

DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND
RESTRICTIONS OF BROOK WOOD CROSSING

THIS DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS OF BROOK WOOD CROSSING (the "Declaration") is made this 30th day of August, 2002, by BROOK WOOD PARTNERS, LLC, an Indiana limited liability company ("Declarant") and

WITNESSES:

WHEREAS, Declarant is the fee owner of the Development (as defined herein);

WHEREAS, Declarant intends by this Declaration to impose upon the Development mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within the Development by the recording of this Declaration;

WHEREAS, Declarant desires to provide a flexible and reasonable procedure for the overall development of the Development and to establish a method for the administration, maintenance, preservation, use, and enjoyment of such properties as are now or may hereafter be subject to this Declaration; and

WHEREAS, Declarant has formed (of intends to form) the Association (as defined herein) for the purposes of carrying out the powers and duties aforesaid.

NOW, THEREFORE, Declarant hereby declares that all of the real estate described in Exhibit "A" attached hereto, and any additional property as may be subsequent amendment be added to and subjected to this Declaration, shall by held, sold and conveyed subject to the following covenants, conditions, easements and restrictions, which shall "run with the land" and are for the purpose of protecting the value and desirability of and which shall run with the real property subjected to this Declaration and which shall be binding on all parties having any right, title or interest in the described Development or any part thereof, their heirs, successors, successors-in-title, and assigns and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1.1. Articles of Incorporation. Articles of Incorporation means and refers to the Articles of Incorporation of the Association, as filed with the Secretary of State of the State of Indiana.

Section 1.2. Association. Association shall mean and refer to Brook Wood Crossing Homeowners' Association, Inc., or an organization of similar name, formed, or to be formed, as an Indiana not-for-profit corporation, its successors and assigns. The Board of Directors or Board shall mean the elected body of the Association having its normal meaning under Indiana not-for-profit corporation law.

Section 1.3. Bylaws. Bylaws shall refer to the Bylaws of the Association, as the same may exist and be in effect from time to time.

Section 1.4. Common Area. Common Area shall mean all real and personal property now or hereafter owned by or subject to an easement for the common use and enjoyment of all Owners in the Development. The Common Area to be owned by the Association shall be conveyed to the Association at any time prior to the last conveyance of a Lot to any Owner by Declarant. By way of example and not by way of limitation, Common Area shall include the Drainage System in the Development including all lakes, retention/detention ponds, spillways, creeks and culverts, all landscaping other than landscaping on any Lot, accent or special effect lighting systems for the Development (excluding exterior light fixtures to be installed and maintained by Owners), community recreational facilities and such other or further items as shall be shown as Common Area or subject to an easement for stated purposes on the various Plats and Plans filed with the Recorder of Marion County from time to time with respect to portions of the Development.

Section 1.5. Common Expenses. Common Expenses shall mean and include the actual and estimated expenses of operating the Association, including any reasonable reserves, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the Bylaws, and the Articles of Incorporation of the Association. Common Expenses shall include, without limitation, the actual and estimated cost to the Association for the maintenance, management, operation, repair, improvement and replacement of Common Area, real estate taxes or personal property taxes assessed against any Common Area, as well as any other costs or expense incurred by the Association for the benefit of the Common Area and the Owners.

Section 1.6. Control Transfer Date. Control Transfer Date shall be the date on which the Declarant is no longer a Class B Member of the Association.

Section 1.7. Declarant. Declarant means Brook Wood Partners, LLC, an Indiana limited liability company, or any other person, firm, corporation or partnership which succeeds to the interest of Brook Wood Partners, LLC, as developer of the Development, as a matter of law or as evidenced by a written instrument of transfer to such effect.

Section 1.8. Development. Development shall mean and refer to the real property described in Exhibit "A", attached hereto and incorporated herein by reference and such additional real property as may be added in accordance with Article VIII.

Section 1.9. DCC. DCC shall mean and refer to the Development Control Committee, an architectural and use standards committee, established pursuant to the provisions of Article XI hereof.

Section 1.10. Drainage System. Drainage System shall mean and include the retention/detention ponds, storm sewers, subsurface drainage tiles, swales, ditches, pipes, and other structures, fixtures, properties, equipment, and facilities located in, upon, or under the Common Area, Streets, or easements affecting one or more Lots or property located outside the Development, and designed for the purpose of expediting the drainage of surface and subsurface waters from, over, across and under the Development, other than such as may have been dedicated to the public and accepted for maintenance by the appropriate public agency.

Section 1.11. Eligible Mortgage Holder. Eligible Mortgage Holder shall mean a holder, insurer, or guarantor of a first mortgage on a Lot who has requested notice of certain matters from the Association as herein and in the Association's Bylaws provided.

Section 1.12. Eligible Votes. Eligible Votes shall mean those votes available to be cast on the issue at hand. A vote which is for any reason suspended is not available to be cast.

Section 1.13. Lot. Lot shall mean a portion of the Development other than the Common Area intended for any type of independent ownership and use as may be set out in this Declaration and as shall be shown on the Plats and Plans filed with this Declaration and amendments thereto. Where the context indicates or requires, the term Lot includes any structure on the Lot.

Section 1.14. Majority. Majority means more than fifty percent (50%) of the total number of eligible groups, Eligible Votes, eligible Owners, or other, as the context may indicate.

Section 1.15. Member. Member shall mean and refer to a person or entity entitled to membership in the Association, as provided herein.

Section 1.16. Mortgage. Mortgage means any mortgage, deed to secure debt, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

Section 1.17. Owner. Owner shall mean and refer to the record owner, whether one or more persons or entities, of any Lot which is part of the Development, but excluding any party holding the fee simple title merely as security for the performance of an obligation. Owner shall include the Declarant (but pursuant to Section 10.11 no assessments are payable by Declarant as an Owner except as specifically described therein).

Section 1.18. Person. Person means a natural person, a corporation, a partnership trustee, or other legal entity.

Section 1.19. Plats and Plans. Plats and Plans shall collectively mean those plats or plans of all or any portion of the Development making reference hereto which have been or hereafter may be recorded in the office of the Recorder of Marion County, Indiana, as the same may be amended or supplemented by replats or otherwise.

Section 1.20. Preservation Areas. Preservation Areas shall mean those portions of the Common Area that shall be maintained by the Association in their present condition, subject to drainage improvements and Drainage Easements (as hereinafter defined) as required by the applicable law or local authority.

Section 1.21. Quorum. Quorum shall mean the percent of Eligible Votes entitled to be cast on a matter at any meeting of Members as specified in the Bylaws.

Section 1.22. Special Assessments. Special Assessments shall mean those certain assessments authorized and made pursuant to the terms of Section 10.4 hereof.

Section 1.23. Streets. Streets shall mean all driveways, walkways, roadways, streets and similar areas, designed as such on the Plats and Plans, which have been or hereafter are constructed for the purpose of providing common access for Owners, occupants and their guests and invitees,

to any or all Lots, other than those that have been dedicated to the public and accepted for maintenance by the appropriate public agency.

ARTICLE II

PROPERTY RIGHTS

Section 2.1. Owner's Easement of Enjoyment. Every Owner shall have a right and easement of ingress and egress in and to, and, use and enjoyment of the Common Area, which shall be appurtenant to and shall pass with the title to every Lot, subject to:

(i) the right of the Association to charge reasonable admission and other fees for the use of any Common Area and to impose reasonable limits on the number of guests who may use such facilities;

(ii) the right of the Association to suspend or terminate a Member's voting rights in accordance with law and the Articles of Incorporation and Bylaws;

(iii) the right to suspend use of any such facilities for any period during which any assessment for Common Expenses against that Owner's Lot remains unpaid, and for any violation by an Owner of the Association's rules and regulations, for the duration of the violation and for an additional period thereafter not to exceed thirty (30) days;

(iv) the Declarant's reserved easements as described herein and the right of the Declarant to grant easements in and to the Common Area to any public agency, authority, or utility for such purposes as benefit only the Development or portions thereof and Owners or Lots contained therein;

(v) the right of the Association to borrow money for the purpose of improving the Common Area, or any portion thereof, for acquiring additional Common Area, or for constructing, repairing, or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a mortgage conveying all or any portion of the Common Area, provided two-thirds (2/3) of Eligible Votes shall approve; provided, however, the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any and all rights,

interests, options, easements, and privileges reserved or established in this Declaration for the benefit of Declarant or any Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within the Development; and

(vi) the right of the Association to dedicate or transfer all or any portion of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by the Declarant during any time that the Declarant controls the Association and otherwise by at least two-thirds (2/3) of all Eligible Votes.

