a certain portion of the Property and/or improvements thereon or thereunder for the public use and benefit and said property dedicated or intended to be dedicated shall be known as the Public Areas as defined herein. All Public Areas shall be treated as Common Area until the Declarant or the Association dedicates the real estate to the Municipality pursuant to Article IV herein.

2.06 Amendment: This Article shall not be amended during the Development Period without the prior written consent of the Declarant.

Article III
CONDOMINIUM UNITS

3.01 **Condominium Unit Identification:** The legal description of each Condominium Unit shall consist of the identifying number or symbol of such Condominium Unit shown on the Condominium Plat. Every deed, lease, mortgage or other instrument may describe a Condominium Unit by its identifying number or symbol as shown on the Condominium Plat, and every such description shall be deemed good and sufficient for all purposes.

3.02 **Condominium Unit Boundaries:** Each Condominium Unit shall consist of the space enclosed and bounded by the horizontal and vertical planes set forth in the delineation thereof as shown on the Condominium Plat. Each Condominium Unit shall consist of the space enclosed and bounded by the planes defined by the unfinished interior surfaces of the perimeter walls, ceiling and floor, as built or as shown on the building plans, including the fixtures and improvements located wholly within said boundaries and excluding the structural parts of the buildings. In the event any horizontal or vertical boundary line as shown on the Condominium Plat does not coincide with the actual location of the respective wall, floor or ceiling surface of the Condominium Unit because of inexactness of construction, settling after construction, or for any other reasons, the boundary lines of each Condominium Unit shall be deemed to be and treated for purposes of occupancy, possession, maintenance, decoration, use and enjoyment, as in accordance with the actual existing construction. In such cases, permanent easements for exclusive use shall exist in favor of the Owner of each Condominium Unit in and to such space lying outside of the actual boundary line of the Condominium Unit, but within the appropriate wall, floor or ceiling surfaces of the Condominium Unit.

Each of the following shall be considered a part of the applicable Condominium Unit: All windows, window frames, doors and door frames (including garage doors, entry doors, storm doors and screen doors) including all glass, screens, and locks in said windows and doors; all attic space accessible exclusively from one Condominium Unit; any equipment relating to the air conditioning system, ventilating ducts or heating system of any Condominium Unit which is situated outside the boundaries of the Condominium Unit hereinabove; and, all installations for providing power, light, gas, hot and cold water, heating, refrigeration and air conditioning exclusively to one Condominium Unit shall be considered a part of that Condominium Unit.

3.03 **Certain Structures Not Constituting Part of Any Condominium Unit:** No Owner shall own, except as a tenant-in-common with all other Owners, any pipes, wires, cables, ducts, conduits, chimneys, public utility lines or other structural components running through his or her Condominium Unit and serving more than his or her Condominium Unit, whether or not such items shall be located in the floors, ceiling or perimeter or interior walls of the Condominium Unit.

3.04 Easements: Each Owner shall have a valid easement to the space between the interior of the walls of the Condominium Unit and the exterior walls of the building in which his Condominium Unit is located for purposes of adding additional utility outlets, wall hangings, erection of non-bearing partition walls, doors and door frames, and the like where space between the walls may be necessary for such uses, provided that the Owner shall do nothing or permit nothing to impair the structural integrity of any of the Building, and provided that the affected Common Area and Facilities be restored to their former condition by the Owner at his sole expense upon completion or termination of the use requiring the easement.

3.05 Encroachment and Easements for Common Area: If, by reason of the location, construction settling, or shifting of a Building, the Common Area encroach upon a Condominium Unit, then in such event, an easement shall be deemed to exist and run to the Association for maintenance, use and enjoyment of such Common Area. Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities located in any of the other Condominium Units and serving his Condominium Unit.

3.06 Prohibition Against Subdivision: No Owner shall, by deed, plat or otherwise, subdivide or in any other manner cause a Condominium Unit to be separated into any tracts or parcels different from the whole Condominium Unit as shown on the Condominium Plat.

Document is NOT OFFICIAL!
Article IV
PROPERTY RIGHTS AND INTERESTS IN COMMON AREA AND FACILITIES
This Document is the property of the Lake County Recorder!

4.01 Ownership of Common Area and Facilities: Each Owner shall be entitled to and shall own an undivided interest in the Common Area and Facilities as a tenant-in-common with all other Owners.

4.02 Use of Common Area and Facilities: Except as otherwise limited in this Declaration, each Resident and Owner shall have the non-exclusive right and easement in common with all other Residents and Owners to use and enjoy the Common Area and Facilities (except those designated as Limited Common Area) for all reasonable purposes incident to the use and occupancy of and ingress and egress to such Resident's Condominium Unit as a place of residence, and such Owner's right to ingress and egress to such Owner's Condominium Unit as property owned by such Owner and such other reasonable incidental uses permitted by this Declaration, which rights and easements shall run with the land, be appurtenant to and pass with the title to every Condominium Unit, subject to and governed by the following:

- (a) The Governing Documents;

- (b) The reasonable and customary privacy, consideration and respect due other Residents as members of a community principally for persons fifty-five (55) years and older as reflected in the Community-Wide Standards of conduct, if any;
- (c) The right of the Board to suspend, limit or restrict the right of an Owner or Resident to use recreational facilities, without limitation, including the Community Center;
- (d) The right of the Board to impose reasonable terms, conditions and requirements and charge reasonable rentals or use fees for the use of the Community Center and Community Gardens by Residents;
- (e) The right of the Board to permit use of the Common Area and Facilities including the Community Center by non-Residents upon payment of use fees or other fees established by the Board and to limit and restrict Owners' who are not Residents use of recreational facilities, without limitation the Community Center and Community Gardens;
- (f) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for Association obligations;
- (g) The rights of the Declarant hereunder.

4.03 Use of Community Center for Bible Study and other Religious Activities: Subject to reasonable guidelines, rules and limitations, if any, established by the Board, Residents may use the Community Center for Bible studies and other religious activities intended primarily for Residents.

4.04 Prohibition Against Partition: There shall be no partition of the Common Area and Facilities through judicial proceedings or otherwise until this Declaration is terminated and the Property is withdrawn from its terms or from the terms of any statute applicable to condominium ownership including the Act. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property or from acquiring and disposing of real estate which may or may not be subject to this Declaration.

4.05 Condemnation: In the case of taking by a competent authority of any part of the Common Area and Facilities owned by the Association, the proceeds awarded in such condemnation shall be first paid to satisfy any indebtedness secured by a mortgage or other lien encumbering such portion of the Common Area and Facilities and the balance to the Association. The proceeds, if any, paid to the Association, together with any reserve being held for such part

of the Common Area and Facilities shall be used first to restore or replace any improvements taken or condemned, and the balance, if any, shall in the discretion of the Board, either (i) be distributed to the Owners and their respective Mortgagees, as their interests may appear, in equal shares, or (ii) be used for the mutual benefit of such Owners, as determined by the Board in its reasonable discretion; provided, that during the Development Period any such action shall be consented to by the Declarant.

Article V **LIMITED COMMON AREA**

5.01 Description: The Limited Common Area are those areas designated as such in the Condominium Plat. The Private Gardens are within Limited Common Area and are for the use and enjoyment of the Residents of the Condominium Unit to which they are appurtenant.

5.02 Use of the Private Garden: The Private Garden is intended to provide the Owner and Resident of the appurtenant Condominium Unit with a semi-private outdoor place for a garden and/or patio. The manner of use of the Private Garden and limitations on plantings, improvements, ornamentation and structures shall be governed by any applicable provisions in the Governing Documents and the Community - Wide Standard established by the Board. The Owner and Residents shall not use or permit the use of the Limited Common Area appurtenant to their Condominium Unit in such a way that such use increases the risk or rate of insurance to the Association and as otherwise prohibited in the Governing Documents.

5.03 Maintenance of the Private Garden: Subject to the limitations set forth in the applicable sections of the Governing Documents, each Owner of the appurtenant Condominium Unit shall be responsible for the installation, upkeep, care, maintenance, repair, replacement and improvement of the Private Garden, without limitation, including any stone, concrete or other surfaces including patio surfaces, all benches, containers and other hardscape, and all flowers, shrubs and other plants contained in the Private Garden. Each Owner and Resident shall keep the Private Garden in good repair and appearance so as to not detract from Community-Wide Standards of appearance. In the event that a sidewalk leading from the driveway or street to the front door of the Condominium Unit passes through or adjoins the Private Garden, such sidewalk shall be deemed a part of the Common Area and Facilities and shall be maintained by or through the Association as a part of the Common Area and Facilities, notwithstanding its depiction as a Limited Common Area in the attached Exhibit C.

5.04 Loss of Property in or Damage to the Limited Common Area: Owner shall be solely responsible for any and all loss, damage or disappearance of and to the Private Garden appurtenant to his or her Condominium Unit, without limitation, including any plants, furnishings, personal property, structures or improvements temporarily or permanently located therein and,

except as otherwise expressly provided in this Declaration, the Association shall have no responsibility or liability for any loss, damage or destruction thereto.

Article VI **AGE RESTRICTIONS**

6.01 Age Restriction: Merrillvillas is intended to provide housing primarily for persons fifty-five (55) years of age or older, subject to the rights reserved to Declarant in Section 16.08 Merrillvillas shall be operated as an "age restricted community" in compliance with all applicable state and federal laws including, without limitation, the applicable provisions, if any, of The Fair Housing Act and of the Housing for Older Persons Act of 1995, each as from time to time amended. To the extent there is any ambiguity or inconsistency in the Governing Documents they shall be interpreted so as to be consistent with the applicable provisions of state and federal law. Subject to Section 16.08, each Condominium Unit, if occupied, shall be Occupied by at least one (1) individual fifty-five (55) years of age and older; provided, however, that once a Condominium Unit is occupied by an Age-Qualified Occupant, other Qualified Residents of that Condominium Unit may continue to occupy the Condominium Unit, regardless of the termination of the Age-Qualified Occupant's Occupancy. Notwithstanding the above, at all times, at least eighty percent (80%) of the Condominium Units within the Property shall be Occupied by at least one (1) individual fifty-five (55) years of age or older. The Board shall establish policies and procedures from time to time as necessary to maintain its status as an age-restricted community under state or federal law. Such policies and procedures may include, but are not limited to the Board requiring each Owner and/or a Resident of each occupied Condominium Unit to cooperate with a census requested by the Board bi-annually or otherwise and to provide the Board with an affidavit with respect to the Occupancy of the Condominium Unit and the continuing qualification of Merrillvillas an "age-restricted community" for people fifty-five (55) years and older.

6.02 Additional Limitations on Persons under Nineteen (19) Years of Age: Merrillvillas is a community principally for people fifty-five (55) years of age and older. Strong family and personal relationships are encouraged, but certain restrictions and limitations are imposed with respect to the number of nights that a person under the age of nineteen (19) may stay in a Condominium Unit or on the Property. Additional rules, regulations and restrictions applicable to persons under the age of nineteen (19) may be set forth in the Rules and Regulations as amended from time to time by the Board or by the Association. No person under nineteen (19) years of age shall:

- (a) Occupy a Condominium Unit;
- (b) Stay overnight in any Condominium Unit for more than 30 consecutive days; or,

- (c) Stay overnight in any Condominium Unit for more than 45 days in a consecutive 6 month period.

6.03 **Enforcement:** Each Resident and Owner shall conform to the provisions in this Article and are further requested to voluntarily comply with the spirit of the intention that Merrillvillas be a community primarily for people fifty-five (55) years and older. The Association may enforce the provisions of this Article by an action in law or in equity, including, without limitation, an injunction requiring specific performance hereunder and as otherwise provided in this Declaration.

Article VII

BEAUTIFUL COMMUNITIES WITH GARDENS

7.01 **Initial Intention:** Merrillvillas is intended to be a community that features gardens, gardening activities and programs, birding opportunities, attention to natural habitat, attractive native landscaping and maintenance methods based upon an integrated pest management approach or other methods which seek to reduce the amount of harmful and irritating pesticides and lawn-care chemicals released into the environment or to which Residents are exposed. While these are the initial goals, each Owner is deemed to understand that there can be no assurance that each of these will be implemented or the manner of implementation, and if implemented, will continue as implemented, if at all. The degree of success or implementation of these intentions is subject to several factors and conditions, without limitation, including the degree of participation and involvement of Owners and Residents, the amount of funds allocated for these purposes by the Association, the Board and/or Members, natural conditions, the programs, if any, actually made available to or offered to the Association, Owners and Residents, and the continuing agreement of the Association and its Members to participate in such programs and activities, and to implement the intentions described hereinabove.

7.02 **Beautiful Communities With Gardens Membership:** The Association shall maintain a BCG Membership so long as a BCG Membership is available, except if terminated by BCG or the Association as hereinafter provided. During such time that the Association maintains a BCG Membership, the Association shall pay membership fees to BCG, comply with BCG Guidelines, if any, and comply with any conditions and requirements of BCG Membership established by BCG. Fees for a BCG Membership are based upon the total number of Condominium Units on the Property. Unless otherwise directed by the Owner in writing, the Association is authorized to provide the name and address of each Owner to BCG for the purpose of providing one (1) set of BCG Program materials and BCG Guidelines to each Condominium Unit. BCG Membership, BCG Programs and BCG Guidelines shall be subject to their continued availability, which availability is not assured, guaranteed or represented by BCG, Declarant or otherwise to any Owner, Resident, and Member or to the Association. So long as the Association has a current

BCG Membership in good standing, it is entitled to describe itself as a "Member of Beautiful Communities With Gardens" subject to the provisions of Section 7.01.

7.03 Membership Fees and Other Costs: Membership fees for the BCG Membership are payable by the Association when due to BCG. The Association is also authorized to comply with BCG Guidelines and to budget, allocate and expend funds in connection therewith. Regardless of the use or non-use by any Owner(s) of BCG Programs or other benefits of the Association's BCG Membership, all such membership fees and funds paid or expended by the Association shall be included as Common Expenses and allocated to all Condominium Units in the manner provided for Common Expenses in Article XII.

Article VIII **MEMBERSHIP AND VOTING RIGHTS**

8.01 Function of Association: The Association shall be the entity responsible for management, maintenance, operation and control of the Common Area and Facilities and the primary entity responsible for compliance with and enforcement of the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and the laws of the State of Indiana.

8.02 Membership: Every Owner shall be a Member of the Association and shall hold one (1) membership for each Condominium Unit owned. If a Condominium Unit is owned by more than one (1) Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation, such reasonable fees as may be established in Section 4.01, and the restrictions on voting set forth in Section 8.03 and in the By-Laws. All such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner, manager or trustee, or by any other individual having apparent authority or designated from time to time by the Owner in a written instrument provided to the Secretary of the Association. The Declarant shall be a member of the Association during the Development Period.

8.03 Voting:

- (a) One (1) individual shall be designated by each Owner to be the "Voting Member" with respect to each Condominium Unit owned by the Owner. If no designation is made and more than one (1) person seeks to be the Voting Member for a Condominium Unit, the Board may either recognize one (1) individual as the Voting Member or suspend the vote for the Condominium Unit until the issue has been resolved. During the Declarant Control Period, all of the voting rights of the Owners at any meeting of the Members of the Association or otherwise shall be vested exclusively in the Declarant, and

Owners other than the Declarant shall have no voting rights. After the end of the Declarant Control Period, all of the voting rights at any meeting of the Members of the Association or otherwise shall be vested in the Voting Members and each Voting Member shall have one (1) vote for each Condominium Unit which the Voting Member represents. After the end of the Declarant Control Period, any action may be taken by the Voting Members at any meeting at which a quorum is present (as provided in the By-Laws) upon an affirmative vote of a majority of the votes represented at the meeting by the Voting Members present at such meeting, except as otherwise provided herein or in the By-Laws. Voting Members may vote directly or by proxy as provided in the By-Laws. The Board shall determine whether votes shall be cast in person or by mail from time to time.

- (b) Certain Special Declarant Rights, including the right to approve, or withhold approval of, certain actions proposed under this Declaration, the By-Laws and the Articles during the Development Period and the right and power, during the Declarant Control Period, to appoint all members of the Board, are specified in the relevant sections of this Declaration, the By-Laws and the Articles.

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Article IX
RIGHTS AND OBLIGATIONS OF THE
ASSOCIATION AND VARIOUS DISCLOSURES AND DISCLAIMERS

9.01 Common Area and Facilities: The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area and Facilities and all improvements thereon (including, without limitation, furnishings, equipment, and other personal property of the Association used in connection with the Common Area and Facilities), and shall keep the Common Area and Facilities in good, clean, attractive, and sanitary condition, order, and repair, pursuant to this Declaration and the By-Laws and consistent with the Community-Wide Standard. The Board is specifically authorized, but not obligated, to retain or employ professional management to assist in carrying out the Association's responsibilities under this Declaration.

