

Section 35.03: Limited Assessments. At any time in which the Community contains any Limited Common Areas, then the Board will determine the normal, anticipated Common Expenses relating to that Limited Common Area, which will be separately identified on the Association's annual budget. The Common Expenses attributable to the Limited Common Areas will be assessed as Limited Assessments. All Limited Assessments will be allocated among and charged equally to only those Owners in the Community for whom the Limited Common Areas are made available for their use and enjoyment, and will be payable on the same terms for all such Owners, regardless of the size, location, type, value or any other differentiating factor of the Owner's Lot. Limited Assessments will represent the primary source of funds to cover the Common Expenses incurred by the Association in carrying out its obligations under this Declaration and the other Governing Documents concerning Limited Common Areas.

Section 35.04: Special Assessments. Some costs and expenses incurred by the Association may not be anticipated within the Association's annual budget, or may not be properly chargeable against all or a portion of the Owners in the Community as a General Assessment or a Limited Assessment. Therefore, the Association is authorized to levy Special Assessments to cover such costs and expenses. Special Assessments include, without limitation, an allocable share of: (i) the cost to repair any uninsured damage to Common Areas for which no Owner is responsible; or (ii) the cost to construct or install any additional Improvement to the Common Area; or (iii) the cost of taking any extraordinary action for the benefit of the Association or the Society of any Neighborhood, the Members or any portion of the Common Area; or (iv) Compliance Assessments; or (v) Preliminary Membership Assessments; or (vi) any other cost or expense not otherwise covered by General Assessments or Limited Assessments. The Board of the Association will have the power to determine the necessity and amount of any Special Assessment, and to which Owner(s) and/or Lot(s) a Special Assessment should be levied. However, any particular Special Assessment that exceeds Ten Percent (10%) of the Association's total annual budget for the year immediately preceding that in which the Special Assessment is proposed must be approved in advance by majority vote of the Voting Members of the Association. Special Assessments will be payable in the manner and at the times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

Section 35.05: Preliminary Membership Assessment. The Association is authorized to charge and collect a type of one-time Special Assessment, referred to as a

Preliminary Membership Assessment, for the purpose of creating the necessary source of operating funds for the Association as Lots are added to the Community. At the time of closing on the original sale of each Lot in the Community, the purchaser of the Lot will be required to pay to the Association a Preliminary Membership Assessment. The amount of the Preliminary Membership Assessment will be determined by the Board of the Association, but may not exceed Twenty-Five Percent (25%) of the amount of the annual General Assessment then in effect for the fiscal year in which the closing takes place. The Preliminary Membership Assessment will be shown on the settlement statement at closing and paid to the Association as a settlement disbursement. This type of Assessment will only apply the first time each Lot is sold, but will not apply to subsequent sales of the same Lot. The Preliminary Membership Assessment is not refundable, and will not be credited against any other Assessments established under this Article.

Section 35.06: Compliance Assessments. The Association will also have the authority to levy a type of Special Assessment, known as a Compliance Assessment, against any Owner who fails to comply with any of the requirements of this Declaration or the other Governing Documents, and who fails to correct the noncompliance after notice from the Association in the manner provided in this Declaration. The purpose of the Compliance Assessment is to reimburse the Association for its costs and expenses incurred in connection with enforcement of this Declaration and the Governing Documents. This includes, without limitation, (i) the costs incurred by the Association to repair any damage to Common Areas for which an Owner is responsible; or (ii) any other costs incurred by the Association to bring the Owner or Lot into compliance with the Declaration or any of the other Governing Documents; or (iii) the amount owed to the Association as a result of any disciplinary proceedings against an Owner as provided in the Declaration or any of the other Governing Documents; or (iv) any other costs and expenses incurred by the Association in connection with the enforcement of the Declaration or any of the other Governing Documents.

Section 35.07: Individual Services Assessments. The Association may, but will not be required to, offer and provide special services to some or all of the Owners in the Community. The types and availability of, and charges for, these services, if any, will be determined from time to time by the Board. In general, these special services will be designed to utilize resources already owned by or available to the Association which can provide further conveniences to the Owners who may desire these services. Examples may include lawn care, landscape maintenance, organic waste disposal and

composting, and lessons for or participation in various recreational activities. If the Association makes any individual services available, the Association will have the authority to either directly charge the Owner a fee for the services payable directly as rendered, or to assess the Owner for the services by means of a type of Special Assessment known as an Individual Services Assessment. If the charge is payable directly as the services are rendered, but the Owner fails to pay the charge within the terms established by the Board, the unpaid balance due will automatically become an Individual Services Assessment enforceable against the Owner's Lot in the same manner as all other Assessments under this Part of the Declaration. Nothing in this Section will be construed to ever obligate the Association to develop or offer any type of individual services, or to continue any type of individual services once commenced.

