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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
 OF BROOKHAVEN SUBDIVISION**

THIS DECLARATION (Declaration") is made this 26th day of October, 2005, by Brookhaven Development LLC, an Indiana limited liability company ("Developer").

RECITALS

1. Developer is the owner of the real estate which is described in Exhibit "A" attached hereto and made a part hereof (the "Initial Real Estate").
2. Developer intends to subdivide the Initial Real Estate into residential lots.
3. Before subdividing the Initial Real Estate, Developer desires to subject the Initial Real Estate to certain covenants, conditions and restrictions for the purpose of preserving and protecting the value and desirability of the Initial Real Estate for the benefit of each owner of any part thereof.
4. Developer further desires to create an organization to which shall be assigned the responsibility for maintaining and administering the common areas and certain other areas of the Real Estate and of administering and enforcing the covenants and restrictions contained in this Declaration and the subdivision plats of the Initial Real Estate as hereafter recorded in the office of the Recorder of Johnson County, Indiana and of collecting and disbursing assessments and charges as herein provided.
5. Developer may from time to time subject additional real estate located within the tracts adjacent to the Initial Real Estate to the provisions of this Declaration (the Initial Real Estate, together with any such addition, as and when the same becomes subject to the provisions of this Declaration as herein provided, is hereinafter referred to as the "Real Estate" or the "Subdivision").

NOW, THEREFORE, Developer hereby declares that the Real Estate is and shall be acquired, held, transferred, sold, hypothecated, leased, rented, improved, used, and occupied subject to the following covenants, conditions and restrictions, each of which shall run with the land and be binding upon, and inure to the benefit of, Developer and any other person or entity hereafter acquiring or having any right, title or interest in or to the Real Estate or any part thereof.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF BROOKHAVEN SUBDIVISION

ARTICLE I

DEFINITIONS

The following terms, when used in this Declaration with initial capital letters, shall have the following respective meanings:

1.1 "Association" means the Brookhaven Community Association, Inc., an Indiana not-for-profit corporation, which Developer has caused or will hereafter cause to be incorporated, and its successors and assigns.

1.2 "Architectural Review Committee" means the architectural review body established pursuant to Paragraph 6.1 of this Declaration.

1.3 "Common Areas" means (i) all portions of the Real Estate shown on any Plat of a part of the Real Estate as a "Common Area" or which are otherwise not located in Lots and are not dedicated to the public and all facilities, structures, buildings, improvements and personal property owned or leased by the Association from time to time.

1.4 "Common Expenses" means (i) expenses associated with the maintenance, repair or replacement of the Common Areas and the performance of the responsibilities and duties of the Association, including without limitation expenses for the improvement, maintenance or repair of the improvements, lawn, foliage and landscaping located on a Drainage, Utility or Sanitary Sewer Easement or on a Landscape Easement to the extent the Association deems it necessary to maintain such easement, (ii) expenses associated with the maintenance, repair or continuation of the drainage facilities located within and upon the Drainage, Utility or Sanitary Sewer Easements, (iii) all judgments, liens and valid claims against the Association, (iv) all expenses incurred to procure liability, hazard and any other insurance provided for herein and (v) all expenses incurred in the administration of the Association or the performance of the terms and provisions of this Declaration.

1.5 "Developer" means Brookhaven Development LLC, an Indiana limited liability company, and any successors or assigns whom it designates in one or more written recorded instruments to have the rights of Developer hereunder.

1.6 "Development Period" means the period of time commencing with the date of recordation of this Declaration and ending on the date Developer or its affiliates no longer own any Lot within the Real Estate, but in no event shall the Development Period extend beyond the date seven (7) years after the date this Declaration is recorded.

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF BROOKHAVEN SUBDIVISION**

1.7 "Landscape Easements" means those areas of ground so designated on a Plat of any part of the Real Estate established for the purpose of providing community landscaping amenities and maintaining landscaping required by regulatory approvals.

1.8 "Lot" means any parcel of the Real Estate (excluding the Common Areas) which is designated and intended for use as a building site, or developed and improved for use as a single family residence identified by number on the Plat; specifically excluding, however, parcels of real estate designated as "Blocks".

1.9 "Mortgagee" means the holder of a duly recorded first mortgage lien on any Lot or Residence Unit.

1.10 "Original Builder" means the homebuilder to which the Developer initially conveys the Lots.

1.11 "Owner" means the record owner, whether one or more persons or entities, of fee-simple title to any Lot, including contract sellers, but excluding for all purposes those persons or entities having an interest merely as security for the performance of an obligation unless specifically indicated to the contrary. If a Lot is sold under a recorded contract of sale, and the contract specifically so provides, then the purchaser (rather than the fee owner) will be considered the Owner. The term Owner as used herein shall include Developer so long as Developer shall own any Lot in the Real Estate.

1.12 "Plat" means a duly approved final plat of any part of the Real Estate as hereafter recorded in the office of the Recorder of Johnson County, Indiana.

1.13 "Real Estate" means the Initial Real Estate, and all or such portion of any additional real estate as has, from time to time, been subjected to this Declaration.

1.14 "Residence Unit" means any single-family home constructed on any part of the Real Estate.

1.15 "Supplemental Declaration" shall mean an amendment or supplement to this Declaration executed by or consented to by Developer or its successors and assigns, and recorded in the public records of Johnson County, Indiana, which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein.

1.16 "Tree Preservation Easement" shall mean those areas denoted on the face of the Plat as Tree Preservation Easements, which are created for the purpose of maintaining the

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF BROOKHAVEN SUBDIVISION

existing tree and shrub vegetation in its natural state. No existing trees or shrubs may be removed from these Easements except for the removal of dead or diseased plant material. Wherever Tree Preservation Easements may coincide with other easements, such as drainage, utility or access easements, any tree or shrub trimming or removal shall be the minimum amount necessary to achieve suitable drainage, utility installation or access within the Tree Preservation Easement.

1.17 "Utility, Drainage or Sanitary Sewer Easements" means those areas of ground so designated on a Plat of any part of the Real Estate.

ARTICLE II

APPLICABILITY

2.1 All Owners, their tenants, guests, invitees and mortgagees, and any other person using or occupying a Lot or any other part of the Real Estate shall be subject to and shall observe and comply with the applicable covenants, conditions and restrictions set forth in this Declaration and any rules and regulations adopted by the Association as herein provided, as the same may be amended from time to time.

2.2 The Owner of any Residence Unit (i) by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from the Developer or its affiliates or any other builder or any other Owner of the Residence Unit; or (ii) by the act of occupancy of the Residence Unit, shall conclusively be deemed to have accepted such deed, executed such contract or undertaken such occupancy subject to the covenants, conditions and restrictions of this Declaration. By acceptance of a deed, execution of a contract or undertaking of such occupancy, each Owner covenants, for such Owner, such Owner's heirs, personal representatives, successors and assigns, with Developer and the other Owners from time to time, to keep, observe, comply with and perform the covenants, conditions and restrictions of this Declaration.

ARTICLE III

PROPERTY RIGHTS

3.1 Owners' Easement of Enjoyment of Common Areas. Developer hereby declares, creates and grants a non-exclusive easement in favor of each Owner for the use and enjoyment of the Common Areas. Such easement shall run with and be appurtenant to each Lot and related Residence Unit, subject to the following provisions:

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF BROOKHAVEN SUBDIVISION

(i) the right of the Association to charge reasonable fees for the use of any recreational facilities situated upon the Common Areas which are in addition to the regular and special assessments described herein;

(ii) the right of the Association to fine any Owner or make a special assessment against any Lot in the event a person permitted to use the Common Areas by the Owner of such Lot violates any rules or regulations of the Association;

(iii) the right of the Association to dedicate or transfer all or any part of the Common Areas or grant easements therein to any public agency, authority or utility for such purposes and subject to such conditions as may be set forth in the instrument of dedication or transfer;

(iv) the easements reserved elsewhere in this Declaration and in any Plat of any part of the Real Estate.

3.2 Permissive Use. Any Owner may permit his or her family members, guests, tenants or contract purchasers who reside in the Residence Unit to use his or her right of use and enjoyment of the Common Areas subject to the terms of this Declaration and any rules and regulations promulgated by the Association from time to time.

3.3 Conveyance of Common Areas. Developer may at any time and from time to time convey all of its right, title and interest in and to any of the Common Areas to the Association by warranty deed, and such Common Areas so conveyed shall then be the property of the Association; provided, however, that the Common Areas for the Initial Real Estate and any additional lands added by Supplemental Declaration, respectively, shall be conveyed to the Association on or before the time that the first Lot within the Initial Real Estate or such additional land, respectively and as the case may be, is conveyed for residential use.

3.4 Easements for Developer.

(a) During the Development Period, Developer shall have an easement for access to the Real Estate, including any Lot and all Common Areas, for the purpose of constructing structures and other improvements in and to the Lots and Common Areas, and for installing, maintaining, repairing, and replacing such other improvements to the Real Estate (including any portions of the Common Areas) as are contemplated by this Declaration or as Developer desires, in its sole discretion, including, without limitation, any improvements or changes permitted and described

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF BROOKHAVEN SUBDIVISION

by Article II hereof, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided in no event shall Developer have the obligation to do any of the foregoing. In addition to the other rights and easements set forth herein and regardless of whether Developer at that time retains ownership of a Lot, Developer shall have an alienable, transferable, and perpetual right and easement to have access, ingress and egress to the Common Areas and improvement thereon for such purposes as Developer deems appropriate, provided that Developer shall not exercise such right so as to unreasonably interfere with the rights of owners of the Real Estate.