This Section 2.1. may not be amended without the written consent of Declarant during the time that Declarant owns any property subject to this Declaration.

Section 2.2. Delegation of Use. No Owner may delegate his or her right of enjoyment to the Common Area to any other individual without the prior written consent of the Association.

Section 2.3. Owner's Right to Ingress, Egress and Support. Each Owner shall have the right to ingress and egress over, upon, and across the Common Area necessary for access to his or her Lot and shall have the right to lateral support for his or her Lot, and such rights shall be appurtenant to and pass with the title to each Lot.

Section 2.4. Rules and Regulations. The Board and Directors of the Association may establish reasonable rules and regulation concerning the use of the Common Area, facilities located thereon, and individual Lots in the Development, as appropriate. Copies of such regulations and amendments thereto shall be furnished by the Association to all Owners prior to the rule's effective date. Such regulations shall be binding upon the Owners, their families, tenants, guests, invitees, and agents until and unless such regulation, rule, or requirement shall be specifically overruled, cancelled, or modified by the Board of Directors of the Association or the Members by two-thirds (2/3) of all Eligible Votes and the written approval of the Class B Member prior to the Control Transfer Date. The Board shall have the authority to impose reasonable monetary fines and other sanctions, and monetary fines may be collected by lien and foreclosure, as provided in Article X. In addition, the Association, through

its Board, may, by contract or other agreement, enforce county ordinances or permit Marion County to enforce ordinances affecting the Development for the benefit of the Association and its Members.

Section 2.5. Declarant's Reserved Easement. Notwithstanding any provisions contained in the Declaration to the contrary, Declarant hereby expressly reserves unto itself and its successors and assigns a nonexclusive, perpetual right, privilege, and easement with respect to any property in the Development, for the benefit of Declarant and its successors and assigns over, under, in, and on the Development, without obligation and without charge to Declarant, for the purposes of construction, installation, relocation, development, sale, maintenance, repair, replacement, use and enjoyment and otherwise dealing with the Development and any other property now owned or which may in the future be owned by Declarant. The reserved easement shall constitute a burden on the title to all or any portion of the Development and specifically includes, but is not limited to:

(i) the right of access, ingress, and egress for vehicular and pedestrian traffic over, under, on, and in all or any portion of the Development, and the right to tie into any portion of the Development; with driveways, parking areas, Streets, the Drainage System and walkways; and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer, and drainage lines and facilities constructed or installed in, on, under, and/or over all or any portion of the Development;

(ii) the right to construct, install, replace, relocate, maintain, repair, use and enjoy signs, model residences, sales offices, construction offices and business offices as, in the sole opinion of Declarant, may be required, convenient or incidental to the construction and sale by Declarant of residences in all or any portion of the Development or in any portion of the Additional Land; and

(iii) the right to maintain a sales and marketing office for the Development within the Common Area without cost to Declarant until Declarant no longer owns any Lots in the Development.

No rights, privileges, and easements granted or reserved herein shall be merged into the title of any property within the Development, but shall be held independent of such title, and no such right, privilege, or easement shall be

surrendered, conveyed, or released unless and until and except by delivery of a quitclaim deed from Declarant releasing such right, privilege, or easement by express reference thereto with respect to all or any portion of the Development. Declarant may grant to a builder of Lots within the Development similar rights as granted to Declarant under (ii) and (iii) above.

This Section 2.5. may not be amended without the advance written consent of Declarant as long as Declarant owns one or more Lots.

Section 2.6. Character of the Development.

2.6.1 Use of Lots.

(i) Except as may be otherwise expressly provided in this Declaration, each Lot shall be used for residential purposes only as a residence for a single family related by blood, adoption, or marriage. No business buildings shall be erected on said Lots, and no business may be conducted on any part thereof, other than the home occupations permitted in the Dwelling District Zoning Ordinance of Marion County, Indiana, as amended from time to time. Lease or rental of a Lot or any building thereon for residential purposes shall not be considered to be a violation of this covenant, so long as the lease is in compliance with reasonable rules and regulations as the Board of Directors may promulgate, or in the absence of such rules and regulations, with the prior written approval of the Board. Provided, however, all such Leases shall be in writing and shall be for a minimum term of not less than six (6) months. Any lessee or tenant shall in all respects be subject to the terms and conditions of this Declaration, the Bylaws, and the rules and regulations adopted hereunder.

(ii) Without the prior written consent of the Association's Board of Directors, nothing shall be done or kept on any Lot or on the Common Area or any part thereof to increase the rate of insurance on the Development or any part thereof over what the Association, but for such activity, would pay. Noxious, destructive, or offensive activity, or any activity constituting an unreasonable source of annoyance, shall not be conducted on any Lot or on the Common Area or any part thereof, and the Association shall have standing to initiate legal proceedings to abate such activity. Each Owner shall refrain from any act or use of his or her Lot which could reasonable cause embarrassment, discomfort, or annoyance to other Owners, and the Board of Directors shall have the

power to make and enforce reasonable rules and regulations in furtherance of this provision.

2.6.2 Use of Common Areas. No planting or gardening shall be done, and no fences, hedges, walls or any other structure or planting shall be erected or maintained upon the Common Area, except in accordance with the initial construction of the improvements located thereon by the Declarant or as approved by the Association's Board of Directors or their designated representatives. No antennas may be erected upon the Common Area, except the Association may erect a master antenna serving the Members. Except for the right of ingress and egress, the Owners of Lots may use the property outside their respective Lots only in accordance with reasonable regulations as may be adopted by the Association's Board of Directors or as is expressly provided herein. It is expressly acknowledged and agreed by all parties concerned that this Section 2.6 is for the mutual benefit of all Owners and is necessary for the protection of all Owners.

2.6.3 Signs. Except as hereinafter provided for Declarant, no signs of any type whatsoever, billboards, unsightly objects, or nuisances shall be erected, placed, or permitted to remain on the Development, other than signage provided by Declarant (before the Control Transfer Date) or by the Association (after the Control Transfer Date) and approved by the DCC, and signs that are approved by the DCC and are erected by a builder of multiple Lots in the Development (a "Builder"), except that one sign of not more than six (6) square feet may be displayed for the purpose of either advertising the Lot for sale or advertising a garage/yard sale at such Lot. Provided, however, no Owner of a Lot shall have a garage sale or yard sale more often than four (4) times per calendar year.

2.6.4 Storage and Parking of Vehicles and Driveways. No motor homes, boats or recreational vehicles, campers, travelers, inoperable vehicles, or trucks larger than a pickup truck shall be parked on any lot, driveway or street within the development. Motor homes and recreational vehicles may not be parked in excess of 24 hours for loading or unloading the vehicle. No Owners or tenants shall repair or restore any vehicle of any kind upon any Lot or Common Area, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility. No garage may be altered in such a manner that the number of automobiles which may reasonably be parked therein after the alteration is less than the number of automobiles that could have been reasonably parked in the garage as originally constructed.

2.6.5 Pets. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on the Development, except that normal household pets in reasonable numbers may be kept in residences subject to rules and

regulations adopted by the Association through its Board of Directors, provided that such pets are not kept, bred, or maintained for any commercial purpose. The Board shall have the absolute power to prohibit a pet from being kept on any Lot in the Development, including inside residences constructed thereon. No doghouses or other pet enclosures shall be constructed or located on any Lot without the prior written approval of this DCC.

2.6.6 Nuisances. No outside toilets shall be permitted on any Lot in the Development (except during a period of construction and then only with the consent of the DCC), and no sanitary waste or other wastes shall be permitted to enter the storm drainage system. No discharge from any floor drain shall be permitted to enter into the storm drainage system. No noxious or offensive activities shall be carried on any Lot in the Development, nor shall anything be done on any of said Lots that shall become or be an unreasonable annoyance or nuisance to any Owner of another Lot in the Development. By purchase of a Lot, each Owner agrees that any violation of this paragraph constitutes a nuisance which may be abated by Declarant, the Association, or any Owner in the Development in any manner provided at law or in equity. The cost or expense of abatement, including court costs and attorneys' fees, shall become a charge or lien upon the offending Owner's Lot, and may be collected (i) in any manner provided by law or in equity for collection of a liquidated debt, or (ii) by foreclosure of said lien in the manner provided for in Section 10.6 for the lien of assessments. Neither the Declarant, nor any officer, agent, employee or contractor thereof, the Association, or any Owner enforcing the provisions of this paragraph shall be liable for any damage which may result from enforcement hereof.