ARTICLE XXXVI

DETERMINATION AND PAYMENT OF ASSESSMENTS

Section 36.01: Budgets. The Association will determine the amount of Assessments required for each fiscal year by adopting an annual budget for the Association. At least Sixty (60) days before the beginning of each fiscal year, the Board will complete its preparation of a proposed budget, which must be approved by majority vote of the Board. The proposed budget will then be submitted to the Voting Members of the Association for consideration and approval at least Thirty (30) days before the beginning of the next fiscal year. The Voting Members will have the authority to approve the budget as proposed by the Board, or to make such modifications to the budget as the Voting Members may deem necessary or appropriate. The final budget of the Association for the next fiscal year must be adopted by majority vote of the Voting Members. The budget, as finally adopted by the Association, will be made available for inspection and copying by any Owner upon written request. Each budget will contain, at a minimum, the components described below:

- A. **General Assessment Budget.** The General Assessment section of the budget will separately identify, as near as possible, the anticipated fixed and variable Common Expenses of the Association that are properly allocable among all Lot Owners. This budget section will also take into account and identify anticipated surpluses to be carried forward from previous years. The current balance of all Reserve portions of the General Assessments, and all contributions to be made to those Reserves in the coming year, will also be separately identified on the budget.

- B. Limited Assessment Budget. The Limited Assessment section of the budget will separately identify, as near as possible, the anticipated fixed and variable Common Expenses of the Association relating to Limited Common Areas that are properly allocable among some, but not all, Owners. Limited Assessments for each different Limited Common Area will be shown separately on the budget. This budget section will also take into account and identify anticipated surpluses to be carried forward from previous years. The current balance of all Reserve portions of each Limited Assessment, and all contributions to be made to those Reserves in the coming year, will also be separately identified on the budget.
- C. Special Assessment Budget. If the Board determines that any Special Assessments will be charged in any year, a description and amount of those Special Assessments will be separately identified in the budget. However, Compliance Assessments and Individual Service Assessments will not need to be shown on the budget, unless Association desires to include the anticipated totals of those Assessments for the year on the budget.
- D. Developer's Discretionary Payments. If the Developer has made, or promised to make, any loans, advances or contributions toward the budget in a particular year, the amount paid or payable by the Developer, and any terms or repayment, will be shown separately on the budget.

Section 36.02: Determination of Assessments. As soon as the Association has adopted the annual budget for the next fiscal year, the Board will determine and set the Assessments to be levied. The allocable share of General Assessments to be charged to each Owner will be the total of all General Assessments under the budget divided by the sum of: (i) the number of non-exempt Lots in the Community already sold; plus (ii) the number of non-exempt Lots for which the Developer then has a binding contract to sell. The allocable share of each type of Limited Assessment to be charged to each Owner to whom that Assessment applies will be the total of that type of Limited Assessment under the budget divided by the sum of: (i) the number of non-exempt Lots already sold that are benefitted by that assessable Limited Common Area; plus (ii) the number of those benefitted non-exempt Lots for which the Developer then has a binding contract to sell. Special Assessments will be allocated among the Owners in a manner determined by the Board to be fair and equitable in relation to the reason for the Special Assessment. All Compliance Assessments and Individual Services

Assessments will be determined and charged individually to the appropriate Owner(s) only.

Section 36.03: Effective Dates of Assessments. The Assessments determined under this Article will become the personal obligation of the Owners to whom the Assessments are charged effective as of the first day of the Association's fiscal year.

