

DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS  
FOR BROOKS PARK SUBDIVISION

THIS DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS FOR BROOKS PARK SUBDIVISION, ("Declaration"), made this 29th day of November, 2005 by Macs Landing, LLC., an Indiana limited liability company, (hereinafter referred to as "Declarant"),

WITNESSETH THAT:

WHEREAS, the Declarant is the owner in fee simple of certain real estate located in Hamilton County, Indiana, more particularly described in the Exhibit A, attached hereto and made a part hereof ("Real Estate"); and,

WHEREAS, the Declarant is developing the Real Estate as a residential subdivision consisting of detached, one family dwellings located on separate lots, to be known as "Brooks Park" (hereinafter referred to as the "Subdivision"), which shall be platted by Declarant; and,

WHEREAS, Declarant desire to subject the Real Estate to certain covenants in order to provide appropriate easements and restrictions with respect to the use and enjoyment of common area and lakes in the Subdivision and to ensure that the development and use of the various lots in the Subdivision are harmonious with and do not adversely affect the value of any other lots in the Subdivision; and

WHEREAS, the Declarant desire to provide for the maintenance and repair of the Common Property (as herein defined) located or to be located in the Subdivision, which is of common benefit to the owners of the various lots within said Subdivision, and to that end desires to establish certain obligations on said owners and a system of assessments and charges upon said owners for certain maintenance and other costs in connection with the operation of the Subdivision;

NOW, THEREFORE, the Declarant impose upon the Real Estate the following covenants, which shall run with the Real Estate and be binding upon Declarant and upon all successors to and assigns of all or any part of Declarant's interest in the Real Estate:

ARTICLE I.

General Purpose of This Declaration

The Real Estate is hereby subjected to the covenants, easements, conditions, and restrictions herein declared to preserve the value of the Real Estate, to provide for appropriate reciprocal rights and obligations between Owners with respect to Common Property (as herein defined) shared by them, to ensure proper use and appropriate improvement of the Real Estate, to encourage the construction of attractive buildings and other attractive improvements at appropriate locations on the Real Estate, to prevent haphazard development thereof which may be inharmonious with other improvements on the Real Estate or within the Subdivision, to preserve and maintain proper setbacks from

streets and adequate free space between structures, to provide for adequate and proper maintenance of the Real Estate so as to ensure a high quality appearance and condition on the Real Estate, all for the purpose of preserving the value of all Lots within the Subdivision and to ensure desired high standards of maintenance of the Real Estate to the benefit of all Owners within the Subdivision.

## ARTICLE II

### Definitions For All Purposes Of This Declaration

The following terms, whenever used in this Declaration, shall have the meanings assigned to them by this Article II:

Section 1. Assessment. "Assessment" means the share of the Common Expenses imposed upon each Lot, as determined and levied pursuant to the provisions of Article VI.

Section 2. Association. Association means Brooks Park Homeowners Association, Inc., an Indiana Nonprofit Corporation, formed or to be formed for the purpose of determining and collecting the Assessments and overseeing and enforcing the terms of this Declaration and the Subdivision's plat restrictions.

Section 3. Architectural Committee. "Architectural Committee" means solely the Declarant so long as any Lots remain unsold by Declarant and only after all lots in the Subdivision have been sold by Declarant shall mean the Board of Directors of the Association, or any group of not less than three (3) persons designated as the Architectural Committee by resolution of the Board of Directors, when and to the extent exercising any rights of consent pursuant to this Declaration. The term Architectural Committee shall be the same committee as the Architectural Committee as set out in the Plat Restrictions.

Section 4. Subdivision. "Subdivision" means the Brooks Park subdivision as shall be platted and recorded by Declarant in accordance with the provisions of this Declaration.

Section 5. Common Area. "Common Area" means certain open spaces, streets, lakes and any other areas or community facilities which may be designated by Declarant as Common Area on the plat of the Subdivision, as the same may be recorded from time to time, and which is intended for the common benefit of all Lots. Without limiting the generality thereof, Common Area shall include, to the extent not dedicated to the public, all streets, sidewalks, green spaces between curbs and sidewalks, green spaces between right of way lines and sidewalks, curbs, water mains, fire hydrants, the Drainage System, the Sewage System, street lights, street signs, paths, lakes (including water supply pumps and wells), retention ponds, and open spaces.

Section 6. Common Expense. "Common Expense" means the actual and estimated cost to the Association for maintenance, management, operation, repair, improvement, and replacement of Common Area and the Common Property, real estate taxes or personal property taxes assessed against any Common Area or Common Property, and any other cost or expense incurred by the Association for the benefit of the Common Area or Common Property, and shall also include the cost of maintaining the

landscaping upon the Lots if so desired by the Board of Directors of the Association, and any other cost or expense incurred by the Association pursuant to this Declaration or in the course of performance of its duties under this Declaration. Common Expenses shall not include any costs or expenses incurred in connection with the initial installation or completion of the streets, lakes, utility lines and mains, street lights, or other improvements constructed by or installed on behalf of Declarant, but shall include the costs of any private water supply system to service the ponds.

Section 7. Common Property. "Common Property" means all real and personal property which is in the nature of common or public improvements or areas, as may be designated on the plat of the Subdivision, and which is located in, upon, or under the Common Areas or Easements within the Subdivision other than such as may have been dedicated to the public and accepted for maintenance by the appropriate public agencies.

Section 8. Declarant. "Declarant" means Macs Landing, LLC., an Indiana limited liability company or any other person, firm, corporation or partnership which succeeds to the interests of Macs Landing, LLC as developer of the Subdivision as set forth in a recorded instrument expressly transferring the rights and obligations of Declarant.

Section 9. Drainage System. "Drainage System" means the storm sewers, subsurface drainage tiles, swales, ditches, pipes, and other structures, fixtures, properties, equipment and facilities located in, upon, or under the Common Area or Easements, and designed for the purpose of expediting the drainage of surface and subsurface waters from, over, and, across the Subdivision, other than such as may have been dedicated to the public and accepted for maintenance by the appropriate public agency.

Section 10. Easements. "Easements" refer to those areas reserved as easements of any type whatsoever on the plat of the Subdivision, as the same may be recorded from time to time.

Section 11. Lot. "Lot" means any of the separate parcels identified on the final plat of the Subdivision, as the same may be recorded from time to time. Lots shall be numbered. More than one Lot may be collectively referred to as Lots.

Section 12. Mortgagee. The term "Mortgagee" means any holder, insurer, or guarantor of any first mortgage on any Lot.

Section 13. Owner. "Owner" means any person or persons, entity or entities other than Declarant who hold or acquire on or after the date of this Declaration legal and/or equitable title to any Lot; provided, however, that "Owner" shall not include any Mortgagee so long as such Mortgagee does not have possession of the Lot or hold both legal and equitable title thereto.

Section 14. Plat. "Plat" shall mean the final recorded plat of the Subdivision.

Section 15. Plat Restrictions. "Plat Restrictions" shall mean all the restrictions, covenants, terms and conditions stated on the Plat.

Section 16. Sewage System. "Sewage System" means any sanitary sewer lines, lift stations, equipment, or facilities located in, upon, or under the Common Area or Easements and designed to provide for the discharge of sanitary sewage from any or all

Lots, as the same are or may be constructed at any time, and any replacement thereof or substitute therefor, except such as may have been dedicated to the public and accepted for maintenance by the appropriate public agency.

Section 17. Water System. "Water System" means any non utility provided or irrigation water lines, including wells, pump stations, fire fighting cisterns, equipment or facilities located in, upon, or under the Common Area or Easements and designed to provide for the supply of water to any of the Lots, as the same are, or may be, constructed at any time, and any replacement thereof or substitution thereof, except such as may have been dedicated to the public or public utility, and accepted for maintenance by such public agency or public utility.

Section 18. Builder. "Builder" means any person or persons, entity or entities other than Declarant or Owner who hold or acquire on or after the date of this Declaration legal and/or equitable title to any Lot for the sole purpose of erecting a residence on the said Lot within one year after acquisition of the Lot in accordance with the terms and conditions set forth in this Declaration and the Plat Restrictions.

Section 19. Developer. Developer for the purposes of Article II, Section 8. Declarant, the developer is Macs Landing, LLC., an Indiana limited liability company, or any other person, firm, limited liability company, corporation or partnership which succeeds to the interests of Macs Landing, LLC as developer of the Subdivision.

