

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
THE PRESERVE AT BROOKSIDE**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE PRESERVE AT BROOKSIDE** is made this 27<sup>th</sup> day of July, 2023 by Bridgenorth Homes, LLC (the "Declarant").

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of certain property, located in Town of McCordsville, Hancock County, Indiana, which is more particularly described in what is attached hereto and incorporated herein by reference as "Exhibit A" (the "Property"); and

**WHEREAS**, Declarant desires to subdivide and develop the Property and in connection therewith, to impose certain covenants, conditions and restrictions on the Property.

**NOW, THEREFORE**, the Declarant hereby declares that all of the Lots (defined below) in the Property, as they are held and shall be held, conveyed, hypothecated, or encumbered, leased, rented, used, occupied, and improved, are subject to the following covenants, conditions, and restrictions, all of which are declared to be in furtherance of a plan of the improvement and sale of the Property and each Lot situated therein, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property as a whole and each of the Lots situated therein. This Declaration shall run with the Property and shall be binding upon and inure to the benefit of the Declarant and upon all parties having or acquiring any interest in the Property or any part or parts thereof.

**ARTICLE I  
DEFINITIONS**

The following are the definitions of the terms as they are used in this Declaration:

Section 1.1 "Applicable Laws" means all federal, state, and local laws, statutes, regulations, and ordinances that are applicable to the Property.

Section 1.2 "Architectural Control Committee" shall mean the Architectural Control Committee, as more fully described in Article VI of this Declaration.

Section 1.3 "Association" shall mean *The Preserve at Brookside Homeowners Association, Inc.*, a not-for-profit corporation, the membership, and power of which are more fully described in Article VIII of this Declaration.

Section 1.4 "Attached Dwelling Unit" shall mean and refer to a Dwelling Unit that is attached by a Party Wall to one or more other Dwelling Units, and includes Duplex Units and Quad Units.

Section 1.5 "Board" or "Board of Directors" shall mean the Board of Directors of The Preserve at Brookside Homeowners Association, Inc.

Section 1.6 "Builder" means a person or entity (i) regularly engaged in the business of constructing single-family residences for sale and responsible for the original construction of a residence on a Lot and (ii) deemed by the Declarant, in its sole discretion, to be a Builder.

Section 1.7 "Common Area" shall mean those areas (i) designated on current or future Plats as a "Common Area", "C.A." and (ii) any other areas designated by the Declarant for the common use and enjoyment of the residents of the Property.

Section 1.8 "Declarant" shall mean Bridgenorth Homes, LLC, and any successors and assigns of it that it designates in one or more written recorded instruments to have the rights of Declarant under the Declaration.

Section 1.9 "Declaration" shall mean this Declaration, as from time to time amended.

Section 1.10 "Development Period" means the period of time commencing with Declarant's acquisition of the Property and ending on the termination of the Class B Membership in the manner set forth in Section 8.3(B) below.

Section 1.11 "Duplex Building" shall mean and refer to a residential building or structure containing two (2) attached Duplex Units, each of which has accommodations for one single family.

Section 1.12 "Duplex Lot" shall mean and refer to any Lot located in the Property and created by and shown on a Plat upon which a Duplex Unit is intended to be constructed in accordance with applicable zoning ordinances.

Section 1.13 "Duplex Lot Line" shall mean and refer to the Lot line, created by and shown on a Plat for the Property, that divides a Duplex Building into two Duplex Units.

Section 1.14 "Duplex Unit" shall mean and refer to an Attached Dwelling Unit that is attached to only one other Attached Dwelling Unit and separated from such other Attached Dwelling Unit by a single Party Wall.

Section 1.15 "Dwelling Unit" shall mean and refer to any improvement to the Property intended for any type of independent ownership for use and occupancy as a residence by a single household and shall, unless otherwise specified, include within its meaning (by way of illustration but not limitation) Attached Dwelling Units (including, without limitation, Duplex Units and Quad Units), together with all appurtenances thereto, including private garage and recreational facilities usual and incidental to the use of a single-family residential lot.

Section 1.16 "Limited Areas" shall mean those areas designated as "Limited Area" or "L.A." on current or future plats, and may be used exclusively by the Owner of the adjoining Lot for patio, privacy fences, or other uses approved by the Architectural Control Committee. All uses must be approved by the Architectural Control Committee. Limited Areas may not be used for parking.

Section 1.17 "Limited Driveway Area" shall mean those driveway areas designated on current or future plats as "Limited Driveway Area" or "L.D.A.". The Limited Driveway Area is not part of the platted Lots. Limited Driveway Area may be used by each adjoining owners, and shall be maintained by the Association.

Section 1.18 "Limited Street Areas" shall mean those areas designated as "Limited Street Areas" or "L.S.A." on current or future plats, and may only be used by adjoining Owners and their invitees.

Section 1.19 "Lot" shall mean any home site, for the construction of a Dwelling Unit, identified on a Plat that is recorded in the Office of the Recorder of Hancock County, Indiana.

Section 1.20 "Owner" shall mean the record owner, whether one or more persons, or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but otherwise excluding those having such interest merely as security for the performance of an obligation. Unless specifically indicated to the contrary, the term "Owner" shall include the Declarant.

Section 1.21 "Party Wall" shall mean and refer to the common wall that separates one Attached Dwelling Unit from another Attached Dwelling Unit.

Section 1.22 "Person" shall mean an individual, firm, corporation, partnership, association, trust or other legal entity or any combination thereof.

Section 1.23 "Plat" shall mean the subdivision plats of the Property which are recorded with the Recorder of Hancock County, Indiana.

Section 1.24 "PUD Ordinance" shall mean Ordinance No. 030921B, an amendment to the Villages at Brookside PD-M Ordinance No. 030910 adopted by the Common Council of the Town of McCordsville, Indiana on March 9, 2020, as amended. The Property is subject to the terms and conditions of the PUD Ordinance. In the event of any conflict between the PUD Ordinance and this Declaration, this Declaration shall control.

Section 1.25 "Quad Building" shall mean and refer to a residential building or structure containing four (4) attached Dwelling Units, each of which has accommodations for one single family.

Section 1.26 "Quad Lot" shall mean and refer to any Lot located in the Property and created by and shown on a Plat upon which a Quad Unit is intended to be constructed in accordance with applicable zoning ordinances.

Section 1.27 "Quad Lot Line" shall mean and refer to the Lot lines, created by and shown on a Plat for the Property, that divide a Quad Building into four Quad Units.

Section 1.28 "Quad Unit" shall mean and refer to an Attached Dwelling Unit that occupies a Quad Building with three other Attached Dwelling Units.

Section 1.29 "Special Use" shall mean any use defined or identified in any applicable zoning ordinance as a "Special Use".

## **ARTICLE II**

### **CHARACTER OF THE DEVELOPMENT**

Section 2.1 In General. Lots may be used only for residential purposes. All Property located within a Plat that has not been designated by numbering shall be used in a manner determined by the Declarant. Lots may be used only for residential purposes and only one Dwelling Unit may be constructed on a numbered Lot.

Section 2.2 Other Restrictions. All Property shall be subject to the easements, restrictions, and limitations of record and rights-of-way, and also to all Applicable Laws.

**ARTICLE III**  
**EASEMENTS**

Section 3.1 Designated Easements. The following are easements designated or to be designated, in the Declarant's sole discretion, upon a Plat:

(A) Designated Drainage, Utility, and Sewer Easements. There are strips of ground designated on the Plat as drainage easements, utility easements, sewer easements, sanitary sewer easements or storm sewer easements, or any combination thereof, which are hereby reserved to the appropriate governmental entities, public utilities, and private utilities for the installation and maintenance of swales, ditches, pipes, drains, electric lines, water lines, gas lines, telephone lines, fiber optic cable, high speed internet lines, sanitary sewers, manholes, detention and retention areas or other drainage facilities. Said easements, including water lines, may be located in areas designated as LA, LSA, LDA, and CA. Purchasers of Lots shall take title subject to such easements hereby created and subject at all times to the rights of proper authorities to service and maintain such drainage facilities and easements, and no permanent structure of any kind and no part thereof, except fences which do not retard or impede the flow of drainage water and which are approved by any entity to which the easement is dedicated, shall be built, erected or maintained on said drainage easements, except by the Declarant or its assigns. It shall be the responsibility of the Association and the Owners of the areas enclosed within such drainage easements to maintain such areas in such conditions that the flow of storm drainage waters on, across and from said areas shall not be impeded, diverted or accelerated. Such use for storm water movement or retention or detention is hereby declared to be an easement and servitude upon said land for the benefit of the Owners of other land included within the Plat, upstream or downstream, affected by such use and for any proper governmental agency or department or any private or public utility. All proper governmental agencies or departments and public and private utilities are hereby given the right to obtain access to such areas to perform maintenance and to perform such maintenance as may be necessary to protect that easement and servitude rights. It shall be the responsibility of the Association and the Owner of any Lot or parcel of land within the Plat to comply at all times with the provisions of the drainage plan as approved for the Plat by the appropriate governmental agency or department and the requirements of all drainage permits for such Plat issued by those agencies. Failure to so comply shall operate as a waiver and release of the Declarant, the developer, or their engineers and agents from all liability as to damage caused by storm waters or storm drainage. Further, there are hereby created easements and servitudes upon the land within the Plat in favor of surface water runoff along natural valleys and drainage channels running to Owners of other land contained within the Plat, upstream and downstream. It shall be the responsibility of the Association and the Owners of these natural valleys and channels to use their land and maintain said natural valleys and channels

in such manner and condition that the flow of storm drainage waters on, across, from and to such areas shall not be impeded, diverted or accelerated.