(b) In addition to the easement set forth in Section 3.4 (a), Developer hereby retains, reserves and is granted an exclusive perpetual easement over, above, across, upon, along, in, through, and under the Utility Easement Areas, as such is defined in Section 3.5, below (i) for the purpose of owning, installing, maintaining, repairing, replacing, relocating, improving, expanding and otherwise servicing any utility or service including, without limitation, electricity, gas, sewer, telephone, television, and computer link by line, wire, cable, main, duct, pipe conduit, pole, microwave, satellite or any other transfer or wireless technology, and any related equipment, facilities and installations of any type bringing such utilities or services to each Lot or Common Area; (ii) to provide access to an ingress and egress to and from the Real Estate for the purposes specified in subsection (i); and (iii) to make improvements to and within the Real Estate to provide for the rendering of public and quasi-public services to the Real Estate. The easements, rights and privileges reserved to Developer under this Section 3.4(b) shall be transferable by Developer to any person or entity solely at the option and benefit of the Developer, its successors and assigns, and without notice to or the consent of the Association, the Owners, or any other person or entity. Developer may at any time and from time to time grant similar or lesser easements, rights, or privileges to any person or entity. By way of example, but not by limitation, Developer and others to whom Developer may grant such similar or lesser easements, rights or privileges, may so use any portion of the Real Estate to supply exclusive telecommunications services to each Lot. The Easements, rights and privileges reserved under this Section shall be for the exclusive benefit of Developer, its successors and assigns and may not be impaired, limited or transferred, sold or granted to any person or entity by the Association or any of the Owners.

3.5 Drainage, and Utility Easements.

(a) There is hereby reserved for the benefit of Developer, the Association, and their respective successors and assigns, the perpetual right and easement, as well as the power, to hereafter grant and accept nonexclusive easements to and from any of the

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF BROOKHAVEN SUBDIVISION

following providers and their respective successors and assigns, upon, over, under, and across (i) all of the Common Areas; and (ii) those portions of all Lots designated on the Plat as "D&UE" and as otherwise are reasonably necessary (such areas herein referred to collectively as the "Utility Easement Areas") for installing, replacing, repairing, and maintaining, the following specified services, and no other:

<u>Name of Specific Provider:</u>	<u>Specific Service:</u>
Hoosier Energy	Electricity
Town of Bargersville	Water
City of Greenwood	Sewer
Vectren	Natural Gas
SBC	Telephone
Insight	Cable

The Developer, the Association, and their successors and assigns shall also have the perpetual right and easement, as well as the power, to hereafter grant and accept nonexclusive easements within the Utility Easement Areas to and from any public authority or agency, public service district, public or private utility or other person for the purpose of installing, replacing, repairing, maintaining, and using storm sewers, drainage systems, and retention ponds and facilities for the Real Estate or any portion thereof. Any other grant or acceptance of any easement other than those specified above for any other utility service, including but not limited to, master television antenna and/or cable systems, security and similar systems, shall be made by Developer in accordance with the rights reserved to Developer under Section 3.4(b), above. To the extent possible, all utility lines and facilities serving the Real Estate and located therein shall be located underground. By virtue of any such easements and facilities, it shall be expressly permissible for the providing utility company or other supplier or service provider, with respect to the portions of the Development so encumbered, (i) to erect and maintain pipes, lines, manholes, pumps, and other necessary equipment and facilities, (ii) to cut and remove any fences, trees, bushes, or shrubbery, (iii) to grade, excavate, or fill, or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement, and use of such utilities and systems.

(b) Developer hereby grants to such governmental authority or agency as shall from time to time have jurisdiction over the Real Estate with respect to law enforcement and fire protection, the perpetual, non-exclusive right and easement upon, over, and across all of the Common Areas for purposes of performing such duties and activities related to law enforcement and fire protection in and upon the Real Estate as shall be

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF BROOKHAVEN SUBDIVISION

required or appropriate from time to time by such governmental authorities under applicable law.

(c) There shall be created sanitary sewer easements in those areas designated on the Plat which easements shall run in favor of Developer and any governmental or private entity needing such access for the purpose of installation and maintenance of the pipes, lines, manholes, pumps and other equipment necessary for the sanitary sewer system.

3.6 Drainage Easements. There is hereby reserved an easement for the benefit of Developer, the Association, and their respective successors and assigns for access to and installation, repair, or removal of a drainage system, either by surface drainage or appropriate underground installations, for the Real Estate; provided, however, that the Owner of any Lot subject to a drainage easement shall be required to maintain the portion of said drainage easement on his Lot (as shown on any Plat) in the condition originally provided by Developer and free from obstructions so that the surface water drainage will be unimpeded. No changes shall be made to said area by the Owner without the written consent of the applicable governmental agency; provided, however, that Developer, in its sole discretion, may make any changes. No permanent structures shall be erected or maintained upon said drainage easements.

3.7 Landscape Easements. Landscape Easements, as designated on a Plat of all or any part of the Real Estate, are hereby created and reserved for the use of Developer and the Association for access to and installation, maintenance, repair, and replacement of signs, walls, earth mounds, trees, foliage, landscaping, and other improvements. Except as installed by Developer or the Association, no improvements or permanent structures, including without limitation, fences, patios, decks, driveways, and walkways, shall be erected or maintained in or upon said Landscape Easements without the written consent of the Board and provided such are in accordance with all applicable zoning laws. Notwithstanding the reservation of this easement, the Owners of Lots subject to a Landscape Easement which does not extend along adjoining streets or roads shall have the exclusive right to use such area, subject to any other easement affecting such Lot.

3.8 Lake Maintenance Access Easement and Emergency Access Easement. There may be strips of grounds as shown on the Plat marked Lake Maintenance Access Easement (L.M.A.E.) and Emergency Access Easement (E.A.E.), which are created and reserved: (a) for the use of the Developer during the Development Period for access to the Common Area or the Lakes and (b) for the nonexclusive use of the Association or any applicable governmental authority for access to the Common Areas or the Lakes. The Owner of any Lot which is subject to an L.M.A.E. or E.A.E. shall be required to keep the

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF BROOKHAVEN SUBDIVISION

portion of his Lot which is subject to such easement free from obstructions so that access will be unimpeded.

3.8 Medians and Entry Features. There may be landscaped medians and/or islands located within the Real Estate and within the public right-of-way of the streets which are not otherwise labeled as Common Areas or as a Landscape Easement. These areas are created and reserved for installation and maintenance of landscaping and entry features such as but not limited to permanent walls, signs, fences and landscaping material. These landscaped areas and features shall be maintained by the Association as if such were a Common Area.

3.9 Sales and Construction Offices. Notwithstanding anything to the contrary contained in this Declaration or a Plat of any part of the Real Estate now or hereafter recorded in the office of the Recorder of Johnson County, Indiana, Developer, any entity related to Developer and any other person or entity with the prior written consent of Developer, during the Development Period, shall be entitled to construct, install, erect and maintain such facilities upon any portion of the Real Estate owned by Developer, the Association or such person or entity as, in the sole opinion of Developer, may be reasonably required or convenient or incidental to the development of the Real Estate or the sale of Lots and the construction or sale of Residence Units thereon. Such facilities may include, without limitation, storage areas or tanks, parking areas, signs, model residences, construction offices or trailers and sales offices or trailers.

3.10 Signs. Developer and its designees shall have the right to use signs of any size during the Development Period and shall not be subject to the Plat Covenants with respect to signs during the Development Period. The Developer and its designees shall also have the right to construct or change any building, improvement or landscaping on the Real Estate without obtaining the approval of the Architectural Review Committee at any time during the Development Period.

3.11 Maintenance Easement. There is hereby reserved and created for the use of Developer, the Association and their respective agents, employees, successors and assigns, a maintenance easement to enter upon any Lot for the purpose of mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps, or other unsightly growth and removing trash, so as to maintain a community-wide standard of health, fire safety, and appearance for and within the Real Estate, provided that such easements shall not impose any duty or obligation upon Developer or the Association to perform any such actions.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF BROOKHAVEN SUBDIVISION

ARTICLE IV

USE RESTRICTIONS

4.1 Lakes. There shall be no swimming, skating, boating, or fishing in or on or other recreational use of any lake, pond, creek, ditch or stream on the Real Estate, unless otherwise allowed by the Association. The Association may promulgate rules and regulations with respect to the permitted uses, if any, of the lakes or other bodies of water on the Real Estate.

4.2 Use of Common Areas. Subject to section 4.1 above, the Common Areas shall be used only for recreational purposes and other purposes permitted or sanctioned by the Association. Certain Common Areas are or shall be designed as buffer areas from adjoining lands or as landscaped areas for aesthetic enjoyment only. Common Areas established for the purpose of community landscaping, such as entry walls and entry landscaping, shall not be used for active recreational purposes.

4.3 Lot Access. All Lots shall be accessed from the interior streets of the Subdivision.

4.4 Other Use Restrictions Contained in Plat Covenants and Restrictions. The Plat Covenants and Restrictions relating to the Real Estate contain additional restrictions on the use of the Lots in the Subdivision, including, without limitation, prohibitions against commercial use, detached accessory buildings and nuisances; restrictions relating to the use of Landscape Easements, and Utility, Drainage and Sanitary Sewer Easements; and restrictions relating to temporary structures, vehicle parking, signs, mailboxes, garbage and refuse disposal, storage tanks, water supply and sewage systems, ditches and swales, driveways, antenna and satellite dishes, awnings, fencing, swimming pools, solar panels and outside lighting. Such prohibitions and restrictions contained in the Plat Covenants and Restrictions are hereby incorporated by reference as though fully set forth herein.