### ARTICLE III.

#### Use and Bulk Restrictions

Section 1. **Permitted Uses**. All improvements on any portion of a Lot shall be used or occupied only for residential purposes, with no more than one (1) dwelling unit per Lot and one (1) nuclear family per Lot. Except as provided in this Article III, no business buildings shall be erected on the Real Estate and no commercial enterprise may be conducted on any part thereof including, but not limited to, any hotel, motel, bed and breakfast, or transient use. No lease on any Lot or portion thereof shall have a term of less than six (6) months.

Section 2. **Types of Structures and Fences**. Except as provided in this Section 2, no structure shall be erected, altered, placed, or permitted to remain on any Lot, other than one detached, single-family dwelling with an attached side-loading garage for at least two (2) but not more than four (4) cars unless otherwise permitted by the Architectural Committee. No such structures shall be erected on any Lot without the prior written approval of the Architectural Committee. Except as provided in this Section 2, any garages, pool houses, storage areas or any other structure which if detached would be considered an accessory building must be attached to and be under the same roofline or rooflines as the primary dwelling, shall be of a permanent type of construction and shall conform to the general architecture and appearance of said residence. No shack of any type, mobile home, modular home, manufactured housing, outhouse, detached storage shed or tool shed, cage, or barn of any kind whatsoever shall be erected, situated, stored, or otherwise located on any Lot, except such structures used by a builder during the construction of a proper single-family dwelling structure, provided such builder's temporary structures shall be promptly removed from the lot upon substantial completion of the proper structure and shall not be permitted to remain on the lot in any event for

more than twelve (12) months after the commencement of construction of the proper single-family dwelling structure, unless such period is extended in writing by the Developer or the Committee, and

Except to the extent a taller fence as required under applicable law in connection with an in-ground swimming pool approved as required, no fence shall be permitted on any Lot except for forty-eight (48") high decorative metal fences in the 'wrought iron' style as approved by the Architectural Committee. No part of any fence may extend forward on the affected Lot beyond the primary rear wall of the dwelling, cross any building line, or be located in a manner that impedes or restricts drainage of any Lot. Furthermore, the Declarant shall have the right to erect and the Association has the right to maintain a perimeter fence around the Subdivision and an entranceway gate or gates to the Subdivision.

Section 3. **Setbacks and Pad Elevation.** No building or other structure shall be placed closer to the street, Outlot, or the property lines of each Lot than twenty-five feet (25') front yard building set back line, five feet (5') side yard setback with an aggregate of fifteen feet (15') and thirty feet (30') rear yard setback, nor over any easement shown on the Plat unless otherwise stated Plat Restrictions or shown in the Plat. No building shall be constructed lower than the minimum building pad elevation provided by Declarant or Declarant's Engineer.

Section 4. **Manner of Use.** Each Owner shall use and occupy his respective Lot and all easements and rights-of-way appertaining thereto, in a careful, safe, and proper manner and keep his Lot in a clean and safe condition in accordance with this Declaration, applicable zoning ordinances, all health, fire, and police requirements and regulations, state statutes, local ordinances, the lawful directions of proper public officials, the Plat Restrictions set out in the plat of the Subdivision and all rules and regulations as promulgated from time to time by the Board of Directors of the Association. No Owner shall conduct nor permit any person to conduct any nuisance or any unlawful activity on the Real Estate.

Section 5. **Floor Area.** The ground floor of each *multi-story dwelling* constructed on a Lot, exclusive of one story open porches, terraces, balconies, and garages, shall not be less than 1400 square feet of finished and livable floor area, ranch style homes shall have not less than 2000 square feet and for two story homes shall have not less than 2400 square feet. Basement floor area shall not be counted in the above square footages and shall be in addition thereto. Notwithstanding, the foregoing, Article XII Section 11, the Architectural Committee, or the Developer shall with respect to Lots on which no dwelling has begun to be constructed, may increase each of the minimum square footages, may increase or decrease building setbacks for individual Lots or in the aggregate, may promulgate and amend construction guidelines which include, but are not limited to, heights, number of stories, widths, depths, styles, materials, roof pitches, garage locations, landscaping, and related matters. In addition to the foregoing, the owner of each Lot must comply with local zoning ordinances or seek variances thereof.

Section 6. **Building Exteriors, Driveways, and Satellite Dishes.** The finished exterior of every building constructed or placed on any Lot in the Subdivision shall be of material acceptable to and approved by the Architectural Committee. Notwithstanding the requirements set forth in this Section 6, the Architectural Committee may authorize the use of other materials as determined in its sole discretion; provided however, at no time

shall the Architectural Committee approve the use of vinyl or aluminum siding, and or vinyl windows on any dwelling on any Lot. For all buildings in the Subdivision, the first floor exterior shall be 3 sides minimum of a masonry type product defined as brick, stone, cultured stone, EFIS or dryvit. All buildings backing up to 104<sup>th</sup> Street or Georgia Road shall be wrapped on all sides of a masonry type product defined in the previous sentence. Masonry requirements may be modified and reduced upon approval of the Architectural Committee in its sole and controlling discretion on a case-by-case basis for Victorian, Colonial, Cape Cod, Country French, or other styles that lend them selves to the use of less brick stone, or dryvit material.

All driveways must be concrete from their point of connection with the abutting street or road to the dwelling house. At no point along the length thereof shall the paved area of the driveway be less than twelve (12) feet in width.

At no time shall there be on a Lot in the Subdivision or on the exterior of any dwelling any antenna, wireless communication receiving apparatus, or similar devices or cables thereto; provided, however, one (1) satellite dishes no more than twenty-four inches (24") in diameter can be mounted in an inconspicuous location may be approved by the Architectural Committee.

#### ARTICLE IV.

##### General Rights and Restrictions

Section 1. **Nuisances**. No farm animals, birds or fowl, wild animals or domestic animals for commercial purposes shall be kept or permitted on any Lot. Furthermore, at no time shall any dog runs, kennels, animal storage areas, pens, cages, or pastures, be created, constructed, erected, or placed on any Lot in the Subdivision. At no time shall any animal storage, veterinary medicine, emergency animal care, or animal grooming or sitting activity be permitted on any Lots in the Subdivision.

Pets shall be permitted outdoors only within the boundaries of an electronic invisible fence, an approved forty-eight (48") high decorative metal fence in the 'wrought iron' style as approved by the Committee or under leash. If under leash, accompanied by an Owner or other person, and each Owner shall be fully liable for any injury or damage to any person or to the Common Area or Common Property caused by his or her pet or kept animal, and shall be responsible for removing from such areas his or her pet's waste materials. The Association may adopt such other rules and regulations regarding pets and kept animal otherwise dealing with the use and enjoyment of the Common Area and Common Property and the Lots as it may deem appropriate. In the event that is the judgment of the Association, any pet or kept animal is causing or creating a nuisance or disturbance or noise, such pet or kept animal shall be permanently removed from the Real Estate upon written notice of such determination by the Association.

No noxious, unlawful, or otherwise offensive activity shall be carried out on any Lot in the Subdivision, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the Subdivision in the opinion of the Association or the Declarant. No Lot or structure or improvement thereon shall be used in any manner which causes or might reasonably be expected to cause any disturbance to the normal use and enjoyment of surrounding or neighboring Lots, nor in any manner which causes

injury to the reputation of the Subdivision, including, without limitation, the burning of any refuse or excessive noise by the use of any musical instruments, loud speakers, electrical equipment, amplifiers or other equipment or machines.

Section 2. **Sight Obstructions.** No trees, hedge or shrub planting which obstructs sight lines at elevations between two and six feet above the adjoining streets shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street Lot lines and a line connecting points twenty-five (25) feet from the intersection of said street Lot lines (or in the case of a rounded property corner, from the intersection of the street Lot lines extended to form a corner). The same sight line limitations shall apply to any Lot within 10 feet from the intersection of a street line with the edge of a driveway pavement. As to any trees located within said sight line areas, the Owner thereof shall maintain the foliage line of such trees at a sufficient height to prevent obstruction of such sight lines.

Section 3. **Driveways.** All driveways shall be installed prior to or as soon as practicable after the completion of the construction of the dwelling in accordance with the Plat Restrictions and the plans and specifications meeting the approval of the Architectural Committee. Each Owner shall maintain the driveway(s) located on his Lot so as to prevent or repair unsightly cracking or crumbling, and shall keep his driveway(s) clean and free of debris.