(B) Designated Mounding, Landscaping, and Screening and Sign Easements. Any strips of grounds shown or designated on the Plat for landscaping including, but not limited to, landscape easements, landscape maintenance easements, or landscape maintenance access easements are hereby reserved unto Declarant, during the Development Period, and, thereafter, unto the Association, for the purposes of (i) providing signs which either advertise the Property and the availability of Lots or identify the Property and (ii) installing landscaping, mounding, fencing, masonry walls, and screening. Declarant reserves unto itself during the Development Period and thereafter unto the Association, the exclusive and sole right to erect signs and install landscaping, mounding, and screening within these strips of ground. Notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences or other improvements shall be erected or maintained in the area of such easements, except by the Declarant during the Development Period, and thereafter by the Association. Furthermore, notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences, structures, or other improvements shall be erected between (i) any landscape easement or landscape maintenance easement and (ii) any perimeter roadway, public highway or right-of-way along the perimeter or boundary of the Property, except by the Declarant during the Development Period and thereafter by the Association.

(C) Easement Work. Notwithstanding any architectural approval under Article VI below, during the course of any maintenance, service, repair or work upon any easement, including Sanitary Sewer Lateral Easements as hereinafter defined, the Declarant, the Association, any private utility, any public utility, and any governmental entity shall have the right and the authority, without any obligation, liability or obligation of replacement, whatsoever to any Owner, to remove, damage, or destroy any fence or other structure or landscaping built, erected, maintained or planted in any easement described in Section 3.1 (A) above.

Section 3.2 General Drainage, Utility, Sewer and other Development Easements. The following rights reserved in this Section shall not be exercised, after the conveyance of any Lot, in a manner that unreasonably restricts the rights of ingress and egress to such Lot. The following rights and easements reserved by Declarant in this Section 3.2 shall run with the land, and Declarant's right to further alter or grant easements shall automatically terminate and pass to the Association upon the expiration of any Development Period.

(A) General Easement. Declarant hereby reserves unto itself during the Development Period, and thereafter unto any public or private utility, a general easement

("General Drainage, Utility and Sewer Easement") for drainage, utility and sewer purposes in, on and over all of the Common Area and any Lot, so as to permit the installation and allow to be maintained all electrical, telephone, water, gas, sanitary and storm sewer, television (including but not limited to cable and/or satellite) transmission facilities, security systems and other utility services (including all necessary lines, pipes, wires, cables, ducts, antennae and other equipment and facilities) to serve any Dwelling Unit. Any General Drainage, Utility and Sewer Easement include all areas of the Property outside any Dwelling Unit. The rights hereunder and easements hereby reserved survive the conveyance, by the Declarant to the Association, of any Common Area. This easement shall be in addition to any easement identified upon a Plat as a drainage, sewer, utility, cable, landscape, sign, transmission, flowage or similar type easement.

Additionally, each Owner shall have an easement in common with all other similarly situated Owners to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities located in any of the other Dwelling Units and serving his Dwelling Unit, with such right being perpetual and appurtenant to the ownership of the Dwelling Unit.

(B) Sign and Facility Easement. Declarant reserves unto itself during the Development Period, and thereafter unto the Association, a general sign and facilities easement ("Sign and Facilities Easement") giving it the right to install, erect, construct and maintain an entryway sign or signs, directional signs, advertising signs advertising and/or identifying the Property or the Lots therein, lighting, walkways, pathways, fences, walls and any other landscaping, architectural and recreational features or facilities considered necessary, appropriate, useful or convenient, anywhere upon the Property (except upon any Lot after the first conveyance thereof). Any such signs and other improvements shall comply with any Applicable Laws and all such signs and other improvements shall be maintained by the Association as a part of its Common Area maintenance obligations.

(C) Additional Authority. Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the full right, title and authority to:

(i) Relocate, alter, or otherwise change the location of any Drainage, Utility and Sewer Easement, and/or Sign and Facilities Easement, or any facility or infrastructure at any time located therein or thereon;

(ii) Grant such further easements, licenses and rights-of-way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress and egress, utility and

similar purposes on or within any portion of the Property, for the benefit of the Property or any portion thereof; and,

(iii) Describe more specifically or change the description of any Drainage, Utility and Sewer Easement, Sign and Facilities Easement and any other easement, license, or right-of-way now or hereafter existing on the Property, by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Recorder of Hancock County, Indiana.

(D) The title of (i) the Declarant or the Association to the Common Area owned during the Development Period and (ii) any Owner of any Lot, shall be subject to the rights and easements reserved herein.

**ARTICLE IV**  
**ADDITIONAL PROVISIONS RESPECTING**  
**SANITARY SEWER UTILITY**

Section 4.1 Easements. Sanitary sewer utility easements allow for the construction, extension, operation, inspection, maintenance, reconstruction, and removal of sanitary sewer facilities and also give utility companies, whether public or private, as well as any governmental authorities, the right of ingress/egress.

Section 4.2 Trees. No trees shall be planted directly over building sewers or laterals. Any landscaping placed within easements or right-of-ways may be removed, damaged, or destroyed by the applicable utilities without any obligation of repair or replacement.

Section 4.3 Sanitary Sewer Lateral Easements (“SSLE”). SSLE shall be designated on current and future plats. SSLE, and the sanitary sewer facilities contained therein, shall be maintained by the Association unless caused by an intentional or negligent act of an Owner or the Owner’s invitee. The Association shall have the right of temporary access across the adjoining Lot and Dwelling Unit for the purpose of performing said maintenance.

Section 4.4 Owner’s Responsibility. All Owners not serviced by gravity sanitary sewer service are responsible for all maintenance, repair and replacement of all grinder/ejector pumps, force mains and gravity laterals from the Dwelling Unit to its connection to the sanitary sewer main.

Section 4.5 Discharge. The discharge of clear water sources, including, but not limited to, foundation drains, sump pumps, and roof drains into the sanitary sewers is prohibited.



Section 4.6 Grade Changes. Grade changes across sanitary sewer facilities must be approved in writing by the applicable utilities, and must comply with Applicable Laws.

## **ARTICLE V**

### **COVENANTS AND RESTRICTIONS**

Section 5.1 Land Use. Lots may be used only for residential purposes and only one Dwelling Unit, not to exceed the maximum height permitted by and measured pursuant to the Applicable Laws, may be constructed thereon.

Section 5.2 Address Identification. The numbers representing the address of each Dwelling Unit will be of a uniform appearance and will be displayed in a uniform location and manner, as determined by the Architectural Control Committee.

Section 5.3 Lighting. All homes will have exterior lights as approved by the Architectural Control Committee. In the Declarant's sole discretion, street lights may be installed by Declarant in the utility easements on Lots, in the Common Areas, and in public rights-of-way. During the Development Period, and in the Declarant's sole discretion, street lights may be operated and maintained by the Association. After the Development Period, the Association shall have the right to remove street lights deemed no longer necessary by the Board of Directors.

Section 5.4 Temporary Structures. No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a dwelling or Dwelling Unit, temporary or permanent, nor may any structure of a temporary character be used as a dwelling or Dwelling Unit. No temporary structure, trailer, or other outbuilding shall be placed or erected on any Lot, except by Declarant or a Builder. Any such temporary structure, trailer, garage, or other outbuilding shall be removed immediately upon completion of the primary Dwelling Unit.

Section 5.5 Driveways. All driveways in the Property shall be concrete in material, unless otherwise approved by the Architectural Control Committee. Shared drives located in Limited Driveway Areas ("L.D.A.") as defined in Section 1.17, shall be similarly constructed. Adjoining Owners must only use these drives for ingress, egress and parking in a manner that does not impair, in any respect, the similar use by the other adjoining Owner.

Section 5.6 Water Systems. Each Owner shall connect to the water main maintained by a private or public water utility to provide water for domestic use on the Lot and shall pay all connection, or other charges lawfully established with respect to connections thereto. Each Owner shall also receive from said private or public water utility a monthly water bill representing the domestic use of water in connection with the Owner's Lot, which shall be in addition to the

Irrigation Bill, and each Owner shall be responsible for and pay all water usage charges incurred in connection with their Lot.

Section 5.7 Drainage. In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of such downstream Lot to permit such drainage to continue, without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, although no specific drainage easement for such flow of water is provided on the Plat. To the extent not maintained by the municipality or local governmental board having jurisdiction, "Drainage Easements" shall exist in drainage swales and shall be maintained by the Owner of the Lot upon which such easements are located such that water from any adjacent Lot shall have adequate drainage along such swale. The elevation of a Lot shall not be changed so as to materially affect the surface elevation or grade of surrounding Lots. Perimeter foundation drains and sump pump drains shall be connected whenever feasible into a subsurface drainage tile. Down spouts and drains shall be designed to disperse runoff for overland flow to street or swale collection systems. Each Owner shall maintain the subsurface drains and tiles located on his Lot and shall be liable for the cost of all repairs thereto or replacements thereof.