9.02 Personal Property and Real Property for Common Use: The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant and its designees may convey to the Association improved or unimproved real estate, or interests in real estate, personal property and leasehold and other property interests, regardless of whether such real estate is Common Area or part of the real estate described in Exhibit B or is other real estate referred to in Article II hereunder. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions of record or as set forth in the deed or other instrument transferring such property to the Association. Upon written request of

Declarant, the Association shall reconvey to Declarant any unimproved portions of the Property originally conveyed to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

9.03 Rulemaking and Enforcement:

- (a) Rulemaking. The Association, through the Board, may make, modify, amend, cancel, limit, create exceptions to and enforce reasonable rules governing the use of the Property and/or conduct thereon, consistent with the rights and duties established by the Governing Documents, including, without limitation, rules limiting the use of the Common Area and Facilities by visitors, including visiting children and Occupancy of the Condominium Units. Such rules shall be binding upon all Owners, Residents, guests, invitees, and licensees, if any, until and unless overruled, canceled, or modified in a regular or special meeting of the Association by the vote of a majority of the total vote in the Association.
- (b) Enforcement. The Board, or the covenants committee, if any, established pursuant to the By-Laws, may impose sanctions for violations of the Governing Documents. The Board shall establish a range of penalties for violations of the Governing Documents, with violations of the Declaration, unsafe conduct, and harassment or intentionally malicious conduct treated more severely than other violations. Such sanctions may include, without limitation:
- (i) imposing a graduated range of reasonable monetary fines which, until paid, shall constitute a lien upon the violator's Condominium Unit. In the event that any Resident, guest or invitee of a Condominium Unit violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; provided, however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board and the fine shall become a Specific Assessment and/or lien against the Condominium Unit of such Owner;
 - (ii) suspending an Owner's right to vote;
 - (iii) suspending any Person's right to use any recreational facilities within the Common Area and Facilities including the Community Center and Community Garden; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Condominium Unit;

- (iv) suspending any services provided by the Association to an Owner or the Owner's Condominium Unit if the Owner is delinquent in paying any assessment or other Charge owed to the Association; and
- (v) levying Specific Assessments to cover costs incurred in bringing a Condominium Unit or Private Garden into compliance in accordance with Section 12.05(b).

In addition, the Board may elect to enforce any provision of the Governing Documents by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations in accordance with any applicable ordinance or requiring immediate abatement of violating activity) or by suit at law or in equity to enjoin any violation or to recover monetary damages, or both, without the necessity of compliance with the procedures set forth in the By-Laws.

All remedies set forth in the Governing Documents are to be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

- (i) the Association's position is not strong enough to justify taking any or further action;
- (ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;
- (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed as a waiver of the Association's right to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

The Association, by contract or other agreement, may enforce applicable state and local laws and ordinances and governmental bodies including the Municipality may enforce their respective laws and ordinances within the Property for the benefit of the Association and its Members.

9.04 Implied Rights; Board Authority: The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

9.05 Indemnification: The Association shall indemnify every officer, director, and committee member and the Association's managing agent and its employees and agents against all damages and expenses, including attorney's fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which it, he or she may be a party by reason of being or having been an officer, director, committee member or managing agent, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section and/or Indiana law.

The officers, directors, committee members and managing agent shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and hold each such officer, director, committee member and managing agent harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, committee member and managing agent may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is available at a reasonable cost. Decisions whether to institute litigation are no different from other decisions directors make. There is no independent legal obligation to bring a civil action against another party, and no provision of the Governing Documents shall be construed to impose a duty upon the Board to sue under any circumstances. In deciding whether to bring a civil action against another party, a director is protected by the business judgment rule as explained in the By-Laws.

9.06 Dedication of Common Area: The Association may dedicate portions of the Common Area to the Municipality, or to any other local, state, or federal governmental or quasi-governmental entity.

9.07 Security: It is the goal of all Owners, including Declarant, to have a safe and healthy environment. However, no written or oral representations regarding the safe and secure nature of Merrillvillas shall be construed in whole or in part as guarantees thereof, it being

recognized that circumstances which are beyond the control of the Declarant, the Association, the Board, or the managing agent may arise. The Association may maintain or support certain activities within the Property designed to make the Property safer than they otherwise might be; provided, however, that the Association shall not be obligated to maintain or support such activities.

The Association, the managing agent, BCG, the Declarant, or Declarant's agents, employees, members and affiliates shall not in any way be considered insurers or guarantors of security within the Property. None of the foregoing shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, entry gate, fence, patrol, burglar alarm system or other security system or measures, including any mechanism or system for limiting access to the Property, can not be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended.

Each Owner acknowledges, understands and covenants to inform all Residents, tenants, guests, and invitees of the Owner's Condominium Units that the Association, its Board of Directors and committees, BCG, the Declarant and its affiliates, and the managing agent are not insurers or guarantors of security within the Property. Each Owner and all Residents, tenants, guests, and invitees of the Owner's Condominium Unit assume all risks for loss or damage to property and injury or death to persons, to Condominium Units, and to the contents of Condominium Units and further acknowledge that the Association, its Board and committees, the managing agent, BCG, and the Declarant and its affiliates have made no representations or warranties, nor has any Owner, or any Resident, tenant, guest, or invitee of any Condominium Unit relied upon any representations or warranties, expressed or implied, relative to any entry gate, fence, patrolling of the Property, any fire protection system, burglar alarm system, or other security systems recommended or installed or any security measures undertaken within the Property.

9.08 Assumption of Risk: The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to promote the health, safety and welfare of the Owners and Residents. Notwithstanding anything contained in the Governing Documents or any other document binding the Association, none of the Association, the Board, the managing agent, BCG, or the Declarant and its affiliates shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner or Resident of any Condominium Unit or any tenant, guest or invitee of any Owner or Resident or for any property of any such Persons. Each Owner and Resident of a Condominium Unit and each tenant, guest and invitee of any Owner or Resident shall assume all risks associated with the use and enjoyment of the Property, without limitation, including all recreational facilities and the Community Center and Community Garden.

The Association, the Board, the managing agent, BCG, or the Declarant and its affiliates shall not be liable or responsible for any personal injury, illness, death or any other loss or damage

caused by the presence or malfunction of utility lines or utility sub-stations adjacent to, near, over, or on the Property. Each Owner and Resident of a Condominium Unit and each tenant, guest, and invitee of any Owner or Resident shall assume all risk of personal injury, illness, death or other loss or damage arising from the presence of utility lines or utility sub-stations, if any, and further acknowledges that the Association, the Board, the managing agent, BCG and, the Declarant and its affiliates have made no representations or warranties, nor has any Owner or Resident, or any tenant, guest, or invitee of any Owner or Resident relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines or utility substations, if any.

No provision of the Governing Documents shall be interpreted as creating a duty of the Association, the Board, the managing agent, BCG, or the Declarant and its affiliates to protect or further the health, safety or welfare of any individuals, even if the funds of the Association are used for any such purpose.

Each Owner (by virtue of his or her acceptance of title to his or her Condominium Unit) and each other Person having an interest in or lien upon, or making any use of, any portion of the Property (by virtue of accepting such interest or lien or making such use) shall be bound by this Section and shall be deemed to have waived any and all rights, claims, demands and causes of action against the Association, the managing agent, BCG, and the Declarant and its affiliates, their directors, officers, committee members, employees, agents, contractors, subcontractors, successors and assigns arising from or connected with any matter for which the liability has been disclaimed.

9.09 Change of Use of Common Area and Facilities: During the Declarant Control Period, without the approval or consent of the Members, and thereafter, pursuant to action of the Members taken at a duly called meeting of the Members, the Board shall have the power and right to change the use of portions of the Common Area and Facilities and Limited Common Area. Any such change shall be pursuant to Board resolution stating that: (a) the present use or service is no longer in the best interest of the Owners, (b) the new use is for the benefit of the Owners, (e) the new use is consistent with any deed restrictions and zoning regulations restricting or limiting the use of the Common Area and Facilities, (d) the new use is consistent with the then effective Master Plan.

Notwithstanding the above, if after the Declarant Control Period the Board adopts a resolution which states that the change in use will not have an adverse effect on the Association and the Owners, the Board may give notice of the change to all Owners. The notice shall give the Owners a right to object within thirty (30) days of the notice. If less than ten percent (10%) of the Members who will be affected by the change submit written objections, the change shall be deemed approved, and a meeting shall not be necessary.

9.10 View Impairment: Neither the Declarant nor the Association guarantees or represents that any view from any Condominium Unit will be preserved without impairment or that any view will not be materially altered. Neither the Declarant nor the Association shall have

the obligation to relocate, prune, or thin trees or other landscaping except as set forth in Article X. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

9.11 Relationship with Tax-Exempt Organizations: The Association may create, enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area and Facilities to non-profit, tax-exempt organizations for the benefit of the Property, the Association, its Members and Residents. The Association may contribute money, real or personal property or services to any such entity. Any such contribution shall be a Common Expense of the Association and included as a line item in the Association's annual budget.

For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code ("Code"), such as but not limited to entities which are exempt from federal income taxes under Sections 501(c)(3) or 501 (c)(4), as the Code may be amended from time to time.

9.12 Recycling Programs: The Board may establish a recycling program and recycling center or containers within the Property, and in such event all Residents shall support such program by recycling, to the extent reasonably practical, all materials which the Association's recycling program, center or containers are designed to accommodate. The Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation, and any income received by the Association as a result of such recycling efforts shall be used to reduce Common Expenses.

9.13 Wildlife Control: Declarant and the Association reserve the right to undertake such measures as may be appropriate to control wildlife within the Property and to prevent wildlife from becoming a nuisance or overly dependant upon Merrillvillas and its Residents. Owner's and Residents acknowledge that Merrillvillas is a community desirous of maintaining a habitat for wild birds and butterflies and an attractive community for gardens, however each Owner and Resident acknowledges the need to prevent animals from becoming a nuisance or danger to the health, safety and welfare of Residents or other persons.

Article X
MAINTENANCE

10.01 Association's Responsibility: The Association shall maintain and keep in good repair the Common Area and Facilities, which shall include, but need not be limited to:

- (a) all Common Area and Facilities (excluding Limited Common Area);
- (b) all water service facilities included in the Common Area;

- (c) all perimeter walls or fences constructed by the Declarant surrounding the Property or which separate a Private Garden from the Common Area; provided that Owners shall be responsible for maintaining the interior surface of the perimeter wall or fence located around such Owner's Private Garden as provided in Section 10.02;
- (d) if, and to the extent, required under applicable Municipality ordinances, landscaping, street lights and signage within public rights-of-way abutting the Property;
- (e) landscaping, the Community Center and Community Garden;
- (f) any additional property included within the Common Area and Facilities as may be required under the terms of this Declaration, any Supplemental Declaration, any Condominium Plat, or any contract or agreement for maintenance thereof entered into by, or which is binding upon, the Association;
- (g) any property or facility owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members and identified by written notice from the Declarant to the Association until the Declarant revokes such privilege by written notice to the Association; and
- (h) mail boxes, benches, fences, pergolas and other hardscapes installed by Declarant;
- (i) exterior lighting fixtures installed by Declarant or the Association even if metered by and connected to the electrical system of an individual Condominium Unit;
- (j) if the community is gated or has a gated emergency entrance, any electronic or mechanical gate opening devices in good operating condition and repair and compatible with the Municipality's electronic or other opening technology and systems.

The Association shall also have the right and power, but not the obligation, to take such actions and adopt such rules as may be necessary for control, relocation and management of wildlife, snakes, rodents, and pests, within the Common Area and Facilities.

The Association may also maintain other property which it does not own, including, without limitation, property dedicated to public use and property subject to easements benefitting the

Association and its Members, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard, to permit the Association or its Members' use and enjoyment of the property or easement and if otherwise permitted by applicable law.

Except as hereinafter provided in this Section, the costs of maintenance, repairs and replacement of (i) the Common Area and Facilities shall be Common Expenses, and (ii) Limited Common Area, if such shall be undertaken by the Association, shall be Limited Common Area Expenses which shall be paid by the Owner of the Condominium Unit who has the right to use the Limited Common Area.

If during the Development Period the Association fails to properly perform its maintenance responsibilities hereunder, the Declarant may, upon not less than ten (10) days notice and opportunity to cure such failure, cause such maintenance to be performed and in such event, the Association shall reimburse Declarant for all costs incurred.

10.02 Owner's Responsibility: Each Owner shall maintain his or her Condominium Unit and Private Garden and all other improvements comprising the Condominium Unit and Private Garden in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association hereunder or pursuant to a Supplemental Declaration. Without limiting the foregoing, the Board may request that an Owner water portions of Common Area around his or her Condominium Unit and his or her Private Garden. The Association may from time to time establish schedules, rules and limitations on watering by Residents and Owners or may direct an Owner or Resident to discontinue excessive or unnecessary watering.

In addition to any other enforcement rights, if an Owner fails to perform properly his or her maintenance responsibility, the Association shall have the right, but not the obligation, to come upon such Owner's Condominium Unit and Private Garden and perform such maintenance responsibilities and assess all costs incurred as a Specific Assessment in accordance with Section 12.05. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

10.03 Special Services: To the extent provided for in a Supplemental Declaration or by action of the Board, from time to time, the Association may furnish "Special Services" to a Condominium Unit or a group or groups of Condominium Units. By way of example and without limitation, a Special Service may include the repair of locks, broken glass and doors or the maintenance of the Private Garden or services typically provided by a handyman. The cost of furnishing a Special Service shall be assessed to the applicable Owner as a Specific Assessment under Section 12.05. The Association may also, by Board action or committee action, discontinue providing a Special Service. If the Association is required to furnish a Special Service to a Condominium Unit or Private Garden, but if a portion of the Condominium Unit or Private Garden with respect to which the Special Service is to be furnished is obstructed with temporary or permanent improvements, personal property or other obstructions which make it difficult or

impractical for the Association's agent or contractor to furnish the Special Service, the Association shall not be required to furnish the Special Service and, in such case, the Owner shall be responsible for furnishing the Special Service to such portion of the Condominium Unit or Private Garden at the Owner's sole cost and expense, so that the appearance of such portion of the Condominium Unit and Private Garden is within the Community-Wide Standards. Anything herein to the contrary notwithstanding, the Association shall not be obligated to furnish Special Services to an Owner, Resident, Condominium Unit or Private Garden.

10.04 Standard of Performance: Maintenance, as used in this Article, shall include, without limitation, repair and replacement as needed, as well as such other duties, which may include irrigation, as the Board may determine necessary or appropriate to satisfy the Community-Wide Standard. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants, as determined by the Board.

Without limiting the foregoing, the Board may establish standards for maintenance of portions of the Property which are higher than those generally required under the Community-Wide Standard.

Notwithstanding anything to the contrary contained herein, none of the Association, any Owner, Declarant and its affiliates or the managing agent shall be liable for property damage or personal injury occurring on, or arising out of, the condition of property which it does not own unless, and only to the extent that, it has been negligent in the performance of its maintenance responsibilities.

10.05 Alterations, Additions or Improvements: Except for those made by Declarant as provided in this Declaration, alterations, additions or improvements to the Common Area and Facilities or to the exterior of any door, door frame, window or window frame, may be made only pursuant to prior approval of the Board. The cost of any such alterations, additions or improvements to Common Area (other than Limited Common Area), except those made by Declarant during the Development Period, shall be charged to all Owners of Condominium Units in equal amounts for each Condominium Unit.

10.06 Damage or Destruction and Restoration of Buildings: In the event of fire or other casualty or disaster loss resulting in less than complete and total destruction of all Buildings containing Condominium Units, the improvements shall be reconstructed and the insurance proceeds applied to reconstruct the improvements.

In the event of complete or total destruction of all of the Buildings containing Condominium Units by fire or any other casualty or disaster, Buildings shall not be reconstructed, except by agreement of two-thirds (2/3) of all of the Owners, and the insurance proceeds, if any, shall be divided among the Owners in the percentage by which each owns an undivided interest in the Common Areas and Facilities and the Property shall be considered removed from the Act. A determination of complete and total destruction of the Buildings containing Condominium Units shall be made by a two-thirds (2/3) vote of all Owners at a special meeting of the Association called for that purpose.

When insurance proceeds are not sufficient to cover the costs of repair or reconstruction and the Property is not to be removed from the Act, the Owners shall contribute the balance of any such costs in the percentage by which an Owner owns an undivided interest in the Common Areas and Facilities as expressed in the Declaration. Such amount shall be assessed as part of the Common Expense and shall constitute a lien from the time of assessment as provided in the Act.

Reconstruction of the improvements, as used in this Article, means restoring the improvements to substantially the same condition in which they existed prior to the fire or other disaster, with each Condominium Unit and the Common Areas and Facilities having the same vertical and horizontal boundaries as before.

Article XI **INSURANCE AND CASUALTY LOSSES**

11.01 Association Insurance:

- (a) **Required Coverages.** The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:
- (i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements within the Common Area and Facilities to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes;
 - (ii) Commercial general liability insurance on the Common Area and Facility and the Limited Common Area, insuring the Association, its Members and BCG, if applicable, for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least \$2,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; provided, should additional coverage and

higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

- (iii) Workers compensation insurance and employer's liability insurance, if and to the extent required by law;
- (iv) Directors' and officers' liability coverage;
- (v) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixth (1/6) of the total annual assessments then in effect, plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of individuals serving without compensation; and
- (vi) Such additional insurance as the Board, in its business judgment, determines advisable.

Premiums for all insurance on the Common Area and Facilities and the Limited Common Area shall be Common Expenses and shall be included in the Base Assessment.

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- (b) Policy Requirements. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one (1) or more qualified individuals, at least one (1) of whom must be familiar with insurable replacement costs in the metropolitan Chicago area. All Association policies shall provide for a certificate of insurance to be furnished, upon request, to each Member insured, to the Association and each Mortgagee.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 11.01 (a). In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By- Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners or Residents, or their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible as a Specific

Assessment against such Owner(s) and their Condominium Units pursuant to Article XII.