2.6.7 Garbage Trash and Other Refuse. No Owner of a Lot in the Development shall burn or permit the burning out-of-doors of garbage or other refuse, nor shall any such Owner accumulate or permit the accumulation out-of-doors of such refuse on his Lot except as may be permitted below. All dwellings built in the Development shall be equipped with a garbage disposal unit. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be installed underground or shall be so placed and kept so as to be enclosed and as not to be visible from any street within the Development at any time, except at the time when refuse collections are being made.

2.6.8 Minimum Square Footage and Model Homes.

(a) All single story homes shall have a minimum of 1,400 square feet of livable space. Homes more than one story shall have a minimum of 1,600 square feet.

(b) No Owner of any Lot in the Development other than Declarant or persons having the written permission of Declarant shall build or use, or permit the building or use upon any such Lot of any dwelling that is to be used as a model home or exhibit house.

2.6.9 Temporary Structures. No temporary house, trailer, tent, garage, mini-barn or other out building shall be placed or erected on any Lot, nor shall any regular overnight camping be permitted on any Lot; provided, however, that Declarant or any person specifically authorized by Declarant may maintain a temporary construction or sales trailer on any Lot or Lots.

2.6.10 Utility Services. No utility services will be installed under any paved areas in the Development, except by jacking, drilling, or boring, unless specifically approved by the Declarant (or, after Declarant turns over control of the Association, by the DCC). All utility facilities in the Development will be underground, except where required to be placed above ground by the individual utility supplier.

2.6.11 Wells and Septic Tanks. No water wells shall be drilled on any of the Lots in the Development without the approval of the DCC. No septic tanks shall be installed on any of the Lots, in any of the Common Areas.

2.6.12 Antennas and Solar Heat Panels. Except as approved by the DCC, no exposed antennas, satellite dishes in excess of 24" in diameter or solar heat panels shall be allowed on any Lot or on any residence on any Lot which is visible from outside such residence. All such items shall be subject to the prior written approval of the DCC as to aesthetics and location.

2.6.13 Accessory Outbuildings. No accessory outbuildings, including mini-barns, shall be erected on any of the residential Lots that back up to Cumberland Road or which are visible on corner lots adjoining a street. All accessory out buildings shall be made of the same material and color of the house.

2.6.14 Occupancy or Residential Use of Partially Completed Dwelling Houses Prohibited. No dwelling house constructed on any of the residential Lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed for occupancy in accordance with the approved building plan. The determination of whether the house shall have been substantially completed for occupancy shall be made by the building inspector of the governmental entity having jurisdiction over the Development and such decision shall be binding on all parties.

2.6.15 Other Restrictions. All tracts of ground in the Development shall be subject to all covenants, conditions, easements, restrictions and limitations of record, and to all governmental zoning authority and regulations affecting the Development, all of which are incorporated herein by reference including but not limited to the Amended Development Plan for Brook Wood Crossing dated November 9, 1999, which is on file in the office of the Department of Metropolitan Development, 200 E. Washington Street, Indianapolis, Indiana 46204.

2.6.16 Fences, Light Fixtures, Etc. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Development, any fence, basketball goal, swimming pool, hot tub, play structure (such as swing set) or other exterior structure must be approved by the DCC as to size, location, height and composition before it may be installed. No metal swing sets shall be permitted. Any fencing in the Development will be designed and installed to be a harmonious as possible with the architectural character of the Community. No fence or screen will be approved if its installation will obstruct necessary site lines for vehicular traffic. Undue obstruction of view or other amenities from adjoining properties will be taken into consideration by the DCC when reviewing for approval. Fences in general shall not be located any closer to the front of the home than the rear foundation line of the home. The DCC will discourage fencing of the entire back yard due to the effect that this fencing may have on the feeling of spaciousness desired by other property owners. Fences may be privately installed but must be constructed to professional levels of quality. Non-professionally installed fences will be inspected by the DCC after completion in order to insure that the final product is of a professional quality and final approval of the fence shall be deemed withheld until successful completion of this final review.

(a) Height Restrictions. DCC will approve fences up to four (4) feet in height which otherwise meet these guidelines. The DCC will give consideration, however, to a variance in this height limit where clearly unique circumstances exist. The use of six (6) foot fences around small patio areas of a backyard or sideyard of a home in order to secure privacy for the immediate patio area will be permitted. The specific fence height restrictions are as follows:

(i) Property fencing and walls above grade shall not exceed four (4) feet above grade unless otherwise approved by the DCC.

(ii) The DCC will not approve any proposed fence which exceeds four (4) feet in height unless the rear line of that Lot offers some circumstance clearly unique to that Lot.

(iii) Patio screens/privacy fences shall not exceed six (6) feet in height.

(b) Materials and Finish.

(i) Wood fencing or screening will be approved if the design is in conformity with the architectural design of the Development, and either (i) stained or complimented to match the exterior colors of the home, or (ii) have a natural wood finish.

(ii) The DCC will not approve an application for the installation of a chain link or other galvanized metal fencing.

2.6.17 Damaged Structures. No improvement which has partially or totally been destroyed by fire or otherwise shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

2.6.18 Prohibition of Used Structures. All structures constructed or placed on any Lot in the Development, including play structures, shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such Lot without the prior written approval of the DCC.

2.6.19 Maintenance of Lots and Improvements. Unless the Association is obligated to perform the same, the Owner of any Lot in the Development shall at all times maintain the Lot (and to the extent required by the restrictions contained elsewhere herein or in the Plats and Plans, Common Area adjacent to such Lot) and any improvements situated thereon in such a manner as to prevent the same from becoming unsightly and, specifically, such Owner shall:

(i) mow and care for the lawn at such times as may reasonably be required in order to prevent the unsightly growth of vegetation and weeds;

(ii) remove all debris or rubbish;

(iii) prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development;

(iv) cut down and remove dead trees; and

(v) keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.

2.6.20 Manufactured and Modular Homes. All manufactured and modular homes as defined in Section 2.25 of the Dwelling Districts Zoning Ordinance of Marion County, Indiana, Docket No. 89-A0-2, as amended are prohibited.

2.6.21 Above Ground Pools. Above ground pools are prohibited.

2.6.22 Garages. All homes shall have an attached garage measuring a minimum of twenty (20) feet by twenty (20) feet.

2.6.23 Mailboxes and House Numbers. Mailboxes used for each home shall be of uniform design, as adopted by the Board of Directors. All house numbers shall be of uniform design, as adopted by the Board of Directors, and attached to the front of the home in a uniform location visible from the street and permanently affixed thereto.

2.6.24 Landscaping of Lots. Each and every home located on a Lot shall have landscaping that shall include a minimum of two trees and low bushes each of two (2) inch caliper and deciduous variety.

2.6.25 Driveway and Sidewalk Material and Construction. All driveways shall be surfaced in asphalt or concrete materials and sidewalks shall be concrete. Each Owner of a Lot shall cause a sidewalk to be installed on his or her Lot contemporaneously with the construction of a home on such Lot, including all interior Lots on both sides of the streets.

2.6.26 Streetlights/Yardlights. Unless Streetlights are installed by Declarant or the Association, which installation is not mandatory but subject to the discretion of the Declarant or the Association, all Lots with homes located thereon shall have a dusk-to-dawn yard light. Such dusk-to-dawn yard light shall be of uniform design as approved by the Board of Directors of the Association.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 3.1. Membership. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 3.2. Classes of Membership. The Association shall have two (2) classes of Members consisting of Class A Members and the Class B Member.

3.2.1. Class A. Class A Members shall be all Owners of Lots with the exception of the Declarant. Except as otherwise provided herein or in the Articles of Incorporation, each Owner shall be entitled to one vote for each Lot owned. When more than one person is an Owner of a Lot, all such persons shall be Members. The vote for such Lot shall be exercised by the person whom the collective Members with respect to such Lot may designate. In the event that a Membership stands of record in the names of a least two (2) persons or entities, then if one person or entity votes, the vote binds all persons. In no event shall such vote be split into fractional votes and in no event shall more than one vote be cast with respect to any Lot. Each vote cast with respect to a Lot shall presumptively be valid, but if such vote is questioned by any Member holding any interest in such Lot and if all such Members holding an interest in the Lot are not in agreement as to the validity of the vote for such Lot which is questioned, then such vote shall not be counted. In addition, the Association may reject a vote, consent, waiver or proxy appointment if there is a reasonable basis to doubt the validity of a signature or the signatory's authority.