Section 5.8 Signs and Other Displays. Except for such signs as Declarant may in its sole discretion display in connection with the identification of development of the Property and the sale of Lots therein, no sign of any kind shall be displayed to the public view of any Lot except that one (1) sign of not more than four (4) square feet may be displayed by an Owner or a Builder at any time for the purpose of advertising a Lot or Dwelling Unit thereon for sale. No Owner of a Dwelling Unit shall cause or permit anything to be hung or displayed on the outside of the windows or patio doors or placed on the outside walls of any Dwelling Unit; and no sign, awning, canopy, shutter or radio or television antenna or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of any Dwelling Unit without the prior written consent of the Association.

Section 5.9 Fencing. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Development, every fence must be approved by the Architectural Control Committee as to style, size, location, height and composition before it may be installed. For the purposes of uniformity, only white vinyl fences with a uniform height of four feet (4') are permitted around patios.

Section 5.10 Nuisances. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood hereby established. Violation of any ordinance governing noise, building or lot maintenance, or any other public nuisance shall be deemed to be a nuisance creating rights in every affected Owner, the Declarant, and/or the Association, as the case may be, to enforce the provisions hereof against the offending Owner. Barking dogs may constitute a nuisance. In the event of

successful enforcement by an Owner, the Declarant, or the Association of the provisions thereof, the offending Owner shall be liable to the prevailing party for attorneys' fees, court costs, and all other costs and expenses of litigation and collection in connection therewith.

Section 5.11 Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers out of public view from the street (either within the garage or behind a Committee-approved fence or screen), except for a period of time not more than 24 hours prior to, and 12 hours after the removal thereof, when it may be placed at the curb of the Lot. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

Section 5.12 Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purpose. The owners of such permitted pets shall confine them to their respective Lots such that they will not be a nuisance. Owners of dogs and cats shall control or confine them so as to avoid barking and/or roaming which will annoy or disturb adjoining Owners. Unless permitted by the Board of Directors, no Owner shall maintain more than two (2) of the same type (dog, cat, bird) of pet nor more than four (4) total pets of any type; provided, however, that fish which are located in indoor aquariums and which pose no risk to the public health shall not be considered pets for the purpose of this restriction. No dangerous or potentially dangerous pets, such as exotic animals (large wild cats, wolves, alligators, snakes which are poisonous or longer than two feet, poisonous spiders, and so on) shall be permitted to exist in a Dwelling Unit or on a Lot.

Section 5.13 Outside Burning. No trash, leaves, or other materials shall be burned upon a Lot.

Section 5.14 Antennae Systems. To the extent not inconsistent with federal law, exterior television and other antennae, including satellite dishes, are prohibited, unless approved in writing by the Architectural Control Committee. The Architectural Control Committee may adopt rules for the installation of such antennae and/or satellite systems, which rules shall require that antennae and satellite dishes be placed as inconspicuously as possible from public view from the street. It is the intent of this provision that the Architectural Control Committee shall be able to strictly regulate exterior antennae and satellite dishes to the fullest extent of the law and should any regulations adopted herein or by the Architectural Control Committee conflict with federal law, such rules as do not conflict with federal law shall remain in full force and effect.

Section 5.15 Exterior Lights. Except on Lots on which there is maintained a sales office or model home by the Declarant or a Builder, no exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Lot.

Section 5.16 Electric Bug Killers. Electric bug killers, "zappers", and other similar devices shall not be installed at a location or locations which result in the operation thereof becoming a nuisance or annoyance to other Owners, and shall be operated only when outside activities require the use thereof and not continuously.

Section 5.17 Awnings. Except on Lots on which there is maintained a sales office or model home by the Declarant or a Builder, or as approved by the Architectural Control Committee, no metal, wood, fabric, fiberglass or similar type material awnings are permitted anywhere on the Property. Patio covers of unlimited size and pergolas may be permitted with the unanimous approval of the Architectural Control Committee.

Section 5.18 Diligence in Construction. Subject to inclement weather, every Dwelling Unit shall be completed within fifteen (15) months after the commencement of the construction thereof. For cause shown, this fifteen (15) month period may be extended by the Architectural Control Committee. 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 after the time of such destruction or damage or, if approval of the applicable casualty insurance is pending, then within three (3) months after such casualty insurance approval.

Section 5.19 Mailboxes. The Declarant shall install the initial mailbox for each Lot which shall be standard as to size, location, post, design, height, material, composition and colors. Mailboxes will be maintained by the Association.

Section 5.20 Clothes Lines. No clotheslines may be erected on any Lot.

Section 5.21 Outbuildings and Dog Houses. Any and all forms of outbuildings, including but not limited to, sheds, storage sheds, dog houses, and play houses, which are not directly connected to the main house on any Lot are prohibited, unless the same are necessary or incident to the Declarant's, Builder's or Association's business or activities upon the Property. All Structures that are connected to the Dwelling Unit must be approved by the Architectural Control Committee, shall share at least one wall with the Dwelling Unit, and have visual and construction quality that matches or compliments that of the Dwelling Unit.

Section 5.22 Play Equipment. Children's play equipment such as sandboxes, temporary swimming pools, swing and slide sets, and trampolines are prohibited.

Section 5.23 Subsurface Drains and Sump Pump Discharges. Subsurface drains may have been provided in certain areas within drainage easements as additional storm and ground water drainage sources and are part of the public storm drainage system. Subsurface drain laterals have

been provided on specific Lots, and the Builder on such Lots shall connect all sump pump discharge lines to such laterals. All maintenance and repair of all sump pump discharge lines and subsurface drain laterals shall be the responsibility of each Lot Owner. The areas of Owner responsibility include all sump pump lines and subsurface drain laterals between the connection at the sump pump within the home and the connection with the publicly maintained storm sewer or subsurface drain within the drainage easement.

Section 5.24 Swimming Pools and Hot Tubs. Swimming pools shall not be permitted to be constructed by an Owner upon a Lot, and hot tubs may only be installed if approved by the ACC.

Sections 5.25 Tennis Courts, Racquetball Courts, Paddleball Courts and so on. Tennis courts, racquetball courts, paddle ball courts, basketball courts, squash courts, and other recreational facilities or sporting facilities are prohibited on any Lot.

Section 5.26 Vents. All metal and PVC roof or range vents shall be painted to blend with roof color.

Section 5.27 Windows-Doors. If storm doors are installed, they must be painted to match or compliment the exterior of the Dwelling Unit, and must be approved by the Architectural Control Committee. No unfinished aluminum doors or windows are allowed. All curtains, blinds or other window coverings shall be tasteful and commensurate with the architecture, design and appearance of Dwelling Units on the Property.

Section 5.28 Street Signs. Decorative street signs that do not conform to applicable municipal standards may be installed by Declarant in the Declarant's sole discretion. Such decorative street signs, if any, shall be maintained by the Association, and shall be repaired or replaced by the Association, if damaged, in accordance with Applicable Laws.

Section 5.29 Fuel Tanks. All above or below ground storage tanks, with the exception of gas storage tanks used solely in connection with gas grills for the purpose of grilling or cooking food, are prohibited.

Section 5.30 Garbage and Other Refuse. No Lot Owner in the Property 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, including compost, on such Owner's Lot.

Section 5.31 Home Occupations. No Lot or Lots shall be used by an Owner, other than a Builder or Declarant, for any purpose other than as a single-family residence, except that a home occupation, that satisfies all requirements of all Applicable Laws, may be permitted provided that,

in addition to the requirements of Applicable Laws, any such Owner's use is conducted entirely within the Dwelling Unit and participated in solely by a member of the immediate family residing in said Dwelling Unit, and is clearly incidental and secondary to the use of the Dwelling Unit for dwelling purposes and does not change the character thereof and in connection with which there is (i) no sign or display that will indicate from the exterior that the Dwelling Unit is being utilized in whole or in part for any purpose other than that of a dwelling; (ii) no commodity sold upon the premises; (iii) no person is employed other than a member of the immediate family residing in the Dwelling Unit; and (iv) no manufacture or assembly operations are conducted. Provided, however, that in no event shall a child day care, barber shop, styling salon, animal hospital, any form of animal care or treatment such as dog trimming, or any other similar activities be permitted as a home occupation. The foregoing notwithstanding, the Declarant and Builders shall be permitted to operate sales and construction trailers, model homes, and sales offices.

Section 5.32 Open Drainage Ditches and Swales. The following shall apply to open ditches and swales (ditches) along dedicated roadways or within rights of way or established drainage easements:

(A) Drainage swales (ditches) along dedicated roadways or within rights-of-way or established drainage easements, shall not be altered, dug out, filled in, tiled, or otherwise changed, without the written permission of the appropriate jurisdictional agency and the Association. Owners must maintain these swales as grass ways or other non-eroding surfaces. Any damage to swales or drainage structures must be repaired or replaced by the Owner causing such damages.