All insurance coverage obtained by the Board shall:

- (i) be written with a company authorized to do business in the State of Indiana which satisfies the requirements of the Fannie Mae, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;
- (ii) be written in the name of the Association as trustee for the benefitted parties. Policies on the Common Area shall be for the benefit of the Association and its Members;
- (iii) not be brought into contribution with insurance purchased by Owners, Residents, or their Mortgagees individually;
- (iv) contain an inflation guard endorsement;
- (v) include an agreed amount endorsement, if the policy contains a co-insurance clause;
- (vi) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Area and Facilities or membership in the Association;
- (vii) provide a waiver of subrogation under the policy against each Owner and each Resident;
- (viii) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and
- (ix) include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one (1) or more individual Owners, unless such Owner is acting within the scope of its authority on behalf of the Association.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

- (i) a waiver of subrogation as to any claims against the directors, committee members, officers, employees, and the Association's manager, the Owners, Residents and their respective tenants, servants, agents, and guests;
 - (ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;
 - (iii) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;
 - (iv) an endorsement requiring at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;
 - (v) a cross liability provision; and
 - (vi) a provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.
- (c) Damage and Destruction. Immediately after damage or destruction to all or any part of the Property covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.
- Any damage to or destruction of the Common Area and Facilities shall be repaired or reconstructed unless (i) at least eighty percent (80%) of the total vote in the Association, and (ii) the Declarant, during the Development Period, decides within sixty (60) days after the loss not to repair or reconstruct. However, if either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such sixty (60) day period, then the period shall be extended until such funds or information are available, not to exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area and Facilities shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Common Area and Facilities shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be distributed among all Owners.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy Special Assessments to cover the shortfall against the Owners.

11.02 Owners' Insurance: By virtue of taking title to a Condominium Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Condominium Unit and Private Garden, less a reasonable deductible and to carry liability insurance on the Private Garden naming the Association as an additional insured.

Each Owner further covenants and agrees that if the Owner is required to carry property insurance for his or her Condominium Unit and Private Garden, in the event of damage to or destruction of improvements on or comprising his or her Condominium Unit or Private Garden, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved by the Board, regardless of whether the insurance proceeds are sufficient to pay the cost of such work.

Article XII ASSESSMENTS

12.01 Creation of Assessments: The Association may levy assessments against each Condominium Unit for Association expenses as the Board may specifically authorize from time to time. There shall be three (3) types of assessments: (a) Base Assessments to fund Common Expenses for the general benefit of all Condominium Units; (b) Special Assessments; and (c) Specific Assessments. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Property, is deemed to covenant and agree to pay these assessments.

Assessments shall be paid in such manner and by such dates as the Board may establish. Unless the Board otherwise provides, the Base Assessment for a Condominium Unit and any other assessment not due according to the terms of an invoice shall be due and payable in advance on

the first day of each month; provided, that, upon the first conveyance of a Condominium Unit to a purchaser for value, the pro rata portion of such assessments for the balance of the month shall be due and payable upon conveyance of the Condominium Unit. If any Owner is delinquent in paying any assessments or other charges levied on his or her Condominium Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

The Association shall, upon request by an Owner, furnish to any Owner liable for any type of assessment a certificate in writing signed by an authorized Association officer setting forth whether such assessment has been paid and any delinquent amount. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

No Owner may exempt himself or herself from liability for assessments by non-use of Common Area and Facilities, abandonment of his or her Condominium Unit or Private Garden, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, loss or diminution of use, or from any other action it takes.

12.02 Computation of Base Assessment: Not less than sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget covering the Common Expenses estimated to be incurred during the coming year. The budget shall include a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 12.03, but shall not include expenses incurred during the Declarant Control Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs.

The Base Assessment shall be levied equally against all Condominium Units subject to assessment and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including contributions to reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Condominium Units subject to assessment under Section 12.09 on the first day of the fiscal year for which the budget is prepared and the number of Condominium Units reasonably anticipated to become subject to assessment during the fiscal year.

After the Declarant Control Period, a budget and a proposed assessment may be disapproved at a meeting of the Members upon the vote of Voting Members representing at least a majority of the total Association vote and, if during the Development Period, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering the budget and proposed assessment except on petition for a special meeting of the Voting Members as provided for in the By-Laws, which petition must be presented to the Board within thirty (30) days after notice of the

proposed assessments. Notice of proposed assessments shall be mailed by regular first class mail to each Owner at the address of the Condominium Unit or as otherwise directed in writing by the Owner. If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year.

The Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of amounts (in addition to any amounts paid by Declarant), which may be either a contribution, an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such payments shall be disclosed as a line item in the Common Expense budget. The payment of such amounts in any year shall not obligate the Declarant to continue such payments in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

12.03 Reserve Budget and Capital Contribution: The Board shall annually prepare a reserve budget which takes into account the number and nature of replaceable assets within the Common Area and Facilities, the expected life of each asset, and the expected repair or replacement cost. Such reserve budgets may also anticipate making additional capital improvements and purchasing additional capital assets. The Board shall include in Base Assessments reserve contributions in amounts sufficient to meet these projected needs. So long as the Board exercises business judgment in determining an adequate amount of reserves, the amount of the reserve fund shall be considered adequate.

The Board may adopt resolutions regarding the expenditure of reserve funds, including policies designating the nature of assets for which reserve funds may be expended. During the Development Period, neither the Association nor the Board shall adopt, modify, limit or expand such policies without the Declarant's prior written consent.

12.04 Special Assessments: In addition to other authorized assessments, subject as provided below, the Board may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted, including unbudgeted capital expenditures. Any such Special Assessment may be levied against all Condominium Units, if such Special Assessment is for Common Expenses. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. Such Special Assessments shall become effective unless (a) disapproved at a meeting of the Owners by the vote of Voting Members representing at least two-thirds ($\frac{2}{3}$) of the total votes in the Association, or (b) if, during the Development Period, the Special Assessment is disapproved by the Declarant.

There shall be no obligation to call a meeting for the purpose of considering Special Assessments except on petition of the Voting Members or Owners as provided for special meetings in the By-Laws, which petition must be presented to the Board within thirty (30) days after notice of the Special Assessment. Notice of Special Assessment shall be provided as set forth in Section 12.02.

12.05 Specific Assessments: The Board may levy "Specific Assessments" against particular Condominium Units for expenses incurred or to be incurred by the Association, as follows:

- (a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or Special Services to the Condominium Unit or Residents thereof, which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner; and
- (b) to cover costs incurred in bringing a Condominium Unit or Private Garden into compliance with the terms of the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or Residents of the Condominium Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Condominium Unit Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying any Specific Assessment under this subsection (b).

12.06 Creation of Lien and Personal Obligation: The Declarant for each Condominium Unit hereby covenants, and each Owner of a Condominium Unit 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 Condominium Unit. Each Charge, together with interest thereon, late charges, and reasonable costs of collection (including attorney's fees), if any, as hereinafter provided, shall be a continuing lien upon the Condominium Unit against which such Charge is made and also shall be the personal obligation of the Owner of the Condominium Unit 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.

12.07 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 eighteen percent (18%) or the maximum amount allowed by law if the law requires per annum from the due date to the date when paid and the Association may assess a reasonable late fee and may (i) bring an action against the Owner personally obligated to pay the Charge to recover the Charge (together with interest, late fees, 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.

12.08 Lien for Charges Subordinated to Mortgages: The lien for a Charge, provided for in Section 12.06, shall be subordinate to a Mortgage on the Condominium Unit which was recorded prior to the date that the lien for any such Charge attached. Except as hereinafter provided, the lien for Charges, provided for in Section 12.06, shall not be affected or discharged by any sale or transfer of a Condominium Unit. Where title to a Condominium Unit is transferred pursuant to a decree of foreclosure of the Mortgage or by deed or assignment in lieu of foreclosure of the 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 Condominium Unit shall be personally liable for his or her share of the Charges with respect to which a lien against his Condominium Unit 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 Base Assessment, Specific Assessment, or Special Assessment, and non-payment thereof shall result in a lien against the transferee's Condominium Unit, as provided in this Article.

12.09 Date of Commencement of Assessments: The obligation to pay assessments shall commence as to each Condominium Unit on the first day of the month following: (a) the month in which the Condominium Unit is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later.

12.10 Failure to Assess: Failure of the Board to fix assessment amounts or rates or to post, deliver or mail each Owner an assessment notice shall not be deemed to be a waiver, modification, or release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Specific Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

12.11 Exempt Property: The following property shall be exempt from payment of Base Assessments, Specific Assessments and Special Assessments:

- (a) All Common Area and Facilities; and
- (b) Any property dedicated to and accepted by any governmental authority or public utility.

12.12 Utility Costs Billed to Owners: Certain utility charges incurred in connection with the use, operation and maintenance of the Common Area and Facilities (including certain exterior lighting) may not be separately metered to the Common Area and Facilities. If such charges are metered to an individual Condominium Unit rather than being separately metered for the Common Area and Facilities, then the following shall apply:

- (a) If, in the opinion of the Board, each Owner is sharing in a fair and equitable manner the cost of such service, then no adjustment shall be made and each Owner shall pay his or her own bill; or
- (b) If, in the opinion of the Board, the Owner of a Condominium Unit is being billed disproportionately for costs allocable to the Common Area and Facilities, then the Association shall pay, or reimburse such Owner, an amount equal to the portion of the bill which in the reasonable determination of the Board is properly allocable to the Common Area and Facilities, as the case may be, and the amount thereof shall be Common Expenses.

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

Article XIII
USE RESTRICTIONS

The Property shall be used only for residential, recreational, and related purposes which may include, without limitation, offices for any managing agent or agents retained by the Association or business offices for the Declarant or the Association consistent with this Declaration and any Supplemental Declaration. Any Supplemental Declaration or additional covenants imposed on the Property or rules and regulations of the Board may impose stricter standards than those contained in this Article and the Association shall have standing and the power to enforce such standards.

13.01 Signs: No sign shall be erected within the Property without the written consent of the Board, except those required by law, including posters, circulars and billboards; provided, one (1) "for sale" (but not "for rent" or "for lease") sign appearing professionally prepared not exceeding 11 inches by 17 inches may be placed by the Owner on the inside of a window of his or her Condominium Unit and security system signs and decals may be placed on windows, doors and discretely outside the Condominium Unit or as otherwise limited by the Board. During the Development Period, the Declarant shall have the right to erect or permit signs as it, in its sole discretion, deems appropriate, including, without limitation, "for sale", "sold", promotional, development, construction, entry and directional signs.

13.02 Vehicles and Parking: No commercial vehicle, recreational vehicle, snow mobile, motorcycle or other motorized vehicle and no boat, trailer, hitch or other similar personal property shall at any time be parked or stored on any portion of the Property other than in a garage or on

a driveway servicing only one Condominium Unit directly in front of the garage doors of that Condominium Unit. Unless otherwise specifically permitted by the Board or pursuant to rules and regulations adopted by the Board, driveways on the Property servicing only one Condominium Unit may only be used to park commercial vehicles, recreational vehicles, snow mobiles, boats, trailers, or other similar vehicles for not more than twenty-four (24) hours total during any seven (7) day period at a time and to park operable automobiles.

There shall be no parking on roads or driveways designated as "fire lanes" by the Municipality or as prohibited by the Board, Declarant or the Municipality or in any manner that obstructs or may obstruct emergency vehicles or ingress or egress to a Condominium Unit. Subject to the provisions of the Governing Documents, vehicles permitted herein may be parked in front of the garage doors of a Condominium Unit only with the permission of the Owner or Resident of such Condominium Unit. The Board may establish such other parking rules and regulations as it deems appropriate for the safety, welfare and security of the Residents and the Property.

13.03 Animals and Pets: No animals of any kind, including livestock and poultry, shall be raised, bred, or kept on any portion of the Property, except that for each Condominium Unit there shall be permitted up to a total of two (2) dogs or two (2) cats or a combination of dogs and cats not to exceed two (2) in total, no more than three (3) birds, and a reasonable number, as determined by the Board, of other usual and common household pets, subject to compliance with applicable local codes. In no event, however, shall monkeys, snakes, pigs, ferrets or animals which may be regarded as "dangerous" or "wild" if loose be permitted in any Condominium Unit. Pets which are permitted to roam free, or which, in the sole discretion of the Association, make objectionable noise, endanger the health or constitute a nuisance or inconvenience to the Owners of other Condominium Units or the owner of any portion of the Property shall be removed from the Property upon request of the Board. If the Owner fails to honor such request, the pet may be removed by the Board. The Board may adopt reasonable rules designed to minimize damage and disturbance to other Owners and Residents, including rules requiring damage deposits, waste removal, leash controls, noise controls, pet occupancy limits based on size and facilities of the Condominium Unit and fair share use of the Common Area and Facilities; provided, however, any rule prohibiting the keeping of ordinary household pets shall apply prospectively only and shall not require the removal of any pet which was being kept on the Property in compliance with the rules in effect prior to the adoption of such rule. Nothing in this provision shall prevent the Association from requiring removal of any animal that presents an actual threat to the health or safety of Residents or from requiring abatement of any nuisance or unreasonable source of annoyance. No pets shall be kept, bred, or maintained for any commercial purpose.

13.04 Quiet Enjoyment: Nothing shall be done or maintained on any part of a Condominium Unit or Private Garden which emits foul or obnoxious odors outside the Condominium Unit or Private Garden or creates noise or other conditions which tend to unreasonably disturb the peace, quiet, safety, comfort, or serenity of the Residents and invitees of other Condominium Units. Specifically, there shall be no loud music played inside or outside

of a Condominium Unit that unreasonably disturbs the Occupant of any other Condominium Unit. No activity shall be carried on upon any portion of the Property, which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the Residents and invitees of other Condominium Units.

13.05 Unsightly or Unkempt Conditions: All portions of the Property outside the Condominium Unit shall be kept in a clean and tidy condition at all times. Each Owner shall be responsible to keep clean and tidy his or her Private Garden. No rubbish or debris of any kind shall be placed or permitted to accumulate adjacent to any Condominium Unit so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other portion of the Property. No other nuisance shall be permitted to exist or operate in any Condominium Unit so as to be offensive or detrimental to any other portion of the Property. No activities shall be conducted in or adjacent to any Condominium Unit or Private Garden which are or might be unsafe or hazardous to any Person or property. No open fires shall be lighted or permitted on the Property, except in a barbecue unit while attended and in use for cooking purposes. No Owner shall engage in any activity which materially disturbs or destroys the vegetation, wildlife, or air quality within the Property or which result in unreasonable levels of sound or light pollution or which conflicts with the applicable Community-Wide Standard. Owners shall keep outdoor furniture and other items of personal property located in their Private Garden concealed from view by fences or landscaping around the Private Garden.

13.06 Antennae: Standard TV antennas to be located in the attic space, if any, above the garage and other over-the-air reception devices so located shall be permitted provided that they are professionally installed in a safe manner in accordance with applicable manufacturers specifications and they do not interfere with the use and enjoyment of any other Condominium Unit. Satellite dishes of less than one (1) meter in diameter shall be permitted on the roof or side of a Building, but shall be located in as unobtrusive a location as possible. Subject to prior Board approval as to size, location and manner of installation, each Owner is hereby granted an easement on the exterior wall directly outside his or her Condominium Unit to professionally affix a satellite dish conforming with the limitations herein or otherwise established by the Board. Declarant and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus (of any size) for a master antenna, cable, or other communication system for the benefit of all or any portion of Merrillvillas, should any master system or systems require such exterior apparatus.

13.07 Fences: No wall, dog run, animal pen, or fence of any kind shall be constructed on any Limited Common Area, except as initially done by or through Declarant or as otherwise approved by the Board, in the Board's sole discretion, consistent with the Community-Wide Standard.

13.08 Exterior Lighting: Except for seasonal holiday decorative lights, which may be displayed between November 15 and January 15 only, all exterior lights must be approved by the

Board. No Owner or Resident may tamper with, alter, disconnect or turn-off any lighting on the exterior of a Condominium Unit controlled by a light sensor, timer or other similar device which has been installed by the Declarant or the Association even if metered by and connected to the electrical system of an individual Condominium Unit.

13.09 Time-Sharing: No Condominium Unit shall be made subject to any type of timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Condominium Unit rotates among members of the program on a fixed or floating time schedule over a period of years.

13.10 Firearms/Fireworks: The discharge of firearms or fireworks within the Property is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size or type of projectile. Nothing herein shall be construed to prohibit the Declarant or the Association from using portions of the Common Area from time to time to put on a fireworks show.

13.11 Detention Area; Controlled Burns: The detention area of Merrillvillas may be planted and seeded with prairie plants among other plantings. The Board may establish or adopt rules and guidelines pertaining to the maintenance and use of this area. Residents are advised that a preferred method of managing the prairie detention area to control weeds and to maintain its function and value is to engage in annual controlled burning to replicate natural conditions. Declarant, the Association and other entities engaged in managing the prairie areas may initiate such controlled burns and in so doing shall not be liable for any alleged damages due to smoke and particulate matter. It is anticipated that such burning would only be evident within the Property for a few days per year.

13.12 Business Use; Leasing: No business or trade, garage sale, moving sale, rummage sale, or similar activity shall be conducted in or from any Condominium Unit or Private Garden, except that an Owner or Resident may conduct ancillary business activities within the Condominium Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Condominium Unit; (b) the business activity conforms to all zoning requirements for the Property; (c) the business activity does not involve regular visitation of the Condominium Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of Residents of the Property; and (d) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board. "Business and trade" shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the family of the producer of such goods or services and for which the producer receives a fee, compensation, or other form of consideration,

regardless of whether (a) such activity is engaged in full or part time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

This Section shall not apply to any activity conducted by the Declarant with respect to its development and sale of the Property or its use of any Condominium Units which it owns within the Property. The leasing of a Condominium Unit shall not be considered a business or trade within the meaning of this subsection. "Leasing," for purposes of this Declaration, is defined as regular, exclusive occupancy of a Condominium Unit by any person other than the Owner, for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. Condominium Units may be leased only in their entirety. No fraction or portion may be leased or rented. There shall be no subleasing of Condominium Units or assignment of leases unless prior written approval is obtained from the Board. All leases shall be in writing. No transient tenants may be accommodated in a Condominium Unit, and all leases shall be for an initial term of no less than thirty (30) days, except: (A) with the prior written consent of the Board or (B) as initially authorized by Declarant in a Supplemental Declaration.

Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Condominium Unit Owner within ten (10) days of execution of the lease, but in no event later than five (5) days prior to the occupancy by the lessee. The Owner must make available to the lessee copies of the Governing Documents and assure, require and be responsible that the Condominium Unit is Occupied by an Age-Qualified Resident and/or a Qualified Resident. The Board may adopt reasonable rules regulating leasing and subleasing.

13.13 Occupancy: Condominium Units shall not be occupied by more than two (2) persons per bedroom in the Condominium Unit.

13.14 Trash Containers and Collection: No garbage or trash shall be placed or kept outside any Condominium Unit, except in covered containers of a type, size and style which are approved by the Board or as required by the applicable governing jurisdiction and, if applicable, the private collection contractor. In no event shall such containers be maintained so as to be visible from outside the Condominium Unit unless they are being made available for collection and then only for the shortest time reasonably necessary to effect such collection or as the Board shall otherwise reasonably specify. All rubbish, trash, or garbage shall be removed from the Condominium Units and Private Gardens and shall not be allowed to accumulate therein or thereon. No outdoor incinerators shall be kept or maintained in any Private Garden.

13.15 Clothes Drying Facilities: Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on the Property and no clothes, sheets, blankets or laundry of any kind shall be hung outside on any portion of the Property.

13.16 Snowmobiles Prohibited: The operation of snowmobiles or similar mechanized snow vehicles within the Property is prohibited.

13.17 Skiing: Cross country skiing within the Property shall be restricted to marked trails, if any, established by the Association.

13.18 Bird and Squirrel Houses: No Private Garden shall be allowed to have more than two (2) bird, squirrel or similar houses or combinations thereof, and such houses shall be mounted on a pole or poles so that the total height of the pole(s) and house(s) does not exceed seven (7) feet. With exception of the foregoing, feeding of wildlife by Residents is prohibited, except pursuant to a program established or approved by the Board.

13.19 Flagpoles: No Owner shall erect an independent ground mounded flagpole in the Private Garden or any other place on the Property.

13.20 Above-Ground Pools and Water Elements: The installation of an above-ground swimming pool, jacuzzi, hot-tub or similar structure in any Private Garden is prohibited. Subject to Declarant approval during the Declarant Control Period and the Board thereafter as to design, size, and function, Owner may install a safe, shallow, decorative water element.

13.21 Drainage Systems: Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person other than Declarant may obstruct or re-channel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves a perpetual easement across the Property for the purpose of altering drainage and water flow; provided, such easement right shall not be exercised in such a manner as to unreasonably interfere with the use of any Private Garden without the affected Owner's consent.

13.22 Air Conditioning Units: Except as may be permitted by the Board or its designee, no window air conditioning units may be installed in any Condominium Unit.

13.23 Artificial Vegetation, Exterior Sculpture, and Similar Items: No artificial vegetation shall be permitted on the exterior of any portion of the Property except in the Private Garden. Exterior sculpture, structures, fountains, trellises, pergolas and similar items located in the Private Garden and visible from a roadway or common driveway must be approved by the Board or meet guidelines, if any, established by the Board or permitted in this Declaration. Owner may not place such items or other structures in the Common Area and Facilities.

Article XIV
EASEMENTS

14.01 Easements of Encroachment: The Declarant reserves to itself and grants to the Association and to each Condominium Unit reciprocal appurtenant easements of encroachment,

and for maintenance and use of any permitted encroachment, between each Condominium Unit and any adjacent Common Area and Facilities and between adjacent Condominium Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

14.02 Easements for Utilities:

- (a) There are hereby reserved to the Declarant during the Development Period, and granted to the Association, and the designees of each (which may include, without limitation, the Municipality, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Property (but not through a structure) to the extent reasonably necessary to install, replace, repair, and maintain cable television systems, master television antenna systems, security systems, communication systems, fiber optics, computer lines and similar systems, roads, walkways, bicycle pathways, trails, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, and electricity. The Declarant and/or the Association may assign these rights to any local utility supplier, cable company, security company or other company providing a service or utility to the Property subject to the limitations herein. Each Owner hereby grants the Board an irrevocable power of attorney to execute, acknowledge and record for and in the name of such Owner, such instruments as may be necessary or appropriate to effectuate the foregoing. In addition, each Owner, by accepting any interest in a Condominium Unit, is deemed to appoint the Association as such Owner's attorney-in-fact for the purposes of granting permits, licenses and easements over the Common Area for utilities, roads and other purposes which the Board or Declarant may deem necessary or appropriate to the operation of the Property.

Each Owner, by acceptance of a deed or contract of sale to a Condominium Unit acknowledges that the Property is subject to easements not necessarily set forth in this Declaration but disclosed in the Public Records, Condominium Plat, planned unit development plat or the plat of subdivision, each as may be applicable.

This easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any Condominium Unit or Private Garden, and any damage to a Condominium

Unit resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Condominium Unit. Each Owner, by acceptance of a deed to the Condominium Unit acknowledges that utilities, wires, pipes and other such items may be located in, under or through the Private Garden and that the easements described herein may run in, under, through and over the Private Garden. Any disturbance, digging or excavation in a Private Garden for repair, installation or access to such improvements will be done in a reasonable manner with an effort to reduce disruption and damage to the Private Garden area. Owner acknowledges that because of the unique nature of some Private Gardens, complete restoration to the condition prior to such disturbance is not reasonable or possible.

Declarant specifically grants to the local utility suppliers easements across the Property for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the structures on any Condominium Unit, nor shall any utilities be installed or relocated on the Property, except as approved by the Board or Declarant.

- (b) There is hereby reserved to the Declarant during the Development Period, the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any real estate described on Exhibits A or B.

14.03 Easements to Serve Additional Property: The Declarant hereby reserves for itself and its duly authorized agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area and Facilities for the purposes of enjoyment, use, access, and development of the real estate described in Exhibit B and adjoining real estate, whether or not such real estate is made part of the Property. This easement includes, but is not limited to, a permanent non-exclusive right of ingress and egress over the Common Area and Facilities for construction of roads and for connecting and installing utilities on such real estate. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area and Facilities as a result of vehicular traffic connected with development of such real estate. Declarant further agrees that if the easement is exercised for permanent access to such real estate and such real estate or any portion thereof benefitting from such easement is not made subject to this Declaration, the Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along any roadway providing access to such real estate.

14.04 Easements for Cross-Drainage: The Declarant hereby reserves for itself and grants to the Association an easement across every Limited Common Area and Common Area and Facilities for natural drainage of storm water runoff from other portions of the Property, the real estate described in Exhibit B and any other real estate which Declarant annexes to Merrillvillas; provided, no Person shall alter the natural drainage on any Condominium Unit, Limited Common Area or Common Area to increase materially the drainage of storm water onto adjacent portions of the Property without the consent of the Owner(s) of the affected property, the Board, and, during the Development Period, the Declarant.

14.05 Right of Entry: The Declarant hereby grants to the Association an easement of access and right, but not the obligation, to enter all portions of the Property, including each Condominium Unit, for emergency, security, and safety reasons. Such right may be exercised by the authorized agents of the Association, its Board, officers, or committees, and by all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry into a Condominium Unit shall be only during reasonable hours and after notice to and permission from the Owner thereof. This easement includes the right to enter any Condominium Unit and Limited Common Area to cure any condition which increases the risk of fire or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but does not authorize entry into any dwelling when such Owner objects to entry or such entry is otherwise barred or limited by law, except by emergency personnel acting in their official capacities. The Municipality is hereby granted the right of access in and through the Property for emergency and public safety equipment, including, but not limited to fire, ambulance and police equipment.

14.06 Easements for Maintenance and Enforcement; Entry: The Declarant hereby grants to the Association and its authorized agents, a perpetual easement and right to enter all portions of the Property, including each Private Garden to (a) perform its maintenance responsibilities under Article X, and (b) make inspections to ensure compliance with the Governing Documents. Except in emergencies, entry into a Condominium Unit shall be only during reasonable hours and after notice to and permission from the Owner. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Association at its expense.

The Declarant grants to the Association an easement and the right to enter a Private Garden to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Governing Documents. All costs incurred, including reasonable attorneys' fees, shall be assessed against the violator as a Specific Assessment.

14.07 Easements for Exterior Landscaping and Maintenance: The Declarant hereby grants to the authorized agents of the Association the right to enter upon those portions of the Private Garden to furnish services required or permitted to be furnished by the Association

hereunder or under any Supplemental Declaration. Any damage caused by the exercise of this Easement shall be repaired by the Association at its expense.

Article XV
MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Condominium Units on the Property. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

15.01 Notices of Action: An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Condominium Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Condominium Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;
- (b) Any delinquency in the payment of assessments or charges owed by a Condominium Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Declaration or By-Laws relating to such Condominium Unit or the Owner or Resident which is not cured within sixty (60) days;
- (c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or
- (d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

15.02 No Priority: No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Condominium Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

15.03 Notice to Association: Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Condominium Unit.

15.04 Failure of Mortgagee to Respond: Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

Article XVI
SPECIAL DECLARANT RIGHTS

16.01 Special Declarant Rights: The Declarant reserves the following rights and powers ("Special Declarant Rights"):

- (a) The rights and powers designated herein as being rights and powers of the Declarant to be exercised, during the Development Period, including, without limitation, the following:
 - (i) To complete any improvements indicated on any Condominium Plat, development plans, if any, filed with this Declaration or Supplemental Declaration, or the Master Plan as may be amended from time to time;
 - (ii) To add or withdraw real property from the terms of this Declaration and any Supplemental Declaration;
 - (iii) To maintain sales offices, management offices, signs advertising on the Property;
 - (iv) To use easements through the Common Area and Facilities for the purpose of making improvements within the Property;
 - (v) To use the Common Area and Facilities for special events without the payment of any fee or charge;
 - (vi) To implement BCG Guidelines and BCG Programs, if any; and
 - (vii) To furnish maintenance services, including, without limitation, watering of grass and other landscaping on portions of the Property.
- (b) Any and all rights and powers designated in the Governing Documents as being rights and powers of the Declarant to be exercised during the Declarant Control Period including, without limitation, the right and power

to appoint and remove any director or officer of the Association as provided in the By-Laws.

- (c) Assignment. The Declarant may assign any Special Declarant Rights, or other special rights and obligations of the Declarant set forth in this Declaration or the By-Laws to any affiliate of the Declarant, or Declarant may allow any affiliate of the Declarant to exercise such rights on behalf of the Declarant. The method of exercising such rights shall be subject to the agreement of the parties thereto, which shall not require recordation in the Public Records.
- (d) Transfer. Any or all of the Special Declarant Rights, or any of the other special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under the Governing Documents. No such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

16.02 Models, Sales Offices and Management Offices: During the Development Period and for the period of twelve (12) months thereafter, the Declarant may maintain and carry on in any Condominium Unit owned by Declarant or any portion of the Common Area and Facilities, without limitation, including the Community Center and Community Gardens, such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Condominium Units, Common Area and Facilities or other real estate, including, but not limited to, business offices, construction offices and trailers, signs, model units, marketing trails, and sales offices. The Declarant shall have easements for access to and use of such facilities. Except as provided below, the Declarant's right to use the Common Area and Facilities for purposes stated in this paragraph shall not be exclusive and shall not unreasonably interfere with use of such Common Area and Facilities by Owners. Without limiting the foregoing, the Declarant hereby reserves to itself an exclusive easement and exclusive right to use such portion of the Community Center and Community Gardens as it shall elect as a sales office during the period provided for above. Declarant shall pay a reasonable portion of the cost of utilities, upkeep and wear and tear of the Community Center and Community Gardens to compensate for its use.

16.03 Construction of Improvements/Removal of Property: The Declarant and its employees, agents and designees shall also have a right and easement during the Development Period over and upon all of the Common Area and Facilities for the purpose of (a) making, constructing and installing such improvements to the Common Area and Facilities as it deems appropriate in its sole discretion or (b) removing peat moss, dirt, gravel, trees, bushes, or other landscaping, and other material as the Declarant deems appropriate in its sole discretion. The

Declarant shall not be obligated to pay or otherwise account to the Association for any material removed from the Common Area and Facilities under (b) above.

16.04 Other Covenants Prohibited: During the Development Period, no Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Property without Declarant's prior written consent. Any instrument recorded without such consent shall result in such instrument being void and of no force and effect unless subsequently approved in writing by the Declarant and Declarant's consent recorded in the Public Records.

16.05 Master Planned Community: Each Owner, by accepting a deed or title to a Condominium Unit and becoming an Owner, and each other Person, by acquiring any interest in the Property, acknowledges awareness that Merrillvillas is a master planned community, the development of which is likely to extend over one or more years, and agrees not to protest or otherwise object to (a) zoning or changes in zoning or to uses of, or changes in density of, the Property and the real estate described in Exhibit B during the Development Period, or (b) changes in any conceptual or master plan for the Property and the real estate described in Exhibit B, including, but not limited to, the Master Plan; provided, such revision is or would be lawful (including, but not limited to, lawful by special use permit, variance or the like) and is not inconsistent with what is permitted by the Declaration (as amended from time to time).

16.06 Equal Treatment: During the Development Period, the Association shall not, without the prior written consent of the Declarant, adopt any policy, rule or procedure that:

- (a) Limits the access of the Declarant, its successors, assigns and/or affiliates or their personnel and/or guests, including visitors, to the Common Area and Facilities;
- (b) Limits or prevents the Declarant, its successors, assigns and/or affiliates or their personnel from advertising, marketing or using the Association or its Common Area and Facilities in promotional materials;
- (c) Limits or prevents purchasers of new residential housing constructed by the Declarant, its successors, assigns and/or affiliates in Merrillvillas, and at the sole discretion of Declarant, owners of condominium units at the Sycamore Cove condominium development adjoining the Property from becoming members of the Association or enjoying full use of its Common Area and Facilities, subject to the membership provisions of this Declaration and the By-Laws;
- (d) Impacts the ability of the Declarant, its successors, assigns and/or affiliates, to carry out to completion its development plans and related construction activities for Merrillvillas, as such plans are expressed in the Master Plan,

as such may be amended and updated from time to time. Policies, rules or procedures affecting the provisions of existing easements established by the Declarant and limiting the establishment by the Declarant of easements necessary to complete Merrillvillas shall be expressly included in this provision. Easements that may be established by the Declarant shall include but shall not be limited to easements for development, construction and landscaping activities and utilities; or

- (e) Impacts the ability of the Declarant, its successors, assigns and/or affiliates to develop and conduct customer service programs and activities in a customary and reasonable manner.

The Association shall not exercise its authority over the Common Area and Facilities (including, but not limited to, any gated entrances and other means of access to the Property or the Exhibit B property) to interfere with, frustrate or delay the rights of the Declarant set forth in this Declaration or to impede access to any portion of the Property or the Exhibit B property over the streets and other Common Area and Facilities within the Property.

16.07 Right to Use Common Area and Facilities for Special Events: During the Development Period, the Declarant shall have the right to use all Common Area and Facilities, including the Community Center and Community Gardens, for up to twenty-one (21) days each year to sponsor special events for charitable, philanthropic, or marketing purposes as determined by the Declarant in its sole discretion. Any event described in this paragraph shall be subject to the following conditions:

- (a) The availability of the facilities at the time a request is submitted to the Association;
- (b) The Declarant shall pay all costs and expenses incurred and shall indemnify the Association against any loss or damage resulting from the special event; and
- (c) The Declarant shall return the facilities and personal property owned by the Association and used in conjunction with the special event to the Association in the same condition as existed prior to the special event.

The Declarant's right to use the Common Area and Facilities for special events shall be enforceable by injunction, by any other remedy in law or equity, and by the terms of this Declaration.

16.08 Sales By Declarant: Notwithstanding the restriction set forth in Section 6.01, Declarant reserves the right to sell, at its sole election, Condominium Units to Persons between the ages of fifty (50) and fifty-five (55), inclusive years of age; provided, such sales shall not affect Merrillvillas's compliance with all applicable state and federal laws under which Merrillvillas may be developed and operated as an age-restricted community.

Article XVII
DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

17.01 Prerequisites to Actions Against Declarant: Prior to any Owner or the Association filing a civil action, undertaking any action in accordance with Section 17.04, or retaining an expert for any such action against Declarant, contractor or subcontractor performing work on any portion of Merrillvillas, the Owner or the Board, as appropriate, shall notify and meet with the Members to discuss the alleged problem or deficiency. Moreover, prior to taking any action, the potential adverse party shall be notified of the alleged problem or deficiency and provided reasonable opportunity to cure the problem.

17.02 Consensus for Association Litigation: Except as provided in this Section after the Declarant Control Period, the Association shall not commence a judicial or administrative proceeding without first providing at least twenty-one (21) days written notice to its Members of a special meeting to consider such proposed action. Taking such action shall require the vote of Owners of seventy-five percent (75%) of the total number of Condominium Units in the Association. This Section shall not apply, however, to (a) actions brought by the Association to enforce the Governing Documents (including, without limitation, the collection of assessments and the foreclosure of liens); (b) counterclaims brought by the Association in proceedings instituted against it; or (c) actions to protect the health, safety, and welfare of the Members. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

17.03 Alternative Method for Resolving Disputes: Declarant, the Association, and their respective officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Property, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances, or disputes described in Section 17.02 ("Claims") shall be resolved using the procedures set forth in Section 17.04 in lieu of filing suit in any court.