4.5 Minimum Living Space Areas. The minimum square footage of living space of Residence Unit constructed on Lots in the Development, exclusive of porches, terraces, garages, carports, accessory buildings or portions thereof, or similar facilities not modeled and decorated for regular and continuous habitation, shall be at least 1,800 square feet. Basements shall not be included in the computation of the minimum living area.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF BROOKHAVEN SUBDIVISION

4.6 Other Restrictions.

a. Residential Setback Requirements.

(i) Front Setbacks. Unless otherwise provided in these restrictions or on the recorded Plat, all dwelling houses and above-ground structures shall be constructed or placed on residential lots in the Development so as to comply with the set-back lines, as established on the Plat of the Development.

(ii) Side Yards. The side yard setback lines shall be consistent with the applicable district requirements of the Johnson County Zoning Ordinance unless otherwise approved by the Committee and the Board of Zoning Appeals.

(iii) Rear Yards. The rear setback line shall be consistent with the applicable district requirements of the Johnson County Zoning Ordinance unless otherwise approved by the Committee and the Board of Zoning Appeals.

b. Mailboxes and Landscaping. Any mailboxes must be approved by the Committee as to size, location, height, and composition before it may be installed. A standard mailbox design will be established by the Committee. Address numbers shall be permanently affixed on each mailbox in a manner consistent with the requirements of the Committee. Mailbox placement may be undertaken without special review if the proposed type and placement conforms to the standard design. Front yards along the front foundation of the Residence Unit shall contain six (6) bushes or similar plants with a minimum height of 18 inches and at least one (1) deciduous tree having a caliper of not less than two inches. Rear yards shall have at least one (1) deciduous tree having a caliper of not less than two inches.

(c) Exterior Construction. The finished exterior of every building constructed or placed on any lot in the Development shall be of material other than tar paper, rollbrick siding, T-111 plywood sheet, or aluminum siding, or any other similar material. All driveways must be concrete. All exterior building materials are to be of an aesthetically pleasing natural earth tone. Vinyl siding used shall have a minimum thickness of .040" and a minimum 5/8" butt. All Residence Units shall have a minimum of 75% full first-story front brick, to be calculated exclusive of windows, doors, and vents.

(d) Garages Required. All residential dwellings in the Development shall include an enclosed attached two-car garage minimum.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF BROOKHAVEN SUBDIVISION

(e) Heating Plants. Every Residence Unit in the Development must contain a heating plant, installed in compliance with the required codes, and capable of providing adequate heat for year-round human habitation of the house.

(f) Diligence in Construction. Every building whose construction or placement on any residential Lot in the Development shall be completed within nine (9) months after the beginning of such construction or placement. No improvement that has partially or totally been destroyed by fire or otherwise shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

(g) Sales of Lots by Developer. Every lot within the Development shall be sold to a builder or individual approved by the Developer or developed by the Developer.

(h) Prohibition of Used Structures. All structures constructed or placed on any numbered lot in the Development shall be constructed with substantially all new materials and no used structures shall be relocated or placed on any such lot.

(i) Maintenance of Lots and Improvements. The Owner of any lot in the Development shall at all times maintain the lot and any improvements situated thereon in such a manner as to prevent the lot or improvements from becoming unsightly and, specifically, such Owner shall:

(i) Mow the lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds.

(ii) Remove all debris or rubbish.

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

(iv) Cut down and remove dead trees.

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

(vi) Within sixty (60) days following completion of a house on a lot, the Owner shall landscape the lot, weather permitting.

(vii) Mow and maintain grass in any part of the street right-of-way that abuts the front yard of any Lot.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF BROOKHAVEN SUBDIVISION

(j) Sidewalk. Prior to occupancy, the owner of each lot of the subdivision shall construct a concrete sidewalk parallel to the owner's street frontage(s) on the owner's lot which shall extend from one side of the property to the other side of the property. The Committee shall approve the location of the sidewalk.

(k) Above-Ground Swimming Pools Prohibited. No aboveground swimming pools shall be permitted to be constructed on any lot. The Committee shall determine whether or not a pool shall be defined as aboveground.

(l) Fencing. The Committee shall establish rules and regulations regarding the application for fence approval and the placement and installation of fences. Said rules and regulations may change from time to time, as necessary. Chain link fencing is prohibited. However, fences constructed of white PVC, wood (shadow box), wrought iron, or similar decorative metal shall be permitted, subject to prior approval of their location by the Committee. Other fencing types and materials not listed herein may be considered for approval by the Committee on a case-by case basis. No fences taller than 4 feet will be approved on lake lots. Maintenance of fencing within Common Areas will be the responsibility of the Association. No fencing will be allowed to be placed by any Lot Owner within any Landscape Easement at any Subdivision entry or along Paddock Road or Olive Branch Road. Fencing to be installed in yards abutting Paddock Road or Olive Branch Road shall be uniform in appearance and conform to the fence design and placement requirements established by the Committee, which shall be a 6' high wood shadow box fence type.

(m) Outbuildings. No freestanding detached outbuildings will be permitted, including but not limited to, storage sheds, mini-barns or garages.

(n) Satellite Dishes. No television satellite antenna dishes any larger than 24" in diameter shall be permitted on any lot. All ground-mounted dishes must be placed behind the front building line and must be screened from adjoining neighbor's primary view to the extent that such screening will not interfere with the satellite signal to the dish. No roof or building mounted satellite dish may be mounted on a front-facing wall or roof.

(o) In General. No noxious or offensive activities shall be permitted on any lot in the Development, nor shall anything be done on any of said lots that shall become or be an unreasonable annoyance or nuisance to any Owner of another lot in the Development.

(p) Signs. With the exception of Permitted Signs (hereinafter described), all signs including but not limited to those advertising a garage sale or a Lot "For Lease", must be

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF BROOKHAVEN SUBDIVISION

approved by the Homeowners Association before being placed upon any Lot or Common Area. Permitted Signs shall include only those professionally constructed signs advertising a home on a Lot for sale by a licensed and registered real estate broker/company, non-illuminated and less than or equal to 6 square feet in size ("Permitted Signs").

No more than one sign (including a Permitted Sign) may be displayed on a Lot at one time. In addition, no more than one sign (including a Permitted Sign) may be displayed in the community by an entity owning multiple Lots. All Permitted Signs advertising a Lot for sale shall be removed within three (3) business days of the conveyance of the Lot.

Signs advertising a Lot for "Rent to Own" or something similar are expressly prohibited and may not be placed on any Lot or dwelling constructed thereon. Builder and Developer are expressly exempt from the requirements of this section and may post signs on Common Areas and Lots owned by Builder, as they deem necessary.

(q) Animals. No animals shall be kept or maintained on any lot in the Development except the usual household pets and, in such case, such household pets shall be kept reasonably confined so as not to become a nuisance. No dog runs shall be permitted.

(r) Vehicle Parking. No trucks larger than one (1) ton in payload size, inoperable vehicles, campers, trailers, boats, or similar vehicles shall be parked in any driveway or on any street in the Development. Motor homes and recreational vehicles may be parked in a driveway for a period not exceeding 24 hours for loading or unloading the vehicle. No vehicles shall be parked on any street overnight.

(s) Garbage and Other Refuse. No Owner of a lot in the Development shall burn or permit the burning out-of-doors of garbage or other refuse, nor shall any such Owner accumulate or permit the accumulation out-of-doors of such refuse on his lot. All Residence Units built in the Development shall be equipped with a garbage disposal unit.

(t) Model Homes. No Owner of any Lot in the Development shall build or permit the building upon said lot of any Residence Unit that is to be used as a model home or exhibit house without written permission to do so from the Developer.

(u) Temporary Structures. No temporary house, trailer, tent, garage or other outbuilding shall be placed or erected on any lot.

(v) Open Drainage, Ditches and Swales.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF BROOKHAVEN SUBDIVISION

(i) Drainage swales (ditches) along dedicated roadways and within the right-of-way, or on dedicated drainage easements, are not to be altered, dug out, filled in, tiled, or otherwise changed, without the written permission of the appropriate authority. By accepting a deed to a Lot, the Owner accepts the grading and drainage of the Lot in an "as is" condition, and the Developer has no further obligation to construct or maintain the open drainage on the Lot. Property owners must maintain any part of these swales as may occur on their Lots as sodded grassways or other non-eroding surfaces. Water from roofs or parking areas must be contained on the property long enough so that said such water will not damage drainage swales or ditches. Driveways may be constructed over swales or ditches only when appropriately sized culverts or other approved structures have been permitted by the appropriate authority.

(ii) Any property Owner altering, changing, or damaging these drainage swales or ditches will be held 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 Association shall have the right but not the obligation to cause said repairs to be accomplished and the bill for such repairs will be sent to the affected property owners for immediate payment.

(w) Utility Services. No utility services shall be installed, constructed, repaired, removed, or replaced under finished streets, except by jacking, drilling or boring.

(x) Wells and Septic Tanks. No water wells shall be drilled nor septic tanks and fields installed on any of the Lots in the Development.

(y) Dusk-To-Dawn Lighting. Each Lot shall maintain continuous dusk-to-dawn lighting to be controlled by a photocell. Said dusk-to-dawn lighting shall be placed either in the front yard on a freestanding pole located not more than ten (10) feet from the edge of the driveway; or twin carriage lights mounted on either side of the garage door if fronting the street.