(B) Any Owner or Builder altering, changing, or damaging such drainage swales or ditches shall be responsible for such action and will be given ten (10) days notice, by registered mail, to repair said damage, after which time, if no action is taken, the appropriate jurisdictional agency, the Declarant or the Association may cause said repairs to be accomplished and the invoice for such repairs shall be sent to the responsible Owners for immediate payment. If immediate payment is not received by the Association, the amount owed, together with reasonable attorney's fees, shall be a lien on the subject Lot and the Association shall have all the rights and remedies to collect any outstanding amounts as outlined hereafter in Article X of this Declaration.

Section 5.33 Roofing Materials. The roofing materials on all Dwelling Units shall be of a quality, style and composition acceptable to the Architectural Control Committee.

Section 5.34 Solar Panels. Solar panels shall not be permitted on any Dwelling Unit unless the solar panel is approved by the Architectural Control Committee. The Architectural Control

Committee, in reviewing a request for a solar panel, shall consider landscaping, location, size, aesthetics, and the visibility of the solar panel.

Section 5.35 Parking of Vehicles. No trucks (larger than a ¾ ton pickup), campers, motor homes, travel trailers, trailers, boats, any commercial vehicle with advertising or similar vehicles may be parked on any street, alley or drive or on any lot in the Property overnight. Other vehicles used for recreation (van conversions/RV's) that cannot be parked in a garage, will be permitted to park in front of the garage Limited Areas for not more than forty-eight (48) hours to allow for loading and unloading. Such vehicles must not exceed twenty (20) feet in length and must not block normal access of other residents. Furthermore, disabled or non-operational vehicles of any kind shall not be parked on any lot, driveway, alley or street. Storage of any vehicle is prohibited, except in an enclosed garage. It is understood that from time to time owners may invite guests to their home which may cause times of temporary parking on the drives and alleys. However, in no instance shall temporary parking be permitted for longer than twenty-four (24) consecutive hours and the temporary parking shall be done in such a manner to prevent blocking the alley and causing driving on the grass surfaces. Commercial moving vans, when conducting contract business, and commercial trucks when in the area to perform service or repair work are an authorized exception to this restriction.

All parking by Owners or guests must be: (a) within the garage, (b) in the Limited Areas in front of the garage door, (c) in the parking space at the clubhouse parking area, or (d) on the side drive in such a manner so as not to block any other residents access to the garage or street. No vehicle may be parked in the clubhouse parking areas for more than forty-eight consecutive hours. Vehicles parked there for more than forty-eight (48) consecutive hours are subject to being towed.

Inoperable vehicles (with flat tires, expired license tags, etc.) or vehicles which cannot be identified as belonging to an Owner or a resident, which are parked in any Common Area or Limited Area for more than forty-eight (48) consecutive hours may be towed off the premises at the vehicle owner's expense. No repair work is permitted on vehicles in Limited Areas or Common Areas except for short term emergency work (flat tire, battery charge, etc.)

Section 5.36 Wells. Water wells are prohibited for any reason or purpose.

Section 5.37 Occupancy or Residential Use of Partially Completed Dwelling Unit Prohibited. No Dwelling Unit constructed on any Lot shall be occupied or used for residential purposes or human habitation until a certificate of occupancy therefore has been issued.

Section 5.38 Construction and Landscaping; Time Requirements; Divestiture; Penalties. All construction upon, landscaping of, and other improvements to a Lot shall be completed strictly

in accordance with a Lot development plan approved by the Committee. All landscaping specified on the landscaping plan approved by the Committee shall be installed on the Lot strictly in accordance with such approved plan within sixty (60) days following substantial completion of the Dwelling Unit, unless delayed due to adverse weather conditions.

Section 5.39 Septic Systems. No septic tank, absorption field, or any other on-site sewage disposal system shall be installed or maintained on any Lot.

Section 5.40 Rental Agreements. Any rental agreement for a Dwelling Unit must be for an initial period of at least one (1) year, must be in writing and must be subject to the terms and conditions set forth in this Declaration and in the other Association documents including, but not limited to, the Articles of Incorporation and Bylaws of the Association. Every such rental agreement must include a provision stating that any failure by the tenant, its household members or guests, to comply with any terms and conditions as set forth above, shall be a default under the rental agreement, and the Owner shall be responsible for enforcing such provision at its sole expense; provided, however, that the Association shall also have the right to enforce any terms and conditions against the Owner or any tenant, or both, in the sole discretion of the Association, without regard to whether Declarant or the Association were or are in privity with such tenant. The foregoing shall not be construed as a waiver by the Association of its rights hereunder to enforce any terms and conditions herein against a tenant or any other Person in possession of the Property or any part thereof. Each Owner agrees to indemnify, defend and hold harmless the Association and the Board of Directors from and against all costs, liability, charges, expenses and claims resulting directly or indirectly from such Owner's failure to comply with the foregoing provisions. By accepting title to a Lot, each Owner acknowledges and accepts the Association's right to enforce the foregoing restrictions as provided hereunder.

Section 5.41 Pets. Owners are permitted to keep pets, but Owners shall at all times clean up after and dispose of any waste left by said pet.

Section 5.42 Utilities. Each Owner shall pay for his own utilities which are separately metered. Utilities that are not separately metered shall be treated as and paid as part of the Regular Assessment.

## **ARTICLE VI**

### **ARCHITECTURAL CONTROLS**

Section 6.1 Approvals. Approvals, determinations, permissions, or consents required herein shall be deemed given only if they are given in writing and signed, by an authorized member of the Declarant with respect to approvals to be obtained from the Declarant, by an officer of the Association with respect to approvals to be obtained from the Association and by a member of the



Architectural Control Committee with respect to approvals to be obtained from the Architectural Control Committee. The Architectural Control Committee may, in its discretion, unilaterally promulgate written architectural and design Architectural Control guidelines (the "Guidelines") which (i) will comply with the guidelines and restrictions of the PUD Ordinance, (ii) may, from time to time, be changed, or amended by the Architectural Control Committee without notice to or consent of Owners and (iii) shall be binding upon the Owners.

Section 6.2 Architectural Control Committee. An Architectural Control Committee, composed of at least three (3) members, shall exist and shall be appointed by the Declarant until the end of the Development Period, and appointed by the Board of Directors thereafter. Such members shall be subject to removal by the Declarant at any time, with or without cause, until the end of the Development Period, and subject to removal by the Board of Directors at any time, with or without cause, thereafter. Any vacancies from time to time shall be filled by appointment by the Declarant until the end of the Development Period, and by appointment by the Board of Directors thereafter.

Section 6.3 Duties of Architectural Control Committee. The Architectural Control Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information has been submitted to the Architectural Control Committee. The Architectural Control Committee, for its permanent files, shall retain one copy of submitted material. All notifications to applicants shall be in writing and, in the event that such notification is one of disapproval, the requesting applicant may re-apply with changes. If, however, approval has not been received by the applicant in writing within thirty (30) days, then said request shall be deemed denied.

Section 6.4 Exercise of Discretion. Declarant intends that the members of the Architectural Control Committee shall exercise discretion in the performance of their duties consistent with the provisions of this Declaration, and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members of the Architectural Control Committee. In any judicial proceeding challenging a determination by the Architectural Control Committee and in any action initiated to enforce this Declaration in which an abuse of discretion by the Architectural Control Committee is raised as defense, abuse of discretion may be established only if a reasonable person, weighing the evidence and drawing all inferences in favor of the Architectural Control Committee, could only conclude that such determination constituted an abuse of discretion.

Section 6.5 Inspection. The Architectural Control Committee may inspect work being performed without the Owner's permission to verify compliance with the Declaration.

Section 6.6 Liability of Architectural Control Committee, Declarant and Association.

Neither the Architectural Control Committee nor any agent thereof, nor the Declarant, or the Association shall be liable in any way for any costs, fees, damages, delays, or any charges or liability whatsoever relating to the approval or disapproval of any plans submitted to it, nor shall the Architectural Control Committee, Declarant or Association be responsible in any way for any defects in any plans, specifications or other materials submitted to it, or for any defects in any work done according thereto. Further, the Architectural Control Committee, Declarant and Association make no representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, whether the improvements result in any encroachments, the compliance of proposed plans with Applicable Laws, or the materials to be used. All parties should seek professional construction advice, engineering, and inspections of each Lot prior to purchasing the Lot, commencing original construction on said Lot or installing any fences, landscaping, additions, remodeling or other improvements on said Lot.

Section 6.7 Common Areas Entrances, Street Signs, and Landscape Easements. None of the following shall be installed or constructed without prior written approval thereof by the Architectural Control Committee: (i) any landscaping, fences, structures, lighting, walking trails, sidewalks, or other improvements located in any Common Area, Limited Area, landscape maintenance access easement, landscape easement or sign easement, (ii) any entrance monument or signage identifying the Property or any section thereof and (iii) street signage.