Section 36.04: Time to Pay Assessments. The Board will have the authority to determine the time or times in which the Assessments will be billed and paid. In particular, the Board may require payment of the Assessments in one annual lump sum, or in quarterly or monthly installments. The Board may change the payment terms from year to year, but the payment terms will be the same for all Owners. If the Association fails to set Assessments for any particular fiscal year, or fails to deliver notice of the Assessments to an Owner, such failure will not be deemed a waiver, modification or a release of any Owner from the obligation to pay Assessments. In such event, each Owner will continue to pay the same amount of Assessments on the same terms as the preceding fiscal year until the Owner receives written notice of a new Assessment. The Association will have the right to retroactively assess any difference between the amounts the Owner actually paid during that period and the amounts payable under the new Assessment rate.

Section 36.05: Commencement of Liability for Assessments. Every Owner's liability for payment of Assessments will commence on the date the Owner closes on the purchase of the Lot and accepts delivery of the deed for the Lot. Subject to the provisions in this Declaration regarding liability for unpaid or delinquent Assessments, all current Assessments then levied on a Lot for the fiscal year in which the Lot is sold will be prorated on a per diem basis between the former Owner and the purchaser, unless otherwise agreed in writing between the seller and purchaser. However, proration between the seller and purchaser will not affect the obligations of either party for payment of Assessments in the manner provided in this Declaration, and will not delay the due date of the next installment of Assessments to become payable in connection with that Lot.

Section 36.06: Compliance Certificate. Upon request by an Owner or purchaser of a Lot, the Association will prepare and provide a Compliance Certificate in the manner described in Part Two of this Declaration. In particular, the Compliance Certificate will reveal the current status of all Assessments levied against the Owner and the Lot, including the total amount of all Assessments for the current fiscal year, the amount already paid, the balance remaining to be paid, whether any portion of the Assessment

is delinquent, and the amount, if any, of any late charges, interest or other costs of collection attributable to those Assessments. The Association may make a reasonable charge for the issuance of a Compliance Certificate, which must be paid at the time of submitting the request for the Compliance Certificate. The effect of the Compliance Certificate with respect to Assessments will be the same as for any other violations or delinquencies as provided in Part Two of this Declaration.

Section 36.07: Rules and Regulations. The Association will have the authority to adopt Rules and Regulations concerning more specific procedures regarding the preparation, adoption and disclosure of annual budgets, and the billing and collection of Assessments, as long as those procedures are consistent with this Declaration and the other Governing Documents.

ARTICLE XXXVII **NONPAYMENT OF ASSESSMENTS**

Section 37.01: Nonpayment and Remedies. Nonpayment of any Assessment when due will constitute a material violation of this Declaration by the Owner from whom the Assessment is payable. If such violation occurs, the Association will have the right to pursue any remedies provided in this Declaration for enforcement and collection of the Assessments and all other applicable late charges, interest and costs of collection.

Section 37.02: Late Charge. The Association will have the authority to impose and collect a late charge if any installment of Assessments is not paid when due. The late charge will be an amount determined by the Board, but may not exceed Ten Percent (10%) of the delinquent amount. The Board will also have the right to set the number of days past due an installment of Assessments must be before the late charge applies. All late charges imposed by the Association must be consistently applicable to all Owners.

Section 37.03: Interest on Delinquent Assessments. The Association will also have the authority to impose and collect interest on any installment of Assessments that is not paid within Thirty (30) days of the due date. The interest rate will be a percentage determined by the Board, but may not exceed the lesser of: (i) Eighteen Percent (18%); or (ii) the maximum rate permitted under Applicable Law. The Board will also have the right to increase the number of days past due an installment of Assessments must be before the interest applies. All interest imposed by the Association must be consistently applicable to all Owners.

Section 37.04: Lien of Assessments. In order to secure payment of Assessments, the Association will have a lien on each Lot in the manner described in this Section.