Section 4. **Vehicle-Parking.** Except as stated herein, all motor vehicles belonging to members of a household of an owner of a lot shall have permanent parking spaces in garages or driveways constructed on the Lots in the Subdivision, and no disabled vehicle shall be stored on any Lot in the Subdivision. No recreational vehicle; all terrain vehicle; go-kart; motorcycle; racing car or parts thereof; bus; coach; boat; jetski; watercraft; snowmobile; boat, jetski, watercraft, or snowmobile trailer; semi-trailer; semi tractor; truck or van of any type (except minivan, conversion van, van with a maximum capacity of fifteen (15) persons, or a pick-up truck owned by an Owner of a Lot), farm equipment, excavation equipment, camper, motor home, tractor, or trailer of any kind may be stored, parked, located, or otherwise situated at any time on any Lot or any street or the Common Area; provided, however, such vehicles may be stored in the garage of the primary dwelling on the Lot if such vehicle cannot be seen from any street or any Lot in the Subdivision. No vehicle shall be parked on a regular, recurrent, or permanent basis on any street. This Section 4 shall not apply to any construction vehicles, trailers, or equipment of Declarant or any other builder in the Subdivision during the development thereof nor shall apply to any excavation equipment used to perform services for any utilities in the Easements or the Common Area.

Section 5. **Signs.** No sign of any kind shall be displayed to the public view on any Lot (whether indoors or outdoors), except:

- (a) that one sign of not more than six square feet may be displayed for the purpose of advertising a house for sale or rent,
- (b) signs of not more than six square feet as may be erected by the builders or Owners (including Declarant) to advertise the property during construction and sale,
- (c) such other signs as may be approved by the Architectural Committee and,
- (d) if necessary under applicable zoning regulations or requirements, signs required by any zoning authority having jurisdiction thereof.

Section 6. **Landscaping and Vegetation.** Within one hundred eighty (180) days of the earlier of the occupancy of or completion of the primary dwelling unit on a Lot, each Owner other than Developer shall landscape his lot in accordance with a landscape plan submitted to and approved by Developer or the Committee. Each such landscape plan shall be submitted to the Developer or the Architectural Committee concurrently with the submission of the plans for any structure proposed to be constructed on said lot, and shall include as a part thereof a minimum of fourteen (14) 18” to 24” in height or spreading shrubs to be planted within mulch beds in the front of the homes. Lots over 6,000 square feet but less than 15,000 square feet shall be required to have two (2) trees in the lot planting area in the front yard or sideyard within ten (10) feet of the established building line. Lots over 15,000 square feet shall be required to have three (3) trees in the lot planting area with at least one in the front yard.

The *Red Sunset Maple* is the designated street tree for the Subdivision. All lots are required to plant street trees that are a minimum of 2” diameter and shall be placed on average between 40 – 60 feet on center in a planting strip between the curb and the sidewalk. The planting strip shall be a minimum of four feet wide. Within 100’ of an intersection, trees may be planted back of the sidewalk in order to maintain vision clearance of traffic control signs. In cases of sanitary sewer laterals, refer to Hamilton Southeastern Utilities detail for tree separation before placement.

At no time shall the Owner allow either of these shade trees to remain in the yard or along the street if they become diseased or are dead. In the event of death or disease of shade trees, the Owner, at its own expense, shall promptly replace the dead or diseased trees with trees meeting or exceeding the above-described requirements.

It shall be the duty of the Owner of any Lot or Lots in the Subdivision to keep the grass on his Lot or Lots properly cut and to keep the Lot or Lots free of weeds and trash and otherwise neat and attractive in appearance, including, without limitation, the proper maintenance of any structures on such Lot or Lots. In the event the owner of any Lot fails to do so in a manner satisfactory to the Association, the Association shall have the right (but not the obligation) through its agents and employees to enter upon said Lot and to repair, maintain, and restore the Lot and the improvements or landscaping situated thereon. The cost of such landscaping or structural repair or maintenance shall be and constitute an assessment against such Lot and the Owner, to be collected, and enforced as if it were a part of the a Lot Owner’s regular Annual Assessment as provided in the Declaration.

Section 7. **Garbage and Refuse Disposal.** No Lot shall be used or maintained as a dumping ground or area for trash. Rubbish, garbage, or other waste shall not be kept on any Lot except in sanitary, windproof containers, and such containers shall be kept clean, shall be stored in the garage of each respective unit except for trash pick-up days, and shall not otherwise be stored on any Lot in open public view. All equipment, garbage cans, service yards, woodpiles, or storage piles shall be kept from view of neighboring residences and streets. All rubbish, trash, or garbage stored outside any residence shall be regularly removed from the premises and shall not be allowed to accumulate thereon. There shall not be permitted on the Lots any type of clothes line. Trash collection services for the Subdivision shall be provided only by an entity selected and designated by the Declarant or the Association. Trash may be placed at the curb of each Lot no earlier than 6:00 P.M. of the night before the day of scheduled collection, and trash receptacles shall not be permitted to remain outside more than twenty-four (24)



consecutive hours.

Section 8. **Storage Tanks.** At no time shall there be situated, or located above, upon, or beneath the surface of any Lot any aboveground or underground storage tank of any type whatsoever.

Section 9. **Tree Preservation.** No trees may be removed or relocated from any Lot without the approval of the Architectural Committee, and applications for such approval shall be made to the Architectural Committee in writing, except that such approval shall not be required for Declarant. Trees are to be removed or added to the Lot only in accordance with the Plat Restrictions.

Section 10. **Placement of Utility Lines.** All electrical service lines, gas service lines, cable television lines, telephone lines, and all other lines or mains which may be used for the transmission of any form of matter, signal, or energy, which may be located on the Real Estate and which are not within buildings or structures or attached to the walls thereof, shall be placed underground. All lines which serve any one Lot shall be so located as to be accessible for maintenance and repair without disturbance to structures and other permanent improvements on any other Lot. To the extent that any lines or equipment of any utility providing such services are situated on a Lot, such utility shall have an easement on the Lot for the installation, reconstruction, operation and maintenance of such lines or equipment.

Section 11. **Obstruction of Common Property.** No Owner shall unreasonably interfere with, damage, or obstruct the use or maintenance of any Common Area or Common Property.

Section 12. **Outdoor Lighting and Mailboxes.** Uniform dusk to dawn front yard lights approved by the Architectural Committee shall be installed by the owner at owner's expense prior to the completion of construction of a dwelling on a lot. After installation, the owner shall maintain and replace the installed dusk to dawn light if necessary at the owner's expense. Any replacement front yard dusk to dawn light shall only be that approved by the Architectural Committee in advance of replacement.

Uniform mailboxes approved by the Architectural Committee shall be installed on the Lot in the location approved by the Architectural Committee by the Owner at Owner's expense prior to the completion of construction of a dwelling on a Lot. After installation the Owner shall maintain and replace the damaged uniform mailbox if necessary at the Owner's expense. Any replacement mailbox may only be that approved by the Architectural Committee in advance of replacement.

Section 13. **Swimming Pools.** No aboveground swimming pools shall be located on any lot in the Subdivision. An in-ground swimming pool may be installed on a Lot as an accessory to the dwelling for the use of the Owner or their guests. During the period commencing May 1 and ending September 30 of any calendar year, the in-ground pool shall be fully operable and functional and not violate any building or health code regulations, ordinances, or statutes. Such pool shall be installed in the rear yard of the Lot. All pool equipment must be concealed in an inconspicuous location. Temporary wading pools measuring no more than six feet (6') in diameter and less than one foot (1') in depth is permitted without Architectural Committee approval. Such temporary wading pools must be drained and stored indoors on a nightly basis.

Section 14. **Sidewalks**. Each Lot shall have a sidewalk constructed along each Lot line that borders a street. The sidewalk shall be constructed in strict accordance with plans approved by the Architectural Committee. The edge of such sidewalk nearest the street shall be located continuously four feet (4') back from the back of the street curb and shall continuously run parallel with and four feet (4') from the back of the street curb. The sidewalk shall be constructed of concrete and shall be a maximum of five feet (5') in width and a minimum of four inches (4") thick. The Owner of the Lot shall install the sidewalk when constructing the dwelling on the Lot; provided, however, the sidewalk shall be fully installed prior to or upon the date of occupancy of the newly constructed home by the owner. After installation of the sidewalk, the owner at its own expense shall repair, maintain or if required by the Association or Developer, replace any damaged sidewalk and restore it to its original condition.