ARTICLE V

ASSOCIATION

5.1 Membership. Each Owner shall automatically become a member of the Association and shall remain a member of the Association so long as he or she owns a Lot.

5.2 Classes of Membership and Vote. The Association shall have two (2) classes of membership, as follows:

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF BROOKHAVEN SUBDIVISION

(i) Class A Members. Class A members shall be all Owners other than Developer (unless Class B membership has been converted to Class A, membership as provided in the immediately following subparagraph). Each Class A member shall be entitled to one (1) vote per Lot owned.

(ii) Class B Member. The Class B member shall be the Developer. The Class B member shall be entitled to three (3) votes for each Lot owned by Developer. The Class B membership shall cease and be converted to Class A membership upon the Applicable Date (as defined in Section 5.3 below).

5.3 Applicable Date. The term "Applicable Date" shall mean when the total votes outstanding in the Class A membership is equal to the total votes outstanding in the Class B membership or the expiration of the Development Period, whichever shall first occur.

5.4 Multiple or Entity Owners. Where more than one person or entity constitutes the Owner of a Lot, all such persons or entities shall be members of the Association, but the single vote in respect of such Lot shall be exercised as the persons or entities holding an interest in such Lot determine among themselves. In no event shall more than one person exercise a Lot's vote and no Lot's vote shall be split.

5.5 Board of Directors. The members of the Association shall elect a Board of Directors of the Association as prescribed by the Association's Articles of Incorporation and By-Laws. The Board of Directors of the Association shall manage the affairs of the Association.

5.6 Professional Management. No contract or agreement for professional management of the Association, nor any contract between Developer and the Association, shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause, without any termination penalty, on written notice as provided therein, but in any event, with at least ninety (90) days prior written notice.

5.7 Responsibilities of the Association. The responsibilities of the Association shall include, but shall not be limited to:

(i) Maintenance of the Common Areas including any and all improvements thereon as the Association deems necessary or appropriate.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF BROOKHAVEN SUBDIVISION

(ii) Maintenance, including lease payments, of any street lighting located within the street right-of-way or within an appropriate easement along a street within the Development.

(iii) Installation and replacement of any and all improvements, signs, lawn, foliage and landscaping in and upon the Common Areas or Landscape Easements as the Association deems necessary or appropriate.

(iv) Maintenance, repair and replacement of any entrance streetlight, any private street signs and any private streets which may be shown on any Plat of a part of the Real Estate as Common Area.

(v) Replacement of the drainage system in and upon the Common Areas as the Association deems necessary or appropriate and the maintenance of any drainage system installed in or upon the Common Areas by Developer or the Association. Nothing herein shall relieve or replace the obligation of each Owner of a Lot subject to a Drainage Easement to keep the portion of the drainage system and Drainage Easement on such Lot free from obstructions so that the storm water drainage will be unimpeded.

(vi) Maintenance of lake water so as not to create stagnant or polluted waters affecting the health and welfare of the community.

(vi) Procuring and maintaining for the benefit of the Association, its officers and Board of Directors and the Owners, the insurance coverage required under this Declaration.

(viii) Assessment and collection from the Owners and payment of all Common Expenses.

(ix) Performing or contracting for property or Association management, snow removal, Common Area maintenance, trash removal or other services as the Association deems necessary or advisable.

(x) Enforcing the rules and regulations of the Association and the requirements of this Declaration and any applicable zoning or other recorded covenants, in each case, as the Association deems necessary or advisable.

5.8 Powers of the Association. The Association may adopt, amend or rescind reasonable rules and regulations (not inconsistent with the provisions of this Declaration) governing the use and enjoyment of the Common Areas and the management and administration of the Association, in each case as the Association deems necessary or

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF BROOKHAVEN SUBDIVISION

advisable. The rules and regulations promulgated by the Association may provide for reasonable interest and late charges on past due installments of any regular or special assessments or other charges or fines against any Owner or Lot. The Association shall furnish or make copies available of its rules and regulations to the Owners prior to the time when the rules and regulations become effective.

5.9 Compensation. No director or officer of the Association shall receive compensation for his or her services as such director or officer, except to the extent expressly authorized by a majority vote of the Owners present at a duly constituted meeting of the Association members.

5.10 Non-Liability of Directors and Officers. The directors and officers of the Association shall not be liable to the Owners or any other persons for any error or mistake of judgment in carrying out their duties and responsibilities as directors or officers of the Association, except for their own individual willful misconduct or gross negligence. It is intended that the directors and officers of the Association shall have no personal liability with respect to any contract made by them on behalf of the Association except in their capacity as Owners.

5.11 Indemnity of Directors and Officers. The Association shall indemnify, hold harmless and defend any person, his or her heirs, assigns and legal representatives (collectively, the "Indemnitee") made or threatened to be made a party to any action, suit or proceeding by reason of the fact that he or she is or was a director or officer of the Association, against all costs and expenses, including attorneys fees, actually and reasonably incurred by the Indemnitee in connection with the defense of such action, suit or proceeding, or in connection with any appeal thereof or to enforce the indemnity rights contemplated hereby except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Indemnitee is guilty of gross negligence or willful misconduct in the performance of his or her duties. The Association shall also reimburse any such Indemnitee for the reasonable costs of settlement of or for any judgment rendered in any such action, suit or proceeding, unless it shall be adjudged in such action, suit or proceeding that such Indemnitee was guilty of gross negligence or willful misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against an Indemnitee, no director or officer shall be considered or deemed to be guilty of or liable for gross negligence or willful misconduct in the performance of his or her duties where, acting in good faith, such director or officer relied on the books and records of the Association or statements or advice made by or prepared by any managing agent of the Association or any accountant, attorney or other person or firm employed or retained by the Association to render advice or service, unless such director or officer had actual knowledge of the falsity or incorrectness thereof, nor shall a director be deemed guilty of gross

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF BROOKHAVEN SUBDIVISION

negligence or willful misconduct by virtue of the fact that he or she failed or neglected to attend any meetings of the Board of Directors of the Association. The costs and expenses incurred by any Indemnitee in defending any action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Indemnitee to repay the amount paid by the Association if it shall ultimately be determined that the Indemnitee is not entitled to indemnification or reimbursement as provided in this section 5.11.

ARTICLE VI

ARCHITECTURAL REVIEW COMMITTEE

6.1 Creation. There shall be, and hereby is, created and established an Architectural Review Committee to perform the functions provided for herein. At all times during the Development Period, the Architectural Review Committee shall consist of three (3) members appointed, from time to time, by Developer and who shall be subject to removal by Developer at any time with or without cause. After the end of the Development Period, the Architectural Review Committee shall be a standing committee of the Association, consisting of three (3) persons appointed, from time to time, by the Board of Directors of the Association. The three persons appointed by the Board of Directors to the Architectural Review Committee shall consist of Owners of Lots but need not be members of the Board of Directors. The Board of Directors may at any time after the end of the Development Period remove any member of the Architectural Review Committee upon a majority vote of the members of the Board of Directors.

6.2 Purposes and Powers of Architectural Review Committee. The Architectural Review Committee shall review and approve the design, appearance and location of all residences, structures or any other improvements placed or modified by any person on any Lot and the substantial installation and removal of any trees, bushes, shrubbery and other landscaping on any Lot, in such a manner as to preserve the value and desirability of the Real Estate and the harmonious relationship among Residence Units and the natural vegetation and topography.

(i) In General. No residence, building, structure, antenna, walkway, fence, deck, pool, tennis court, basketball goal, wall, patio or other improvement of any type or kind shall be erected, constructed, placed or modified, changed or altered on any Lot without the prior written approval of the Architectural Review Committee. Such approval shall be obtained only after written application has been made to the Architectural Review Committee by the Owner of the Lot requesting authorization from the Architectural Review Committee. Such written application shall be in the manner and form prescribed from time

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF BROOKHAVEN SUBDIVISION

to time by the Architectural Review Committee and, in the case of construction or placement of any improvement, shall be accompanied by two (2) complete sets of plans and specifications for the proposed improvement. Such plans shall include plot plans showing the location of all 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. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which the Architectural Review Committee may reasonably require. Unless otherwise permitted by the Architectural Review Committee, plot plans shall be prepared by either a registered land surveyor, engineer or architect.

(ii) Power of Disapproval. The Architectural Review Committee may refuse to approve any application (a "Requested Change") made to it when:

(a) The plans, specifications, drawings or other materials submitted are inadequate or incomplete, or show the Requested Change to be in violation of any of the terms of this Declaration or the Plat Covenants and Restrictions applicable to any part of the Real Estate;

(b) The design or color scheme of a Requested Change is not in harmony with the general surroundings of the Lot or with the adjacent Residence Units or related improvements; or

(c) The Requested Change in the opinion of the Architectural Review Committee would not preserve or enhance the value and desirability of the Real Estate or would otherwise be contrary to the interests, welfare or rights of the Developer or any other Owner.

(iii) Rules and Regulations. The Architectural Review Committee, from time to time, may promulgate, amend or modify additional rules and regulations or building policies or procedures as it may deem necessary or desirable to guide Owners as to the requirements of the Architectural Review Committee for the submission and approval of Requested Changes.

6.3 Duties of Architectural Review Committee. If the Architectural Review Committee does not approve a Requested Change within forty-five (45) days after all required information on the Requested Change shall have been submitted to it, then such Requested Change shall be deemed denied. One copy of submitted material shall be retained by the Architectural Review Committee for its permanent files.