3.2.2. Class B. The Declarant shall be the sole of Class B Member. The Class B Member shall be entitled to four (4) votes per Platted Lot that it owns for so long as it shall own any Lot or real estate in the Development or until the Declarant's Class B membership is converted to a Class A membership if that occurs earlier. The Class B membership shall cease and be converted to a Class A membership on the happening of the first to occur of the following events:

- (i) when the Class B Member owns or is the contract purchaser of less than twenty-five percent (25%) of the Lots in the Development,
- (ii) when the Class B Member voluntarily surrenders its Class B membership, or

(iii) five (5) years after the first Lot is conveyed to an Owner in any portion of the Development.

Section 3.3. Board of Directors. Subsequent to the Control Transfer Date, the Board of Directors of the Association shall be as prescribed by the Association's Bylaws. The Board of Directors shall manage the affairs of the Association. The initial Board of Directors shall be appointed by the Declarant and shall manage the affairs of the Association until the Control Transfer Date.

Section 3.4. Professional Management. No contract or agreement for professional management of the Association by Declarant nor any other contract between the Association and Declarant shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause without any termination fee by written notice of ninety (90) days or less.

Section 3.5. Responsibilities of the Association. The Association is hereby authorized to act and shall act on behalf of, and in the name, place, and stead of, the individual Owners in all matters pertaining to the maintenance, repair, and replacement of the Common Areas, the determination of Common Expenses, the collection of annual assessments and Special Assessments, and the granting of any approvals whenever and to the extent called for by this Declaration for the common benefit of all such Owners. The Association shall also have the right, but not the obligation, to act on behalf of any Owner or Owners in seeking enforcement of the terms, covenants, conditions and restrictions contained in this Declaration. Neither the Association nor its officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color of authority of this Declaration or for any failure to take any action called for by this Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct. The Association shall procure and maintain insurance in accordance with the provisions of Article V hereof. The Association may contract for such services as management, snow removal, security control, trash removal, and such other services as the Association deems necessary or advisable.

Section 3.6. Control and Transfer of Control of Association. Until the Control Transfer Date, the Board of Directors of the Association shall consist of persons appointed by Declarant.

ARTICLE IV

MAINTENANCE

Section 4.1. Maintenance.

(a) The Association shall maintain and keep in good repair the Common Area. The maintenance of the Common Area shall be deemed to include, but not be limited to, maintenance, repair, and replacement, subject to the insurance and casualty loss provisions contained herein, at the Association's sole cost and expense as Common Expense, of all trees, fences, shrubs, grass, Streets, Common Area parking spaces, bike, paths, walks, Drainage System improvements, the accent or special effect lighting system, central signage for the Development including street signage and other improvements situated upon the Common Area. The Association shall repair or replace any street sign that has incurred substantial damage or has been destroyed or removed within ten (10) business days of notice of such damage, destruction or removal.

(b) In the event that the Board of Directors of the Association determines that (i) Owner has failed or refused to discharge properly his or her obligations with regard to the maintenance, repair, or replacement of items for which he or she is responsible hereunder or otherwise; or (ii) that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees, or invitees, and is not covered or paid for my insurance, in whole or in part, then, in that event, the Association, except in the event of an emergency situation, shall give the Owner written notice of the Associations' intent to provide such necessary maintenance, repair, or replacement, at the Owner's sole cost and expense; the notice shall set forth with reasonable particularity the maintenance, repairs, or replacement required and shall advise the Owner to complete the same within three (3) days from the date of such notice; provided, however, that if the same is not capable of completion within the three (3) day period, such notice shall advise the Owner to immediately commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at Owner's sole cost and expense, and the cost shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot.

(c) The cost of snow removal and landscaping maintenance in excess of amounts budgeted therefor shall be paid by the Owners (on the same basis as assessments for Common Expenses are allocated to the Owners in accordance with Section 10.3 hereof) by a Special Assessment. In the event the Association enters into contracts for snow removal and landscaping maintenance while Declarant controls the Association, the Association shall indemnify and hold Declarant harmless from all liability and obligations with respect thereto. This Section 4.1(c) is included herein in recognition of the fact that the costs of snow removal and landscaping maintenance for the Development may substantially exceed amounts budgeted therefor by the Association due to inordinate snow fall, an inordinate number of snow falls during any season, general weather conditions, agricultural conditions and amount of use. Nothing contained herein shall be construed to require that the Association provide snow removal service for the Development. In the event snow removal service is to be provided for the Development an amount therefor shall be included in the annual budget and collected as a Common Expense with the understanding that a Special Assessment may be necessary in the event the amount budgeted therefor is insufficient to defray the actual snow removal costs.

(d) The subdivision to be constructed on the Development has been designed to include a stormwater quality best management practice (the "BMP(s)") that must be maintained by the BMP(s) owner, which shall be the Declarant until the formation of the Association, after which time the Association shall be the owner of the Development's BMP(s). The Association shall comply with and adhere to all requirements of the Operations and Maintenance Manual for the Development's BMP(s), which has been or will be placed of record, subject to all fees and other requirements of the City of Indianapolis.

ARTICLE V

INSURANCE

Section 5.1. Insurance.

(a) The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain insurance for all insurable improvements on the Common Area against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief. This insurance shall be in an amount sufficient to cover the full replacement cost of any

repair or reconstruction in the event of damage or destruction from any such hazard.

(b) The Board shall also obtain a public liability policy covering the Common Area, the Association, and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have at least a Five Hundred Thousand Dollar (\$500,000) single person limit as respects bodily injury and property damage, a One Million Dollar (\$1,000,000) limit per occurrence, and a Two Hundred Fifty Thousand Dollar (\$250,000) minimum property damage limit. Premiums for all insurance on the Common Area shall be Common Expenses of the Association. The policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

(c) All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association as Trustee for the respective benefitted parties, as further identified below. Such insurance shall be governed by the provisions hereinafter set forth:

(i) All policies shall be written with a company licensed to do business in Indiana and holding a rating of XI or better in the Financial Category as established by A.M. Best Company, Inc. if reasonably available, or, if not available, the most nearly equivalent rating.

(ii) All policies on the Common Area shall be for the benefit of the Lot Owners and their mortgagees as their interests may appear.

(iii) Exclusive authority to adjust losses under policies in force on the Development obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(iv) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their mortgagees.

(v) All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Marion County area.

(vi) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(1) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners, and their respective tenants, servants, agents, and guests;

(2) a waiver by the insurer of its rights to repair, and reconstruct, instead of paying cash;

(3) that no policy may be cancelled, invalidated, or suspended on account of any one or more individual Owners;

(4) that no policy may be cancelled, invalidated, or suspended on account of the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner, or mortgagee;

(5) that any "other insurance" clause in any policy exclude individual Owner's policies from consideration; and

(6) that no policy may be cancelled or substantially modified without at least thirty (30) days' prior written notice to the Association.

(d) In addition to the other insurance required by this Section, the Board shall obtain, as a Common Expense, worker's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds. The amount of fidelity coverage shall be determined in the Board's best

business judgment, but may not be less than three (3) months' assessments plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to the Association.

Section 5.2. Individual Insurance. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that such Owner shall carry blanket all-risk casualty insurance on such Owner's Lot and structures constructed thereon. Each individual Owner further covenants and agrees that in the event of a partial loss or damage and destruction resulting in less than total destruction, the individual Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction. In the event that the structure is totally destroyed and the individual Owner determines not to rebuild or to reconstruct, the individual Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction. The Association may impose more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Lot and the standard for returning the Lot to its natural state in the event the Owner decides not to rebuild or reconstruct.

Section 5.3. Disbursement of Proceeds. Proceeds of insurance policies written in the name of the Association shall be disbursed as follows:

(a) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Common Area or, in the event no repair or reconstruction is made, after making such settlement as is necessary and appropriate with the affected Owner or Owners and their mortgagee(s) as their interests may appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of any mortgagee or a Lot and may be enforced by such mortgagee.