17.04 Claims: Unless specifically exempted below, all Claims arising out of or relating to the interpretation, application, or enforcement of the Governing Documents, or the rights, obligations, and duties of any Bound Party under the Governing Documents or relating to the

design or construction of improvements on the Property shall be subject to the provisions of Section 17.05.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not constitute a Claim and shall not be subject to the provisions of Section 17.05:

- (a) Any suit by the Association against any Bound Party to enforce the provisions of Article XII relating to the assessment or collection of any Charge;
- (b) Any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article II (Submission to the Act; Master Plan; Contraction, Expansion) and Article XVI (Special Declarant Rights);
- (c) Any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;
- (d) Any suit in which any indispensable party is not a Bound Party; and
- (e) Any suit as to which any applicable statute of limitations would expire within ninety (90) days of giving the Notice required by Section 17.05(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 17.05.

17.05 Mandatory Procedures:

- (a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:
 - (i) the nature of the Claim, including the Persons involved and Respondent's role in the Claim;

- (ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
 - (iii) Claimant's proposed remedy; and
 - (iv) that Claimant will meet with Respondent to discuss good faith ways to resolve the Claim.
- (b) Negotiation and Mediation. The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

If the Parties do not resolve the Claim within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have thirty (30) additional days to submit the Claim to mediation under the auspices of an independent mediator or agency providing dispute resolution services in the geographic area of the Property.

If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation, or within such time as determined by the mediator, the mediator shall issue a written notice of termination of the mediation proceedings. The notice of termination of mediation shall set forth that the Parties are at an impasse and the date that mediation was terminated.

17.06 Allocation of Costs of Resolving Claims: Each Party shall bear its own costs, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator.

17.07 Enforcement of Resolution: After resolution of any Claim through negotiation or mediation, if any Party fails to abide by the terms of any agreement, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 17.05. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than

one (1) non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and court costs.

Article XVIII
GENERAL PROVISIONS

18.01 Term: Unless otherwise provided by Indiana law, in which case such law shall control, this Declaration shall run with the land and have perpetual duration. This Declaration may be terminated only by an instrument signed by Owners of at least ninety percent (90%) of the total Condominium Units within the Property and, during the Development Period, the Declarant, which instrument is recorded in the Public Records. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

18.02 Amendment: Prior to the conveyance of the first Condominium Unit to an Owner, Declarant may unilaterally amend this Declaration. After the conveyance of any Condominium Unit to an Owner, other than amendments which may be executed unilaterally by the Declarant during the Development Period in the exercise of its rights of development or Declarant's other rights herein, or amendments executed by the Association, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of seventy-five percent (75%) of the total vote in the Association, and the consent of the Declarant during the Development Period, except as otherwise expressly provided in this Declaration.

During the Development Period, the Declarant may unilaterally amend this Declaration if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Condominium Units; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Fannie Mae or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on the Condominium Units; (iv) to enable any reputable private insurance company to insure mortgage loans on the Condominium Units; (v) to satisfy the requirements of any local, state or federal governmental agency for the development, marketing, and sale of Condominium Units or (vi) to correct errors, or resolve inconsistencies or ambiguities in this Declaration or any Exhibit hereto or any part of the Governing Documents.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Amendments to this Declaration shall be prepared, executed, recorded and certified by the President of the Association.

No amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant during the Development Period.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within one (1) year of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

18.03 Severability: Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

18.04 Cumulative Effect; Conflict: The provisions of this Declaration shall be cumulative with any additional covenants and restrictions provided for in any of the Governing Documents, and the Association may, but shall not be required to, enforce such additional covenants and restrictions. Nothing herein shall preclude any Supplemental Declaration or other recorded covenants and restrictions applicable to any portion of the Property from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

18.05 Use of the Words "Merrillvillas ": No Person shall use the words "Merrillvillas" or any derivative in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the terms "Merrillvillas" in printed or promotional matter where such term is used solely to specify that particular property is located within Merrillvillas and the Association shall be entitled to use the words "Merrillvillas" in its name.

18.06 Marks: Any use by the Association of names, marks, symbols or logos of Declarant, Merrillvillas, LLC, Beautiful Communities With Gardens or any of their affiliates (collectively "Marks") shall inure to the benefit of the respective entity and shall be subject to such entity's periodic review for quality control. The Association shall enter into license agreements with such entity, terminable with or without cause and in a form specified by such entity in its sole discretion, with respect to permissive use of certain Marks. The Association shall not use any Mark without the affected entity's prior written consent.

18.07 Compliance: Every Owner and Resident of any Condominium Unit shall comply with this Declaration, the By-Laws, and the rules of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other

remedy available at law or in equity, by the Association or, in a proper case, by any aggrieved Condominium Unit Owner(s).

18.08 Occupants Bound: All provisions of the Governing Documents shall also apply to all Residents, guests, and invitees of any Condominium Unit. Every Owner shall cause all Residents, guests and invitees of his or her Condominium Unit to comply with the foregoing, and every Owner shall be responsible for all violations and losses to the Common Area Facilities caused by such Residents, guests and invitees notwithstanding the fact that such Residents, guests and invitees of a Condominium Unit are fully liable and may be sanctioned for any violation.

18.09 Attorneys' Fees: In the event of an action instituted to enforce any of the provisions contained in the Governing Documents, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs, including administrative and lien fees, of such suit. In the event the Association is a prevailing party in such action, the amount of such attorneys' fees and costs shall be a Specific Assessment and Charge with respect to the Condominium Unit(s) involved in the action.

Article XIX

SALE OR MORTGAGE OF CONDOMINIUM UNIT BY OWNER

19.01 Sale: For the purpose of maintaining the congenial and residential character of Merrillevillas, and for the protection of the Owners with regard to financially responsible residents, sale of a Condominium Unit by an Owner other than the Declarant shall be subject to the following conditions and restrictions.

The Owners, as a group, shall have the right of first refusal to purchase any Condominium Unit which an Owner wishes to sell. Any Owner wishing to sell who receives a bona fide offer to purchase shall promptly give written notice to the Board of his desire to sell, together with the name and address of the intended purchaser, the names and ages of all intended Occupants including the Age-Qualified Occupant(s), the terms and conditions of such offer and such other information or documentation as the Board may reasonably require. Within ten (10) days after the receipt of such notice, the Board shall determine if it should recommend exercise of the right to purchase or waive the right to purchase. In the event the Board elects to waive the right to purchase, a certificate in recordable form, executed by the President or Secretary of the Board, certifying that the Board has waived its right to purchase, shall be delivered to the Owner, who may then proceed to sell and convey his Condominium Unit to that person upon the same terms and conditions as set forth in the Owner's notice to the Board. In the event the sale is not completed within one hundred eighty (180) days following the date of such certificate, then the Condominium Unit shall again become subject to the Board's right of first refusal as herein provided.

In the event the Board deems it advisable to exercise the right to purchase the Condominium Unit, then it shall give written notice thereof to the Owner and shall, within fourteen (14) days following the receipt of such notice from the Owner wishing to sell, call a meeting of all the Owners for the purpose of voting upon the proposed purchase. If the recommendation of the Board to purchase such Condominium Unit is approved by no less than seventy-five percent (75%) in the aggregate of the total votes, then the Board shall proceed to purchase the Condominium Unit from the Owner upon the same terms and conditions contained in the offer. The purchase price for the Condominium Units shall be considered to be a Common Expense and borne by the Owners; provided, however, that the Owner who has made the offer to sell his Condominium Unit shall not be assessed for or required to pay his pro rata share of the expense incurred in the purchase of the Condominium Unit.

Legal title to the Condominium Unit shall be conveyed to the Association as an entity or to those persons then serving as Board, as trustees for the benefit of the Owners, whichever the Board, in their sole discretion, deem appropriate.

In the event that the proposed purchase is not approved by the required percentage of the Owners as set out above, then the Board, through the President or Secretary, shall promptly deliver a certificate in recordable form to the Owner who may proceed to sell his Condominium Unit under the same terms and conditions as if the Board had not elected to recommend the exercise of the right of the Association to purchase.

If, for any reason, either the Board or the Owners shall fail to act on the right of first refusal; within the time periods herein provided, then the right of first refusal shall be deemed to have been waived.

If the Board shall purchase a Condominium Unit in accordance with this Article, the Board shall have the authority at any time thereafter to sell or lease the Condominium Unit upon the terms and conditions as the Board shall, in their sole direction, deem desirable, without application to or approval of the Owners. The proceeds of any such sale shall be returned to the Owners in the same percentage as they had contributed to the purchase. In the event the Board elects to lease such Condominium Unit, then the lease rental payments shall be applied against the Common Expense.

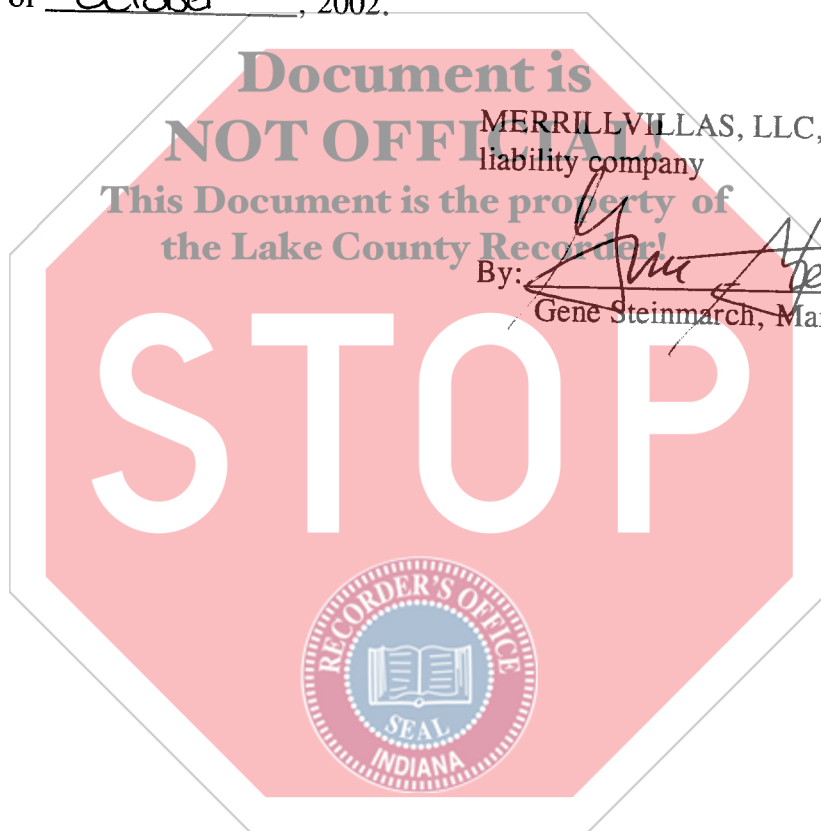
Any sale or attempted sale by an Owner of his Condominium Unit, except in accordance with the provisions of this Article, shall be void; provided, however, that any certificate waiving the right to purchase executed by the Board and delivered to an Owner as provided by this Article may be relied upon by any purchaser or mortgagee and shall, with respect to such purchaser or mortgagee, be absolutely binding upon the Board and the Owners unless such purchaser or mortgagee has actual knowledge that the certificate was procured fraudulently or by reason of a misrepresentation of a material fact.

19.02 Limitations to Mortgagee: With respect to a mortgagee that is a bank, life insurance company, savings and loan association, or other recognized institutional lender, or is the Declarant, the provisions of Section 19.01 of this Article shall be limited in their application as follows:

- (a) The provisions of Section 19.01 shall not be applicable to the conveyance of a Condominium Unit to such mortgagee as a result of a foreclosure of its mortgage or a conveyance in lieu thereof or to the conveyance of a Condominium Unit to any person at a public sale in the manner provided by law with respect to mortgage foreclosures. The provisions of Section 19.01 shall be applicable to and binding upon such mortgagee or other person so obtaining title to a Condominium Unit with respect to any subsequent transfer or conveyance of the Condominium Unit.

The provisions of this Section 19.01 may not be amended without the consent of all of such mortgagees.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 9th day of October, 2002.



MERRILLVILLAS, LLC, an Illinois limited liability company
By: Gene Steinmarch
Gene Steinmarch, Manager

STATE OF INDIANA)
) SS:
COUNTY OF Porter)

Be it remembered, that on this 9th day of October, 2002, came before me, Gene Steinmarch, Manager of Merrillvillas, LLC, an Illinois limited liability company, who being duly sworn upon oath, did acknowledge execution and delivery of the within instrument to be the act and deed of said limited liability company for the purposes therein contained.

My Commission Expires:

Kimberly S. Werner
Commission Expires: May 20, 2008
County of Residence: LaPorte

Kimberly S. Werner
Notary Public
County of Residence: _____

This Instrument Prepared By:

Todd A. Leeth
HOEPPNER WAGNER & EVANS LLP
103 E. Lincolnway, P.O. Box 2357
Valparaiso, Indiana 46384
Telephone: (219) 464-4961

August 30, 2002

C:\HWE\TAL\Steinmarch\Declaration.wpd



EXHIBIT A

BYLAWS

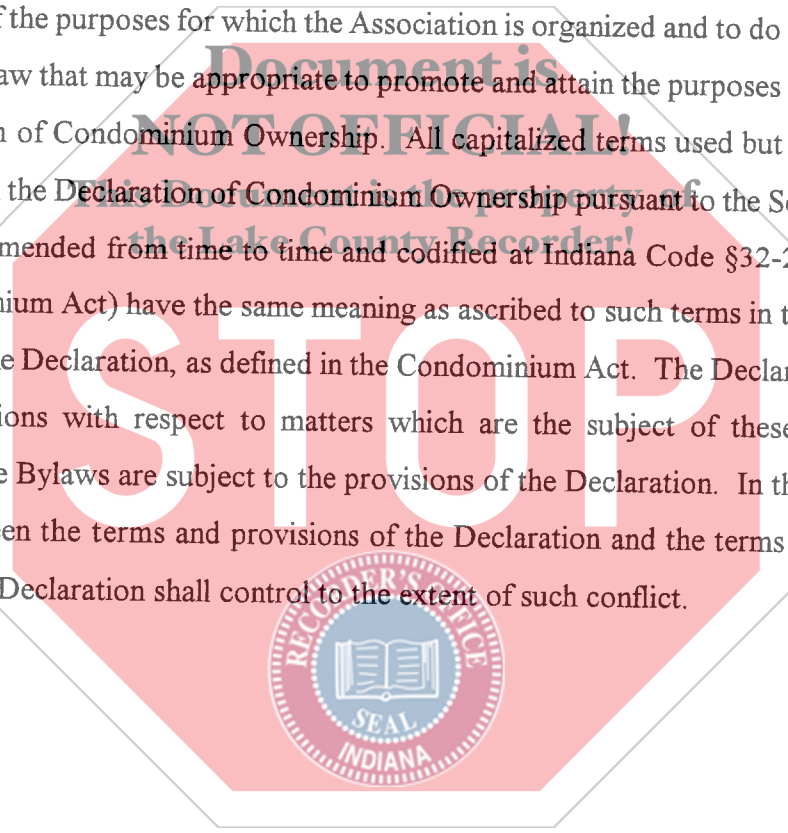
OF

MERRILLVILLAS CONDOMINIUM ASSOCIATION, INC.

ARTICLE I

General Provisions

The Association is responsible for the overall administration of the Property through its duly elected Board. Whether or not incorporated, the Association shall have such powers, not inconsistent with the Act, as are now or may hereafter be granted by the Nonprofit Corporation Act for the State of Indiana (the "Act"). The Association shall have and exercise all powers necessary or convenient to effect any or all of the purposes for which the Association is organized and to do every other act not inconsistent with law that may be appropriate to promote and attain the purposes set forth in the Act or the Declaration of Condominium Ownership. All capitalized terms used but not defined herein that are defined in the Declaration of Condominium Ownership pursuant to the Section 10 of Public Law 2-2002, as amended from time to time and codified at Indiana Code §32-25-1-1 *et seq.* (the Indiana Condominium Act) have the same meaning as ascribed to such terms in the Declaration, or if not defined in the Declaration, as defined in the Condominium Act. The Declaration may contain additional provisions with respect to matters which are the subject of these Bylaws and the provisions of these Bylaws are subject to the provisions of the Declaration. In the event that there is a conflict between the terms and provisions of the Declaration and the terms and provisions of these Bylaws, the Declaration shall control to the extent of such conflict.



ARTICLE II

Members

Section 1. Classes of Members, Membership, and Termination Thereof. The Association shall have one class of Members. The designation of such class and the qualifications of the Members of such class shall be as follows:

Each Owner shall be a Member of the Association, which membership ("Membership") shall terminate on the sale or other disposition of a Member's Unit, at which time the new Owner shall automatically become a Member of the Association. Such termination shall not relieve or release any former Owner from any liability or obligation incurred under or in any way connected with the condominium or the Association during the period of such ownership and Membership in the Association. Furthermore, such termination shall not impair any rights or remedies that the Board or others may have against a former Owner arising from, or in any way connected with, such ownership and Membership and the covenants and obligations incident thereto. No certificates of stock or other certificates evidencing Membership shall be issued by the Association. The provisions of Section 8.02 of the Declaration are incorporated herein.

Section 2. Votes and Voting Rights.

- a. Until the date of the first annual meeting of the Members, as provided in Article III, Section 1, hereof, no Member of the Association shall have the right to elect the directors. All such members of the Board of Directors shall be appointed and shall hold office as provided in Article IV, Section 2, of these Bylaws.
- b. During the Declarant Control Period, all voting rights of the Owners at any meeting of the Members of the Association or otherwise shall be vested exclusively in the Declarant as set forth in Section 8.03 of the Declaration, which provisions are incorporated herein.