6.4 Liability of the Architectural Review Committee. Neither the Architectural Review Committee, the Association, the Developer nor any agent or member of any of the

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF BROOKHAVEN SUBDIVISION

foregoing, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done in connection with a Requested Change or for any decision made by it unless made in bad faith or by willful misconduct.

6.5 Inspection. The Architectural Review Committee or its designee may, but shall not be required to, inspect work being performed to assure compliance with this Declaration and the materials submitted to it pursuant to this Article VI and may require any work not consistent with an approved Requested Change, or not approved, to be stopped and removed at the offending Owner's expense.

ARTICLE VII

ASSESSMENTS

7.1 Purpose of Assessments. Each Owner of a Lot by acceptance for itself and related entities of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association for his obligation for (i) regular assessments for Common Expenses ("Regular Assessments") and (ii) special assessments for capital improvements and operating deficits and for special maintenance and repairs ("Special Assessments"). Such assessments shall be established, shall commence upon such dates and shall be collected as herein provided. The general purpose of Regular and Special Assessments is to provide funds to maintain and improve the Common Areas and related facilities for the benefit of the Owners, and the same shall be levied for the following specific purposes: (i) to promote the health, safety and welfare of the residents occupying the Real Estate, (ii) for the improvement, maintenance and repair of the Common Areas, the improvements, lawn foliage and landscaping within and upon the Common Areas, Landscape Easements, Drainage, Utility or Sanitary Sewer Easements and the drainage system, (iii) for the performance of the responsibilities and duties and satisfaction of the obligations of the Association and (iv) for such other purposes as are reasonably necessary or specifically provided herein. A portion of the Regular Assessment may be set aside or otherwise allocated in a reserve fund for repair and replacement of any, capital improvements which the Association is required to maintain. The Regular and Special Assessments levied by the Association shall be uniform for all Lots within the Subdivision.

7.2 Regular Assessments. The Board of Directors of the Association shall have the right, power and authority, without any vote of the members of the Association, to fix from time to time the Regular Assessment against each Residence Unit at any amount not in excess of the "Maximum Regular Assessment" as follows:

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF BROOKHAVEN SUBDIVISION

(i) Until December 31 of the year immediately following the conveyance of the first Lot to an Owner for residential use, the Maximum Regular Assessment on any Residence Unit for any calendar year shall not exceed Two Hundred Seventy Five Dollars (\$275.00).

(ii) From and after December 31 of the year immediately following the conveyance of the first Lot to an Owner for residential use, the Maximum Regular Assessment on any Residence Unit for any calendar year may be increased by not more than five percent (5%) per year above the Regular Assessment for the previous calendar year without a vote of the members of the Association.

(iii) From and after December 31 of the year immediately following the conveyance of the first Lot to an Owner for residential use, the Board of Directors of the Association may fix the Regular Assessment at an amount in excess of the maximum amount specified in subparagraph (ii) above only with the approval of a majority of those members of each class of members of the Association who cast votes in person or by proxy at a meeting of the members of the Association duly called and held for such purpose.

(iv) Each Residence Unit shall be assessed an equal amount for any Regular Assessment, excepting any proration for ownership during only a portion of the assessment period.

7.3 Special Assessments. In addition to Regular Assessments, the Board of Directors of the Association may make Special Assessments against each Residence Unit, for the purpose of defraying, in whole or in part, the cost of constructing, reconstructing, repairing or replacing any capital improvement which the Association is required to maintain or the cost of special maintenance and repairs or to recover any deficits (whether from operations or any other loss) which the Association may from time incur, but only with the assent of a majority of the members of each class of members of the Association who cast votes in person or by proxy at a duly constituted meeting of the members of the Association called and held for such purpose.

7.4 No Assessment against Developer or Original Builder. Neither the Original Builder, the Developer nor any affiliated entity shall be assessed any portion of any Regular or Special Assessment during the Development Period. The Original Builder shall not be assessed any portion of any Regular or Special Assessment for a period of 12 months after the end of the Development Period.

7.5 Date of Commencement of Regular or Special Assessments, Due Dates. The Regular Assessment or Special Assessment, if any, shall commence as to each Residence Unit on the first day of the first calendar month following the first conveyance of the related Lot

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF BROOKHAVEN SUBDIVISION

to an Owner, provided that, in the case of the conveyance by Developer of a Lot to any builder in the Subdivision not related to Developer, such commencement shall occur on the first day of the sixth calendar month following the first conveyance of the Lot to such builder.

The Board of Directors of the Association shall fix the amount of the Regular Assessment at least thirty (30) days in advance of each annual assessment period. Written notice of the Regular Assessment, any Special Assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to each Owner subject thereto. The installment periods and due dates for all assessments shall be established by the Board of Directors. The Board of Directors may provide for reasonable interest and late charges on past due installments of assessments.

7.6 Failure of Owner to Pay Assessments.

(i) No Owner may exempt himself from paying Regular Assessments and Special Assessments due to such Owner's nonuser of the Common Areas or abandonment of the Residence Unit or Lot belonging to such Owner. If any Owner shall fail, refuse or neglect to make any payment of any assessment when due, the lien for such assessment (as described in section 7.7 below) may be foreclosed by the Board of Directors of the Association for and on behalf of the Association as a mortgage on real property or as otherwise provided by law. In any action to foreclose the lien for any assessment, the Owner and any occupant of the Residence Unit shall be jointly and severally liable for the payment to the Association on the first day of each month of reasonable rental for such Residence Unit, and the Board of Directors shall be entitled to the appointment of a receiver for the purpose of preserving the Residence Unit or Lot, and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid assessments. The Board of Directors of the Association, at its option, may in the alternative bring suit to recover a money judgment for any unpaid assessment without foreclosing or waiving the lien securing the same. In any action to recover an assessment, whether by foreclosure or otherwise, the Board of Directors of the Association, for and on behalf of the Association, shall be entitled to recover from the Owner of the respective Lot costs and expenses of such action incurred (including but not limited to attorneys fees) and interest from the date such assessments were due until paid.

(ii) Notwithstanding anything contained in this section 7.6 or elsewhere in this Declaration, any sale or transfer of a Residence Unit or Lot to a Mortgagee pursuant to a foreclosure of its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid assessments which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF BROOKHAVEN SUBDIVISION

prior Owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Residence Unit, or the purchaser thereof, at such foreclosure sale, or the grantee in the event of conveyance in lieu thereof, from liability for any assessments thereafter becoming due or from the lien therefor.

7.7 Creation of Lien and Personal Obligation. All Regular Assessments and Special Assessments, together with interest, costs of collection and attorneys' fees, shall be a continuing lien upon the Lot against which such assessment is made prior to all other liens except only (i) tax liens on any Lot in favor of any unit of government or special taxing district and (ii) the lien of any first mortgage of record. Each such assessment, together with interest, costs of collection and attorneys' fees, shall also be the personal obligation of the Owner of the Lot at the time such assessment became due and payable. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. The personal obligation for delinquent assessments (as distinguished from the lien upon the Lot) shall not pass to such Owner's successors in title unless expressly assumed by them. The Association, upon request of a proposed Mortgagee or proposed purchaser having a contractual right to purchase a Lot, shall furnish to such Mortgagee or purchaser a statement setting forth the amount of any unpaid Regular or Special Assessments or other charges against the Lot. Such statement shall be binding upon the Association as of the date of such statement.

7.8 Expense Incurred to Clear Drainage, Utility or Sanitary Sewer Easement Deemed a Special Assessment. As provided in the Plat Covenants relating to the Real Estate, the Owner of any Lot subject to a Drainage, Utility or Sanitary Sewer Easement including any builder, shall be required to keep the portion of said Drainage, Utility or Sanitary Sewer Easement on his Lot free from obstructions so that the storm water drainage will not be impeded and will not be changed or altered without a permit from the applicable local governmental authority and prior written approval of the Developer and the Association. Also, no structures or improvements, including without limitation decks, patios, pools, fences, walkways or landscaping of any kind, shall be erected or maintained upon said easements, and any such structure or improvement so erected shall, at Developer's or the Association's written request, be promptly removed by the Owner at the Owner's sole cost and expense. If, within thirty (30) days after the date of such written request, such Owner shall not have commenced and diligently and continuously effected the removal of any obstruction of storm water drainage or any prohibited structure or improvement, Developer or the Association may enter upon the Lot and cause such obstruction, structure or improvement to be removed so that the Drainage, Utility or Sanitary Sewer Easement is returned to its original designed condition. In such event, Developer or the Association shall be entitled to recover the full cost of such work from the offending Owner and such amount shall be deemed a special assessment against the Lot owned by such Owner which, if

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF BROOKHAVEN SUBDIVISION

unpaid, shall constitute a lien against such Lot and may be collected by the Association pursuant to this Article 7 in the same manner as any Regular Assessment or Special Assessment may be collected.

ARTICLE VIII

INSURANCE

8.1 Casualty Insurance. The Association shall purchase and maintain fire and extended coverage insurance in an amount equal to the full insurable replacement cost of any improvements owned by the Association. The Association shall also insure any other property, whether real or personal, owned by the Association, against loss or damage by fire and such other hazards, as the Association may deem desirable. Such insurance policy shall name the Association as the insured. The insurance policy or policies shall, if practicable, contain provisions that the insurer (i) waives its rights to subrogation as to any claim against the Association, its Board of Directors, officers, agents and employees, any committee of the Association or of the Board of Directors and all Owners and their respective agents and guests and (ii) waives any defense to payment based on invalidity arising from the acts of the insured. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried.