Section 15. **Title to Common Area and Common Property**. Title to all Common Area and Common Property shall be held in the Association. Each Owner shall have as non-exclusive reciprocal easements appurtenant to his Lot:

- a. a right of access to his Lot over the streets as shown on the Plat (streets shown on the Plat hereinafter referred to as "Streets"),
- b. the right to the use of all of the Common Area for its intended purposes,
- c. the right of access thereto over the Streets,
- d. the right of access to and use of the Water System, Drainage System, the Sewage System, and
- e. all utility lines and mains abutting or adjacent to his Lot;

provided, however, that no Owner's use of any Common Area or Common Property shall materially interfere with any other Owner's use thereof

Section 16. **Remedies for Failure to Comply**. In the event that any Owner fails to fully observe and perform the obligations set forth in this Declaration or the Plat Restrictions, and in the further event that such failure is not cured within thirty (30) days after written notice of the same is given by the Association or the Declarant, the Association, Architectural Committee (as to the matters for which it has responsibility), Declarant or any Owner shall have the right to commence judicial proceedings to abate or enjoin such failure, to collect damages for such failure, to take such further action as may be allowed at law or equity to correct such failure after commencement of such proceedings, or any combination of these remedies. In the event that such failure causes or threatens to cause immediate and substantial harm to any property outside of such defaulting Owner's Lot or to any person or entity, the Association or the Declarant shall have the right to enter upon such Lot for the purpose of correcting such failure and any harm or damage caused thereby, without any liability whatsoever on the part of the Association. All costs incurred by the Association, Architectural Committee or Declarant in connection with any act or proceeding undertaken to abate, enjoin, or correct such failure; including court costs, interest, and attorney fees; shall be payable by the defaulting Owner upon demand by the Association, Architectural Committee or Declarant and shall immediately become a lien against his Lot, subject to payment and collection in the manner provided in Article VII for collection of Assessments (amount payable by defaulting Owner and lien against Lot collectively hereinafter referred to as "Default Assessment"). The rights in the Owners and the Association, Architectural Committee, or Declarant under this Section shall be in addition to all other enforcement rights hereunder or at law or in equity.

Section 17. **Lot Access.** All Lots shall be accessed from the Streets.

Section 18. **Miscellaneous Rights and Restrictions.**

(a) **Gardens.** Vegetable, wild flower, and other gardens may be located only in the rear yard of a Lot and may not exceed one hundred (100) square feet in size. Vegetation within the garden area may not exceed three feet (3') in height.

(b) **Flag Poles.** The display of flags and banners on any Lot or the Common Area shall only be done after written approval of the Architectural Committee. At no time shall the Architectural Committee approve the erection of a free standing flag pole or poles on any Lot in the Subdivision. The Architectural Committee shall have the authority to approve the erection of a free standing flag pole or poles in the Common Area and to approve the display of flags and banners in aggregate total not to exceed twelve (12) square feet in size from poles or other means anchored or attached to a dwelling on a Lot in the Subdivision.

(c) **Prohibited Items and Activities.** Trampolines, clotheslines, wells providing water for human or household consumption, septic tanks and systems, and electronic insect eradication devices ("zappers") are prohibited. No trash or grass clippings may be disposed of on any empty Lot in the Subdivision.

(d) **Basketball Goals.** Basketball goals are permitted subject to approval by the Architectural Committee. Goals with black posts and glass or white/translucent fiberglass backboards may be considered for approval. No basketball goal positioned in a manner likely to result in the use of an adjoining public or private street in connection with the use of such goal may be approved.

(e) **Playground Equipment.** Play sets and other recreational equipment or items must be approved by the Architectural Committee. All approved play sets must be located behind the Dwelling in the rear yard of the affected Lot and must be constructed primarily of a material or materials determined appropriate by the Architectural Committee. No play set may exceed twelve feet (12') in height. All play sets shall be kept in good condition and repair, and shall be stained and/or painted as reasonably necessary as determined by the Architectural Committee.

(f) **Garage and Yard Sales; Holiday Lights.** There shall be no more than two (2) garage or yard sales held by the Owner or residents of any Lot during any twelve (12) month period. Christmas lights and other holiday or occasion-themed decorations may be erected no sooner than five (5) weeks prior to, and removed not later than two (2) weeks after, such holiday or occasion.

(g) **Replatting Restriction.** At no time shall any Owner of more than one Lot replat the Lots or portions thereof owned by Owner to one Lot or any number of Lots shown on the replat without the prior written approval of Declarant or Association in its sole and controlling discretion. In any event of any approved replat, any assessment by the Association to the Owner shall be on a per Lot basis based on the Lots as originally platted in the Plat, not on the basis of the number of Lots in any replat.

(h) **Other Memberships.** An Owner of a Lot upon becoming an Owner shall automatically become a member of the Brooks Park Amenity Association, Inc. with all the

rights and subject to all the obligations appertaining thereto. Such membership in the Brooks Park Amenity Association is mandatory as long as an Owner owns a Lot or Lots, and such membership may not be waived, assigned, or terminated in any way.

## ARTICLE V.

### Rights and Obligations for Structures

Section 1. **Enjoyment.** Each Owner shall have the exclusive right (subject to the provisions of this Declaration) to occupy, and enjoy his Lot and the improvements constructed thereon in accordance with the terms and conditions set forth in this Declaration and the Plat Restrictions.

Section 2. **Maintenance and Repair of Structures.** Each Owner shall be responsible for the maintenance, repair, and reconstruction of his Lot and all improvements located thereon, including landscaping, and shall keep the same in good condition and repair. The Association shall have the right to enter upon each Lot for the performance of its maintenance and repair rights or duties hereunder or under the Plat Restrictions. This right of entry shall include, but not be limited to, the entrance onto a Lot for trash and weed removal, grass cutting, landscape maintenance and repair, and building or structural maintenance, repairing, and reconstruction.

Section 3. **Insurance, Casualty.** The Association shall maintain a master policy of insurance against fire and other casualty, with standard extended coverage endorsements, on the Common Property and on all improvements in the Common Area, in an amount equal to the full insurable value of such improvements. Such insurance shall include a replacement cost endorsement and inflation guard endorsement (if obtainable) and shall name as insureds the Declarant, its members and officers, and the Association including the Association's officers and directors. In the event that the improvements on any Lot(s) are damaged or destroyed by any casualty, the Owner(s) thereof shall promptly repair or reconstruct the same substantially to their condition immediately prior to such damage or destruction; provided, that subject to the other provisions of this Declaration, such Owners may elect to remove the remainder of the improvements and construct new improvements thereon not necessarily the same as the ones previously constructed. Any new improvements not the same as the ones previously constructed shall only be constructed, erected or placed on the Lot after the prior written approval of the Architectural Committee.

Section 4. **Failure to Repair, Maintain or Reconstruct; Remedies.** In the event that any Owner shall fail or refuse to maintain, repair, or reconstruct any improvements for which he is responsible under this Article V and shall persist in such failure or refusal after thirty (30) days prior written notice thereof, then in addition to all other rights and remedies as may be available at law or in equity, the Association shall have the right, to enter upon such defaulting Owner's Lot and perform all necessary work thereon to return the improvements or landscaping or both to good condition and repair or to build such structures or improvements as are necessary to restore the improvements to a complete and useable architectural unit. In the event that such failure or refusal shall result in any condition which is the Association has determined or is causing or is likely to cause immediate and substantial harm to persons or property outside of such defaulting Owner's Lot, such right of entry shall be immediate. All costs incurred as a result of such entry and the work performed on such defaulting Owner's behalf (including attorneys' fees, interest,

and court costs) shall be payable by the Lot's Owner on demand by the party incurring such costs, and shall constitute a lien on such defaulting Owner's Lot from the date(s) incurred in favor of the party incurring such costs. Such amounts shall be collected and enforced as a Default Assessment in accordance with Article VII below.

## ARTICLE VI.

### Construction Approvals

Section 1. **Plans, Specifications and Locations of Improvements**. No building, structure, fence, driveway, patio, swimming pool, landscaping, antenna, tennis court, or other form of improvement shall be erected, placed, or altered on any Lot until the building plans, specifications, landscape plan, and plot plan showing the design, dimensions, color, materials, and location thereof have been approved by the Architectural Committee as to their conformity and harmony of external design with the existing buildings, structures, and other Improvements in the Subdivision, and as to compliance with applicable law and the covenants herein contained; provided, however, that no such approval shall be required for any improvements constructed by Declarant. Subject to Article IV Section 18(f), at no time shall there be the erection, construction, installation, or placement of figurines, statues, posters, pictures, photographs, portraits, mobiles, flags, banners, lamps, artistic creations or other items which the Architectural Committee in its sole discretion could cause embarrassment, discomfort, annoyance, or nuisance to the occupants of the Subdivision that is either (i) attached to the exterior of a dwelling located on a Lot or (ii) otherwise located in, on, or above a Lot. If the Architectural Committee fails to act upon any plans submitted to it for approval within a period of sixty (60) days from the submission date of such plans, such failure shall be deemed approval and the Owner may then proceed with the construction according to the plans submitted; provided, the commencement is made within one (1) year from the date of submission to the Architectural Committee for their approval. The Architectural Committee shall not be entitled to any compensation for services performed pursuant to this Article VI, except as may be approved by the Board of Directors of the Association.