- A. Creation of Lien. All Assessments charged to an Owner will automatically constitute a lien on the Lot of that Owner. The lien will also secure payment of all late charges, interest and costs of collection, as provided in this Declaration.
- B. Effective Dates. The lien of an Assessment will become effective as of the first day of the fiscal year in which the Assessment applies.
- C. Perfection of Lien. The lien of an Assessment will be automatically perfected, and will continue to encumber the Lot until the Assessment and all late charges, interest and costs of collection are paid in full, or otherwise discharged in the manner provided in this Declaration. No additional actions on the part of the Association will be necessary, and no additional documents or instruments will be required to be recorded, in order to perfect the lien.
- D. Notice of Lien. If an Assessment is past due more than Thirty (30) days, the Association may, but will not be required, to file notice of the existence and amount of the lien in the Recorder's Office of Greene County, Ohio. However, the lien of the Assessment will be automatic and continuing regardless of whether or not the Association records such a notice.
- E. Priority of Lien. The lien of the Assessment will constitute the first and best lien on the Lot, binding upon the Owner, and the Owner's heirs, beneficiaries, administrators, executors, legal representatives, successors and assigns, and superior to any and all other charges, liens, or encumbrances which may in any manner arise or be imposed upon the Lot, except the following: (i) liens for real estate taxes or public assessments which under the terms of Applicable Law are made superior to the lien of the Assessment; and (ii) the lien of a Qualified Mortgagee on the subject Lot.
- F. Subordination of Lien. The Association may, but will not be required, to subordinate the lien of the Assessment to the interest of any other lien holder if the Association determines, in its reasonable discretion, that subordination of the lien will enhance, or will not materially impair, the reasonable prospect of collecting the Assessment.
- G. Extinguishment of Lien. Upon full payment of an Assessment, including all applicable late charges, interest and costs of collection, the lien of the

Assessment will be automatically extinguished. If the Association has recorded a notice of lien with the Recorder of Greene County, Ohio, the Association will record a release of that lien upon full payment. The Association will not have any obligation to file any notice indicating the partial release of any lien. No sale or transfer of any Lot will affect or extinguish the Assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any tax lien foreclosure will extinguish the Assessment lien as to any payment which becomes due prior to the sale or transfer. The extinguishment of any particular Assessment as set forth in this subsection will not have any affect upon the automatic perfection of future Assessments.

- H. Delinquency and Acceleration. If any installment of an Assessment is past due more than Thirty (30) days, then in addition to any other remedies available to the Association under this Declaration or the Governing Documents, the Association may accelerate the due date of all Assessments relating to the Lot, and declare that the full amount of all Assessments for that fiscal year are immediately due and payable without further notice or demand.

ARTICLE XXXVIII **PUBLIC ASSESSMENTS**

Section 38.01: Distinction. The Assessments described in this Part of the Declaration are private assessments payable to the Association as an ordinary and necessary requirement of providing for the effective operation of the Community. However, these Assessments of the Association are in addition to, and not to the exclusion of, and other general or special assessments that may at any time be levied by any Government Entity against the Common Area or any Lot. Such public assessments of any Government Entity are separate and distinct from the Assessments of the Association, and are not controlled by this Declaration in any respect.

Section 38.02: Owner's Obligations. Every Owner will be personally responsible for payment of all assessments levied against the Owner's Lot by any Government Entity, without any claim for contribution from the Association, or off-set against the Assessments of the Association.

Section 38.03: Association's Obligations. All assessments levied by any Government Entity against any Common Area or other property of the Association will be the responsibility of the Association as a Common Expense, and will be allocated among

and charged to the Owners in the Community as an Assessment. Public assessments payable by the Association will be itemized on the Association's annual budget.

ARTICLE XXXIX
REAL ESTATE TAXES

Section 39.01: Owner's Obligations. Every Owner will be personally responsible for payment of all real estate taxes levied against the Owner's Lot by any Government Entity, without any claim for contribution from the Association, or off-set against the Assessments of the Association.

Section 39.02: Association's Obligations. All real estate taxes levied by any Government Entity against any Common Area will be the responsibility of the Association as a Common Expense, and will be allocated among and charged to the Owners in the Community as an Assessment. Real estate taxes payable by the Association will be itemized on the Association's annual budget.

ARTICLE XXXX
INSURANCE AND INDEMNIFICATION

Section 40.01: General. Protection of the assets of the Association is necessary to assure the continuing viability of the Association and each Owner's investment in the Community. Therefore, the Association is required to obtain and maintain in full force and effect at all times the policies of insurance described in this Article. All policies of insurance obtained by the Association will be in the name of the Association as insured, and will name all Neighborhood Societies and mortgagees of the Association as additional insureds, to the extent possible. The Developer will also be named as an additional insured of each policy during the Development Period. If any insurance coverage required in this Article is not available, or is available only at a cost that in the discretion of the Board is not economically feasible to obtain, the Association will obtain a substitute form of insurance or other protection most nearly equivalent to the required coverage in order to adequately protect the rights and interests of the Association. The Board will review the terms, conditions, coverages and costs of each policy of insurance annually, or at such other intervals as the Board may deem necessary or reasonable. Further, the Board will have the authority to change insurance agents or providers at any time if, in the discretion of the Board, such change would be beneficial for the Association and would not diminish the coverage and protection required in this Article. All premiums for policies of insurance required or permitted to be obtained by the Association under this Article will be deemed to be a Common Expense, and will be included in the Assessments levied by the Association.