8.2 Liability Insurance. The Association shall also purchase and maintain a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive public liability insurance shall cover all of the Common Areas and shall inure to the benefit of the Association, its Board of Directors, officers, agents and employees, any committee of the Association or of the Board of Directors, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Real Estate and the Developer.

8.3 Other Insurance. The Association shall also purchase and maintain any other insurance required by law to be maintained, including but not limited to workers compensation insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including but not limited to officers' and directors' liability insurance.

8.4 Miscellaneous. The premiums for the insurance described above shall be paid by the Association as Common Expenses.

ARTICLE IX

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF BROOKHAVEN SUBDIVISION

MAINTENANCE

9.1 Maintenance of Lots and Improvements. Except to the extent such maintenance shall be the responsibility of the Association under any of the foregoing provisions of this Declaration, it shall be the duty of the Owner of each Lot, including any builder during the building process, to keep the grass on the Lot properly cut and keep the Lot, including any Landscape, Drainage, Utility or Sanitary Sewer Easements located on the Lot, free of weeds, trash or construction debris and otherwise neat and attractive in appearance including without limitation, the proper maintenance of the exterior of any structures on such Lot. If the Owner of any Lot fails to do so in a manner reasonably satisfactory to the Association, the Association shall have the right (but not the obligation), through its agents, employees and contractors, to, enter upon said Lot and clean, repair, maintain or restore the Lot, as the case may be, and the exterior of the improvements erected thereon. The cost of any such work shall be and constitute a special assessment against such Lot and the owner thereof, whether or not a builder, and may be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general. Neither the Association nor any of its agents, employees or contractors shall be liable to the offending Owner for any damage which may result from any maintenance work performed hereunder. Trees, shrubs and flowers placed in any Landscape Easement by the Association shall be the responsibility of the Association to install and maintain. Lot Owners shall not prune, cut, remove or maintain any of the plant material installed within a Landscape Easement other than to mow and maintain the grass, except with express approval of the Association.

9.2 Damage to Common Areas. In the event of damage to or destruction of any part of the Common Areas or any improvements which the Association owns or is required to maintain hereunder, including without limitation any Subdivision improvement, such as fences or columns erected by the Developer in right-of-way areas, the Association shall repair or replace the same from the insurance to the extent of the availability of such insurance proceeds. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a Special Assessment against all Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds. Notwithstanding any obligation or duty of the Association hereunder to repair or maintain the Common Areas and other improvements if, due to the willful, intentional or negligent acts or omissions of any Owner (including any builder) or of a member of his family or of a guest, subcontractor, employee, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Areas or any other improvements maintained by the Association pursuant to this Paragraph 9.2, or if maintenance, repairs or replacements shall be required thereby which would otherwise be a Common Expense, then the Association shall cause such repairs to be made and such Owner shall pay for such damage and such maintenance, repairs and replacements, unless

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF BROOKHAVEN SUBDIVISION

such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Association, the cost of repairing such damage shall constitute a special assessment against such Owner, whether or not a builder, and its Lot, to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general.

ARTICLE X

MORTGAGES

10.1 Notice to Mortgagee. The Association, upon request, shall provide to any Mortgagee a written certificate or notice specifying unpaid assessments and other defaults, if any, of the Owner of any Lot in the performance of the Owner's obligations under this Declaration or any other applicable documents.

10.2 Notice to Association. Any Mortgagee who holds a first mortgage lien on a Lot may notify the Secretary of the Association by certified mail (return receipt requested) of the existence of such mortgage and provide the name and address of the Mortgagee. A record of the Mortgagee and name and address shall be maintained by the Secretary of the Association and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws of the Association or otherwise shall be deemed effectively given if mailed to the Mortgagee at the address shown in such record in the time provided. Unless notification of a Mortgage and the name and address of the Mortgagee are furnished to the Secretary as herein provided, no notice to any Mortgagee shall be required, and no Mortgagee shall be entitled to vote on any matter to which it otherwise may be entitled by virtue of this Declaration, the By-Laws of the Association, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

10.3 Mortgagees' Rights Upon Default by Association. If the Association fails (i) to pay taxes or the charges that are in default and that have or may become liens against any Common Areas, or (ii) to pay on a timely basis any premium on hazard insurance policies on Common Areas or to secure hazard insurance coverage for the Common Areas upon lapse of a policy, then the Mortgagee with respect to any Lot may make the payment on behalf of the Association.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF BROOKHAVEN SUBDIVISION

ARTICLE XI

AMENDMENTS

11.1 By the Association. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

(i) Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting of the members of the Association at which the proposed amendment is to be considered.

(ii) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of votes of all Owners.

(iii) Meeting. The resolution concerning a proposed amendment must be adopted by the vote required by subparagraph (iv) below at a meeting of the members of the Association duly called and held in accordance with the provisions of the Association's By-Laws.

(iv) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than seventy-five percent (75%) of such votes. In any case, provided, however, that any such amendment shall require the prior written approval of Developer so long as Developer or any entity related to Developer owns any Lot or Residence Unit within the Real Estate. In the event any Residence Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner provided the Mortgagee has given prior notice of its mortgage interest to the Board of Directors of the Association in accordance with the provisions of the foregoing sub-section 10.2.

11.2 By the Developer. Developer hereby reserves the right, so long as Developer or any entity related to Developer owns any Lot or Residence Unit within and upon the Real Estate, to make any technical amendments to this Declaration, without the approval of any other person or entity, for any purpose reasonably deemed necessary or appropriate by the Developer, including without limitation: to bring Developer or this Declaration into compliance with the requirement of any statute, ordinance, regulation or order of any public agency having jurisdiction thereof, to conform with zoning covenants and conditions; to comply with the requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Veterans Administration or any

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF BROOKHAVEN SUBDIVISION

other governmental agency or to induce any of such agencies to make, purchase, sell, insure or guarantee first mortgages, or to correct clerical or typographical errors in this Declaration or any amendment or supplement hereto; provided, however, that in no event shall Developer be entitled to make any amendment which has a material adverse effect on the rights of any Mortgagee, or which substantially impairs the rights granted by this Declaration to any Owner or substantially increases the obligations imposed by this Declaration on any Owner.

11.3 Recording. Each amendment to this Declaration need be executed only by Developer in any case where Developer has the right to amend this Declaration pursuant to Paragraph 11.2 and, otherwise, by the President or Vice President and Secretary of the Association; provided, however, that any amendment requiring the consent of Developer pursuant to Paragraph 11.1 shall contain Developer's signed consent. All amendments shall be recorded in the Office of the Recorder of Johnson County, Indiana, and no amendment shall become effective until so recorded.

ARTICLE XII

MISCELLANEOUS

12.1 Right of Enforcement. Violation or threatened violation of any of the covenants, conditions or restrictions enumerated in this Declaration or in a Plat of any part of the Real Estate now or hereafter recorded in the office of the Recorder of Johnson County, Indiana, shall be grounds for an action by Developer, the Association, any Owner and all persons or entities claiming under them, against the person or entity violating or threatening to violate any such covenants, conditions or restrictions. Available relief in any such action shall include recovery of damages or other sums due for such violation, injunctive relief against any such violation or threatened violation, declaratory relief and the recovery of costs and attorneys fees reasonably incurred by any party successfully enforcing such covenants, conditions and restrictions; provided, however, that neither Developer, any Owner nor the Association shall be liable for damages of any kind to any person for failing or neglecting for any reason to enforce any such covenants, conditions or restrictions.

12.2 Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party, including without limitation the Association and the Developer, to invoke any available remedy with respect to any violation or threatened violation of any covenants, conditions or restrictions enumerated in this Declaration or in a Plat of any part of the Real Estate shall constitute a waiver by that party of, or an estoppel of that party to assert, any right available to it upon the occurrence, recurrence or continuance of such violation.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF BROOKHAVEN SUBDIVISION

12.3 Duration. These covenants, conditions and restrictions and all other provisions of this Declaration (as the same may be amended from time to time as herein provided) shall run with the land comprising the Real Estate and shall be binding on all persons and entities from time to time having any right, title or interest in the Real Estate or any part thereof, and on all persons claiming under them, until December 31, 2025, and thereafter shall continue automatically until terminated or modified by vote in the majority of all Owners at any time thereafter; provided, however, that no termination of this Declaration shall terminate or otherwise affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall consent thereto.

12.4 Severability. Invalidation of any of the covenants, conditions or restrictions 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.


12.5 Applicable Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Indiana.

12.6 Annexation. Additional land adjacent to the Real Estate may be annexed by Developer to the Real Estate (and from and after such annexation shall be deemed part of the Real Estate for all purposes of this Declaration) by execution and recordation by Developer in the Office of the Recorder of Johnson County, Indiana, of a Supplemental Declaration, and such action shall require no approvals or other action of the Owners. Additional real estate may be added to the Real Estate at different times, and there are no limitations fixing the boundaries of the portions or regulating the order, sequence, or location in which any of such portions may be added to the Real Estate. No single exercise of Developer's option to submit additional real estate to the Declaration shall preclude any further exercises of this option thereafter and from time to time as to other real estate.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF BROOKHAVEN SUBDIVISION

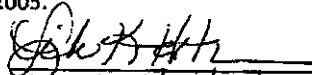
IN WITNESS WHEREOF, witness the signature of the Developer this 20th day of October, 2005.