(b) If it is determined that the damage or destruction to the Common Area for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner as provided for excess proceeds in Section 5.3(a).

Section 5.4. Damage and Destruction.

(a) Immediately after the damage or destruction by fire or other casualty to all or any part of the Development covered by insurance written in the name of the Association, the Board of Directors, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed portions of the Development. Repair or reconstruction, as used in this paragraph means repairing or restoring the Development to substantially the same condition in which it existed prior to the fire or other casualty.

(b) Any damage or destruction to the Common Area shall be repaired or reconstructed unless the Class B Member and at least seventy-five percent (75%) of the Eligible Votes shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the costs of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available, provided, however, such extension shall not exceed sixty (60) days. No mortgagee shall have the right to participate in the determination of whether the Common Area damage or destruction shall be repaired or reconstructed.

(c) In the event that it should be determined by the Association in the manner described above that the damage or destruction of the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the damaged portion of the Development shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition.

Section 5.5. Repair and Reconstruction. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall use general funds or seek a special assessment as permitted in Section 10.4.

ARTICLE VI

NO PARTITION

Section 6.1. No Partition. Except as is permitted in this Declaration, there shall be no physical partition of the Common Area or any part

thereof, nor shall any person acquiring any interest in the Development or any part thereof seek any such judicial partition until the happening of the conditions set forth in Section 5.3 in the case of damage or destruction, or unless the applicable portions of the Development have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

ARTICLE VII

CONDEMNATION

Section 7.1. Condemnation.

(a) Whenever all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of all Owners) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as Trustee for all Owners, to be disbursed as set forth in Section 7.1(b) hereof.

(b) If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking the Class B Member and seventy-five (75%) per cent of the Eligible Votes shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefor, in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the above provisions in Article V hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine.

ARTICLE VIII

ANNEXATION OF ADDITIONAL PROPERTY

Section 8.1. Annexation without Approval of Owners.

(a) As the owner thereof, or if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right,

privilege, and option, from time to time at any time, to subject to the provisions of this Declaration and the jurisdiction of the Association all or any portion of the real property adjacent to the Development as the same exists from time to time whether in fee simple or leasehold, by filing in the Recorder's Office of Marion County, Indiana, an amendment annexing such property. Such amendment to this Declaration shall not require the vote or approval of any Owners. Any such annexation shall be effective upon the filing for record of such amendment unless otherwise provided therein.

(b) Declarant shall have the unilateral right to transfer to any other person the said right, privilege, and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of said real property to be so annexed and that such transfer is memorialized in a written, recorded instrument.

Section 8.2. Acquisition of Additional Common Area. Declarant may convey to the Association additional real estate, improved or unimproved, which upon conveyance or dedication shall be accepted by the Association and thereafter shall be maintained by the Association as a Common Expense for the benefit of all Owners.

Section 8.3. Amendment. This Article shall not be amended without the written consent of Declarant, so long as the Declarant owns any property described in Exhibit "A" attached hereto.

ARTICLE IX

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 9.1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including furnishings and equipment related thereto, if any), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions of this Declaration and the Bylaws.

Section 9.2. Services. The Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Development, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Development or enforcement of

this Declaration. The Association may, but shall not be required to, arrange as an Association expense with third parties to furnish water, trash collection, sewer service, snow removal, security, lawn and landscaping service and other common services to each Lot.

Section 9.3. Personal Property and Real Property for Common Use. The Association through action of its Board of Directors, may acquire, hold and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests located within the properties described in Exhibit "A" attached hereto or hereafter annexed into the Development and conveyed to it by the Declarant.

Section 9.4. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration, the Articles of Incorporation or the Bylaws, and every other right or privilege reasonably to be implied for the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 9.5. Self-Help. In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon a Lot or any portion of the Common Area to abate or remove, using such force as may be reasonably necessary, any erection, thing or condition which violates this Declaration, the Bylaws, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the Board shall give the violating Owner five (5) days' written notice of its intent to exercise self-help. All costs of self-help, including reasonable attorney's fees and paraprofessional fees actually incurred shall be assessed against the violating Owner and shall be collected as provided for herein for the collection of assessments.

Section 9.6. Right of Entry. The Association shall have the right, in addition to and not in limitation of all the rights it may have, to enter into structures and upon Lots for emergency, security, or safety purposes, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all police officers, firefighters, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after reasonable notice to the Owner or occupant of the Lot.

ARTICLE X

ASSESSMENTS

Section 10.1. Purpose of Assessment. The assessments for Common Expenses provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and

enjoyment of the Owners and occupants of Lots, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors. The word "assessments" as used herein shall mean all assessments referred to herein for Common Expenses, including Special Assessments.

Section 10.2. Creation of Assessments.

(a) There are hereby created assessments for Common Expenses as may be from time to time specifically authorized by the Board of Directors. Assessments for Common Expenses shall be allocated among all Owners within the Association as described in Section 10.3 hereof and shall be for expenses determined by the Board to be for the benefit of the Association as a whole. Each Owner, by acceptance of his or her deed, is deemed to covenant and agree to pay all assessments created or referenced herein. All such assessments, together with interest, not to exceed the maximum legal rate, and all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees and paraprofessional fees actually incurred, and any other amounts provided or permitted by law, shall be a charge on the land and shall be a continuing lieu upon the Lot against which each assessment is made.

(b) Each such assessment, together with interest, costs, and reasonable attorney's fees and paraprofessional fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, except no first mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, monthly, quarterly, semi-annually or annually and acceleration of the annual assessment for delinquents. Unless the Board otherwise provides, all assessments shall be paid annually.

Section 10.3. Computation of Assessment.

(a) It shall be the duty of the Board, at least sixty (60) days before the beginning of the fiscal year and thirty (30) days prior to the meeting at which the budget shall be presented to the Membership, to prepare a budget covering the estimated costs of operating the Association during the coming year. The budget shall include a capital contribution establishing a reserve fund in accordance with a capital budget separately prepared and shall list Common Expenses. Each Owner of any Lot in the Development hereby covenants and agrees to pay to the Association its

allocated share (the "Allocated Share") of the annual assessments for Common Expenses for the Development, as fixed, established and determined from time to time as herein provided. The Allocated Share of each Owner in the Development shall be determined by the Declarant and shall be based upon a combination of the following factors: (i) the projected number of Lots in the Development; (ii) the actual or projected purchase price and/or value of each Lot and any residence thereon; (iii) the square footage of each Lot; (v) the number of Lots owned by Owners other than the Declarant; and (vi) any other factor which the Declarant may determine, from time to time, is in the best interest of Declarant and the Development. The method by which the Declarant allocates the Common Expenses among Owners may be changed from time to time prior to the Control Transfer Date as changes occur in the six (6) factors set forth above. The method of computing each Owner's Allocated Share that is used by the Declarant on the Control Transfer Date shall be the method used by the Board subsequent to the Control Transfer Date unless a change in method is approved by two-thirds (2/3) of all Eligible Votes. The Board shall cause a copy of the budget, the amount of the assessments to be levied against each Lot for the following year and a description of the method used in determining the assessments to be delivered to each Owner at least fifteen (15) days prior to the meeting. Each segment of the budget including, without limitation, the assessments for Common Expenses shall become effective unless disapproved at the meeting by a vote of at least two-thirds (2/3) of a Quorum of the Members.

(b) Notwithstanding the foregoing, however, in the event that (i) the proposed budget or the assessments for Common Expenses are disapproved in accordance with Section 10.3(a), or (ii) the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget (or such portion thereof or assessments as shall have been disapproved in accordance with the foregoing) shall have been determined as provided herein, the budget (or applicable portion thereof or assessments) in effect for the then current year shall continue for the succeeding year.

(c) In the event that the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for assessments for the following fiscal year, except that so long as the Declarant controls the Association, and subject to Declarant's rights to impose Special Assessments as described in Section 4.1(c) hereof, Declarant may, but shall be under no obligation, to fund such deficit; provided, however, that Declarant shall be reimbursed by the Association for any deficits so funded, together with interest at ten percent (10%) per annum until so reimbursed, from available surpluses in later years or

through Special Assessments. Thereafter, such deficit may be recouped either by inclusion in the budget for annual assessments or by the making of one or more Special Assessments for such purpose, at the option of the Association. In the event that the amounts budgeted and assessed for Common Expenses in any fiscal year exceed the amount actually expended by the Association for Common Expenses for that fiscal year, an allocable share of such excess (based on the amounts originally levied as assessments) shall be a credit against the assessments due from each Owner for the next fiscal year(s); provided, that Declarant shall first be reimbursed for deficits previously paid, with interest, as required above before such excess shall be so credited to Owners.