- c. Commencing with the date of the first annual meeting of the Members, each Voting Member shall have one (1) vote for each Condominium Unit which the Voting Member represents in accordance with Section 8.03 of the Declaration, subject to the rights of Declarant during the Declarant Control Period as provided in Section 2(b) hereinabove.

Section 3. Transfer of Membership. Membership in this Association is not transferable or assignable, except as provided in Article II, Section 1, hereof.

ARTICLE III

Meetings of Members

Section 1. Annual Meeting. The first annual meeting of the Members shall be held on such date as is fixed by the Declarant, which date shall in no event be later than the earlier of (a) three years from the date the Declaration is recorded, (b) sixty (60) days from the date when 75% of the Units have been conveyed by the Declarant, or (c) such earlier time as selected by the Declarant. Thereafter, an annual meeting of the Members for the purpose of electing directors and for the transaction of such other business as may come before the meeting shall be held in the month of September each year, provided, however, that no such meeting need be held less than one year after the first annual meeting of the Members. If the election of directors shall not be held when designated herein for any annual meeting, or at any adjournment thereof, the Board shall cause the election to be held at a special meeting of the Members called as soon thereafter as it conveniently may be held. In the event the Declarant fails to call the first annual meeting of Members by the latest date set forth above, 20% of the Members may call the first annual meeting by filing a petition to such effect with the Declarant, setting forth a date for such meeting. After the filing of such petition, the Members filing the petition may send notice of the first annual meeting of Members as provided herein and may hold such meeting pursuant to the notice. The Board may disseminate to the Members biographical and background information about candidates for election to the Board if reasonable efforts are made to identify all candidates and all candidates are given an opportunity to include biographical information and background material in the information to be disseminated and

the Board does not express a preference in favor of any candidate. An Owner shall be entitled to receive from the Board or the Declarant acting as the Board as provided herein and in the Act, within five (5) working days after the request therefore, the names and addresses of each Owner entitled to vote at the next annual meeting of Members.

Section 2. Special Meetings. Special meetings of the Members may be called by the Board, the President, or not less than 20% of the Members. All matters to be considered at special meetings of the Members called by not less than 20% of the Members shall first be submitted in writing to the Board not less than ten (10) days before the date of the special meeting of the Members called to consider such matters.

Section 3. Place and Time of Meeting. All meetings of the Members shall take place at 7:00 p.m., in some section of the Property designated by the person or persons calling the meeting, or at such other reasonable place or time designated by the Board or the person or persons calling the meeting. Meetings shall be held in the Community Center unless circumstances do not permit.

Section 4. Notice of Meetings. Written or printed notice stating the purpose, place, day, and hour of any meeting of Members shall be mailed or delivered to each Member entitled to vote at such meeting not less than ten (10), nor more than thirty (30), days before the date of such meeting, by or at the direction of the President or the Secretary, or the officer or persons calling the meeting, except that notice of the first annual meeting of the Members shall be given to the Members at least twenty-one (21) days prior thereto. The notice of a meeting shall be deemed mailed when deposited in the United States mail addressed to the Member at his address as it appears on the records of the Association, with proper postage thereon prepaid.

Section 5. Quorum. The Voting Members present at a meeting in person or by proxy holding 20% of the votes that may be cast at any meeting shall constitute a quorum at such meeting. If a quorum is not present at the commencement of any meeting of Members, the meeting shall be adjourned and may be called again only in accordance with the provisions of these Bylaws.

Section 6. Proxies. At any meeting of Members, a Voting Member may vote either in person or by proxy, executed in writing by the Voting Member or by his duly authorized attorney in fact. No proxy shall be valid after eleven (11) months from the date of its execution. Any proxy distributed by the Board for election of directors shall give Owners the opportunity to designate any person as the proxy holder and shall give the Owner the opportunity to express a preference for any of the known candidates for the Board or to write in a name.

Section 7. Manner of Acting. Except as set forth below, and except as otherwise required by the Declaration or the Act, any action to be taken at any meeting of the Members at which a quorum is present shall be on the affirmative vote of more than 50% of the Voting Members represented at such meeting. The following matters shall require the affirmative vote of 75% or more of all the Owners at a meeting duly called for that purpose:

- a. Merger or consolidation of the Association, except as provided for in Section 2.02 of the Declaration concerning the Sycamore Cove Condominiums;
- b. Sale, lease, exchange, or other disposition of all, or substantially all, of the property and assets of the Association; or
- c. The purchase and sale of land or Units on behalf of the Owners;
- d. Amendment of the Declaration in accordance with Section 18.02 of the Declaration.

ARTICLE IV
Board

Section 1. In General. The affairs of the Association shall be managed by the Board, which shall act as the Board of Directors of Merrillvillas Condominium Association, Inc. as provided in the Act and the Declaration.

Section 2. Number, Tenure, and Qualifications. The number of directors shall initially be three (3). Until the date of the first annual meeting of the Members as hereinabove provided,

directors shall be the directors named in the Articles of Incorporation of the Association if the Association is incorporated; otherwise, directors shall be as appointed by the Declarant. Such directors shall hold office until the first annual meeting of the Members. Commencing with the date of the first annual meeting of the Members, the number of directors shall be increased to five (5), and directors shall be elected solely by, from, and among, the Members of the Association for a term of one year and until their respective successors shall have been elected and qualified. All directors shall be elected at large. Each director shall hold office without compensation. In the event that a Member of the Association is a corporation, partnership, trust, or other legal entity other than a natural person or persons, then any shareholder, officer, or director of such corporation, partner of such partnership, beneficiary or individual trustee of such trust, or manager of such other legal entity may be eligible to serve as a director. If there are multiple owners of a single Unit, only one of the multiple owners shall be eligible to serve as a director at any one time. A director may succeed himself in office.

Section 3. Election. At each annual meeting of the Members, the Voting Members shall not be entitled to vote on a cumulative basis, and the candidates receiving the highest number of votes with respect to the number of offices to be filled shall be deemed to be elected. A candidate for election to the Board or such candidate's representative shall have the right to be present at the counting of the ballots at such election. The Board may disseminate to Owners biographical and background information about candidates for election to the Board if (a) no preference is expressed in favor of any candidate and (b) reasonable efforts to identify all candidates are made and all candidates are given an opportunity to include biographical and background information in the information to be disseminated.

Section 4. Regular Meetings. A regular annual meeting of the Board shall be held immediately after and at the same place as the annual meeting of Members. The Board shall, by regulations that the Board may from time to time adopt, provide the time and place for the holding of additional regular meetings of the Board, provided that the Board shall meet at least four times per year.

Section 5. Special Meetings. Special meetings of the Board may be called by or at the request of the President or 25% of the directors. The person or persons permitted to call special meetings of the Board may fix the time and place for holding any special meeting of the Board called by them.

Section 6. Notice. Written notice of any special meeting of the Board shall be mailed or delivered to all Members of the Association and all directors not calling the meeting at least forty-eight (48) hours before the date of such special meeting. Written notice of regular meetings of the Board shall be mailed or delivered to all Members of the Association at least 48 hours before the date of such meeting. All such notices shall be deemed to be mailed when deposited in the United States mail addressed to each Member at his address as it appears on the records of the Association, with proper postage thereon prepaid. The business to be transacted at or the purpose of any regular or special meeting of the Board shall be specified in the notice. Notices of a regular meeting of the Board need not be served on directors.

Section 7. Quorum. A majority of the directors shall constitute a quorum for the transaction of business at any meeting of the Board. If less than a majority of the directors are present at the commencement of the meeting, the meeting shall be adjourned and may be called again only in accordance with the provisions of these Bylaws.

Section 8. Manner of Acting. The act of a majority of the directors present at the meeting at which a quorum is present at the commencement of the meeting shall be the act of the Board, except when otherwise provided by law or in the Declaration.

Section 9. Vacancies. Any vacancy occurring in the Board by reason of death, removal, or resignation of a director shall be filled by the two-thirds vote of the remaining directors. A Member elected by the Board to fill a vacancy shall serve until the next meeting of the Members; provided that if a petition is filed with the Board signed by Voting Members holding 20% of the votes of the Association requesting a meeting of the Members to fill the vacancy for the balance of the unexpired term of office of his predecessor, the term of the Member so elected by the Board shall terminate

thirty (30) days after the filing of the petition, and a meeting of the Members for the purpose of filling such vacancy for such unexpired term shall be called no later than thirty (30) days following the filing of such petition. Directors, including those appointed by the Declarant, may resign at any time by written resignation delivered or mailed to any officer of the Association, which resignation shall be effective on receipt of said resignation. If, as a result of the death, removal, or resignation of a director, no director remains in office, a special meeting of Members may be called to fill all vacancies for the unexpired terms of the directors.

Section 10. Removal. From and after the date of the first annual meeting of the Members, any director may be removed from office by the affirmative vote of two-thirds of all the Voting Members of the Association at a special meeting called for such purpose.

Section 11. Adoption of Rules and Regulations. All rules and regulations, or amendments thereto, shall be adopted by the Board after a meeting of the Members called for the specific purpose of discussing the proposed rules and regulations, notice of which contains the full text of the proposed rules and regulations, which rules and regulations conform to the requirements of the Act and the Declaration and these Bylaws. No quorum is required at such meeting of the Members. No rules or regulations may impair any rights guaranteed by the First Amendment to the Constitution of the United State. Such rules and regulations shall be effective sixty (60) days after their adoption, provided that the Members may veto the rule or regulation at a special meeting of the Members called for such purpose and held before the effective date of the rule or regulation, by a vote two-thirds of all the Voting Members of the Association.

Section 12. Open Meetings. All meetings of the Board, whether regular or special, shall be open to the Members of the Association, except for meetings:

- a. To discuss litigation when an action against or on behalf of the Association has been filed and is pending in a court or administrative tribunal, or when the Board finds that such an action is probable or imminent;

- b. to consider information regarding appointment, employment, or dismissal of an employee; or
- c. to discuss violations of rules and regulations of the Association, or a Member's unpaid share of Common Expenses.

Any vote on the above matters shall be taken at a meeting, or portion thereof, open to any Member. Any Member may record the proceedings at meetings required to be open by the Act or these Bylaws by tape, film, or other means, subject to reasonable rules and regulations prescribed by the Board to govern the right to make such recordings.

Section 13. Contracts. The Board may not enter into a contract with a current Board Member or with a corporation or partnership in which a Board Member or a Board Member's immediate family has a ten percent (10%) or more interest unless notice of intent to enter the contract is given to Owners within twenty (20) days after a decision is made to enter into the contract and the Owners are afforded an opportunity by filing a petition, signed by twenty percent (20%) of the Owners, for an election to approve or disapprove the contract. Such petition shall be filed within twenty (20) days after such notice, and such election shall be held within thirty (30) days after filing the petition. For purposes of this Section 13, a Board Member's immediate family means the Board Member's spouse, parents, and children.

Section 14. Powers and Duties. The powers and duties of the Board shall include, but not be limited to, the operation, care, upkeep, maintenance, replacement, and improvement of the Common Area and Facilities. However, nothing in the foregoing sentence shall be deemed to invalidate any provision in the Declaration placing limits on expenditures for capital additions or capital improvements to the Common Area and Facilities (other than for purposes of repairing, replacing, or restoring portions of the Common Area and Facilities) by the Board without the prior approval of the Owners.

Section 15. Board's Determination Binding. In the event of any dispute or disagreement between any Owners relating to the Property, or any question of interpretation or application of the provisions of the Declaration, the Rules and Regulations, or the Bylaws, the determination thereof by the Board shall, absent manifest error, be final and binding on each and all of such Owners.

ARTICLE V

Officers

Section 1. Officers. The officers of the Association shall be a President, one or more Vice Presidents (the number thereof to be determined by the Board), a Treasurer, and a Secretary.

Section 2. Election and Term of Office. The officers of the Association shall be elected annually by the Board at the first regular meeting of the Board held after the annual meeting of the Members from among the directors. If the election of officers shall not be held at this meeting, the election shall be held as soon thereafter as conveniently may be possible. Vacancies may be filled or new offices created and filled at any meeting of the Board. Each officer shall hold office until the officer's successor shall have been duly elected and shall have qualified. An officer may succeed himself in office. Officers shall serve without compensation.

Section 3. Removal. Any officer elected by the Board may be removed by a majority vote of the directors.

Section 4. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or otherwise may be filled by the Board for the unexpired portion of the term of the director no longer serving.

Section 5. President. The President shall be the principal executive officer of the Association and shall in general supervise and control all of the business and affairs of the Association. The President shall preside at all meetings of the Members and of the Board. The President may sign, with the Secretary or any other proper officer of the Association authorized by the Board, any deeds,

mortgages, contracts, or other instruments the Board has authorized to be executed, and any amendment to the Declaration, Supplement or Plat as provided in the Act, the Condominium Act and, in general, shall perform all duties incident to the office of President, and such other duties as may be prescribed by the Board from time to time.

Section 6. Vice President. In the absence of the President, or in the event of the President's inability or refusal to act, the Vice President (or in the event there be more than one Vice President, the Vice Presidents, in order of their election) shall perform the duties of the President and, when so acting, shall have all the powers of and be subject to all the restrictions on the President. Any Vice President shall perform such other duties as from time to time may be assigned by the President or by the Board.

Section 7. Treasurer. The Treasurer shall have charge and custody of and be responsible for all funds and securities of the Association; receive and give receipts for money due and payable to the Association from any source whatsoever, and deposit all such money in the name of the Association in those banks, trust companies, or other depositories as shall be selected in accordance with the provisions of Article VII of these Bylaws; and in general perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to the Treasurer by the President or by the Board.

Section 8. Secretary. The Secretary shall keep the minutes of the meetings of the Members and of the Board in one or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; receive all notices on behalf of the Association; together with the President, execute on behalf of the Association amendments to the Declaration and other documents as required or permitted by the Declaration, these Bylaws, or the Act; be custodian of the minute book of the Association and the other records of the Association; and in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to the Secretary by the President or by the Board.

ARTICLE VI

Powers and Duties of the Association and Board

Section 1. General Duties and Powers of the Board. The Board shall exercise for the Association all powers, duties, and authority vested in the Association by the Act and the Declaration, including but not limited to the following:

- a. Operation, care, upkeep, maintenance, replacement, and improvement of the Common Area and Facilities to the extent the operation, care, upkeep, maintenance, replacement, and improvement of Limited Common Area is not imposed on Owners hereunder or in the Declaration.
- b. Preparation, adoption, and distribution of the annual budget ("Annual Budget") of Common Expenses for the Property.
 - a. Levying and expending of assessments.
 - b. Collection of assessments from Owners.
 - c. Employment and dismissal of the personnel necessary or advisable for the maintenance and operation of the Common Area and Facilities.
 - d. Obtaining adequate and appropriate kinds of insurance.
 - e. Owning, conveying, encumbering, leasing, and otherwise dealing with Units and land conveyed to or purchased by it.
 - f. Adoption and amendment of rules and regulations covering the details of the operation and use of the Property, but no such rule or regulation shall make improper or illegal any program or activity of the Declarant that immediately prior to the adoption or amendment of the rule or regulation was otherwise proper or legal hereunder or under the Declaration.
 - g. Keeping of detailed, accurate records of the receipts and expenditures affecting the use and operation of the Property.
 - h. Having access to each Unit, from time to time, as may be necessary for the maintenance, repair, or replacement of any Common Area and Facilities therein or

- accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Area and Facilities or to another Unit or Units.
- i. Borrowing money at such rates of interest as it may determine, issuing its notes, bonds, and other obligations to evidence such borrowing, and securing any of its obligations by making a mortgage or giving a security interest in all or any of its property or income.
 - j. Paying real estate property taxes, special assessments, and any other special taxes or charges of the State of Indiana or of any political subdivision thereof or other lawful taxing or assessing body, that are authorized by law to be assessed and levied on the real property of the condominium (other than assessments on Units not owned by the Association).
 - k. Imposing charges for late payments of an Owner's proportionate share of the Common Expenses, or any other expenses lawfully agreed on, and after notice and an opportunity to be heard, levying reasonable fines for violation of the Declaration, Bylaws, and Rules and Regulations of the Association.
 - l. Assigning its rights to future income, including the right to receive Charges.
 - m. Recording the dedication of a portion of the Common Area and Facilities to a public body for use, as, or in connection with, a street or utility.
 - n. Recording the granting of an easement for the laying of cable television cable when authorized by the Members under the provisions of the Declaration.
 - o. Recording the grant of an easement for construction, maintenance, or repair of a project for protection against water damage or erosion.
 - p. Making reasonable accommodation of the needs of handicapped Owners, as required by the Human Rights Act, in the exercise of its powers with respect to the use of the Common Area and Facilities or approval of modification in an individual Unit.
 - q. Performing such acts and maintaining the Property in such a condition so as to continue to qualify for membership in Beautiful Communities With Gardens, if such membership is available.

- r. To perform such acts and do such other necessary or convenient things so as to qualify as an age-restricted community in accordance with the Housing for Older Person's Act of 1995.

In the performance of their duties, the officers and directors shall exercise, whether appointed by the Declarant or elected by the Members, the care required of a fiduciary of the Members.