Section 2. **Exercises of Discretion by Architectural Committee**. Whenever any approval or exercise of discretion by the Architectural Committee is called for by this Declaration or the Plat Restrictions, the Architectural Committee shall exercise its discretion reasonably in view of the general purposes of this Declaration, as set forth in Article I, and in view of any specific purposes or standards which govern the specific approval or exercise of discretion in question, as may be specified in the section or sections of this Declaration relating thereto. The Architectural Committee shall have no power to approve any plans that do not comply with the use and bulk restrictions set forth in Article III of this Declaration, or to vary or alter any other term, condition, covenant, or restriction in this Declaration or Plat Restrictions; unless express authority therefor is granted by this Declaration or by the Plat Restrictions.

Section 3. **Completion of Work**. Upon receipt of all approvals required pursuant to this Article, each Owner shall, as soon as practical, satisfy or cause to be satisfied all conditions thereof and diligently proceed with the commencement and completion of all approved construction. If the landscaping is not installed within the time period set forth in Article IV Section 6 above or if any other work is not substantially completed within eighteen months of the date of such approval, or such longer period as the Architectural Committee may approve prior to the expiration of such eighteen months, then the

approval of the plans for such landscaping or work shall terminate automatically without any further act by any person, and such Owner shall not commence or continue such landscaping or construction without further approval of the Architectural Committee obtained in the manner of the initial approval as hereinabove provided. Failure to comply with the limitations set forth in this section shall constitute a breach of this Declaration and subject the defaulting party to all enforcement procedures set forth herein and any other remedies provided by law or equity. Furthermore, the Architectural Committee, at its discretion, may declare such uncompleted improvement to be a nuisance and shall have all remedies provided by law, in equity or in this Declaration or the Plat Restrictions, to abate such nuisance.

## ARTICLE VII.

### Covenants for Maintenance Assessments

Section 1. **Purpose of the Assessments.** The Annual Assessments (as defined below), Special Assessments (as defined below), or Default Assessments levied by the Association shall be used exclusively for the purpose of preserving the values of the Lots within the Subdivision, as the same may be platted or replatted from time to time, and promoting the health, safety, and welfare of the Owners, users, and occupants of the same and, in particular, for the improvement, fencing by Declarant or the Association, repairing, operating, and maintenance of the Common Area or Common Property, including, but not limited to, the payment of taxes and insurance thereon, for the cost of labor, equipment, material, and management furnished with respect to the Common Area or Common Property, and any and all other Common Expenses. Each Owner hereby covenants and agrees to pay to the Association:

(a) a Pro-rata Share (as hereinafter defined) of the Annual Assessments fixed, established and determined from time to time as hereinafter provided.

(b) A Pro-rata Share of any Special Assessments fixed, established, and determined from time to time, as hereinafter provided.

Section 2. Pro-rata Share. The Pro-rata Share of each Owner for purposes of this Article VII shall be the percentage obtained by dividing one by the total number of Lots shown on the Plat or replats of the Subdivision, as the same may be recorded from time to time.

Section 3. **Liability for Assessments.** Each Assessment, whether Annual, Special, or Default Assessment, together with any interest thereon and any costs of collection thereof, including attorney's fees and court costs, shall be a charge on each Lot and shall constitute a lien upon each Lot from and after the due date thereof in favor of the Association. The Default Assessment is due and payable by the Owner is a lien on the Lot when notice is given the Owner of the said Default Assessment. Each such Assessment, together with any interest thereon and any costs of collection thereof, including attorney's fees and court costs, shall also be the personal obligation of the Owner of each Lot at the time when the Assessment is due. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. The lien for any Assessment shall for all purposes be subordinate to the lien of any Mortgagee whose mortgage was recorded prior to the date such Assessment first became due and payable. No sale or transfer shall relieve such Lot from liability for

any Assessments thereafter becoming due or from the lien thereof, nor shall any sale or transfer relieve any Owner of the personal liability hereby imposed. The personal obligation for delinquent Assessments shall not pass to any successor in title unless such obligation is expressly assumed by such successor.

Section 4. **Basis of Annual Assessments.** The Board of Directors of the Association shall establish an annual budget prior to the beginning of each fiscal year, setting forth all anticipated Common Expenses for the coming fiscal year, together with a reasonable allowance for contingencies, and reserves for periodic maintenance and repair of the Common Area and the repair and replacement of the Common Area and Common Property. A copy of this budget shall be delivered to each Owner within thirty (30) days prior to the beginning of each fiscal year of the Association. Such budget, when approved, shall constitute the basis on which the total annual assessment for the Subdivision (hereinafter referred to as "Annual Assessment") is determined for purposes of this Declaration.

Section 5. **Basis of Special Assessments.** Should the Board of Directors of the Association at any time during the fiscal year determine that the Annual Assessments levied for such year may be insufficient to pay the Common Expenses for such year, the Board of Directors shall call a special meeting of the Association to consider imposing such special assessments as may be necessary for meeting the Common Expenses for such year. A special assessment shall be imposed only with the approval of two-thirds (2/3) of the Owners, and shall be due and payable on the date(s) determined by such Owners, or if not so determined, then as may be determined by the Board of Directors (hereinafter referred to as "Special Assessment").

Section 6. **Fiscal Year; Date of Commencement of Assessments; Due Dates.** The Association shall establish the fiscal year of the Association and such fiscal year may be changed from time to time by action of the Association. The Annual Assessments on each Lot in each section of the Subdivision shall commence at the first day of the calendar year. Calendar years 2005 and 2006, the Annual Assessment shall be Five Hundred Fifty and no/100 U.S. Dollars (\$550.00), and the Annual Assessments shall be due and payable thereafter in installments as may otherwise be established by the Board of Directors of the Association by notice to the Owners; provided, that if any Lot is first occupied for residential purposes prior to being conveyed by Declarant, full Annual Assessments shall be payable with respect to such Lot commencing on the first day of the first month following the date of such occupancy and due and payable thereafter in installments as established by the Board of Directors. The Board of Directors of the Association may from time to time by resolution authorize the payment of such Annual Assessment in monthly, quarterly, semi-annual, or annual installments on such date or dates as it deems appropriate.

Section 7. **Duties of the Association.**

(a) The Board of Directors of the Association (sometimes hereinafter referred to as "Board of Directors") shall cause proper books and records of the levy and collection of each Annual, Special and Default Assessment (hereinafter collectively referred to as "Assessment" or "Assessments" as the case may require) to be kept and maintained, including a roster setting forth the identification of each and every Lot and each Assessment applicable thereto, which books and records shall be kept in the office of the Association and shall be available for the inspection and copying by each Owner (or duly

authorized representative of any Owner) at all reasonable times during regular business hours of the Association. The Association shall cause audited financial statements to be prepared at least annually for each fiscal year of the Association, and shall furnish copies of the same to any Owner or Mortgagee upon request. The Board of Directors of the Association shall cause written notice of all Assessments levied by the Association upon the Lots and upon the Owners to be mailed to the Owners or their designated representatives. Notices of the amounts of the Annual Assessments and the amounts of the installments thereof shall be sent annually within thirty (30) days following the determination thereof. In the absence of any notice regarding the amount of the Annual Assessment, each Owner shall continue to pay the monthly amount for Annual Assessments previously paid by such Owner. Notices of the amounts of Special Assessments shall be sent as promptly as practicable and in any event not less than ten (10) days prior to the due date of such Assessment or any installment thereof. In the event notice of any Special Assessment is mailed less than ten (10) days prior to the due date of the Special Assessment to which such notice pertains, payment of such Special Assessment shall not be deemed past due for any purpose if paid by the Owner within ten (10) days after the date of actual mailing of such notice.

(b) Upon ten (10) days prior written notice to the Association, and the payment of a reasonable fee, the Association shall promptly furnish upon request to any Owner, prospective purchaser, title insurance company, or Mortgagee a certificate in writing signed by an officer of the Association, setting forth the extent to which Assessments have been levied and paid with respect to any Lot in which the requesting party has a legitimate interest. As to any person relying thereon, such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

(c) The Association shall notify any Mortgagee from which it has received a request for notice: (i) of any default in the performance of any obligation under this Declaration by any Owner which is not cured within sixty (60) days; (ii) of any condemnation or casualty loss that affects either a material portion of the Subdivision or the Lot securing its mortgage; (iii) of any lapse, cancellation, or material modification of any insurance policy or fidelity bond required to be maintained by the Association; and (iv) any proposed action which requires the consent of the Mortgagees or a specified percentage thereof, as set forth in this Declaration.