Section 6.8 Lot Improvements. No Dwelling Unit, dwelling, building structure, deck, driveway, landscaping, excavation or improvement of any type or kind (including significant landscaping or stacking of wood) shall be constructed or placed on any Lot without the prior approval of the Architectural Control Committee. The Architectural Control Committee's determination may be obtained only after the Owner of the Lot requesting authorization from the Architectural Control Committee has made written application to the Committee. Such written application shall be in the manner and form prescribed from time to time by the Architectural Control Committee, and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing (i) the location of the improvements existing upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated and (ii) all easements, setbacks, and rights-of-way and (iii) any landscape plans required by the Architectural Control Committee. Such plans and specifications shall further set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other materials, photographs, or information, which the Architectural Control Committee may require. The exterior materials proposed to be used and the proposed landscaping shall comply with the Guidelines, unless otherwise approved by the Architectural Control Committee. All building plans and drawings required to be submitted to the Architectural Control Committee shall be drawn to a scale of 1/4" = 1' and all plot plans shall be to a scale of 1" = 10',

or to such other scale as the Architectural Control Committee deems appropriate. To the extent owners apply for and receive approval of home improvement plans, the Association shall not be responsible for any damage to said improvements, even if caused by the Association's mistake or negligence. It is also recommended that a certified survey be prepared to insure that there are no encroachments onto adjacent Lots or Common Areas. If an Owner has encroached on an adjacent Owner's property or in a Common Area, the encroaching Owner must, at his or her own expense, move any improvement(s) so as to eliminate the encroachment.

Section 6.9 Power of Disapproval. The Architectural Control Committee may refuse to grant permission to construct, place or make the requested improvement with or without cause. By way of example only, common grounds for denial include, but are not limited to, a deficiency in or absence of the following:

- (A) The plans, and specifications, required to be submitted; and
- (B) The consistency of the design, color scheme, and square footage of a proposed improvement with the general surroundings of the Lot or with adjacent buildings or structures.

Section 6.10 Power to Grant Variances. The Architectural Control Committee may allow reasonable variances or adjustments of this Declaration where literal application would result in unnecessary hardship, but any such variance or adjustment shall be granted in conformity with the general intent and purposes of this Declaration, no variance or adjustment shall be granted which is materially detrimental or injurious to other Lots, and any such variance granted shall not be considered as precedent setting.

Section 6.11 Statement of Purposes and Powers. Subject to this Declaration and the restrictions contained herein, the Architectural Control Committee shall regulate the external design, appearance, use, location and maintenance of lands and improvements thereon in such a manner as to preserve and enhance values and maintain a harmonious relationship among structures and the natural vegetation and topography.

## **ARTICLE VII**

### **USE AND OWNERSHIP OF COMMON AREA AND LIMITED AREA**

Section 7.1 Ownership. A license, upon such terms, conditions, rules and regulations as the Board of Directors, shall from time to time promulgate, for the use and enjoyment of the Common Areas and Limited Areas, is hereby granted to the Owners and their family, guests, tenants or contract purchasers. Every Owner shall have a nonexclusive right and easement of enjoyment in common with all other Owners, in and to the Common Areas and Limited Areas,

which nonexclusive right and easement of enjoyment shall be appurtenant to and pass with the title to every Lot.

Section 7.2 Use. All Common Areas and Limited Areas shall be used for such purposes stated herein and deemed appropriate by the Declarant until the end of the Development Period and following the end of the Development Period, all Common Areas and Limited Areas shall be used as stated herein and for such purposes as deemed appropriate by the Association.

Section 7.3 Non-dedication. Neither the Declarant's execution nor recording of the Plats nor the doing of any other act by the Declarant is, or is intended to become or shall be construed as, a dedication to the public of any Common Area.

## **ARTICLE VIII** **THE PRESERVE AT BROOKSIDE HOMEOWNERS ASSOCIATION, INC.**

Section 8.1 Association Formation. The subdivision shall be subject to a mandatory homeowners' association (the "HOA"), pursuant to this recorded Declaration of Covenants, Conditions, and Restrictions (the "Declaration"). The Articles of Incorporation and By-Laws for the HOA and the Declaration shall be in a form and substance acceptable to Builder and Developer, to which the parties shall agree prior to the Initial Closing. The parties further agree as follows: (i) the HOA will be formed, and the Declaration recorded, prior to the Initial Closing; (ii) Developer shall convey all platted common areas within the subdivision and all improvements thereon (collectively the "Common Areas") to the HOA at the Initial Closing; (iii) Builder or the HOA shall maintain all Common Areas until all Lots have been purchased by Builder; (iv) Developer shall have no liability for any assessments of any kind for any Lots owned by Developer; (v) Builder as identified in Section 1.8 shall be the sole Declarant under this Declaration, provided, however, this Declaration. Developer, under the terms of that certain Lot Purchase Agreement by and between KS Real Estate Holdings, LLC, as Developer, and Bridgenorth Homes, LLC, as Builder, may replace Builder as sole Declarant and assume control of the HOA, but only in the event of a breach or default of the Lot Purchase Agreement.

Section 8.2 Association Duties. The duties of the Association shall include the following: (i) the promotion of the recreation, health, safety, and welfare of the residents in the Property, (ii) the maintenance and repair of the Common Areas, Limited Areas, Limited Driveway Areas, and Limited Street Areas, including, but not limited to, any and all lighting, landscaping, and sidewalks located thereon, (iii) the maintenance and repair of any and all entrance monuments, water features, signage, and the landscaping surrounding such entrances monuments and signage, (iv) maintenance and repair of all street signage, street lighting, and all improvements and landscaping existing in any landscape maintenance access easement and any sign landscape easement, (v) Lot

Maintenance as set forth in Section 8.6 below, (vi) Exterior Maintenance Dwelling Units as set forth in Section 8.7 below, (vii) provision of casualty insurance to insure each Lot and Dwelling Unit as set forth in Section 10.1B, and (viii) the performance of any other obligations and duties of the Association specified in this Declaration. The foregoing provisions of this Section 8.1 notwithstanding, an Owner shall be responsible and liable for any damage to any Common Areas or improvements thereon caused by such Owner or such Owner's agent, contractor, or guest, and the costs of repair or replacement necessitated by such damage shall be immediately paid by the Owner to the Association and may be assessed as a Violation Assessment and enforced per the terms of Article IX below.

Section 8.3 Board of Directors. Prior to the end of the Development Period, members of the Board of Directors shall be appointed by the Declarant, vacancies in the Board of Directors shall be filled by the Declarant, and members of the Board of Directors may be removed and replaced by the Declarant, at any time and for any reason. After the end of the Development Period, the Owners shall elect a Board of Directors as prescribed by the Association's Articles of Incorporation, and the Association's Bylaws. The Board of Directors shall manage the affairs of the Association. Directors need not be members of the Association.

Section 8.4 Classes of Membership and Voting Rights. The Association shall have the following two classes of voting membership:

(A) Class A. Class A members shall be all Owners with the exception of the Declarant. Class A members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as the members holding an interest in such Lot determine among themselves, but in no event shall more than one vote be cast with respect to any Lot.

(B) Class B. The Class B member shall be the Declarant. At all times prior to expiration of the Class B Membership, as provided below in this Section 8.3 (B), the Class B member shall have the same number of votes at any meeting in which votes are to be taken as is held collectively by all Class A members, plus one hundred (100) additional votes. The Class B Membership shall terminate and be converted to Class A Membership and the Development Period shall expire upon the happening of the earlier of the following:

- (i) When the Class B member no longer owns any portion of the Property; or
- (ii) December 31, 2052; or

(iii) When, in its sole discretion, the Declarant expressly specifically terminates and waives in writing its right to Class B Membership. The Declarant reserves the right to assign some of its rights and obligations under this Declaration without terminating the Development Period and without terminating or waiving its right to Class B Membership.

Section 8.5 Membership. Initially, the person(s) who serve as incorporator(s) of the Association shall be the member(s) (the "Initial member(s)"). The Initial member(s) shall remain member(s) of the Association until the Association Articles of Incorporation are accepted by the Indiana Secretary of State, at which time the Initial member(s) shall cease to be member(s) unless they also qualify as Class A or Class B members. Every Owner of a Lot shall be a member of the Association. Apart from the Initial member(s), a membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot.

Section 8.6 Professional Management. No contract or agreement for professional management of the Association, nor any other contract to which the Association is a party, 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 and without payment of any termination fee upon written notice of ninety (90) days or less.

Section 8.7 Lot Maintenance and Exterior Maintenance Responsibilities. The following is a list of maintenance responsibilities to be performed by the Owner or by the Association. This list may be amended as provided in this Declaration.