"DEVELOPER"
Brookhaven Development LLC
an Indiana Limited Liability Company

By: 
J. Brian Mann
Manager

STATE OF INDIANA)
) SS:
COUNTY OF Marion)

Before me, a Notary Public in and for said County and State, personally appeared J. Brian Mann, as Manager of Brookhaven Development LLC, a limited liability company (Developer herein), and acknowledged the execution of the foregoing instrument this 20th day of October, 2005.


Linda R. Hartmann (Printed) Notary

Resident of Marion County, Indiana

My Commission Expires:
4.11.09

This Instrument prepared by Brookhaven Development LLC, 8653 Bash Street, Indianapolis, IN 46256
LINDA HARTMANN

EXHIBIT "A"
LEGAL DESCRIPTION

PART OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 13 NORTH, RANGE 3 EAST OF THE SECOND PRINCIPAL MERIDIAN, JOHNSON COUNTY, INDIANA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID HALF QUARTER SECTION; THENCE ALONG NORTH LINE OF SAID HALF QUARTER SECTION NORTH 88 DEGREES 03 MINUTES 21 SECONDS EAST 1361.80 FEET TO A CAPPED REBAR SET AT THE NORTHEAST CORNER OF SAID HALF QUARTER SECTION; THENCE ALONG EAST LINE OF SAID HALF QUARTER SECTION SOUTH 00 DEGREE 34 MINUTES 59 SECONDS EAST 486.29 FEET; THENCE NORTH 60 DEGREES 53 MINUTES 25 SECONDS WEST 144.70 FEET; THENCE NORTH 67 DEGREES 02 MINUTES 30 SECONDS WEST 90.38 FEET; THENCE NORTH 73 DEGREES 48 MINUTES 52 SECONDS WEST 85.54 FEET; THENCE NORTH 80 DEGREES 06 MINUTES 37 SECONDS WEST 116.91 FEET; THENCE NORTH 89 DEGREES 59 MINUTES 59 SECONDS WEST 361.61 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 01 SECOND WEST 120.00 FEET; THENCE SOUTH 89 DEGREES 59 MINUTES 59 SECONDS EAST 33.83 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 01 SECOND WEST 290.00 FEET; THENCE SOUTH 89 DEGREES 59 MINUTES 59 SECONDS EAST 4.58 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 01 SECOND WEST 170.00 FEET; THENCE SOUTH 89 DEGREES 59 MINUTES 59 SECONDS EAST 7.54 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 01 SECOND WEST 120.16 FEET; THENCE SOUTH 89 DEGREES 59 MINUTES 59 SECONDS EAST 45.94 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 01 SECOND WEST 50.00 FEET; THENCE SOUTH 22 DEGREES 06 MINUTES 10 SECONDS EAST 74.97 FEET; THENCE SOUTH 23 DEGREES 58 MINUTES 44 SECONDS EAST 67.71 FEET; THENCE SOUTH 27 DEGREES 49 MINUTES 15 SECONDS EAST 67.71 FEET; THENCE SOUTH 31 DEGREES 39 MINUTES 45 SECONDS EAST 67.71 FEET; THENCE SOUTH 27 DEGREES 18 MINUTES 32 SECONDS EAST 70.12 FEET; THENCE SOUTH 54 DEGREES 55 MINUTES 16 SECONDS WEST 155.86 FEET; THENCE NORTH 35 DEGREES 04 MINUTES 44 SECONDS WEST 19.89 FEET; THENCE SOUTH 54 DEGREES 55 MINUTES 16 SECONDS WEST 120.00 FEET; THENCE SOUTH 35 DEGREES 04 MINUTES 44 SECONDS EAST 220.36 FEET; THENCE SOUTH 28 DEGREES 18 MINUTES 30 SECONDS EAST 91.53 FEET; THENCE SOUTH 13 DEGREES 24 MINUTES 05 SECONDS EAST 92.85 FEET; THENCE SOUTH 84 DEGREES 06 MINUTES 45 SECONDS WEST 170.00 FEET TO A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY THE RADIUS OF SAID CURVE BEARS SOUTH 84 DEGREES 06 MINUTES 45 SECONDS WEST 185.00 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 09 DEGREES 49 MINUTES 04 SECONDS 31.70 FEET; THENCE SOUTH 74 DEGREES 17 MINUTES 41 SECONDS WEST 122.88 FEET; THENCE NORTH 17 DEGREES 49 MINUTES 51 SECONDS WEST 21.58 FEET; THENCE NORTH 35 DEGREES 04 MINUTES 44 SECONDS WEST 391.41 FEET TO A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY THE RADIUS OF SAID CURVE BEARS SOUTH 40 DEGREES 36 MINUTES 18 SECONDS EAST 175.00 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 08 DEGREES 37 MINUTES 08 SECONDS 20.21 FEET; THENCE NORTH 33 DEGREES 59 MINUTES 09 SECONDS WEST 93.41 FEET; THENCE NORTH 34 DEGREES 31 MINUTES 38 SECONDS WEST 22.86 FEET; THENCE SOUTH 55 DEGREES 28 MINUTES 21 SECONDS WEST 49.40 FEET; THENCE SOUTH 41 DEGREES 28 MINUTES 30 SECONDS WEST 49.79 FEET; THENCE SOUTH 89 DEGREES 23 MINUTES 15 SECONDS WEST 135.22 FEET TO THE WEST LINE OF SAID HALF QUARTER SECTION; THENCE ALONG LAST SAID WEST LINE NORTH 00 DEGREES 36 MINUTES 45 SECONDS WEST 1482.30 FEET TO THE POINT OF BEGINNING CONTAINING 31.419 ACRES, MORE OR LESS, SUBJECT TO ALL RIGHTS-OF-WAY, EASEMENTS AND RESTRICTIONS

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**FIRST AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS & RESTRICTIONS OF BROOKHAVEN**

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS OF BROOKHAVEN (the "First Amendment") to that certain Declaration of Covenants, Conditions & Restrictions of Brookhaven Subdivision, recorded November 1, 2005 as Instrument #2005-030716 in the Office of the Recorder of Johnson County, Indiana (the "Declaration"), is executed as of this 18th day of January, 2006, by the Board of Directors of Brookhaven Community Association, Inc, an Indiana non-profit corporation.

RECITALS

- A. All terms defined in the Declaration are incorporated by reference herein; and
- B. The Declaration contains, *inter alia*, development standards for the real property described in the Declaration and also described in Exhibit "A" hereto (the "Real Estate"), and sets forth rights, obligations, and commitments of the Developer and Owners; and
- C. The Board of Directors of the Association (the "Board"), having been duly appointed pursuant to the Declaration, has the power to propose an amendment to the Declaration pursuant to Section 11 of the Declaration; and
- D. On the 17th day of January, 2006, the Board did hold a meeting of the Association to consider the terms and conditions of this First Amendment, and upon an affirmative vote of more than 75% of the Owners, did adopt a resolution approving this First Amendment and authorizing the recording of this First Amendment, which terms and conditions shall run with the land and are binding on the Owners and their successors and assigns as if originally set forth in the Declaration.

NOW, THEREFORE, the Board hereby amends and supplements the Declaration as follows:

- 1. Section 4.6 (b) of the Declaration is hereby amended to read as follows:

Mailboxes and Landscaping. Any mailboxes must be approved by the Committee as to size, location, height, and composition before it may be installed. A standard mailbox design will be established by the Committee. Address numbers shall be permanently affixed on each mailbox in a manner consistent with the requirements of the Committee. Mailbox placement may be undertaken without special review if the proposed type and placement conforms to the standard design. Front yards along the front foundation of the Residence Unit shall contain six (6) bushes or similar plants with a minimum height of 18 inches and at least one (1) deciduous tree having a caliper of not less than two inches.

- 2. Section 4.6 (l) of the Declaration is hereby amended to read as follows:


(l) Fencing. The Committee shall establish written rules and regulations (the "Fencing Guidelines") regarding the application for fence approval and the placement and installation of fences. Said Fencing Guidelines may change from time to time, as necessary, and the rules shall be made available to any Owner upon request to the Committee. No fences taller than 52" will be approved on any lots, with the exception of swimming pool fences as set forth in the Fencing Guidelines. Maintenance of fencing within Common Areas will be the responsibility of the Association. No fencing will be allowed to be placed by any Lot Owner within any Landscape Easement at any Subdivision entry or in any Landscape Easement along Paddock Road or Olive Branch Road. Fencing to be installed in yards abutting Paddock Road or Olive Branch Road shall be uniform in appearance and conform to the Fencing Guidelines.

3. An additional paragraph, Paragraph 5.12, entitled, "Association's Right to Perform Certain Maintenance," is hereby appended to the end of Article V of the Declaration, to read as follows:

Section 5.12 Association's Right to Perform Certain Maintenance. In the event that the Owner of any Lot in the Subdivision shall fail to maintain his Lot and any improvements situated thereon in accordance with the provisions of Paragraphs 4(i) (i)-(vii) inclusive of this Declaration, the Association shall have the right, but not the obligation, by and through its agents or employees or contractors, to enter upon said Lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such Lot and improvements situated thereon, if any, conform to the requirements of this Declaration. The cost therefor to the Association shall be added to and become a Special Assessment to which said Lot is subject and may be collected in any manner in which such Special Assessment may be collected. Neither the Association nor any of its agents, employees, or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

IN WITNESS WHEREOF, this First Amendment has been executed as of the date first written above.

