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MARY L CLARK
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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR BROOKSIDE**

The undersigned, Langston Development Company, Inc., an Indiana Corporation (hereinafter referred to as the "Developer"), the owner of the real estate shown and described herein, do hereby certify that they have laid off, platted and subdivided and do hereby lay off, plat and subdivide said real estate in accordance with the within plat(s). The following restrictions, limitations and covenants are hereby imposed upon, shall be run with the land contained in such plat(s) and are recorded as Instrument # 200100061005 in the Office of the Hamilton County Recorder.

This Development shall be known and designated as Brookside Development in Hamilton County, Indiana (hereinafter referred to as the "Development"). All streets shown and not heretofore dedicated are hereby dedicated to the public.

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

- A. "Committee" shall mean the Brookside Architectural Control Committee, composed of and operated under the terms of Article II herein.
- B. "Association" shall mean the Brookside Property Owners' Association, Inc., An Indiana not-for-profit corporation, the membership and powers of which are more fully described in Article IV herein and in the Association's By-Laws and Articles of Incorporation which are incorporated herein by this reference.
- C. "Builder(s)" shall mean one who acquires a Lot directly from the developer for the purpose of building a single family dwelling on it for immediate re-sale of Lot and dwelling together.
- D. "Developer" shall mean Langston Development Company, Inc. or it's assigns.
- E. "Lot(s)" shall mean the numerically numbered parcels within the plat(s) of Brookside designed for the exclusive use of the construction of a single-family residence thereon.
- F. "Common Areas" shall mean the alphabetically numbered parcels within the plat(s) of Brookside designed for the mutual use and enjoyment of all the Owners of Lots within Brookside.
- G. "Right of Way Enhancements" shall mean the property located between the street curb and the sidewalk along both sides of all internal Town of Westfield's streets in Brookside and all the improvements located thereon including but not limited to grass, plants and trees.
- H. "Owner(s)" shall mean the person or persons that have been deeded and hold ownership in any Lot within Brookside.
- I. "Covenants" shall mean the recorded terms and conditions of this Declaration of Covenants, Conditions and Restrictions for Brookside together with the Association's By-Laws, any rules and regulations adopted by the Board of Directors and the Design Guidelines for Brookside.
- J. "Applicable Date" shall mean the date of the first meeting of the members of the Association occurring on or after the first of the following 1) Developer relinquishes it's power to appoint the Board of Directors or 2) Developer no longer owns any of the Lots.
- J. "Development" shall mean the Brookside Development and all real estate contained therein as shown on the recorded plat(s) recorded in Hamilton County.

- K. "Dwelling" shall mean a building erected on a Lot within the Development for residential living purposes.
- L. "By-Laws" shall mean the written Code of By-Laws of Brookside.
- M. "Design Guidelines" shall mean the set documents established by the Developer and after the Applicable Date, by the Association, to establish minimum standards of design, construction and maintenance, which are consistent with the level of quality and character desired for Brookside and the Covenants and to assist builders and homeowners in the planning, design, maintenance, and construction of all site improvements. The Developer and the Committee reserve the right to make any amendments, repeals, or modifications to the Design Guidelines that they deem necessary or appropriate at any time and without notice.

ARTICLE I

GENERAL RESTRICTIONS, OBLIGATIONS, AND RIGHTS

Section 1. Lot Use and Maintenance.

A. All Lots in this Development are reserved for residential use and no building other than a single-family Dwelling shall be erected thereon. All plans for such Dwellings are to be submitted to the Developer for approval prior to any construction. Lots are not to be purchased for investment purposes. In the event a owner of a Lot chooses to sell the Lot prior to the construction of a residence, the Developer shall have the first opportunity to purchase the Lot for 95% of the original sales price.

B. Not more than one Dwelling shall be erected or used for residential purposes on any Lot in this Development. No trailer, tent, shack, attached shed, basement, garage, barn, or other out-building or temporary structure shall be used for temporary or permanent residence on any Lot in this Development.