<u>Owner</u>	<u>Association</u>	<u>Description</u>
X		1. Decks, including exterior handrails, and steps, or other improvements installed or added by Owner
	X	2. Siding, exposed flu, and flashing
X		3. Doors (entry, sliding, and garage) exterior hardware
	X	4. Door frames (exterior) painting and caulking (when entire building is painted)
	X	5. Window frames (exterior) and

caulking (when entire building is painted)

X		6.	Glass surfaces, storm and screen doors, and windows
X		7.	Fences—screening, privacy, and patio - area inside fence
	X	8.	Foundation walls, footings
	X	9.	Exterior – structure, siding, paint
	X	10.	Roof – shingles, flashing, gutters, downspouts
	X	11.	Painting – exterior
	X	12.	Gutter cleaning
X		13.	Lights
	X	(a)	Exterior – attached to unit
	X	(b)	Exterior – entrance to subdivision
	X	(c)	Exterior – free standing posts
X		14.	Water and sanitary sewer pipes
	X	(a)	Within structure; including hose bibs
X		(b)	Water line outside structure
	X	(c)	Sanitary sewer line inside the structure
	X	(d)	Sanitary sewer line outside the structure (See §4.3)
X		15.	Wiring – electrical, telephone, etc.
X		(a)	Interior
		(b)	Exterior connected to Owner’s meter
X		16.	Garage door openers
X		17.	Patio area – concrete

X	18.	Driveway repairs
X	19.	Steps, stoops, and front porches
X	20.	Mailboxes
X	21.	Road signs
X	22.	Trees – pruning, fertilization, removal, replacing
X	23.	Lawn – cutting, trimming, fertilization, leaf removal, etc.
X	24.	Snow removal – for snowfall of 2” or greater, drives, walks, and streets
X	25.	Shrubbery – pruning, mulching, spraying, replacement, etc. two (2) times per year
X	26.	Heating and air conditioning equipment
X	27.	Sealing of concrete, decks, balconies, and drives
X	28.	Care and maintenance of irrigation system
X	29.	All fixtures and equipment installed within or as part of the Dwelling Units

**Section 8.8 Lot Maintenance and Exterior Maintenance Assessment.** Each Owner will pay for Lot Maintenance and Exterior Maintenance as part of the Regular Assessment as set forth in Article IX.

**Section 8.9. Exclusions.** Interior maintenance shall not include glass surfaces, doors, doorways, windows, window frames, or landscaping or other improvements installed by the Owner



or Owner's contractor. In the event that the need for any maintenance or repair, interior or exterior is caused through the intentional or negligent act of the Owner, his family, guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject.

## **ARTICLE IX** **ASSESSMENTS**

Section 9.1 Creation of Lien and Personal Obligation of Assessments. Each Owner of any Lot, except the Declarant or a Builder, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the following (collectively the "Assessments"):

- (A) Regular Assessments (hereafter defined);
- (B) One-Time Assessment (hereafter defined); and
- (C) Special Assessments (hereafter defined);

### Section 9.2 Regular Assessment.

(A) Amount and Due Dates. The Regular Assessment provided for herein shall be per calendar year, shall commence for each Lot on the date of closing of the sale of such Lot to an Owner other than the Declarant or a Builder. The Regular Assessment, commencing during the calendar year in which the first Lot is conveyed to an Owner other than the Declarant or a Builder, shall be Three Thousand Three Hundred Dollars (\$3,300.00) per year for a Duplex or Quad Unit, or the then prevailing amount of the Regular Assessment, per Lot, per year and shall be pro-rated to year-end. The Board of Directors shall fix any increase in the amount of the Regular Assessment at least thirty (30) days in advance of the effective date of such increase.

(B) Purpose of Assessments. The Regular Assessment levied by the Association shall be used in the reasonable discretion of the Board of Directors to fulfill the duties and obligations of the Association specified in this Declaration including, without limitation, (i) the obligation to maintain, repair, replace and insure all Common Areas, Limited Areas, Limited Driveway Areas, Limited Street Areas, and all improvements located therein, (ii) Lot Maintenance and Exterior Maintenance obligations, (iii) casualty insurance expenses, (iv) irrigation expenses, (v) the establishment of a reserve for replacement, to be separately maintained in an FDIC insured account with a financial institution, to fund significant capital expenditures, maintenance, repair and replacement

of (x) all Common Areas, Limited Areas, and Limited Driveway Areas, Limited Street Areas (collectively, the "Areas"), including, without limitation, all water features, landscaping, signs, lighting, pavement, and other improvements within the Areas, (y) in connection with the Association's obligations of Lot Maintenance and Exterior Maintenance specified in Section 8.6 above (the "Reserve Component"). The portion of the Regular Assessment relating to Lot Maintenance and Exterior Maintenance shall be uniform for each (i) Duplex Dwelling Unit and Quad Unit; provided, however, that the Exterior Maintenance Assessment applicable to Duplex Units and the Exterior Maintenance Assessment applicable to Duplex Units shall be more than the Exterior Maintenance Assessment applicable to Quad Units.

Section 9.3 One-Time Assessment. Upon the closing of the initial conveyance of each Lot to an Owner other than Declarant or a Builder, the purchaser of such Lot and/or Dwelling Unit shall pay to the Association, in addition to any other amounts then owed or due to the Association, as a contribution to its working capital and start-up fund, the amount of Two Thousand Dollars (\$2,000.00) against such Lot, which payment shall be non-refundable and shall not be considered as an advance payment of any Assessment or other charge owed the Association with respect to such Lot. Such working capital and start-up fund shall be held and used by the Association for payment of, or reimbursement to Declarant for advances made to pay, expenses of the Association for its early period of operation, documentation fee to management company to enable the Association to have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary by the Board.

Section 9.4 Special Assessment. In addition to such other Assessments as may be authorized herein, the Board of Directors may levy in any year a Special Assessment(s) for the purpose of enforcing these covenants and restrictions, for legal expenses, for collection expenses, for the costs of undertaking other activity that is the responsibility of an Owner hereunder but which such Owner has not undertaken as required hereunder, for defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain and for operating deficits which the Association may from time to time incur.

A Special Assessment may also be made against certain Dwelling Units having the use of Limited Areas, or for other purposes where certain Owners receive services or privileges which are not then generally available to all Owners equally, as a charge for the use, maintenance and/or upkeep of such Limited Areas, or for such services or privileges, or for any other charges or expenses attributable to such Limited Areas, services, privileges or which result from actions of an Owner which may cause extra expense to the Corporation. An Owner's agreement to pay Special Assessments may be imposed by the Declarant and/or by the Association as a condition

to approving the use or improvement of Limited Areas, or as a condition to the rendition or grant of services or privileges.

Section 9.5 Method of Assessment. By majority vote of the Board of Directors, the Board of Directors shall adopt an annual budget for the subsequent fiscal year (the "Annual Budget"), which shall provide for the allocation of the Regular Assessment.

A. Prior to the end of the Development Period, the Board shall, by a vote of a majority of the Board, without notice to or approval or a vote by the Members, and on the basis specified above, fix the Regular Assessment for each assessment year of the Association at an amount sufficient to meet the Annual Budget. The Board shall establish the date(s) and frequencies the Regular Assessment shall become due, and the manner in which it shall be paid. As set forth above, the initial Regular Assessment shall be Three Thousand Three Hundred Dollars (\$3,300.00) per year for a Quad or Duplex Unit, and the Regular Assessment may increase or decrease each year in order to satisfy the Annual Budget as determined by the Board of Directors in its sole discretion.

B. After the end of the Development Period, the Annual Budget must reflect the estimated revenues and expenses for the budget year, and the estimated surplus or deficit as of the end of the current budget year. The Association shall provide each Owner with: (1) a copy of the proposed Annual Budget; or (2) written notice that a copy of the proposed Annual Budget is available upon request at no charge to the Owner. At the same time, the Association shall provide each Owner with a written notice of the amount of any increase or decrease in the Regular Assessment paid by the Owners that would occur if the proposed Annual Budget is approved. After all of the foregoing take place, the Association shall hold a meeting pursuant to the following subparagraph (i) and (ii):

(i) After the end of the Development Period, and subject to subparagraph (ii) below, the Annual Budget must be approved at a meeting of the Members by a majority of the Members of the Association in attendance at a meeting called and conducted in accordance with the requirements of this Declaration, the Association's Articles of Incorporation and the Association's By-Laws. For purposes of this meeting, a Member is considered to be in attendance at the meeting if the Member attends: (1) in person; (2) by proxy; or (3) by any other means allowed under Indiana law or under this Declaration, the Association's Articles of Incorporation or the Association's By-Laws.

(ii) If the number of Members in attendance at the meeting held under subparagraph (i) above does not constitute a quorum as defined in the Association's By-Laws, the Board may adopt an Annual Budget for the Association for the ensuing year in

an amount that does not exceed one hundred ten percent (110%) of the amount of the last approved annual budget last approved by the Association.

(B) Due Dates. The Regular Assessment shall be payable monthly, quarterly or annually as determined by the Board of Directors in their sole discretion.

Section 9.6 Lots Owned by Declarant. Neither the Declarant nor any Builder shall be required to pay any Regular Assessments, One-Time Assessments, or Special Assessments, so long as any Dwelling Unit constructed upon a Lot by Declarant or a Builder has not been either conveyed to an Owner intending to occupy or rent said Dwelling Unit as a residence or leased to an individual or an entity for use as a Dwelling Unit.

Section 9.7 Notice and Due Date. Written notice of Special Assessments and such other Assessment notices as the Board of Directors shall deem appropriate shall be delivered to every Owner subject to such Assessment. The due dates for all Assessments shall be established by the Board of Directors.