BROOKHAVEN COMMUNITY ASSOCIATION, INC.
BOARD OF DIRECTORS

By 

Printed J. Brian Mann
Title: President

ATTEST:

By 
Printed Tracy Cleveland
Secretary, Brookhaven Community Association, Inc.

This instrument prepared by Brookhaven Development LLC, 8653 Bash Street, Indianapolis, IN 46256. *Tim Stevens*

STATE OF Indiana } S.S.
COUNTY OF Marion }

On Apr 5, 2006, before me, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared J. Brian Mann known to me to be President of Brakeman Community Association Board of Directors the corporation described in and that executed the within and foregoing instrument, and known to me to be the person who executed the said instrument, and known to me to be the person who executed the said instrument on behalf of the said corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year stated in this certificate above.

[Signature]
Notary Public

Linda K. Hartmann
Printed Name

My Commission Expires on Apr 11 2009

EXHIBIT "A"
Legal Description of the Real Estate

PART OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 13 NORTH, RANGE 3 EAST OF THE SECOND PRINCIPAL MERIDIAN, JOHNSON COUNTY, INDIANA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID HALF QUARTER SECTION; THENCE ALONG NORTH LINE OF SAID HALF QUARTER SECTION NORTH 88 DEGREES 03 MINUTES 21 SECONDS EAST 1361.80 FEET TO A CAPPED REBAR SET AT THE NORTHEAST CORNER OF SAID HALF QUARTER SECTION; THENCE ALONG EAST LINE OF SAID HALF QUARTER SECTION SOUTH 00 DEGREE 34 MINUTES 59 SECONDS EAST 486.29 FEET; THENCE NORTH 60 DEGREES 53 MINUTES 25 SECONDS WEST 144.70 FEET; THENCE NORTH 67 DEGREES 02 MINUTES 30 SECONDS WEST 90.38 FEET; THENCE NORTH 73 DEGREES 46 MINUTES 52 SECONDS WEST 85.54 FEET; THENCE NORTH 80 DEGREES 06 MINUTES 37 SECONDS WEST 116.91 FEET; THENCE NORTH 89 DEGREES 59 MINUTES 59 SECONDS WEST 361.61 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 01 SECOND WEST 120.00 FEET; THENCE SOUTH 89 DEGREES 59 MINUTES 59 SECONDS EAST 33.83 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 01 SECOND WEST 290.00 FEET; THENCE SOUTH 89 DEGREES 59 MINUTES 59 SECONDS EAST 4.58 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 01 SECOND WEST 170.00 FEET; THENCE SOUTH 89 DEGREES 59 MINUTES 59 SECONDS EAST 7.54 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 01 SECOND WEST 120.16 FEET; THENCE SOUTH 89 DEGREES 59 MINUTES 59 SECONDS EAST 45.94 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 01 SECOND WEST 50.00 FEET; THENCE SOUTH 22 DEGREES 06 MINUTES 10 SECONDS EAST 74.97 FEET; THENCE SOUTH 23 DEGREES 58 MINUTES 44 SECONDS EAST 67.71 FEET; THENCE SOUTH 27 DEGREES 49 MINUTES 15 SECONDS EAST 67.71 FEET; THENCE SOUTH 31 DEGREES 39 MINUTES 45 SECONDS EAST 67.71 FEET; THENCE SOUTH 27 DEGREES 18 MINUTES 32 SECONDS EAST 70.12 FEET; THENCE SOUTH 54 DEGREES 55 MINUTES 16 SECONDS WEST 155.86 FEET; THENCE NORTH 35 DEGREES 04 MINUTES 44 SECONDS WEST 120.00 FEET; THENCE SOUTH 35 DEGREES 04 MINUTES 44 SECONDS EAST 220.36 FEET; THENCE SOUTH 28 DEGREES 18 MINUTES 30 SECONDS EAST 91.53 FEET; THENCE SOUTH 13 DEGREES 24 MINUTES 05 SECONDS EAST 92.85 FEET; THENCE SOUTH 84 DEGREES 06 MINUTES 45 SECONDS WEST 170.00 FEET TO A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY THE RADIUS OF SAID CURVE BEARS SOUTH 84 DEGREES 06 MINUTES 45 SECONDS WEST 185.00 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 09 DEGREES 49 MINUTES 04 SECONDS 31.70 FEET; THENCE SOUTH 74 DEGREES 17 MINUTES 41 SECONDS WEST 122.88 FEET; THENCE NORTH 17 DEGREES 49 MINUTES 51 SECONDS WEST 21.58 FEET; THENCE NORTH 35 DEGREES 04 MINUTES 44 SECONDS WEST 391.41 FEET TO A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY THE RADIUS OF SAID CURVE BEARS SOUTH 40 DEGREES 36 MINUTES 18 SECONDS EAST 175.00 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 06 DEGREES 37 MINUTES 08 SECONDS 20.21 FEET; THENCE NORTH 33 DEGREES 59 MINUTES 09 SECONDS WEST 93.41 FEET; THENCE NORTH 34 DEGREES 31 MINUTES 38 SECONDS WEST 22.86 FEET; THENCE SOUTH 55 DEGREES 28 MINUTES 21 SECONDS WEST 49.40 FEET; THENCE SOUTH 41 DEGREES 29 MINUTES 30 SECONDS WEST 49.79 FEET; THENCE SOUTH 89 DEGREES 23 MINUTES 15 SECONDS WEST 135.22 FEET TO THE WEST LINE OF SAID HALF QUARTER SECTION; THENCE ALONG LAST SAID WEST LINE NORTH 00 DEGREES 36 MINUTES 45 SECONDS WEST 1482.30 FEET TO THE POINT OF BEGINNING CONTAINING 31.419 ACRES, MORE OR LESS, SUBJECT TO ALL RIGHTS-OF-WAY, EASEMENTS AND RESTRICTIONS

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**SECOND AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF BROOKHAVEN**

Reference: Plat BK D605 a-D 729

THIS SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BROOKHAVEN SUBDIVISION (the "Second Amendment") to that certain Declaration of Covenants, Conditions and Restrictions for Brookhaven Subdivision, recorded November 1, 2005 as Instrument #2005-030716 in the Office of the Recorder of Johnson County, Indiana (the "Declaration"), as amended by that certain First Amendment to Declaration of Covenants, Conditions & Restrictions of Brookhaven, recorded April 19, 2006 as Instrument #2006-008814 in the Office of the Recorder of Johnson County, Indiana (the "First Amendment") is executed as of this 27th day of February, 2008, by the Declarant, an Indiana limited liability company.

**WITNESSETH:
RECITALS**

- A. All terms defined in the Declaration are incorporated by reference herein; and
- B. The Declaration contains, *inter alia*, development standards for the real property described in the Declaration and also described in Exhibit "A" hereto (the "Real Estate"), and sets forth rights, obligations, and commitments of the Developer and Owners; and
- C. The Board of Directors of the Association (the "Board"), having been duly appointed pursuant to the Declaration, has the power to propose an amendment to the Declaration pursuant to Section 11 of the Declaration; and
- D. On the 26th day of February, 2008, the Board did hold a meeting of the Association to consider the terms and conditions of this First Amendment, and upon an affirmative vote of more than 75% of the Owners, did adopt a resolution approving this Second Amendment and authorizing the recording of this Second Amendment, which terms and conditions shall run with the land and are binding on the Owners and their successors and assigns as if originally set forth in the Declaration.

NOW, THEREFORE, the Board hereby amends and supplements the Declaration as follows:

- 1. Amendment of Article IV. Use Restrictions. Article IV, Section 4.6, Other Restrictions, Paragraph (c), of the Declaration is hereby deleted in its entirety and the following is substituted in lieu thereof:

"(c) Exterior Construction. The finished exterior of every building constructed or placed on any lot in the Development shall be of material other than tar paper, rollbrick siding, T-111 plywood sheet, or aluminum siding, or any other similar material. All driveways must be concrete. All exterior building materials are to be of an aesthetically pleasing tone. Vinyl siding used shall have a minimum thickness of .040" and a minimum 5/8" butt. A minimum 75% of the Residence Units shall have full first-story front brick, to be calculated exclusive of windows, doors, and vents."

2. The recitals above are incorporated herein by this reference as if fully set forth herein and are true and correct in all material respects.

3. Any capitalized terms not otherwise defined herein shall have the same meaning in this Amendment as defined in the Declaration.

4. This Amendment shall extend to, be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.

5. This Amendment shall be governed, construed, applied and enforced in accordance with the laws of the State of Indiana.

IN WITNESS WHEREOF, this Second Amendment has been executed as of the date first written above.

"I AFFIRM, UNDER THE PENALTIES FOR PERJURY, THAT I HAVE TAKEN REASONABLE CARE TO REDACT EACH SOCIAL SECURITY NUMBER IN THIS DOCUMENT, UNLESS REQUIRED BY LAW."

NAME [Signature]

BROOKHAVEN COMMUNITY ASSOCIATION, INC.
BOARD OF DIRECTORS

By: [Signature]
Printed: J. Brian Mann
Title: President

ATTEST:
By [Signature]
Printed J. Brian Mann
Secretary, Brookhaven Community Association, Inc.

DATE 3-13-08
Before me a Notary Public,
personally appeared J. Brian Mann

[Signature]
Linda K Hartmann

This instrument was prepared by and after recording return to:

Brookhaven Development, LLC
Tim Stevens
6925 E. 96th Street, Suite 200
Indianapolis, IN 46250

My commission expires
April 11 2009
My county of
residence Marion