Section 40.02: Public Liability Insurance. The Association will obtain and maintain one or more policies of comprehensive public liability insurance insuring the Association and all of its additional insureds, and their employees, agents and volunteers, against all forms of liability for injury to or death of any persons, or damage to or destruction of any property, arising out of or in connection with the ownership, occupation, use, maintenance and/or repair of all Common Areas and other property of the Association. The limits of liability for the insurance required under this Section will not be less than Three Million Dollars (\$3,000,000.00) for each single occurrence, including the primary policy and any umbrella coverages. If the Federal Home Loan Mortgage Company ("FHLMC"), and/or the Federal National Mortgage Association ("FNMA") participate in the financing of any Lots, the limits of liability for the insurance under this Section will not be less than the minimum amounts required under the then existing FHLMC and FNMA regulations.

Section 40.03: Casualty and Fire Insurance. The Association will also obtain and maintain one or more policies of casualty and fire insurance, with extended coverage endorsements, in an amount equal to the full replacement cost of all Improvements and other insurable portions of the Common Areas, and all other insurable property of the Association. Full replacement cost will be determined by reference to the cost of replacement in the metropolitan Dayton, Ohio, area, without deduction for depreciation or co-insurance.

Section 40.04: Fidelity Bonds. In order to protect against dishonest or illegal acts of trustees, officers, employees, agents and volunteers of the Association, the Association will obtain and maintain fidelity insurance or bond coverage. This coverage will apply to all Persons who handle, have responsibility for handling, or have access to any funds of the Association, regardless of whether such Persons are compensated for their services. The fidelity coverage will be in an amount no less than to the full amount of the anticipated gross annual Assessments levied by the Association.

Section 40.05: Trustee and Officer Liability Insurance. The Association will also obtain and maintain trustee and officers liability insurance in such amounts and on such terms as the Association may determine to be necessary or beneficial to protect those individuals who serve in such capacities on behalf of the Association from liability for their official acts or omissions.

Section 40.06: Other Coverages. The Association will also obtain and maintain all coverages required under Applicable Law, including without limitation worker's compensation and unemployment compensation coverage for all employees of the

Association. Further, the Association will have the authority, but not any obligation, to obtain and maintain such other forms of insurance as the Association may determine to be necessary or beneficial for the protection and/or preservation of the Association, its Common Areas and other assets, Neighborhood Societies or any other aspect of the Community. The form, terms and conditions and all other aspects of these additional coverages will be determined at the sole discretion of the Association.

Section 40.07: Repair and Reconstruction. Promptly after the occurrence of any damage to or destruction of any property covered by insurance carried by the Association, the Association or its authorized agent will file all insurance claims and comply with all other requirements of the applicable policy necessary to preserve protection under the policy. Any damage to or destruction of the Common Areas or other property of the Association will be repaired, replaced or reconstructed to substantially the same condition as it existed prior to the damage or destruction, and in compliance with then existing Applicable Law. However, if the Voting Members determine by at least Seventy-Five Percent (75%) of their voting power that it is not in the best interest of the Association and its Members to repair, replace or reconstruct all or any portion of the damaged or destroyed property, the Association will apply the proceeds of the insurance in the manner provided in the following Section regarding treatment of excess proceeds. The Association will make this determination within Sixty (60) days after the date of the loss, or as soon as possible after all relevant information concerning the loss and the cost of repair, replacement or reconstruction is available to the Association. No mortgagee will have the right to participate in or otherwise control the Association's determination of whether the damage or destruction will be repaired, replaced or reconstructed. If the Association decides not to repair, replace or reconstruct any damaged or destroyed property, the Association will be obligated to restore the affected area in a safe, neat and attractive manner. If the Association decides to repair, replace or reconstruct any damaged or destroyed property, and the available insurance proceeds are not sufficient to cover the costs of repair, replacement or reconstruction, the Association may levy an appropriate Special Assessment to cover the shortage.