Section 9.8 Assessment Liens. All Assessments, together with interest thereon, attorney's fees, and other costs of collection permitted by this Declaration to be collected, shall be a charge on the land and shall be a continuing lien, until paid in full, upon the Lot against which each Assessment is made. Each Assessment, together with interest thereon and costs of collection thereof, including reasonable attorney fees, shall also be the personal obligation of the Owner of the Lot at the time when the Assessment became due. Liens for past due assessments may be recorded with the Recorder of Hancock County, Indiana, as allowed by Applicable Laws.

Section 9.9 Failure of Owner to Pay Assessments. No Owner, by waiver of the use or enjoyment of the Common Areas, or by abandonment of the Dwelling Unit belonging to such Owner, may exempt himself or herself from paying Regular Assessments, One-Time Assessments, or Special Assessments or from contributing toward the expenses of administration or maintenance and repair of the Common Areas, or from any other expense lawfully agreed upon. Each Owner shall be personally liable for the payment of all Regular Assessments, One-Time Assessments, or Special Assessments and all other charges applicable to such Owner and such Owner's Lot. Where the Owner constitutes more than one Person, the liability of such Persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessments, One-Time Assessments, or Special Assessments when due, the lien for such Assessment on the Owner's Dwelling Unit may be foreclosed by the Association in the same manner as mortgages are foreclosed in the State of Indiana or as otherwise specified under the laws and statutes of the State of Indiana. Upon the failure of an Owner to make payments (i) of any Regular Assessments within five (5) days after such are due or (ii) of any One-Time Assessments, or Special Assessments

within ten (10) days after such are due, the Board of Directors, in its sole discretion and regardless of whether litigation is commenced, may:

- (1) impose a uniform late charge, which will be considered an addition to the Assessment, in an amount to be determined by the Board of Directors of up to twenty-five percent (25%) of the amount of the Assessment;
- (2) accelerate the entire balance of the unpaid Assessments for the remainder of the fiscal year and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary;
- (3) require that, in addition to the delinquent Assessment and any applicable late charge, the Owner of the respective Dwelling Unit also pay (i) any attorney's fees incurred incident to the collection of the delinquent Assessment and (ii) collection costs incurred by the Association to the managing agent for processing delinquent Owners' accounts;
- (4) suspend an Owner's right to vote if such Owner is more than six (6) months delinquent; and
- (5) unilaterally suspend or cease the Lot Maintenance Obligations and Exterior Maintenance Obligations provided to an Owner's Lot. If the Board so suspends or ceases the Lot Maintenance Obligations and Exterior Maintenance Obligations provided to an Owner's Lot, for non-payment or for any other reason, that Owner shall immediately be responsible to maintain his or her Lot and Dwelling Unit to satisfy all requirements set forth in the Declaration.

In any action to foreclose the lien for any Assessments, the Board of Directors shall be entitled to the appointment of a receiver for the purpose of preserving the Dwelling Unit and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to any unpaid Regular Assessments, One-Time Assessments, or Special Assessments. The Board of Directors may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessments, One-Time Assessments, or Special Assessments without foreclosing or waiving the lien securing the same. In any action to recover an Regular Assessments, One-Time Assessments, or Special Assessments, whether by foreclosure or otherwise, the Board of Directors, for and on behalf of the Association, shall be entitled to recover costs and expenses of such action incurred, including but not limited to collection costs incurred by the Association to the managing agent for processing delinquent Owners' accounts and reasonable attorney's fees, from the Owner of the respective Dwelling Unit.

Section 9.10 Certificates. The Association shall, upon reasonable request by an Owner, at any time, furnish a letter in writing signed by an officer of the Association, indicating the accounting status of Assessments on a Lot, and showing the balance due the Association, if any.

Section 9.11 Subordination of the Lien to Mortgages. The Sale or transfer of any Lot shall not affect the lien of Assessments levied under this Article IX; provided, however, (i) that the lien of the Assessments provided for herein against a Lot shall be subordinate to the lien of any recorded, first mortgage covering such Lot and (ii) that the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding or deed in lieu thereof, while not relieving the Owner at the time the Assessment was due of personal liability therefore, shall extinguish the lien of such Assessments which became due or are attributable to the period of time prior to such sale or transfer. No such sale or transfer, however, shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

## **ARTICLE X** **INSURANCE**

Section 10.1 Maintenance of Insurance. Commencing no later than the time of the first conveyance of a Lot to an owner other than Declarant, the Association shall maintain, to the extent reasonably available, the following insurance with respect to Lots and Dwelling Units.

- A. A comprehensive coverage of public liability and hazard insurance covering the Common Area and easements of which the Association is a beneficiary, if available at reasonable cost. Such insurance policy shall contain a severability of interest clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. The scope of coverage shall include all coverage in kinds and amounts commonly obtained with regard to projects similar in construction, location and use as determined by the Board of Directors. Further, the public liability insurance must provide coverage of at least \$1,000,000.00 for bodily injury, including death, and property damage for any single occurrence; and
  
- B. A casualty insurance policy affording fire and extended coverage insurance insuring each Lot and structures constructed thereupon including, but not limited to, the Dwelling Unit in an amount equal to the full replacement value of the improvements which in whole or in part, comprise the Dwelling Unit, including, without limitation, any Party Walls. The casualty insurer will allocate the insurance premium, and the Association will pass on the allocated portion of the insurance premium to the Owner of each Dwelling Unit monthly. Declarant will furnish to the purchaser of each Lot, at or prior to the closing of the acquisition of that Lot, a certificate of insurance and endorsement evidencing the insurance coverage described herein. Owners shall not do or permit any act or thing to be

done in or to a Lot or Dwelling Unit which is contrary to law or which invalidates or is in conflict with Declarant's policy of insurance. An Owner who fails to comply with the provisions of this paragraph shall pay all costs, expenses, liens, penalties, or damages which may be imposed upon the Owner, Declarant or the Association by reason thereof. Notwithstanding the foregoing, (i) each Owner of a Lot shall be responsible for the purchase and maintenance of its own insurance policies covering liability, loss and/or damage with respect to contents and other personal property and fixtures located within and about each Dwelling Unit and (ii) although the Association is providing insurance as set forth herein, it is the obligation of each Owner to review and understand the insurance coverage provided by the Association, obtaining any supplemental insurance it deems appropriate, and under no circumstances is the Association liable for the absence of any insurance coverage.

C. Such other insurance as the Association may determine.

Section 10.2 Owner's Individual Policies. It shall be the obligation of each Owner, and not the Association, to procure, maintain and pay for all insurance other than that specified in Section 10.1B above including, without limitation, the following:

A. Casualty Insurance on contents and personal effects. Each Owner shall carry, and shall be responsible for carrying, insurance for his or her own benefit insuring his or her personal effects, and carpeting, wall covering, fixtures, furnishings, and other personal property, and fixtures and other property supplied or installed by the current Owner or a previous Owner or tenant, provided that all such policies must, if obtained, contain waivers of subrogation and further provided that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any such additional insurance carried by any Owner.

B. Liability Insurance. Each Owner should carry, and shall be responsible for carrying public liability insurance for his own benefit covering the Owner's Lot.

C. Other Insurance. Such other insurance as each Owner, in his discretion, deems advisable.

## **ARTICLE XI** **PARTY WALLS**

Section 11.1 General Rules of Law to Apply. To the extent not inconsistent with the provisions of this Article XI, the general rules of law regarding Party Walls and liability of Owners for property damage due to negligence or willful acts or omissions in connection with Party

Walls shall apply thereto.

Section 11.2 Sharing of Repair and Maintenance and Destruction by Fire or Other Casual. If any Party Wall is damaged or destroyed by (i) fire or other casualty, or (ii) ordinary wear and tear and deterioration from lapse of time, or (iii) or by some cause other than the act of one of the adjoining Owners, its agents, family, household or guests, then both adjoining Owners shall proceed forthwith to rebuild or repair the structural components of such Party Wall, sharing equally the cost thereof, and each individual Owner shall proceed forthwith to rebuild or repair the non-structural components of such wall in proportion to their respective uses of the Party Wall. Any and all such reconstruction and/or repairs shall be completed immediately to the extent that the failure to commence and/or complete such reconstruction and/or repairs would result in an immediate risk to human health and/or safety. All other reconstruction and/or repairs shall be completed within three (3) months following the casualty or other event that damaged or destroyed such Party Wall, unless a longer period of time is approved in writing by the Association. If a Party Wall is in a condition that is of such a nature that it has or will (if left uncorrected) result in further damage or destruction of such Party Wall, the reconstruction and/or repairs shall be completed within a reasonable time, not exceeding six (6) months following the initial discovery of the condition. Any and all such reconstruction and/or repair shall be made in a good and workmanlike manner, in compliance with all requirements of all Applicable Laws, to the same or better condition as existed prior to such condition, damage or destruction. However, in the event of substantial destruction to the Party Wall and the adjoining Attached Dwelling Units (i.e. where eighty percent (80%) or more of the Party Wall and the adjoining Dwelling Units are destroyed by fire or otherwise), neither Owner shall be obligated to repair or restore the Party Wall. Each Owner shall have an easement over that part of the other Owner's Lot that is necessary or desirable in order to repair, restore or replace the Party Wall.