#### Section 8. **Non-payment of Assessments; Remedies of Association.**

(a) If any Assessment is not paid on the date when due, then such Assessment shall be deemed delinquent and shall, together with any interest thereon and any cost of collection thereof, including attorneys' fees, become a continuing lien on the Lot against which such Assessment was made, and such lien shall be binding upon and enforceable as a personal liability of the Owner of such Lot as of the date of levy of such Assessment, and shall be enforceable against the interest of such Owner and all future successors and assignees of such Owner in such Lot; provided, however, that such lien shall be subordinate to any first mortgage on such Lot recorded prior to the date on which, such Assessment becomes due.

(b) If any Assessment upon any Lot is not paid within thirty (30) days after the due date, (1) the Board of Directors shall have the right to accelerate the payment of the entire unpaid balance of all Assessments (2) such Assessment and all costs of collection thereof, including attorneys' fees and court costs, shall bear interest from the



date of delinquency until paid at a rate of twelve percent (12%) per annum or a higher rate if allowed by law, (3) the Association may bring an action in any court having jurisdiction against the delinquent Owner to enforce payment of the same and/or to foreclose the lien against said Owner's Lot, (4) there shall be added to the amount of such Assessment all costs of such action, including the Association's attorney's fees and court costs, and (5) in the event a judgment is obtained, such judgment shall include such interest, court costs, and attorneys' fees.

Section 9. **Adjustments.** In the event that the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for Assessments for the following fiscal year. Such deficit may be recouped either by inclusion in the budget for Annual Assessments or by the making of one or more Special Assessments for such purpose, at the option of the Association. In the event that the amounts budgeted and assessed for Common Expenses in any fiscal year exceed the amount actually expended by the Association for Common Expenses for that fiscal year, a Pro-rata share of such excess shall be a credit against the Assessment(s) due from each Owner for the next fiscal year(s), in such amounts as the Board of Directors of the Association shall deem appropriate.

Section 10. **Initiation Fee and Declarant Liability.** No Assessments set forth in this Article VII shall be due from Declarant or due on any Lot owned by Declarant or any Lot owned by a company or entity in which Declarant has an equity, membership, partnership, or other interest. Upon the closing of the initial conveyance of a Lot by the Declarant to an Owner, the Owner shall pay an initiation fee of Five Hundred and no/100 dollars (\$500.00) to the Declarant or the Association.

## ARTICLE VIII.

### Organization and Duties of Association

Section 1. **Organization of Association.** The Association shall be organized as a Nonprofit corporation under the laws of the State of Indiana, to be operated in accordance with the Articles of Incorporation and By-Laws thereof. The membership of the Association shall consist of one class of voting members, with each member having equal voting rights. Subject to Section 6 below of this Article VIII, the ownership of each Lot shall entitle each Owner to one vote for each whole Lot and a fractional vote for his fraction of any Lot owned by said Owner. The members of the Association shall consist of the Declarant and Owners of Lots in the Subdivision, as the same may be platted or replatted from time to time. In the event that any one Lot or fraction of a Lot shall be owned by more than one person, limited liability company, partnership, trust, corporation, or other entity, they shall be treated collectively as one member for voting purposes, so that as to any matter being considered by the Association, only one vote appertains to each Lot for the Owner or Owners of a Lot.

Section 2. **General Duties of the Association.** Except for the rights of individual Owners to enforce the terms of this Declaration or the Plat Restrictions, the Association is hereby authorized to act and shall act on behalf of, and in the name, place, and stead of, the individual Owners for the common benefit of all such Owners in all matters pertaining to the maintenance, repair, and replacement of the Common Area or Common Property, and the determination of Common Expenses, the collection of Annual, Special,

and Default Assessments, the granting of any approvals whenever and to the extent called for by this Declaration, and the cure of, enjoining of, or the collection of damages arising from the default by an Owner of the terms of this Declaration or Plat Restrictions. The Association shall also have the right, but not the obligation, to act on behalf of any Owner or Owners in seeking enforcement of the terms, covenants, conditions and restrictions contained in this Declaration or the Plat Restrictions. Neither the Association nor its officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color of authority of this Declaration, or for any failure to take any action called for by this Declaration or the Plat Restrictions, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct.

Section 3. **Amendment of Declaration.** The Association shall have the right to amend this Declaration at any time, and from time to time, upon the recommendation of an amendment to the Association by its Board of Directors, and the subsequent approval of such amendment by both the Owners of at least ninety (90%) of the Lots and ninety percent (90%) of the Mortgagees; provided, however, that any such amendment of this Declaration shall require prior written approval of Declarant so long as Declarant owns any Lots within the Subdivision. Declarant may withhold its approval at its sole discretion and for any reason whatsoever. Each such amendment must be evidenced by a written instrument, signed and acknowledged by duly authorized officers of the Association, and by Declarant when its approval is required, setting forth facts sufficient to indicate compliance with this paragraph, including as an exhibit or addendum thereto a certified copy of the minutes of the Association meeting at which the necessary actions were taken, and such amendment shall not be effective until recorded in the office of the Recorder of Hamilton County, Indiana.

Section 4. **Insurance.**

A. The Association shall maintain in force adequate public liability insurance protecting the Association, its officers, directors, employees, and agents; the Declarant, its members, officers, employees, and agents; and the Managing Agent (as that term is defined in Section 9 of this Article VIII), its officers and agents against liability for property damage, personal injury, and death and for good faith actions beyond their respective authorities occurring on or in connection with any and all Common Area and Common Property, in an amount not less than Three Million Dollars (\$3,000,000.00) per occurrence for personal injury or death and One Million Dollars (\$1,000,000.00) per occurrence for property damage. Such liability insurance shall include cross liability claims of one or more insured parties against other insured parties. The premium for such insurance shall be Common Expenses.

B. The Association shall also maintain in force the master casualty policy, referred to in Article V hereinabove, and shall maintain adequate fire and extended coverage insurance for all the Common Area and Common Property for the benefit of all Owners and Mortgagees in the Subdivision, insuring against fire, windstorm, vandalism, and such other hazards as may be insurable under standard "extended coverage" provisions, in an amount equal to the full insurable value of such Common Area and Common Property, and shall contain the following endorsements if and to the extent obtainable at a reasonable cost in the State of Indiana: (i) replacement cost; (ii) inflation guard; (iii) demolition cost, contingent liability, and increased construction cost in connection with building code requirements; and (iv) steam boiler coverage if

applicable). In the event that all or any part of the Common Area or Common Property is determined to be in a flood hazard area, the Association shall also obtain a master policy of flood insurance on all structures and improvements on the Common Area or Common Property within such flood hazard zone, in an amount at least equal to the lesser of 100% of the current replacement cost of all insurable property within the flood hazard area, or the maximum coverage available for such property under the National Flood Insurance Program. The amounts of coverages under the foregoing policies may be increased from time to time as determined appropriate by the Board of Directors or as may be required by law.

C. The Association also, if necessary, shall obtain Workmen's Compensation Insurance, employers liability insurance, and such other liability insurance, with such coverages and limits, as the Board of Directors deems appropriate.

All policies of insurance of the character described in Sections A, B, and C above shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, directors, employees, and agents; the Declarant, its members, officers, employees, and agents; and any Managing Agent, its officers, employees and agents, or the Owners, and shall further contain a clause whereby the insurer waives any defenses based on acts of individual Owners whose interests are insured thereunder, and shall cover claims of one or more insured parties against other insured parties. All such policies shall name the Association, its officers, directors, employees, and agents; the Declarant, its members, officers, employees, and agents; and any Managing Agent, its officers, employees and agents, for the use and benefit of the Owners, as the insured; and shall prohibit any cancellation or substantial modification to coverage without at least ten (10) day's prior written notice to the Association and to the Mortgagees. Such insurance shall inure to the benefit of the Association, its officers, directors, employees, and agents; the Declarant, its members, officers, employees, and agents; and any Managing Agent, its officers, employees and agents, acting on behalf of the Association. The premiums of all insurance and bonds required by this Declaration, Plat Restrictions, or by any By-laws of the Association shall be Common Expenses.

D. The Association may obtain a fidelity bond indemnifying the Association, the Board of Directors, and the owners for loss of funds resulting from fraudulent or dishonest acts of any employee or officer of the Association or of any other person handling the funds of the Association or the Owners, which bond shall be written in an amount equal to at least one hundred fifty percent (150%) of the estimated annual operating expenses for the Subdivision.