Section 40.08: Treatment of Excess Proceeds. The Association will retain any insurance proceeds remaining after paying the costs of repair, replacement or reconstruction of damaged or destroyed property of the Association, or after settlement of any insurance claims for damage or destruction that the Association determines not to repair, replace or reconstruct. If the Association has decided not to repair, replace

or reconstruct any damaged or destroyed property of the Association to its original condition, the Voting Members may approve, by affirmative vote of at least Seventy-Five Percent (75%) of their voting power, the construction, installation or acquisition of alternative or additional Improvements or assets that they believe are in the best interest of the Association and its Members. Any excess insurance proceeds not used for the purpose of alternative or additional Improvements or assets will be held in a capital improvements account or other Reserve established by the Association. This requirement is for the benefit of mortgagees and may be enforced by the mortgagee of any affected Common Area or Lot.

Section 40.09: Policy Requirements. All policies of insurance required or permitted to be obtained by the Association under this Article will be issued in the name of the Association as the insured, and will be evidenced by appropriate certificates of insurance describing the coverages obtained and identifying all additional insureds, if any. All insurance policies must be written with a qualified insurance company which is properly licensed and authorized to conduct business in the State of Ohio, and which carries an "A" or better rating under the prevailing insurance industry rating system. The Association will make all certificates of insurance available for inspection by any Owner during reasonable business hour upon written request. Each insurance policy may contain a reasonable deductible, but the amount of the deductible will not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of this Article. In the event of an insured loss, the deductible will be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Association reasonably determines that the loss is the result of the negligence or willful misconduct of one or more Owners, or their Occupants or Users, then the Association may specifically assess the full amount of such deductible against the responsible Owner(s) and their Lots. Without limiting any other requirements the Association may impose, the Association may require any policies of insurance to contain: (i) a waiver of contribution with insurance purchased by individual Owners, Occupants, or their mortgagees; (ii) an agreed amount endorsement if the policy contains a co-insurance clause; (iii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash; (iv) an endorsement excluding any individual Owners' policies of insurance from consideration under any "other insurance" clause; (v) an endorsement requiring at least Thirty (30) days prior written notice to the Association of any cancellation, substantial modification, or non-renewal; (vi) a cross-liability provision; and (vii) a provision vesting in the Association exclusive

authority to adjust losses, in cooperation with any mortgagee of the Association, if required.

Section 40.10: Indemnification of Developer, Association and Related Parties. The Association and each Neighborhood Society will have the authority to indemnify its trustees, officers, committee members, employees, agents and volunteers in the manner permitted under the *Ohio Revised Code*. The scope, purposes and extent of this indemnification will be described in the Articles, Code of Regulations or Canons of Order of the Association and Neighborhood Societies.

Section 40.11: Owner's Insurance Options. Every Owner of a Lot in the Community will be responsible for obtaining and maintaining any insurance coverages the Owner may desire relating to the protection of the Owner and the Owner's Lot, Improvements, personal property and liability, without any contribution from or claim against the Association, the Developer or any Neighborhood Society. No policies of insurance obtained by any Owner may adversely affect or diminish any coverages or protection under insurance obtained by the Association. If any loss intended to be covered by insurance carried by the Association occurs and the proceeds payable under such insurance are to be reduced in whole or in part because of any insurance carried by any Owner, then to the extent of such reduction, the Owner will be unconditionally obligated to assign the proceeds of the Owner's insurance to the Association. All policies of insurance obtained by any Owner must contain a waiver of subrogation against the Association, the Developer, all Neighborhood Societies, and their respective employees and agents, to the extent such waiver is obtainable. Nothing in this Declaration or any of the other Governing Documents will be construed to require or imply that the Association, the Developer or any Neighborhood Society will or has obtained any form of insurance coverage on or for the benefit of any Owner, or any Owner's Lot, Improvements or personal property. Further, nothing in this Declaration or any of the other Governing Documents will be construed as imposing upon the Association, the Developer or any Neighborhood Society an obligation to indemnify, hold harmless or defend any Owner, Occupant or User against any form of loss or liability.

PART EIGHT - ENFORCEMENT AND REMEDIES

Creating a Community in which people enjoy living, working and playing requires sensitivity to the rights and interests of all within the Community. The ability to enforce this Declaration is imperative to assure the protection of those rights and

interests. However, good faith efforts to resolve disputes amicably is an important part of maintaining good relationships. Therefore, the Developer has established the structure of enforcement and remedies described in this Part in an effort to create a balance between the need for strong enforcement with the aspiration of fostering better relations among Community members when disputes arise.