Section 2. Specific Powers and Duties. Anything herein contained to the contrary notwithstanding, the Association and Board shall have the following powers:

- a. To engage the services of a manager or managing agent, who may be any person, firm, or corporation, on such terms and compensation as the Association deems fit, and to remove such manager or managing agent at any time, provided any agreement with such manager or managing agent shall extend for not more than three (3) years and must be terminable by either party to such agreement without cause and without payment of a termination fee, on ninety (90) days' or less prior written notice.
- b. To engage the services of any person (including, but not limited to, accountants and attorneys) deemed necessary by the Association at such compensation as is deemed reasonable by the Association, in the operation, repair, maintenance, and management of the Property, or in connection with any duty, responsibility, or right of the Association and to remove, at any time, any such personnel.
- c. To establish or maintain one or more bank accounts for the deposit of any funds paid to or received by the Association.
- d. To invest any funds of the Association in certificates of deposit, money market funds, or comparable investments.
- e. Upon authorization of a two-thirds vote of the directors, or by affirmative vote of not less than a majority of the Owners at a meeting duly called for such purpose, acting on behalf of all Owners, to seek relief from or in connection with the assessment or levy of any real property taxes, special assessments, or charges

of the State of Indiana or any political subdivision thereof or of any lawful taxing or assessing body, and to charge and collect all expenses incurred in connection therewith as Common Expenses.

- f. To perform all acts as are authorized, required or permitted of it in the Declaration or under the Act.

Section 3. Authorized Expenditures. The Association shall acquire and make arrangements for, and pay for out of the operating fund, in addition to the manager, managing agent, or other personnel above provided for, if any, the following:

- a. Water, waste removal, heating, electricity, telephone, or other necessary utility services for the Common Area and Facilities and such services to the Units as are not separately metered or charged to the owners thereof.
- b. Such insurance as the Association is required or permitted to obtain as provided in the Declaration.
- c. Such costs and expenses for repair, maintenance or replacement of the Common Area and Facilities and all such other costs and expenses as set forth or permitted in the Declaration.
- d. Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, or assessments that the Association deems necessary or proper for the maintenance and operation of the Property or for the enforcement of any restrictions or provisions contained herein.
- e. Membership fees and other costs associated with the Association's membership in Beautiful Communities With Gardens in accordance with the Declaration.
- f. Any amount necessary to discharge any mechanics lien or other encumbrance levied against the Property or any part thereof that may in the opinion of the Association constitute a lien against the Property or against the Common Area and Facilities rather than merely against the interest therein of particular Owners. When one or more Owners are responsible for the existence of such lien, they

shall be jointly and severally liable for the cost of discharging it, and any costs incurred by the Association by reason of said lien or liens shall be specially assessed to said Owners and shall, until paid by such Owners, constitute a lien on, the interest of such Owners in the Property, which lien may be perfected and foreclosed in accordance with the Declaration, the Condominium Act or the other law with respect to liens for failure to pay a share of the Common Expenses.

- g. Maintenance and repair of any Unit or Private Garden or any other portion of the Property that an Owner is obligated to maintain or repair under the terms hereof, if such maintenance or repair is necessary, in the discretion of the Association, to protect the Common Area and Facilities or any other portion of the Property, and the owner of said Unit has failed or refused to perform the maintenance or repair within a reasonable time after written notice of the necessity of the maintenance or repair is delivered by the Association to the Owner; provided that the Association shall levy a Specific Assessment against such Owner for the cost of the maintenance or repair, and the amount of such Specific Assessment shall constitute a lien on the interest of such Owner in the Property, which lien may be perfected and foreclosed in accordance with the Declaration, the Condominium Act or the other law with respect to liens for failure to pay a share of the Common Expenses.
- h. Maintenance and repair (including payment of real estate taxes and common expenses) with respect to any Unit owned by the Association.
- i. If, due to the act or neglect of a Owner or of a member of its family or household pet or of a guest or other authorized Occupant or visitor of such Owner, damage shall be caused to the Common Area and Facilities or to a Unit or Units owned by others, or maintenance, repairs or replacements shall be required that would otherwise be a Common Expense, the assessment against such Owner of a charge for such damage and such maintenance, repairs, and replacements as may be determined by the Board, to the extent not covered by insurance, and the amount of such special assessment shall constitute a lien on the interest of such Owner

in the Property, which lien may be perfected and foreclosed in accordance with the Declaration, the Condominium Act or the other law with respect to liens for failure to pay a share of the Common Expenses.

- j. Such other purposes authorized, permitted or required under the Act or the Condominium Act.

All expenses, charges, and costs of the maintenance, repair, or replacement of the Common Area and Facilities, and any other expenses, charges, or costs that the Association may incur or expend pursuant hereto, shall be approved by the Association, and a written memorandum thereof or payment voucher prepared and signed by the Treasurer. There shall be no structural alterations to, capital additions to, or capital improvements on the Common Area and Facilities or property owned by the Association (other than for purposes of repairing, replacing, and restoring existing portions of the Common Area and Facilities) requiring an expenditure in excess of Ten Thousand Dollars (\$10,000.00) without the prior approval of two-thirds of the Owners. Separate or special assessments for additions or alterations to the Common Area and Facilities or to Association-owned property not included in an Annual Budget are subject to the approval of two-thirds of the Owners.

As used herein, the term "repairing, replacing, and restoring" means to repair, replace, or restore deteriorated or damaged portions of the then-existing decorating, facilities, structural or mechanical components, interior or exterior surfaces, or energy systems and equipment to their functional equivalent prior to the deterioration or damage. In the event the replacement of a Common Area and Facilities may result in an improvement over the quality of such Common Area and Facilities as originally designed, the Board may provide for such improvement, provided that if the improvement over and above the functional equivalency of what existed before results in a proposed expenditure in excess of five percent (5 %) of the Annual Budget, the Board, on receipt of a written petition by Owners with twenty percent (20%) of the votes of the Association, within fourteen (14) days after the Board's action to approve such expenditure, shall call a special meeting of Owners within 30 days after its receipt of such petition. Unless a majority of the total votes of

the Owners are cast at this special meeting to reject the expenditure, the Board's decision to make the expenditure is ratified.

Section 4. Annual Budget.

- a. Each year, on or before November 1st, the Board shall estimate the Annual Budget, including the total amount required for the cost of wages, materials, insurance, services, and supplies that will be required during the ensuing calendar year for the rendering of all services, together with a reasonable amount considered by the Association to be necessary for a reserve for contingencies and replacements (as hereinafter specified) and each Owner's proposed Base Assessment, together with an indication of which portions of the Annual Budget are intended for capital expenditures or repairs or payment of real estate taxes. The Board shall deliver a copy of the proposed Annual Budget to each Owner at least thirty (30) days before the adoption thereof. The Association shall give Owners notice as provided in Article III, Section 4, of the Bylaws of the meeting of the Board, at which the Board proposes to adopt the Annual Budget, or at which any increase or establishment of any assessment, regular or special, is proposed to be adopted.
- b. If said Annual Budget proves inadequate for any reason, including nonpayment of any Owner's Charge, or any nonrecurring Common Expense or any Common Expense not set forth in the Annual Budget as adopted, the Board may at any time levy a Special Assessment, which shall be separately assessed to the Owners according to each Owner's percentage interest in the Common Areas and Facilities, and which may be payable in one lump sum or such installments as the Board may determine. The Board shall serve notice of such further assessment on all Owners (as provided in Article III, Section 4, of the Bylaws) by a statement in writing, giving the amount and reasons therefore, and such Special Assessment shall become effective and shall be payable at such time or times as

determined by the Board. All Owners shall be obligated to pay the Special Assessment.

- c. If an adopted Annual Budget or any Special Assessment requires assessment against Owners in any year exceeding 115 % of the Assessments (both Base Assessment and Special Assessment, if any) for the preceding year, the Board, on written petition by Owners representing 20% of the votes of the Association delivered to the Board within fourteen (14) days of the Board action, shall call a meeting of the Owners within thirty (30) days of the date of delivery of the petition to consider the budget or Special Assessment. Unless a majority of the votes of the Owners are cast at a meeting to reject the budget or Special Assessment, it is ratified. In determining whether Special Assessments, together with Base Assessments, exceed 115% of similar assessments in the preceding year, any separate assessment for expenditures relating to emergencies or mandated by law shall not be included in the computation, and the Board may approve such assessment without the right of Owner veto set forth in this paragraph. As used herein, "emergencies" mean an immediate danger to the structural integrity of the Common Area and Facilities or to the life, health, safety, or property of the Owners, including an individual Condominium Unit.
- d. The Annual Budget shall be assessed to the Owners according to each Owner's percentage interest in the Common Areas and Facilities. Each Owner shall be obligated to pay to the Association, or as it may direct, the portion of the Annual Budget assessed to such Owner in equal monthly installments (subject to acceleration as hereinafter provided) on or before January 1st of the ensuing year, and the 1st day of each and every month of said year.
- e. The failure or delay of the Association to prepare or serve the Annual Budget on the Owners shall not constitute a waiver or release in any manner of the Owners' obligation to pay the Common Expenses and other costs and necessary reserves, as herein provided, whenever the same shall be determined, and in the absence of any annual or adjusted budget, the Owners shall continue to pay the Base

Assessment at the then-existing monthly rate established for the previous period until the Base Assessment that is due more than ten (10) days after such new annual Budget shall have been mailed.

- f. Anything herein or in the Declaration to the contrary notwithstanding, the Board may charge to fewer than all Owners such portion of the insurance premium for insurance the Association is required or permitted to obtain that reflects increased charges for coverage on the Units owned by such Owners, on such reasonable basis as the Board shall determine. Such charge shall be considered a Specific Assessment with respect to the Units owned by such Owners for all purposes herein and under the Declaration.
- g. All funds collected hereunder shall be held and expended solely for the purposes designated herein, and (except for such Specific Assessments as may be levied hereunder against less than all the Owners and for such special adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held for the benefit, use, and account of all the Owners in proportion to their percentage interests in the Common Area and Facilities.

Section 5. Annual Accounting.

- a. On or before the 1st day of April of each calendar year after the Declarant Control Period, the Association shall supply to all Owners an itemized accounting of the Common Expenses for the preceding calendar year actually incurred and paid, together with an indication of which portions of the Annual Budget were for capital expenditures or repairs or payment of real estate taxes, and with a tabulation of the amounts collected pursuant to the budget or assessment, and showing the net excess or deficit of income over expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited according to each Owner's percentage interest in the Common Areas and Facilities to the next monthly

installments due from Owners under the current year's Annual Budget, until exhausted, and any net shortage shall be added, according to each Owner's percentage interest in the Common Area and Facilities, to the installments due in the succeeding six months after rendering of the accounting.

- b. The Association shall allow any first Mortgagee to examine the books and records of the Association during reasonable business hours and to receive, on request, annual reports and other financial data prepared by the Association, or at its direction.
- c. The Association shall provide a copy of a financial statement for the preceding fiscal year within one-hundred-twenty (120) days after the end of such fiscal year on submission of a written request by any holder, insurer, or guarantor of a first Mortgage secured by a Unit.

Section 6. Reserves.

- a. The Association shall build up and maintain a reasonable reserve ("Reserve") for operations, contingencies, and replacement. To establish such Reserve, the Declarant shall collect from each Owner, on conveyance by the Declarant of a Unit to such Owner, an amount equal to two monthly installments of the estimated Base Assessment as initially established by the Declarant and shall remit such amount to the Association. Extraordinary expenditures not originally included in the Annual Budget that may become necessary during the year shall be charged first against such Reserve to the extent that such funds in the Reserves are not specifically allocated to other expenditures. In addition, the Association or the Board shall have the right to segregate all or any portion of the Reserve for any specific replacement or contingency on such conditions as the Association or the Board deems appropriate. The Declarant may not use any of the Reserves to defray any of its expenses or make up any budget deficits while the Declarant is in control of the Association.

b. The Annual Budget shall provide for reasonable Reserves for capital expenditures and deferred maintenance for repair or replacement of the Common Area and Facilities as provided in the Declaration. To determine the amount of Reserves appropriate for the Association, the Board shall take into consideration the following: (1) the repair and replacement cost and the estimated useful life of the property the Association is obligated to maintain, including but not limited to structural and mechanical components, surfaces of the Building and Common Area and Facilities, and energy systems and equipment; (2) the current and anticipated return on investment of Association funds; (3) any independent professional reserve study the Association may obtain; (4) the financial impact on Owners, and the market value of the Units, of any assessment increase needed to fund Reserves; and (5) the ability of the Association to obtain financing or refinancing. Anything to the contrary in the foregoing notwithstanding, the Association may elect to waive in whole or in part the Reserve requirements of this section by a vote of not less than two-thirds of the total votes of the Association. Nothing in this instrument shall limit or prohibit the Association from electing to waive all or part of the Reserve requirements of this section. If the Association elects to waive all or part of such Reserve requirements, the Association may by a vote of the Association elect to again be governed by the Reserve requirements of this section.

Section 7. Default in Payment.

a. If an Owner is in default in the monthly payment of the aforesaid charges or assessments for ten (10) days, the Association may assess a service charge of up to four percent (4 %) of the balance of the aforesaid charges and assessments for each month, or part thereof, that the balance, or any part thereof, remains unpaid. The Association may bring suit for and on behalf of itself, and as representative of all Owners, to enforce collection thereof, or to foreclose the lien therefore as provided by law; and there shall be added to the amount due the costs of said suit,

together with legal interest and reasonable attorneys' fees to be fixed by the court. In addition, the Association may also take possession of such defaulting Owner's interest in the Property and maintain an action for possession of the Unit in the manner provided by law. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area and Facilities or abandonment of his Unit.

- b. Each such assessment, together with interest, court costs, late charges, and reasonable attorneys' fees and costs of collections, or the amount of any unpaid fine, shall also be the personal obligation of the Person who was the Owner at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title or interest unless assumed by them or required by applicable law.

Section 8. Books of Account and Statement of Account.

- a. The Association shall keep full and correct books of account, which shall be open for inspection by any Owner, or any representative of an Owner duly authorized in writing, at such reasonable time or times as may be requested by the Owner. All funds collected hereunder shall be held and expended solely for the purposes designated herein, and (except for such special assessments as may be levied hereunder against less than all the Owners and for such special adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held for the benefit, use, and account of all the Owners in their relative percentage interests in the Common Area and Facilities.
- b. Upon ten (10) days' notice to the Association and the payment of a reasonable fee fixed by the Association in the amount of Fifteen Dollars (\$15) or such other sum as the Board shall reasonably establish, any Owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such Owner.

Section 9. Other Powers and Duties. The Association has all the powers and duties set forth in the Declaration and the Condominium Act.

ARTICLE VII

Contracts, Checks, Deposits, and Funds

Section 1. Contracts. The Board may authorize any officer or officers or agent or agents of the Association, in addition to the officers so authorized by these Bylaws, 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.

Section 2. Checks and Drafts. All checks, drafts, 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 or agent or agents of the Association, and in such manner as shall from time to time be determined by resolution of the Association. In the absence of such determination by the Association, such instruments shall be signed by the Treasurer and countersigned by the President of the Association.

Section 3. Deposits. All funds of the Association shall be deposited from time to time to the credit of the Association in such banks, trust companies, or other depositories as the Board may select.

Section 4. Gifts. 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 VIII
Books and Records

Section 1. Maintaining 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.

Section 2. Availability for Examination. The manager or Board shall maintain the following records of the Association available for examination and copying at convenient hours of weekdays by the Owners or their Mortgagees and their duly authorized agents or attorneys:

- a. Copies of the recorded Declaration and Bylaws and any amendments thereto, Articles of Incorporation of the Association and any Rules and Regulations adopted by the Association or the Board; before the first annual meeting of Members of the Association, the Declarant shall maintain and make available for examination and copying the records set forth in this subsection a.
- b. Detailed accurate records in chronological order of the receipts and expenditures affecting the Common Area and Facilities, specifying and itemizing the maintenance and repair expenses of the Common Area and Facilities and any other expenses incurred, and copies of all contracts, leases, or other agreements entered into by the Association.
- c. The minutes of all meetings of the Association and the Board, which shall be maintained for seven (7) years.
- d. A record giving the names and addresses of the Members.
- e. Ballots and proxies related thereto for all elections to the Board and for any other matters voted on by the Owners, which shall be maintained for not less than one (1) year; provided, however, that in the event the Association adopts rules for secret ballot election as provided in the Act, then, unless directed by court order,

only the voting ballot excluding the Unit number shall be subject to inspection and copying.

- f. Such other records of the Association as are available for inspection by Members of a not-for-profit corporation pursuant to the Nonprofit Corporation Act for the State of Indiana, as amended.

A reasonable fee covering the direct out-of-pocket cost of providing such information and copying may be charged by the Association or the Board for the cost of providing such information and copying.