E. All policies of insurance maintained by the Association pursuant to this Section shall provide that such coverages be in such amounts as may be required from time to time by FNMA, FHLMC, FHA or VA. All policies shall contain a clause whereby the insurer agrees to provide written notice to the Association, to FNMA, and to any other lending institution or agency requesting or requiring the same, prior to any cancellation or material modification thereof. The Association shall notify all Mortgagees of whom it has notice of any lapse, cancellation, or material modification of any insurance policy

F. Each Owner shall have the right to purchase any additional insurance as he may deem necessary, and each Owner shall be solely responsible for loss of or damage to

his personal property located on his Lot, however caused, including all floor and wall coverings, appliances, furniture and betterments installed by the Owner. Each Owner shall be solely responsible for obtaining his own insurance to cover any such loss and risk.

Section 5. **Condemnation, Destruction**. In the event that the Common Area or the Common Property shall be condemned or taken by any competent public authority, or in the event the same shall be damaged or destroyed by any cause whatsoever, the Association shall represent the interests of the Owners and the Declarant if the Declarant so desires in any proceedings, negotiations, insurance adjustments, settlements, or agreements in connection with such condemnation, damage, or destruction. Any sums recovered by the Association shall be applied, first, to the restoration and repair of any Common Area or Common Property condemned, damaged, or destroyed, to the extent such restoration or repair is practicable, and the balance of such sums shall either be held as a reserve for future maintenance of the Common Area or Common Property or turned over to the Owners in proportion to their Pro-Rata Shares, whichever may be determined by a majority vote of the members of the Association. Each Owner shall be responsible for pursuing his own action for damages to his Lot, either by reason of direct damage thereto or by reason of an improvement of value due to damage to the Common Property; provided, however, that upon request of any Owner(s), the Association shall pursue such claims on such requesting Owners' behalf, and shall turn any recoveries for such Owners over to such Owners directly. The Association shall notify all Mortgagees of whom it has notice of any condemnation, damage, or destruction of any Common Area or Common Property.

Section 6. **Control of Association**. During the development of the Subdivision and until such time as Declarant, its successors and assigns, or Developer, its successors and assigns, have no unsold Lot or Lots in the Subdivision, the Association shall be operated and controlled by Declarant. The Board of Directors shall consist of persons appointed by Declarant, and each Owner shall give and shall be deemed to have given to Declarant an irrevocable proxy to vote on any and all matters on which the Owners are entitled to vote under this Declaration, or under the Articles of Incorporation or the By-Laws of the Association. The control of the Association shall be transferred to the Owners no later than one hundred twenty (120) days after the date on which all of the Lots have been conveyed to Owners. The irrevocable proxy in Declarant shall terminate as of the date of such transfer.

Section 7. **Mortgagee's Rights**. The Mortgagees, individually and collectively, have the right, but not the obligation, to pay any taxes or other charges or assessments which are or may become a lien against the Common Area or Common Property, in the event the same are not paid by the Association when due. The Mortgagees also have the right, but not the obligation, to pay any overdue premiums on hazard insurance policies required to be maintained by the Association, or to secure new hazard insurance coverage in the event of a lapse of any such policies. Any Mortgagee or Mortgagees making any payment pursuant to this Section 7 shall be entitled to reimbursement from the Association promptly upon written demand therefor to the Association.

Section 8. **Dealing with Common Area and Common Property**. The Association shall not convey, dedicate, lease, mortgage, pledge, or otherwise transfer or encumber all or any part of the Common Area or Common Property, without the approval of the Owners of at least two-thirds (2/3) of the Lots. In dealing with the

Common Area and the Common Property, the Association shall be deemed to hold the same in trust for the use and benefit of the Owners. Provided, however, the Board of Directors of the Association may approve easement grants across Common Area for utility, storm and sanitary sewer lines.

Section 9. **Professional Management**. The Association may delegate its duties to a professional management agent (“Managing Agent”), but any contract for such purposes shall be terminable upon not more than 90 days' notice, and no such delegation shall relieve the Association of its responsibilities under this Declaration.

## ARTICLE IX.

### Reserved Easements

All public and quasi-public vehicles, including but not limited to police, fire, ambulance and other emergency vehicles, trash and garbage collection, post office vehicles, and privately owned delivery vehicles shall have the right to enter upon and use the streets located in the Subdivision and any Lot therein in performance of their duties. Declarant hereby reserves and may grant to the Association or to the appropriate public agencies or utility companies perpetual easements over, upon, and under the Easements set forth in the Plat as the same are now or hereafter may be located for the maintenance, repair, or replacement of any utilities, including but not limited to water, sewers (storm and sanitary), gas, telephone, electricity, and cable television. In the event that the Streets are hereafter dedicated to the public and accepted for maintenance by the appropriate public agency, the Easements reserved herein shall not be effected in any way by such dedication. In the event that Declarant, its successors or assigns, shall exercise any rights under the Easements hereby reserved, and in the event that such exercise shall cause any damage to any Lot, the party exercising such easement rights shall restore such Lot substantially to its condition immediately prior to such exercise. The Easements hereby reserved, with the approval of the Board of Directors of the Association or Declarant, may be used for the benefit of property not within the Subdivision.

## ARTICLE X

### Term

This Declaration shall be effective for an initial term of twenty (20) years commencing with the date of recording of this Declaration and shall automatically renew for additional term of ten (10) years each, in perpetuity, unless as of the end of any term both the Owners of ninety percent (90%) of the Lots and the Mortgagees of at least ninety percent (90%) of the Lots vote to terminate this Declaration, in which case this Declaration shall terminate as of the end of the term during which such vote was taken.

Notwithstanding the preceding sentence, all Easements created or reserved by this Declaration shall be perpetual unless otherwise expressly indicated herein or unless all persons or entities entitled to the beneficial use of such Easement shall consent thereto.

## ARTICLE XI.

### Private Amenities and Services

The Water System, Drainage System, the Sewage System, Common Area and the Common Property shall be owned and maintained by the Association so long as this Declaration remains in force. However, all streets, sidewalks, pathways, and storm sewer lines and easements thereto shown on the Plat are hereby dedicated to the Town of Fishers, Indiana, its successors and assigns. Furthermore, sanitary sewer and water lines and easements thereto as shown on the Plat are hereby dedicated to the Hamilton Southeastern Utilities, Inc., its successors and assigns. In the event of any termination of this Declaration and/or any dissolution of the Association, the Association shall convey the Common Area and the Common Property to a successor organization having similar purposes and powers as the Association, or it shall use its best efforts to dedicate the Common Area and Common Property to the appropriate public agencies or utilities which normally hold and/or administer such property. If such dedication or conveyance is not possible, such property shall be disposed of as determined by the Circuit Court of Hamilton County, Indiana, consistent with the purposes set forth in this Declaration. In the event of the termination or dissolution of the Association, the right, but not the obligation, of enforcement of the covenants, restrictions, terms, provisions, and conditions of this Declaration is hereby granted to the Town of Fishers, Indiana Planning Commission, its successors and assigns.

## ARTICLE XII.

### Recreation Area

The Common Area designated by the Declarant including any ponds shown on the plat (hereinafter referred to as "Recreation Area") are used for the recreation, leisure, and aesthetic pleasure of only the Owner of each Lot in the Subdivision, the tenants of each Owner, the members of the Owner's or tenant's household living with them and the guests of the Owner or the Owner's tenant. Consequently, the Association shall have the authority to make such rules and regulations it deems appropriate for the preservation, welfare, and maintenance of the Recreation Area; provided, however, notwithstanding the right of amendment of this Declaration set forth in Article VIII, Section 3, above, at no time shall the Association or the Owner alter the rule that the use of such Recreational Area for recreational, leisure, or fishing purposes shall be limited to the Owner of each Lot in the Subdivision, the tenants of each Owner, the members of the Owner's or tenant's household living with them and the guests of the Owner or the Owner's tenant, the members of their households living with them and their guests. Costs and expenses necessary for the maintenance, repair, dredging, fish stocking, and welfare of the Recreation Area shall be part of the Common Expenses.

## ARTICLE XIII.

### General Provisions

Section 1. **Covenants Run With the Land.** Subject to Article X above, the covenants created by this Declaration shall attach and run with the Real Estate and shall be binding upon every person who may hereafter come into ownership, occupancy, or possession of any portion of the Real Estate.

Section 2. **Scope of Covenants.** The Declarant and each Owner of any Lot in the Subdivision, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, are deemed to have agreed to each and every one of the various terms, covenants, conditions, and restrictions contained in this Declaration, and the same shall be of mutual and reciprocal benefit to Declarant and each Owner of each Lot. Declarant, the Association, the Architectural Committee (for matters for which it has authority), or each Owner shall be entitled to enforce this Declaration against any Owner to the full extent permitted herein and under applicable law, and shall have all rights and remedies for such enforcement at law or in equity. Each Owner shall be liable for any failure to fully comply with all of the terms, covenants, conditions, and restrictions contained in this Declaration only so long as each such Owner shall have any interest in any Lot; provided, however, that the relinquishing of all of such interest shall not operate to release any Owner from liability for a failure to comply with this Declaration which occurred while said Owner had such interest.