(d) During the first year following the date of recordation of this Declaration, the total assessments per Lot per year for Common Expenses shall not exceed \$_____.

Section 10.4. Special Assessments. In addition to the other assessments authorized herein, the Association may levy Special Assessments in any year. So long as the total amount of Special Assessments allocable to each Lot does not exceed \$_____ in any one fiscal year, the Board may impose the Special Assessment. Any Special Assessment which would cause the amount of Special Assessments allocable to any Lot to exceed this limitation shall be effective only if approved by two-thirds (2/3) of a Quorum of the Members. Special Assessments shall be paid as determined by the Board, and the Board may permit Special Assessments to be paid in installments extending beyond the fiscal year in which the Special Assessment is imposed. The dollar and percentage limitations contained in this Section 10.4 shall not apply to assessments levied pursuant to Section 4.1(c) hereof, and the total of Special Assessments hereunder shall be calculated without inclusion of any assessments levied pursuant to Section 4.1(c) hereof.

Section 10.5. Lien for Assessments.

(a) All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs, and reasonable attorney's fees and paraprofessional fees actually incurred, as provided herein, shall be secured by a lien on such Lot in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (i) liens of ad valorem taxes; or (ii) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the land records of Marion County, Indiana, and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument.

(b) All other persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded in such records shall be

deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

Section 10.6. Effect of Nonpayment of Assessments: Remedies of the Association.

(a) Any assessments which are not paid when due shall be delinquent. Any assessment delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine. The Association shall cause a notice of delinquency to be given to any Member who has not paid within ten (10) days following the due date. If the assessment is not paid within thirty (30) days, a lien, as herein provided, shall attach and, in addition, the lien shall include the late charge, interest, not to exceed the maximum legal rate, on the principal amount due, and all late charges from the date first due and payable, all costs of collection, reasonable attorneys' fees and paraprofessional fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after sixty (60) days, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the Lot. No Owner may waive or otherwise except liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot.

(b) All payments shall be applied first to costs and attorney and paraprofessional fees, then to the late charges, then to interest, then to delinquent assessments, then to any unpaid installments of the annual assessment or special assessments which are not the subject matter of suit in order of their coming due, and then to any unpaid installments of the annual assessment or special assessments which are the subject matter of suit in the order of their coming due.

Section 10.7. Capital Budget and Contribution. The Board of Directors shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost for the Common Area. The Board shall

set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association as shown on the capital budget, with respect to both amount and timing by annual assessments over the period of the budget. The capital contribution required shall be fixed by the Board and included within the budget and assessment for Common Expenses as provided in Section 10.3. A copy of the capital budget shall be distributed to each Member in the same manner as the operating budget.

Section 10.8. Subordination of the Lien to First Deeds of Trust and First Mortgages. The lien of the assessments, including interest, late charges, costs (including attorneys' fees and paraprofessional fees) provided for herein, shall be subordinate to the lien of any first Mortgage upon the Lot. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer (subject to the right of the Association to payment out of available foreclosure sale proceeds). No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. Where the mortgagee of a first Mortgage of record or other purchaser of a Lot obtains title, his or her successors and assigns shall not be liable for the share of the Common Expenses by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Such unpaid share of Common Expenses shall be deemed to be Common Expenses collectible from all the Lots, including such acquirer, his or her successors and assigns.

Section 10.9. Capitalization of Association. Upon acquisition of record title to a Lot from Declarant, each Owner shall contribute to the capital of the Association an amount equal to fifty percent (50%) of the amount of the annual general assessment for Common Expenses. All such amounts shall be set aside as capital replacement/working capital reserve, and shall not be utilized by Declarant or the Association until after the Control Transfer Date.

Section 10.10. Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to a particular Lot on the first day of the month following the conveyance of such Lot by the Declarant to an Owner (who is not a commercial builder), or by an Owner who is a commercial builder to an Owner who is an end-user and shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual assessment shall be adjusted according to the number of months then remaining in that fiscal year. The date any Lot becomes subject to assessment hereunder shall be the date on which such Lot is transferred by Declarant to an Owner, provided, however, that Declarant may, in its sole and absolute discretion delay the starting date for assessments for as long as Declarant shall deem appropriate in its sole and absolute discretion but assessments shall in all events be payable commencing on the first day of the

first month following the date the Lot is occupied for the residential purposes or is suitable for such occupancy as evidenced, for example, by the appropriate official of Marion County, Indiana, or an architect issuing a certificate of occupancy or its equivalent stating that the residential structure on such Lot is substantially complete and available for occupancy.

Section 10.11. Assessments by Declarant.

(a) Declarant covenants and agrees to pay the full amount of the annual assessment for each Lot occupied for residential purposes that it owns; however, notwithstanding anything contained herein to the contrary, Declarant shall not be required to pay assessments for any Lots not occupied for residential purposes that it owns including but not limited to model homes.

(b) Notwithstanding anything to the contrary herein, Declarant may contribute assessments due from it in services or materials or a combination of services and materials, rather than in money (herein collectively called in-kind contribution). The amount by which monetary assessments shall be decreased as a result of any in-kind contribution shall be the fair market value of the contribution. If Declarant and the Association agree as to the value of any contribution, the value shall be as agreed. If the Association and Declarant cannot agree as to the value of any contribution, Declarant shall supply the Association with a detailed explanation of the service performed and material furnished, and the Association shall acquire bids for performing like services and furnishing like materials from three (3) independent contractors approved by Declarant who are in the business of providing such services and materials. If the Association and Declarant are still unable to agree on the value of the contribution, the value shall be deemed to be the average of the bids received from the independent contractors.

ARTICLE XI

ARCHITECTURAL STANDARDS

Section 11.1. Architectural Standards Jurisdiction. The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the Development Control Committee established herein. The DCC shall have the right to unilaterally promulgate, modify, and amend at any time and from time to time, on behalf of the Board of Directors and the Association, architectural, development and site planning guidelines and standards which shall be binding on all Owners of Lots within the Development, as determined in the reasonable discretion of the DCC. Such guidelines and standards will include requirements and restrictions regarding drainage, landscaping, tree removal, sidewalks, etc.,

as well as the construction of improvements. Such guidelines and standards and amendments thereto may be recorded in the Office of the Recorder of Marion County, Indiana, by the Declarant until the Control Transfer Date and subsequent thereto by the Association. Compliance with these guidelines and standards shall not relieve Owners of their obligation to comply with any and all applicable zoning ordinances, restrictions, development statements, commitment statements or any other similar requirement.

No construction, which term shall include within its definition staking, clearing, excavation, grading, and other site work, and no planting or removal of plants, trees, or shrubs, fences, walls or other structures shall take place except in strict compliance with this Article, until the requirements thereof have been fully met, and until the approval of the DCC has been obtained.

Section 11.2. Construction Standards. The DCC shall have exclusive jurisdiction over all original construction on any portion of the Development. The DCC shall prepare and, on behalf of the Board of Directors, shall promulgate design guidelines and application procedures. The design guidelines shall require that the vertical front exterior wall of all single-family detached houses shall be composed of at least fifty percent clay, brick, or stone, excluding doors, windows and gables in such computation (“Vertical Front Exterior Standards”). All lots which are corner lots will be treated as though it has two front elevations or front exteriors. Additionally, the rear elevations of any home constructed on the Lots along Cumberland Road shall include window shutters unless said rear elevation is constructed of clay, brick or stone (“Cumberland Standards”). The standards and procedures shall be those of the Association, and the DCC shall have sole and full authority to prepare and to amend the standards and procedures with the exception of the Vertical Front Exterior Standards and Cumberland Standards. It shall make the design guidelines available to Owners, builders, and developers who seek to engage in development of or construction upon all or any portion of the Development and all owners, builders and developers shall conduct their operations strictly in accordance therewith. Until all the real estate included in the Development has been conveyed by Declarant to purchasers in the normal course of development and sale, the Declarant retains the right to appoint all members of the DCC, which shall consist of at least three (3), but no more than five (5), persons. There shall be no surrender of this right prior to that time, except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board of Directors shall appoint the members of the DCC.