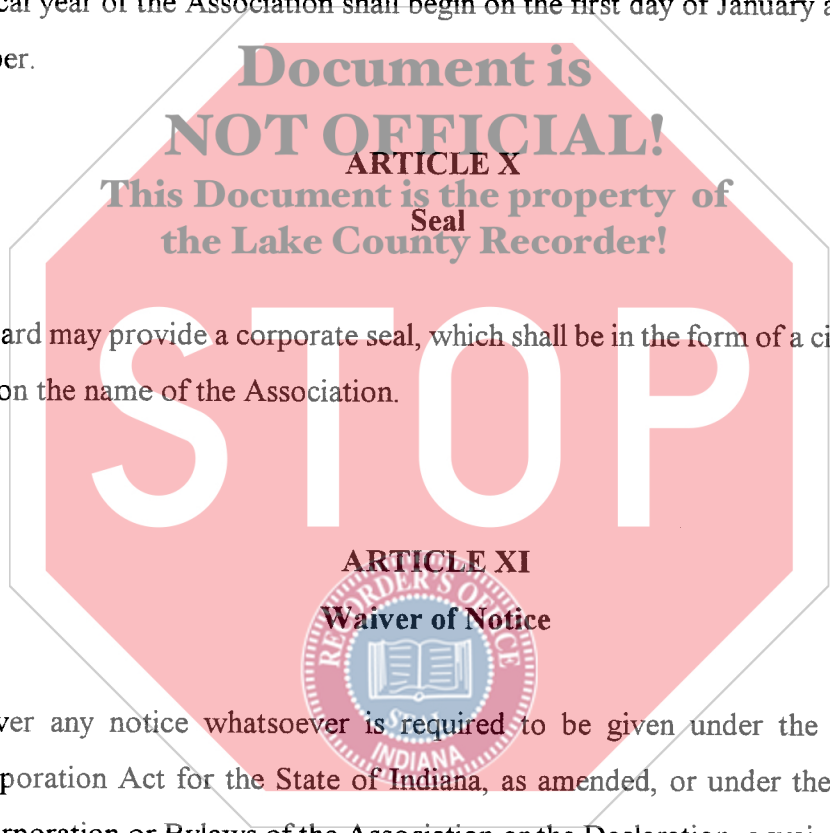
ARTICLE IX

Fiscal Year

The fiscal year of the Association shall begin on the first day of January and end on the last day of December.

The Board may provide a corporate seal, which shall be in the form of a circle and shall have inscribed thereon the name of the Association.

Whenever any notice whatsoever is required to be given under the provisions of the Nonprofit Corporation Act for the State of Indiana, as amended, or under the provisions of the Articles of Incorporation or Bylaws of the Association or the Declaration, a waiver thereof (subject



to all the provisions of such instruments) in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE XII

Amendments to Bylaws

These Bylaws may be altered, amended, or repealed and new Bylaws may be adopted on the affirmative vote of two-thirds of all of the Members at a regular meeting, or at any special meeting called for such purpose, by recording an instrument in writing setting forth such alteration, amendment, or repeal that is signed and acknowledged by an authorized director and that contains an affidavit by an officer of the Association certifying that the necessary affirmative vote of the Members of the Association has been obtained.

ARTICLE XIII

Liability of Board Members and Officers; Indemnification

Neither the director nor the officers of the Association shall be 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 director and officers, except for any acts or omissions found by a court to constitute gross negligence or fraud. The Association shall defend, indemnify, and hold harmless any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a director or officer of the Association, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any

action, suit, or proceeding by judgment, order, settlement, conviction, or plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner that he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

Expenses incurred in defending a civil or criminal action, suit, or proceeding may be paid by the Association in advance of the final disposition of such action, suit, or proceeding, as authorized by the Board in the specific case, on receipt of an undertaking by or on behalf of the director or the officer of the Association to repay such amount, unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Article. The sums necessary to discharge the obligations of the Association under this Article shall be Common Expenses.

The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any statute, agreement, vote of Members of the Association or disinterested directors, or otherwise, both as to action in his official capacity and as to action in other capacity while holding such office, and shall continue as to a person who has ceased to be a director or an officer of the Association. Directors appointed by the Declarant, and officers elected by directors appointed by the Declarant, shall be entitled to all the protections of this Article.

ARTICLE XIV

Construction

a. Nothing hereinabove contained shall in any way be construed as altering, amending, or modifying the Declaration. The Declaration and these Bylaws shall always be construed to further the harmonious, beneficial, cooperative, and proper use and conduct of the Property. If there is any

inconsistency or conflict between these Bylaws and the aforesaid Declaration, the provisions of the Declaration shall control.

b. All words and terms used herein that are also used in the Declaration shall have the same meaning as provided for such words and terms in the Declaration.

c. In the event the Association is incorporated, the words "Board of Directors" and "Director" shall be substituted for the words "Board" and "director," respectively, wherever they appear herein.

ARTICLE XV

Dispute Resolution and Limitation Litigation

All disputes and any litigation or other legal action of the Board or the Association shall be governed by Article XVII of the Declaration if and to the extent applicable.

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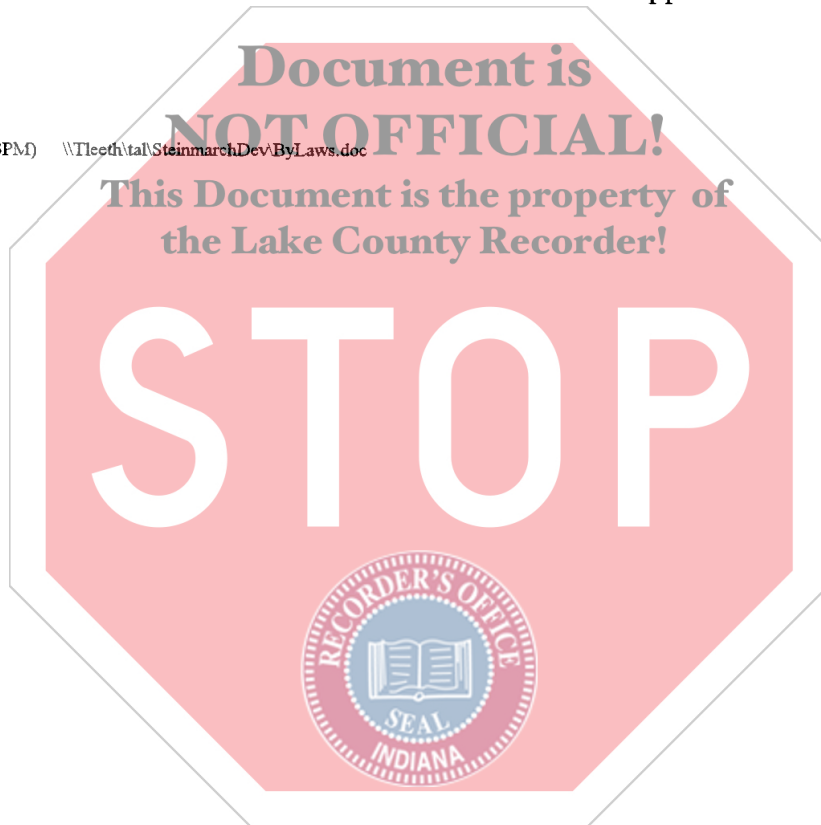


EXHIBIT B

A part of the Southeast Quarter of the Northwest Quarter of Section 21, Township 35 North, Range 8 West of the Second Principal Meridian, more particularly described as follows: Commencing at a point on the North line of said Southeast Quarter of the Northwest Quarter that is North 89°59'48" West, 181.82 feet from the Northeast corner thereof, which point is also the Northeast corner of Lot 4 in Columbus Subdivision, as per plat thereof recorded in Plat Book 50, Page 41 in the Office of the Recorder of Lake County, Indiana; thence South 00°44'06" East along the East line of Lot 4 which is also the East line of the West 699.28 feet of the East 881.10 feet of said Southeast Quarter of the Northwest Quarter, a distance of 600.00 feet to the Southeast corner of said Lot 4; thence North 89°59'48" West along the South line of said Lot 4, a distance of 291.28 feet; thence South 00°44'06" East, a distance of 30.00 feet to the centerline of 80th Avenue, as shown on the recorded plat of said Columbus Subdivision; thence North 89°59'48" West along said center line a distance of 408.00 feet to the West line of said Columbus Subdivision; thence continuing North 89°59'48" West a distance of 136.44 feet; thence South 00°44'06" East a distance of 60.06 feet; thence North 89°59'48" West along a line parallel with the North line of the Southeast ¼ of the Northwest ¼ of said Section 21 a distance of 180.87 feet; thence North 00°47'37" West along a line parallel with and 126.0 feet distant East of the West line of the Southeast ¼ of the Northwest ¼ of said Section 21 (as measured along the North line of said Southeast ¼ of the Northwest ¼ of said Section 21) a distance of 690.07 feet to the North line of the Southeast ¼ of the Northwest ¼ of said Section 21; thence South 89°59'48" East a distance of 318.02 feet to the Northwest corner of said Lot 4; thence continuing South 89°59'48" East along said North line a distance of 699.28 feet to the point of beginning.

Excepting therefrom that part known as Sycamore Cove Block 1, as per plat thereof recorded in Plat Book 77, Page 79 in the Office of the Recorder of Lake County, Indiana, more particularly described by metes and bounds, as follows: part of the Southeast ¼ of the Northwest ¼ of Section 21, Township 35 North, Range 8 West of the Second Principal Meridian, more particularly described as follows: Commencing at the Southeast corner of Sycamore Cove, a planned unit development to the Town of Merrillville, as recorded in Plat Book 76, Page 70 in the Office of the Recorder of Lake County, Indiana; thence North 89°59'48" West, along the South line of said Sycamore Cove, a distance of 171.99 feet to the point of beginning; thence Northwesterly along a curve concave to the Southwest and having a radius of 60.0 feet (the chord of which bears North 58°17'51" West, a distance of 90.16 feet), an arc distance of 102.01 feet; thence Northwesterly along a curve concave to the Northeast and having a radius of 15.0 feet (the chord of which curve bears North 2°59'30" West, a distance of 1.57 feet) an arc distance of 1.57 feet; thence North 0°00'11" East, a distance of 148.39 feet; thence North 89°59'48" West, a distance of 397.55 feet; thence South 0°00'11" West, a distance

of 87.43 feet (recorded 87.33 feet); thence North 89°59'48" West, a distance of 20.0 feet; thence North 0°00'11" East, a distance of 87.43 feet; thence North 89°59'48" West, a distance of 25.0 feet; thence South 0°00'11" West, a distance of 197.33 feet, to the South line of said Sycamore Cove; thence North 89°59'48" West, along the South line of said Sycamore Cove, a distance of 7.94 feet; thence South 0°44'06" East, a distance of 30.0 feet to the center line of vacated 80th Avenue; thence South 89°59'48" East, a distance of 408.0 feet along said center line; thence North 0°44'06" West, a distance of 30.0 feet to the South line of said Sycamore cove; thence South 89°59'48" East, along the South line of said Sycamore Cove, a distance of 119.29 feet to the Point of Beginning, all in the Town of Merrillville, Lake County, Indiana.

Said parcel less exception contains 12.439 acres, more or less.



EXHIBIT C

Exhibit C is the Final Plat of "Merrillvillas" approved by the Town of Merrillville, Indiana and recorded on or about the date of this instrument in the Office of the Recorder of Lake County, Indiana.



EXHIBIT C

Exhibit C is the Final Plat of "Merrillvillas" approved by the Town of Merrillville, Indiana and recorded contemporaneously with this instrument.





ARTICLES OF INCORPORATION

State Form 4162 (R8 / 6-95) Corporate Form No. 364-1 (October 1984)
Approved by State Board of Accounts 1995

EXHIBIT D

SUE ANNE GILROY
SECRETARY OF STATE
CORPORATIONS DIVISION
302 W. Washington St., Rm. E018
Indianapolis, IN 46204
Telephone: (317) 232-6576

Indiana Code 23-17-3-2
FILING FEE: \$30.00

* For tax exempt status, Nonprofit Corporations must qualify with both the Internal Revenue Service and the Indiana Department of Revenue.

INSTRUCTIONS: Use 8 1/2"x 11" white paper for inserts.
Present original and two (2) copies to address in upper right corner of this form.
Please TYPE or PRINT.
Upon completion of filing the Secretary of State will issue a receipt.

APPROVED & FILED

INDIANA SECRETARY OF STATE

ARTICLES OF INCORPORATION

The undersigned incorporator or incorporators, desiring to form a corporation (*hereinafter referred to as the "Corporation"*) pursuant to the provisions of the Indiana Nonprofit Corporation Act of 1991 (*hereinafter referred to as the "Act"*), execute the following Articles of incorporation.

ARTICLE I - Name and Principal Office

Name of the Corporation: (*the name must include the word "Corporation", "Incorporated", "Limited", "Company" or one of the abbreviations thereof*):
MERRILLVILLAS CONDOMINIUM ASSOCIATION, INC.

Principal Office: The address of the principal office of the Corporation is:

Post office address

7931 Tyler Circle

City

Merrillville

Indiana

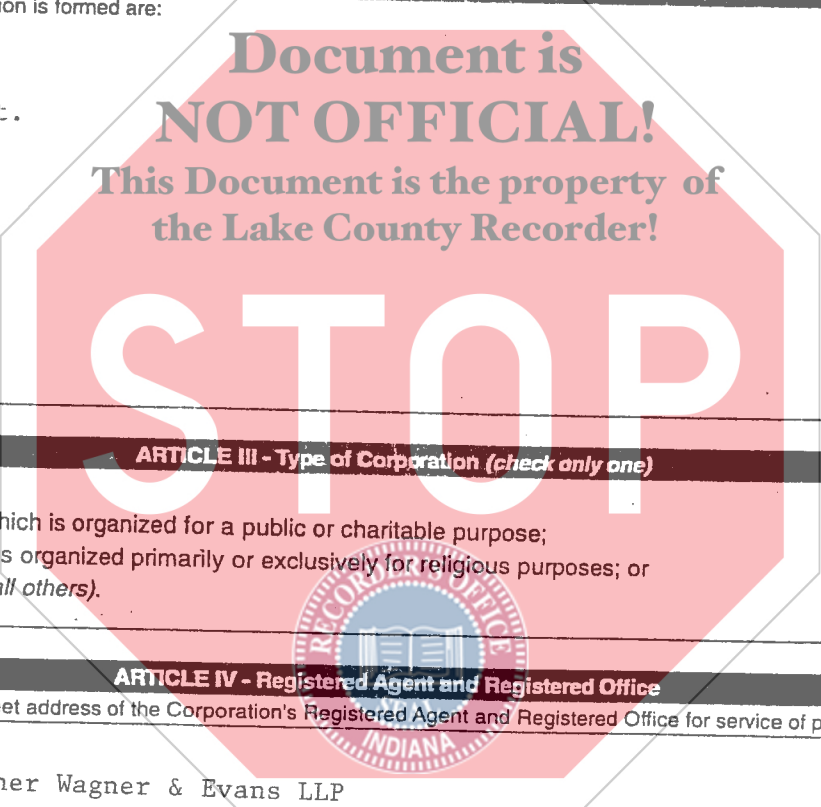
ZIP code

46410

ARTICLE II - Purpose (*optional*)

The purposes for which the Corporation is formed are:

See attached sheet.



ARTICLE III - Type of Corporation (*check only one*)

The Corporation is a:

- public benefit corporation, which is organized for a public or charitable purpose;
- religious corporation, which is organized primarily or exclusively for religious purposes; or
- mutual benefit corporation (*all others*).

ARTICLE IV - Registered Agent and Registered Office

Registered Agent: The name and street address of the Corporation's Registered Agent and Registered Office for service of process are:

Name of Registered Agent

Todd A. Leeth, Hoepfner Wagner & Evans LLP

Address of Registered Office (*street or building*)

103 E. Lincolnway

City

Valparaiso

Indiana

ZIP code

46383

ARTICLE V - Membership

Indicate if Corporation will have members:

- Yes
- No

(Continued on the reverse side)

ARTICLE VI - Incorporator(s)

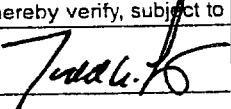
Name(s) and address(es) of the incorporator(s) is/are as follows:				
Name	Number and Street or Building	City	State	ZIP code
Todd A. Leeth	103 E. Lincolnway	Valparaiso	IN	46383

ARTICLE VII - Distribution of Assets on Dissolution or Final Liquidation

Refer to Indiana Code 23-17-22-5 for permitted activities following Dissolution.

Upon dissolution of the Corporation, the Board of Directors shall, after paying or making provision for the payment of all of the liabilities of the Corporation exclusively for the benefit of the members as set forth in the Declaration of Condominiums and pursuant to Section 528 of the Internal Revenue Code of 1986, as amended. The Corporation does not afford pecuniary gain, incidental or otherwise, to its members.



I (we) hereby verify, subject to penalties of perjury, that the facts contained herein are true. <i>(Notarization not necessary)</i>	
Signature 	Printed name Todd A. Leeth
Signature	Printed name
Signature	Printed name

This instrument was prepared by: <i>(name)</i> Todd A. Leeth, HOEPPNER WAGNER & EVANS LLP			
Address 103 E. Lincolnway	City Valparaiso	State IN	ZIP code 46383

ATTACHMENT
ARTICLE II PURPOSE

- 2.01 To form an organization for the owners of condominium units in the Merrillvillas Condominiums located in Merrillville, Porter County, Indiana, to primarily provide for the acquisition, management, maintenance and care of association common area property and to promote the recreation, health, safety and welfare of said owners and residents.
- 2.02 To own, maintain and administrate community properties and facilities, to administrate and enforce covenants and restrictions applying to property within the Merrillvillas Condominiums and to collect and distribute assessments and charges therefor.
- 2.03 To engage in any and all activities related or incidental to the foregoing including but not limited to the powers to acquire, own, hold, use, sell, lease, mortgage or pledge any property, real or personal, tangible or intangible, legal or equitable; to loan or invest its own money upon such security or in such securities as may from time to time be determined by its Board of Directors.
- 2.04 To do any and all things necessary, convenient or expedient, as permitted by the "Act" for the accomplishment of any of the purposes or the furtherance of any of the powers hereinabove set forth either alone or in association with other corporations, firms or individuals.
- 2.05 No part of the net earnings of the corporation (other than by acquiring, constructing, or providing management, maintenance, and care of association property and other than by a rebate of excess membership dues, fees or assessments) shall inure to the benefit of, or be distributable to its members, trustees, officers or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in these articles.
- 2.06 Notwithstanding any other provision of these articles, the corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income tax under Section 528 of the Internal Revenue Code of 1986 or corresponding provisions of any future provisions of the Internal Revenue Code.