Section 3. **Interest, Attorney's Fees and Court Costs.** As to any legal or equitable proceedings for the enforcement of, or to restrain the violation of this Declaration or any provision thereof, if the party bringing such action is successful in obtaining any remedy against any defaulting Owner, such defaulting Owner shall pay interest allowed by law, the reasonable attorney's fees, and the court costs due the successful party, in such amount as may be fixed by the Court in such proceedings.

Section 4. **Failure to Enforce Not a Waiver of Rights.** The failure to enforce any term, covenant, condition, or restriction herein contained shall in no event be deemed to be a waiver of the right to do so thereafter, nor of the right to enforce any other such term, covenant, condition, or restriction.

Section 5. **Rights of Mortgagees.** In addition to the rights of Mortgagees provided in Article VII above, no breach of this Declaration shall defeat or render invalid the lien of any mortgage now or hereafter executed upon any portion of the Real Estate; provided, however, that if all or any portion of said Real Estate is sold under a foreclosure of any mortgage, any purchaser at such sale and his successors and assigns shall hold any and all land so purchased subject to this Declaration, the Plat, and the Plat Restrictions. Notwithstanding any other provision of this Declaration, neither the Owners nor the Association shall have any right to make any amendment to this Declaration which materially impairs the rights of any Mortgagee holding, insuring, or guaranteeing any mortgage on all or any portion of the Real Estate at the time of such amendment.

Section 6. **Effect of Invalidation.** If any provision of this Declaration is held to be invalid by any court or by operation of law, the invalidity of such provision shall not affect the validity of the remaining provisions hereof

Section 7. **Section Headings.** Section headings used herein are used for convenience only and are not intended to be a part of this Declaration or in any way to define, limit, or describe the scope and intent of the particular sections to which they

refer.

Section 8. **Notices.** All notices in connection with this Declaration shall be made in writing and shall be deemed delivered (a) upon personal delivery to the individual person, if any, designated in writing by the Owner, as listed in the roster of Owner's names and addresses maintained by the Association; or (b) receipt by the addressee or refusal of receipt by the addressee after the deposit thereof in any United States main or branch post office, first class postage prepaid; certified, return receipt requested; and properly addressed to the addressee thereof at the address listed in the said roster.

Section 9. **Deed Clause to Implement Declaration.** Each Owner covenants and agrees that it will not execute or deliver any deed or conveyance of a fee title interest in any Lot, or any portion thereof, unless such deed or conveyance contains a clause substantially as follows:

"By acceptance and recording of this conveyance, the Grantee herein covenants and agrees to be bound by (1) the Declaration of Covenants, Easements and Restrictions for Brooks Park Subdivision pertaining to the real estate hereby granted, which is recorded at Miscellaneous Record Book \_\_\_\_\_, Page Number \_\_\_\_\_ in the Office of the Recorder of Hamilton County, Indiana and (2) the Plat Restrictions of Brooks Park pertaining to the real estate hereby granted which is recorded at Plat Book \_\_\_\_\_, Page \_\_\_\_\_ in the Office of the Recorder of Hamilton County, Indiana",

and properly identifying the Book and Page number therein. However, the failure to include such clause shall not have any effect on this Declaration or Plat Restrictions or the enforceability thereof against any Owner of any interest in any portion of the Real Estate.

Section 10. **Provision Against Merger.** The Declarant hereby intends that the Real Estate shall be subject to this Declaration, Plat, or Plat Restrictions that the covenants contained herein shall not be merged into the title of the Declarant, regardless of whether the Declarant is the fee title owner of all or any part of the Real Estate at the time this Declaration is executed or recorded.

Section 11. **Reservations of Declarant.** Notwithstanding anything contained in this Declaration, the Plat or the Plat Restrictions to the contrary, Declarant hereby reserves the right to make such amendments to this Declaration, Plat, or the Plat Restrictions as may be deemed necessary or appropriate by Declarant without the approval of any other person or entity, in order to correct typographical or scrivener's errors, or to bring the Declaration, Plat, Plat Restrictions or the Subdivision into compliance with the requirement of any public agency having jurisdiction thereof or of any agency guarantying, insuring, or approving mortgages, so long as Declarant owns any Lots within the Subdivision; provided that Declarant shall not be entitled to make any amendment which has a materially adverse effect on the rights of any Mortgagee, nor which substantially impairs the benefits of this Declaration, the Plat, or the Plat Restrictions to any Owner or substantially increases the obligations imposed by this



Declaration, the Plat, or the Plat Restrictions on any Owner.

Section 12. **Availability of Documents.** The Association shall keep and make available or inspection during normal business hours copies of this Declaration, the Plat, the Plat Restrictions, the Articles of Incorporation and By-Laws of the Association, and the current financial statements of the Association, for the benefit of all persons who may have an interest therein.

Section 13. **Severability.** Every one of the covenants, terms, conditions, and restrictions in this Declaration is hereby declared to be independent of, and severable from, the rest of the covenants, terms, conditions, and restrictions, each and every one thereof and from every combination thereof. Therefore, if any of the covenants, terms, conditions, and restrictions herein contained shall be held to be invalid or to be unenforceable, or shall lack the quality of running with the land, that holding shall be without effect upon the validity and enforceability or "running" quality of any other of the covenants, terms, conditions, and restrictions herein contained.

IN WITNESS WHEREOF, the manager of Macs Landing, LLC, an Indiana limited liability company, does hereby execute this Declaration as of the date written below:



## BROOKS PARK

A part of the Southeast Quarter and the Northeast Quarter of Section 12, Township 17 North, Range 5 East and part of the Southwest Quarter of Section 7, Township 17 North, Range 6 East, Fall Creek Township, Hamilton County, Indiana more particularly described as follows:

Commencing at the Northwest corner of said Quarter Section; thence North 85 degrees 54 minus 00 seconds East along the South line of said Quarter Section 330.00 feet to the POINT OF BEGINNING of this description; thence continuing North 85 degrees 54 minutes 00 seconds East 689.70 feet; thence North 00 degrees 11 minutes 40 seconds East 1,323.75 feet to a point on the North line of the South half of the Northeast Quarter of Section 12; thence North 85 degrees 39 minutes 21 seconds East along said North line 1,189.24 feet; thence South 04 degrees 13 minutes 54 seconds East 270.00 feet; thence North 85 degrees 39 minutes 21 seconds East 215.92 feet; thence South 62 degrees 48 minutes 58 seconds East 183.20 feet; thence South 00 degrees 00 minutes 00 seconds East 956.12 feet; thence South 10 degrees 10 minutes 17 seconds East 167.38 feet; thence South 07 degrees 00 minutes 46 seconds East 50.00 feet; thence South 00 degrees 01 minutes 33 seconds West 905.95 feet; thence South 17 degrees 42 minutes 25 seconds East 155.11 feet to a point on the West line of the Southeast Quarter of said Section 12; thence South 00 degrees 09 minutes 34 seconds West along said West line 230.94 feet; thence South 17 degrees 42 minutes 25 seconds East 218.97 feet; thence South 24 degrees 42 minutes 28 seconds West 161.70 feet; thence South 00 degrees 09 minutes 34 seconds West 203.61 feet; thence South 71 degrees 43 minutes 21 seconds West 273.22 feet; thence North 59 degrees 05 minutes 20 seconds West 242.28 feet; thence North 76 degrees 17 minutes 12 seconds West 501.03 feet; thence North 54 degrees 43 minutes 45 seconds West 434.90 feet; thence North 37 degrees 24 minutes 21 seconds West 58.86 feet; thence North 00 degrees 11 minutes 40 seconds East 21.24 feet; thence North 36 degrees 00 minutes 00 seconds West 269.54 feet; thence North 76 degrees 15 minutes 00 seconds West 295.00 feet; thence South 87 degrees 30 minutes 00 seconds West 309.00 feet; thence North 80 degrees 30 minutes 00 seconds West 141.00 feet; thence South 45 degrees 15 minutes 00 seconds West 149.00 feet; thence North 83 degrees 00 minutes 00 seconds West 18.50 feet; thence North 00 degrees 14 minutes 20 seconds East 1,215.73 feet to the place of beginning containing 131.398 acres, more or less.

S:/47510/LEGAL/EXHIBIT-LEGAL  
November 30, 2005  
(R) TWF(F)WAB

EXHIBIT "A"