Section 11.3. Modifications. The DCC shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing Lots or structures thereon and the open space, if any, appurtenant thereto; provided, however, the DCC may delegate this authority to the appropriate board or committee of any residential association subsequently created or subsequently subjected to this Declaration so long as the DCC has determined

that such board or committee has in force review and enforcement practices, procedures and appropriate standards at least equal to those of the DCC. Such delegation may be revoked and jurisdiction reassumed at any time by written notice. No permission or approval shall be required to repaint in accordance with an originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his or her residence, or to paint the interior of his or her residence any color desired.

Section 11.4. Procedures for Approval. As to Builders, each such Builder shall submit two (2) complete sets of plans and specifications (meeting the requirements set forth below) for each model of home to be built by Builder in the Development to the DCC for approval. Once a model has been approved, approval is not necessary for any home that is built in compliance with the plans and specifications for such model. For any other construction, approvals required by this Article shall be obtained only after written application has been made to the DCC by the Owner of the Lot requesting authorization (or such Owner's duly authorized representative). Such written application shall be in the manner and form prescribed from time to time by the DCC and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction, improvement or modification. Such plans shall include plot plans showing the location of all improvement existing upon the Lot and the location of the improvements proposed to be constructed or placed upon the Lot, each properly and clearly designated, if applicable. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which the DCC may require. All plans and drawings required to be submitted to the DCC shall be drawn to such scale as the DCC may require. There shall also be submitted, where applicable, the permits or plat plans which shall be prepared by either a registered land surveyor, engineer or architect. Plat plans submitted for improvement location permit shall bear the stamp or signature of the DCC acknowledging the approval thereof.

Section 11.5. Power of Disapproval. The DCC may refuse to grant approvals required under this Article when:

(a) the plans, specifications, drawings or other materials submitted are themselves inadequate or incomplete, or show the proposed improvements to be in violation of these restrictions, including but not limited to violation of the Vertical Front Exterior Standards or the Cumberland Standards;

(b) the design or color scheme of a proposed repainting, modification or improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures, all as determined in the sole discretion of the DCC; or

(c) the proposed improvement, construction or modification, or any part thereof, would be contrary to the interests, welfare or rights of all or any part of the other Owners, all as determined in the sole discretion and opinion of the DCC.

Section 11.6. Liability of Committee. Neither the DCC nor any agent thereof, nor Declarant, shall be responsible in any way for any defects in any plans, specifications or other material submitted to it, nor for any defects in any work done according thereto, nor for any damages associated with their approval or disapproval of any matters subject to this Article.

Section 11.7. Inspection. The DCC or its duly authorized agents may inspect work being performed with their permission to assure compliance herewith, and any applicable regulations of the Association, and an easement for such inspection is hereby reserved over and upon each and every Lot in the Development.

Section 11.8. Declarant Improvements. The DCC shall have no powers with respect to any construction, improvements or modifications undertaken by the Declarant (or any assignee of Declarant if the Declarant has approved the plans therefor) or any improvements approved by the Declarant at any time.

Section 11.9. Remedies for Failure to Obtain Approval. In the event any construction or modifications are made without first obtaining approval of the DCC as required herein or any construction is being performed other than in accordance with the DCC approved plans architectural guidelines and standards, the Declarant, the Association and the DCC shall have the powers of enforcement granted to the Association generally for purposes of this Declaration and may require any modifications, construction, changes or improvements undertaken or installed without or contrary to the approval of the DCC and such architectural guidelines and standards to be removed or renovated by whatever means the Declarant, the Association and/or DCC deem appropriate, with the costs thereof, including costs of collection and attorneys' fees and paraprofessional fees, to become a lien against the defaulting Owner's Lot in the manner described in Section 10.5 hereof.

ARTICLE XII

MORTGAGEE RIGHTS

Section 12.1. 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 owner, insurer, or guarantor and the Lot number) (therefore becoming an Eligible Mortgage Holder), will, upon payment of the reasonable expense of the Association associated therewith, be entitled to timely written notice of:

- (a) any proposed termination of the Association;
- (b) condemnation, damage or destruction to the Development or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder;
- (c) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such Eligible Mortgage Holder where such delinquency has continued for a period for sixty (60) days;
- (d) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or
- (e) any proposed action which would require the consent of Eligible Mortgage Holders.

ARTICLE XIII

GENERAL PROVISIONS

Section 13.1. Duration. The provisions of this Declaration shall run with and bind the land and shall be and remain in effect perpetually in the extent permitted by law; provided, however, so long as Indiana law limits the period during which covenants restricting lands to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, and such provisions may be renewed or extended, in whole or in part, beyond the initial period permitted by such law, for successive periods not to exceed the period permitted by such law, provided such renewal or extension is approved by at least two-thirds (2/3) of all Eligible Votes. Further, no such renewal or extension shall be effective unless there is filed for record in the Office of the Recorder of Marion County, Indiana, on or before the effective date thereof an instrument executed by the President and Secretary of the Association which shall state the terms of such renewal or extension and which shall contain a certification by such Secretary that such extension and renewal was duly approved by the Owners. Every purchaser or grantee of any interest in any real property subject to this Declaration, by acceptance of a deed or other conveyance

therefor, thereby agrees that such provisions of this Declaration may be extended and renewed as provided in this Section.

Section 13.2. Amendment.

(a) This Declaration may be amended unilaterally at any time and from time to time by Declarant (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable government statute, rule, or regulation or judicial determination which shall be in conflict therewith, (ii) if such amendment is reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (iii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal Housing Administration, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to this Declaration; or (iv) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's Lot unless any such Owner shall consent thereto in writing. Further, so long as Declarant owns any property in the Development or capable of being annexed thereto, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect, in the sole opinion of Declarant, the substantive rights of any Owner or mortgagee hereunder.

(b) In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least two-thirds (2/3) of the Eligible Votes and the consent of the Declarant, so long as Declarant has an unexpired option to subject property to this Declaration. Amendments to this Declaration shall become effective upon recordation in the Marion County, Indiana records, unless a later effective date is specified therein.

(c) Declarant hereby reserves the right to make such amendments to this Declaration as may be deemed necessary or appropriate by Declarant without the approval of any other person or entity, in order to bring this Declaration into compliance with the requirements of any public agency having jurisdiction thereof or of any agency guaranteeing, insuring, or approving Mortgages, so long as Declarant owns any Lots within the Development or to enable

reasonable development of and construction on the Lots; provided, that Declarant shall not be entitled to make any amendment which has a materially adverse effect on the rights of any mortgagee, nor which substantially impairs in the reasonable opinion of the Declarant, the benefits of this Declaration to any Owner or substantially increases the obligations imposed by this Declaration on any Owner. Declarant further reserves the right to make such amendments to this Declaration as may be deemed necessary or appropriate by Declarant without the approval of any other person or entity, which amendment shall be fully effective in accordance with its terms:

(i) to cure any ambiguity, supply any omission, or cure or correct any defect or inconsistent provision in this Declaration; or

(ii) to insert such provisions clarifying matters or questions arising under this Declaration as are necessary or desirable and are not contrary to or inconsistent with this Declaration as theretofore in effect; or

(iii) to amend or modify this Declaration in any manner which in the reasonable opinion of the Declarant does not adversely affect in any material respect the rights of any mortgagee or Owner, nor which substantially impairs the benefits of this Declaration to any Owner or substantially increases the obligations imposed by this Declaration on any Owner.

Section 13.3. Indemnification. The Association shall indemnify every officer and director against any and all expenses, including attorney's fees and paraprofessional fees, reasonably incurred by or imposed upon any officer or director 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 he or she may be a party by reason of being or having been an officer or director. The officers and directors 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 by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any

other rights to which any officer or director, or former officer or director, may be entitled. The Association may, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 13.4. Easements for Utilities. There is hereby reserved to the Association blanket easements upon, across, above, and under all property within the Development for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Development or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone, cable television, and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, or security system which the Association might decide to have installed to serve the Development. It shall be expressly permissible for the Association or its designee, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, cables, and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Board shall have the right to grant such easement.

Section 13.5. Construction and Sale. Notwithstanding any provisions contained in Declaration to the contrary, so long as Declarant owns any Lots, it shall be expressly permissible for Declarant, free of any and all charges therefor, to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such residences, including, but not limited to, business offices, signs, model units, and sales offices, and the Declarant shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use residences owned by the Declarant as models and sales offices. This Section may not be amended without the express written consent of the Declarant; provided, however, the rights contained in the Section 13.5 shall terminate upon the earlier of (a) twenty-five (25) years from the date this Declaration is recorded or (b) upon the Declarant's recording a written statement that all sales activity has ceased.