Section 11.3. Repairs for Damage Caused by One Owner. If any such Party Wall is damaged or destroyed through the act of one or more adjoining Owners, or their respective agents, families, households or guests (collectively the "**Offending Parties**"), whether or not such act is negligent or otherwise culpable, so as to deprive another adjoining Owner of the use and enjoyment of the Party Wall, then the Owner(s) of the Attached Dwelling Unit(s) from whence the Offending Parties committed the act that caused the damage or destruction, shall forthwith proceed to rebuild and repair the same, in the manner required under Section 11.2 above, without cost to the adjoining Owner.

Section 11.4. Use; Other Changes. Either Owner shall have the right to use the side of the Party Wall facing the Owner's Attached Dwelling Unit in any lawful manner, including attaching structural or finishing materials to it; however, in addition to meeting the other



requirements of this Declaration and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild its Attached Dwelling Unit in any manner which involves the alteration of any Party Wall shall first obtain the written consent of the adjoining Owner, whose consent shall not be unreasonably withheld, conditioned or delayed. If the adjoining Owner has not responded in writing to the requesting Owner within twenty-one (21) days of its receipt of any such written request, given by registered or certified mail, return receipt requested, such consent of the adjoining Owner shall be deemed to have been given.

Section 11.5. Right to Contribution Runs with the Land; Failure to Contribute. The right of any Owner to contribution from any other Owner under this Article XI shall be appurtenant to the land and shall pass to such Owner's successors in title. If either Owner shall neglect or refuse to pay the Owner's share under this Article XI, or all of the cost in case of the negligence or willful misconduct of such Owner, the other Owner may have the Party Wall repaired or restored and shall be entitled to have a mechanic's lien on the property of the Owner failing to pay for the amount of its share of the repair or replacement cost.

Section 11.6 Dispute. In the event of a dispute between or among Owners with respect to the repair or rebuilding of a Party Wall or with respect to the sharing of the cost thereof, then upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board of Directors, who shall decide the dispute and whose decision shall be final.

Section 11.7 Lot Lines. In the event the Party Wall inside a Duplex Building or Quad Building does not correspond with the Lot lines on the Plat, the boundary lines of said Lot shall be determined as follows:

Where the Lot Line does not coincide with the Party Wall inside the Building, the boundary lines of such Lot shall be deemed modified to include all of the ground area occupied by such Unit. It is the intent hereof that, in any and all events in which a boundary line as shown on any Plat or part thereof does not coincide with the actual location of the respective Party Wall of the Unit because of inexactness of construction, settling after construction, or for any other reason, this Declaration and any Plat or any part thereof shall be interpreted and construed so that all ground area underlying and lying beneath a Unit shall be and constitute part of the Lot upon which such Unit is primarily located to the end that all of such ground area shall be subject to fee simple ownership by the Owner of such Unit; to the extent necessary to accomplish and implement such intention, interpretation and construction, the boundary lines of the Lots shall be determined in accordance with the foregoing

definitional provisions and boundary lines as so determined shall supersede the boundary lines for Lots shown on any Plat or part thereof.

**ARTICLE XII**  
**PLATTING AND REPLATTING**

Section 12.1 Unilateral Right to Replat. During the Development Period, the Declarant shall possess the unilateral right to revise, modify or alter the Plat, without the consent or approval of any Owner of a Lot, in any manner the Declarant deems appropriate, in accordance with the Applicable Laws. The right to revise, modify or alter the Plat includes the ability to (i) replace a Duplex Building with a Dwelling Unit or Quad Building, (ii) replace a Quad Building with a Duplex Building or Dwelling Unit, or (iii) make any other revision to the Plat which Declarant deems appropriate, in accordance with Applicable Laws.

**ARTICLE XIII**  
**UTILITIES**

Section 13.1 Water Utility. Declarant, during the Development Period, and the Association, after the Development Period, shall obtain from the local water provider the monthly water bill pertaining to irrigation of the Property ("Irrigation Bill") and, on a monthly basis, shall allocate that portion of the Irrigation Bill to each Dwelling Unit, which allocation shall be weighted evenly for each Dwelling Unit based upon whether it is a Duplex Unit or Quad Unit, and an average allocation will be applied to each Dwelling Unit in relation to type of Dwelling Unit as described above, and said Irrigation Bill will be billed monthly as a part of the Regular Assessment.

**ARTICLE XIV**  
**PROFESIONAL MANAGEMENT**

Section 14.1 Management of Association. Declarant, during the Development Period, and the Association, after the Development Period, shall have the option of electing to have the Association professionally managed, subject to the provisions of Section 8.5 herein. In the event the Declarant or Association choose to have the Association professionally managed, any management fees charged to the Declarant or Association shall be allocated to the Owner of each Lot, notwithstanding anything to the contrary herein, and shall be billed to each Owner on a monthly basis as a part of the Regular Assessment.

**ARTICLE XV**  
**REMEDIES**

Section 15.1 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 covenants, conditions, and restrictions in this Declaration shall be held to be a waiver by that party or an estoppel of that party of any right available to such party upon the occurrence, reoccurrence or continuation of such violation or violations of this Declaration.

Section 15.2 In General. The Association, the Declarant and/or any Owner, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, or to compel compliance with these restrictions and covenants, and shall be entitled to recover costs of collection and reasonable attorney's fees; however, (i) neither the Declarant, nor the Association, shall be liable for damages of any kind to any person for failing either to abide by, enforce, or carry out any terms, conditions, or restrictions contained in this Declaration and (ii) provisions awarding attorney fees herein are solely for the benefit of the Declarant and Association.

**ARTICLE XVI**  
**EFFECT ON BECOMING AN OWNER**

Section 16.1 The Owner(s) of any Lot subject to this Declaration, by acceptance of a deed conveying title thereto, or by virtue of the execution of a contract for the purchase thereof, whether from Declarant, a Builder, or a subsequent Owner of such Lot, shall accept such deed and execute such contract subject to each and every covenant, condition, and restriction contained in this Declaration. By acceptance of such deed or execution of such contract, each Owner acknowledges the rights and powers of the Declarant, the Architectural Control Committee, and the Association contained in this Declaration, and also, for themselves, their heirs, personal representatives, successors and assigns, such Owner(s) covenant and agree and consent to and with the Declarant, the Architectural Control Committee, and the Association to keep, observe, comply with and perform such covenants, conditions, and restrictions contained in this Declaration.

**ARTICLE XVII**  
**TITLES**

Section 17.1 The titles preceding the various Sections and paragraphs of this Declaration are for convenience of reference only and none of them shall be used as an aid to the construction of any provisions of this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

**ARTICLE XVIII**  
**MISCELLANEOUS**

Section 18.1 Severability. Invalidation of any one of the covenants, restrictions or provisions contained in this Declaration by judgment or court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect. No delay or failure by any person to enforce any of the restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that person of the right to do so thereafter, or as estoppel of that person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the restrictions.

Section 18.2 Statute of Frauds. 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 George W. Bush, former President of the United States of America.

Section 18.3 Duration. This Declaration and its covenants and restrictions are for the mutual benefit and protection of the present and future Owners, the Association, and Declarant, and shall run with the land and shall be binding on all parties and all Persons claiming under them until January 1, 2070, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless changed per the terms of Article XVI below.

Section 18.4 Conflict. In the event of any conflict between this Declaration and the PUD Ordinance, the Declaration shall control.

**ARTICLE XIX**  
**DECLARANT'S RIGHTS**

Section 19.1 Any and all of the rights and obligations of the Declarant set forth in this Declaration may be transferred, in whole or in part, to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration. No such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded with the Recorder of Hancock County, Indiana.

Section 19.2 Nothing in this Declaration shall be construed or applied in a manner that limits or restricts the Declarant or the Builder in the development of the Property or the construction of Dwelling Units within the Property. Therefore, notwithstanding anything in this Declaration to the contrary, the Declarant and Builder may maintain and carry out upon any portion

of the Property, including any Common Area, Lot, and/or such facilities and activities as, in the opinion of the Declarant or Builder, may be reasonably required, convenient, or incidental to the development of the Property and the construction or sale of Dwelling Units including, without limitation, business offices, signs, model units, sales offices, and sales and construction trailers.

**ARTICLE XX**  
**AMENDMENT TO THIS DECLARATION**

Section 20.1 Except as expressly prohibited in this Declaration, this Declaration may be amended or modified from time to time and at any time by an instrument recorded in the Office of the Recorder of Hancock County, Indiana, approved and signed by at least seventy-five percent (75%) of the then Owners. Provided, however, that so long as the Declarant owns one (1) or more units within the condominium and not more than seven (7) years have passed since the original governing documents were first recorded none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. Until the end of the Development Period, this Declaration may also be amended unilaterally, from time to time and at any time, without notice or vote, by Declarant in the Declarant's sole discretion.

(signature page follows)



**EXHIBIT A**

**The Property – Legal Description**

**Block B of the Villages at Brookside Section 16 Subdivision**