ARTICLE XXXXI **ENFORCEMENT**

Section 41.01: Who May Enforce. The Developer, Association, any Neighborhood Society, and all Owners, have the right to enforce this Declaration and all of the other Governing Documents in the manner, and subject to the terms and conditions, in this Part Eight of the Declaration.

Section 41.02: Enforcement By Subsequent Owners. All Owners will have the right to privately enforce this Declaration or any of the other Governing Documents, regardless of whether the violation giving rise to the Claim occurred before or after the time Owner seeking enforcement obtained title to a Lot.

Section 41.03: Limitations on Enforcement by Owners. The rights of any Owner to enforce this Declaration and the other Governing Documents are subordinate to the right of enforcement granted to the Developer, Association, or any Neighborhood Society. Therefore, no Owner may pursue the enforcement of this Declaration or any of the other Governing Documents during any period of time in which the Developer, Association, or any Neighborhood Society is then attempting or pursuing any remedies to enforce the same violation. The purpose of this limitation is to avoid duplication of enforcement efforts, and to recognize that enforcement by the Developer, Association, or any Neighborhood Society is for and on behalf of the Community as a whole.

Section 41.04: Notice of Violation. Except in the case of an imminent threat to the safety of any Person, or danger of damage or destruction of any property, or other form of emergency, any Person alleged to be in violation of this Declaration or any of the other Governing Documents will be entitled to reasonable prior written notice of, and an opportunity to cure, the violation before pursuit of any remedy provided in this Declaration. For purposes of this Section, reasonable notice and opportunity to cure will be deemed to be Ten (10) days after receipt of the notice, unless the facts and circumstances of the violation clearly indicate that the violation cannot, with the exercise of reasonable diligence, be cured within that time. However, if a different time period is stated in any of the Governing Documents regarding a particular type of violation, then the time period in the applicable Governing Document will control.

Section 41.05: Compliance Order. The Association, through the Board or the DRB, will have the right to issue a Compliance Order to any Person who is, or is anticipated to become, in violation of any provisions of the Governing Documents. Failure to abide by the terms of the Compliance Order will entitle the Developer or the Association to immediately pursue any available remedies under this Declaration, including without limitation injunctive relief, without any further notice or opportunity to cure.

Section 41.06: Stop Work Order. The Association, through the Board or the DRB, will also have the right to issue a Stop Work Order to any Person who is, or is anticipated to become, in violation of any provisions of the Governing Documents involving Work on Improvements. Issuance of a Compliance Order is not a prerequisite to issuance of a Stop Work Order. Failure to abide by the terms of the Stop Work Order will entitle the Developer or the Association to immediately pursue any available remedies under this Declaration, including without limitation injunctive relief, without further notice or opportunity to cure.

Section 41.07: Pursuit of Remedies. The failure of any Person to cure a violation of this Declaration or any of the other Governing Documents after proper notice, as required under this Article, will entitle the Developer, Association, any Neighborhood Society, or any Owner to pursue any or all legal and equitable remedies available under Applicable Law, subject only to the requirements in the Article entitled "Alternative Dispute Resolution" later in this Part Eight.

Section 41.08: No Waiver of Right to Enforce Existing Violations. The failure of the Developer, Association, any Neighborhood Society, or any Owner, to enforce any violation of this Declaration or any of the other Governing Documents will not constitute a waiver, estoppel, or laches as to the right to seek any remedies pertaining to the original violation at a later date.

Section 41.09: No Waiver of Right to Enforce Coexisting or Subsequent Violations. The failure of the Developer, Association, any Neighborhood Society, or any Owner to enforce any violation of this Declaration or any of the other Governing Documents will not constitute a waiver, estoppel or laches as to the right to seek remedies pertaining to any coexisting or subsequent violations of the same nature.

Section 41.10: No Waiver of Strict and Exact Compliance. The failure of the Developer, Association, any Neighborhood Society, or any Owner to insist upon strict and exact compliance with any provision of this Declaration or any of the other Governing Documents at any particular time, or by any particular Person or Persons, will not constitute a waiver, estoppel or laches as to the right to later seek remedies