Section 13.6. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

Section 13.7. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this

Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable. If any of the provisions hereof shall be held to be invalid or to be unenforceable or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or “running” quality of any other one of the provisions hereof.

Section 13.8. Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

Section 13.9. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now-living descendants of Elizabeth, Queen of England.

ARTICLE XIV

ENFORCEMENT

Section 14.1. In General. Any party to whose benefit the restrictions herein contained inure, including Declarant and the Association, may proceed at law or in equity to prevent the occurrence or continuation of any violation of this Declaration at the sole cost and expense of the party violating this Declaration (which cost and expense shall become a lien on the violating Owner’s Lot subject to foreclosure in the manner provided in Article X), but neither Declarant nor Association shall be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any provision of this Declaration.

Section 14.2. Government Enforcement. The Metropolitan Development Commission of Marion County, Indiana, its successors and assigns, shall have no right, power, or authority, to enforce any covenants, commitments, restrictions, or other limitations contained herein other than those covenants, commitments, restrictions, or limitations that expressly run in favor the Metropolitan Development Commission of Marion County, Indiana.

Section 14.3. Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of the provisions of this Declaration shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, recurrence, or continuation of such violation or violations of this Declaration.

ARTICLE XV

PRIVATE AMENITIES AND SERVICES

Section 15.1. Private Amenities and Services. The Drainage System, Streets, and other elements comprising the Common Area shall be owned and maintained by the Association so long as this Declaration remains in force. In the event of any termination of this Declaration and/or liquidation, dissolution or winding up of the affairs of the Association, the Association shall, after paying or making provision for the payment of all the liabilities of the Association, distribute all the assets of the Association exclusively for the purposes of the Association in such manner, or to such organization or organizations as the Board of Directors shall determine. Any such assets not so disposed of shall be disposed by the Judge of the Circuit Court of Marion County, Indiana, exclusively for such purposes or to such organization or organizations, as such Court shall determine, which are organized and operated exclusively for such purpose.

ARTICLE XVI

LIMITATION ON DECLARANT'S LIABILITY

Section 16.1. Limitation on Declarant's Liability. Notwithstanding anything to the contrary herein, it is expressly agreed, and each Owner, by accepting title to a Lot and becoming an Owner acknowledges and agrees that neither Declarant (including without limitation any assignee of the interest of Declarant hereunder) nor any director, officer or shareholder of Declarant (or any partner, officer, director or shareholder in any such assignee) shall have any personal liability to the Association, or any Owner, Member or other Person, arising under, in connection with, or resulting from (including without limitation resulting from action or failure to act with respect to) this Declaration or the Association. In any judgment is ever levied against Declarant (or its assignee), the same is hereby agreed to be limited to the extent of Declarant's (or such assignee's) interest in the Development; and, in the event of a judgment no execution or other action shall be sought or

brought hereon against any other assets, nor be a lien upon any other assets of Declarant (or its assignee).

ARTICLE XVII

ADDITIONAL EASEMENTS AND RESTRICTIONS

Section 17.1. Easements. Lots are subject to perpetual non-exclusive drainage easements and utility easements, either separately or in combination, as shown on the Plats and Plans, which are reserved for the use of the Declarant, Association, Lot Owners, public utility companies and governmental agencies as follows and which are all subject to such rules and regulations as the Board may promulgate:

(a) Drainage Easements (D.E. or S.E.) – Are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, including stormwater retention or detention areas, to serve the needs of the Development and adjoining ground and/or public drainage systems; and it shall be the individual responsibility of the Owner to maintain the drainage across his own Lot. Under no circumstances shall said easement be blocked in any manner. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage or by Declarant. No permanent structures shall be constructed within any such easement areas except as may be approved by Declarant.

(b) Utility Easements (U.E.) – Are created (i) for the use of the local governmental agency having jurisdiction over the sanitary waste disposal system of said city and/or county designated to serve the Development for the purposes of installation and maintenance of sewers that are part of said system, and (ii) for the use of public utility companies, not including transportation companies, for the installation of pipes, mains, ducts, communication lines (which shall include cable T.V.), and such other further public services the Declarant may deem necessary. Each Owner of a Lot must connect with any public sanitary sewer available. No permanent structures shall be constructed within any such easement areas except as may be approved by Declarant.

(c) Surface Drainage, Drainage and Utility Easements (S, D & U Easement) – Are created for the purposes stated in Subsections 17.1(a) and (b), and are a combination of the easements described in Subsections 17.1(a) and (b).

(d) Other Easements – Are created to the extent and for the purposes specified in any Supplemental Declaration in which any such easements are set forth.

Section 17.2. Common Areas. Those areas designated as “Common Area” on any Plats and Plans are hereby declared to be Common Area. The Common Area is hereby reserved for the use of the Declarant during the development period, for the use of the Association after the development period, and for the use and enjoyment of all the Owners subject to the limitations contained herein, and further subject to the right of the Association to promulgate reasonable rules and regulations governing such use and enjoyment. Each Owner shall be responsible for mowing and maintaining any Common Area located directly between his Lot line and any lake unless and until the Association shall have elected to take over such maintenance. There shall be absolutely no swimming or boating in any lakes, nor any other use of any such lakes, except as may be permitted by the Declaration. The Owners of Lots in the Development shall take and hold title to the Lots subject to the rights herein granted with respect to the Common Area.

Section 17.3. Lot Access. All Lots within the Development shall be accessed from the interior Streets of the Development.

Section 17.4. Construction Procedure. During construction, reasonable care shall be taken by the builders of the Lots therein to protect all public and private streets from decomposition due to construction. During construction, sites shall be kept as clean as possible to avoid blowing trash and to prevent mud from coming onto other portions of the Development or adjoining properties. Builders shall keep streets reasonably clean and free from dirt/mud and debris during construction periods and neither the Declarant nor the Association shall have responsibility or liability for the streets during construction.

Section 17.5. Streets. The Streets as shown on the Plats and Plans shall be dedicated to the public by specific notation on the Plat or by separate instrument.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration as of the date first above-written.

BROOK WOOD PARTNERS, LLC, an Indiana
limited liability company

By: Woods Bay Development Co., LLC, its
Managing Member

By: _____
Jon M. Sieber, Managing Member

STATE OF INDIANA)
) SS:
COUNTY OF Marion)

Before me, a Notary Public in and for said County and State, personally appeared Jon M. Sieber, the Manager Member of Woods Bay Development Co., LLC, an Indiana limited liability company, the Managing Member of Brookwood Partners, LLC, an Indiana limited liability company, and acknowledged the execution of the foregoing Declaration of Covenants, Conditions, Easements, and Restrictions of Brook Wood Crossing.

WITNESS my hand and Notarial Seal this 22 day of August, 2002.

Notary Public (Signature)

Sara B. Beck
(Printed Name)

My Commission Expires: County of Residence:
May 13, 2008 Marion

This instrument was prepared by Tim E. Ochs, Esq., ICE MILLER, One American Square, Box 82001, Indianapolis, IN 46282; Telephone (317) 236-2100.

EXHIBIT A

Legal Description

The south half of the north half of the west half of the Northeast Quarter of Section 34, Township 16 North, Range 5 East; and the north half of the south half of the west half of the Northeast Quarter of Section 34, Township 16 North, Range 5 East; all in Marion County, Indiana, more particularly described as follows:

Beginning at the northeast corner of the south half of the north half of the west half of the said quarter section; thence South 0 degrees 12 minutes 23 seconds West along the east line of said west half-quarter section 1,334.68 feet to the southeast corner of the north half of the south half of the west half of said quarter section; thence North 39 degrees 33 minutes 04 seconds West along the south line of said north half-half-quarter section 1,323.10 feet to the southwest corner of said half-half-quarter section; thence North 0 degrees 18 minutes 47 seconds East along the west line of said quarter section 1,336.62 feet to the northwest corner of the south half of the north half of the west half of the said quarter section; thence South 89 degrees 27 minutes 59 seconds East along the north line of said south half-half-quarter section 1,320.62 feet to the point of beginning, and containing 40.531 acres, more or less.

Subject to all rights-of-way, easements, and restrictions of record.