C. No Lot or any part thereof be leased, sublet, assigned or suffered to be used for transient occupancy.

D. No Lot in this Development shall be used or maintained as a dumping ground for rubbish, trash, grass clippings, garbage or other waste and such rubbish or trash shall not be kept, except in sanitary containers. It shall be the duty of the Owner of each Lot to maintain the same in a good, clean and sanitary condition, to keep the grass on the Lot properly cut and keep the Lot free of weeds, trash or other debris and otherwise neat and attractive in appearance, including, without limitation, the proper and customary maintenance of the exterior of any structures on such Lot. If the Owner of any Lot fails to do so in a manner satisfactory to the Association, the Association, after approval by two-thirds (2/3) of the Board of Directors, shall have the right (but not the obligation), through its agents, employees and contractors, to enter upon said Lot and to 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 added to and become a part of the Owner's assessment, and such cost shall be immediately due, and shall be secured by the Association's lien on the Owner's Lot. Said cost may be collected and enforced by the Association in the manner provided in this Declaration for the collection and enforcement of assessments in general. Each Owner, by his acceptance of a deed to any Lot, irrevocably grants to the Association, its agents, employees and contractors, the right to enter upon, across and over the Lot owned by such Owner under such conditions as are reasonably necessary to effect the maintenance, cleaning, repair or other work contemplated herein.

Section 2. Lot Lines and Lot Dimensions. The front and side yard building setback lines are hereby established; between which line and the property lines of the street, there shall be erected or maintained no building or structure. The front setback shall generally be a minimum of Thirty five (35) feet, however the Developer may allow the front set back to be reduced to Thirty (30) feet in some circumstances. Please note the general requirement is five (5) feet beyond the setback lines shown on the recorded plat. The minimum rear setback shall be Thirty (30) feet. Side setbacks shall be a minimum of twelve (12) feet each side excluding elements such as drives, fences, walls, and trellises. These set back requirements are the minimum required and the Developer may require the dwelling to be located beyond the minimum requirements for aesthetic harmony or preservation of natural features.

No Lot or combination of Lots may be further subdivided until approval therefore has been obtained from the Town of Westfield Planning Commission; excepting, however, the Developer and its successors in title shall have the absolute right to increase the size of any Lot by joining to such Lot a

section of an adjoining Lot (thereby decreasing the size of such adjoining Lot) so long as the effect of such joining does not result in the creation of a "Lot" with less than the requirements set forth in the Westfield/Washington Township Zoning Ordinance.

Section 3. Dwelling Dimensions. The living area, exclusive of one-story open porches, terraces and garages, shall not be less than Two Thousand Four Hundred (2,400) square feet in the case of a one-story structure, nor less than Two Thousand Six Hundred (2,600) square feet, with a minimum of Thirteen Hundred (1,300) Square Feet on the first floor, in the case of a two story structure. Excepting however that all homes to be placed on lots that are directly adjacent to the Woodshire Development shall have a minimum of Three Thousand (3,000) square feet for both one and two-story homes with a minimum of Fifteen Hundred Square Feet (1,500) to be located on the first floor of two-story homes. Developer may require homes to be larger than the requirements set above on a per area or lot basis.

Section 4. Dwelling Character and Appearance. All buildings shall be constructed in a substantial and good workmanlike manner and of new materials. No roll roofing of any description or character shall be used on the roof of any dwelling house or attached garage on any of said Lots. No vinyl or aluminum siding shall be used on the exterior of any homes. Exterior materials must be at least 50% brick, other masonry material or drivet unless architectural design does not warrant as determined by the Developer or the Committee. All other materials shall be wood, drivet, or other material approved by the Developer or the Committee. The Developer, or Committee prior to construction, must approve colors of all exterior materials, including but not limited to shingles, paint, and masonry.

Section 5. Garages. All homes must have a minimum of a three (3) car attached garage. All garages shall be angled, side load or, when aesthetically designed, "L" shaped with the majority of the doors being side. Garages with all doors located perpendicular to the street will generally not be permitted.

Section 6. Accessory Structures. No detached structures, mini-barns, tree houses, docks, or other out buildings shall be permitted on any Lot in Brookside.

Section 7. Drives. Each driveway on a Lot shall be of concrete or asphalt material.

Section 8. Swimming Pools. No aboveground swimming pools shall be permitted in the Development. No in ground swimming pool shall be permitted without prior written approval of Developer or Committee.

Section 9. Solar Heat Panel. No solar heat panels shall be permitted in the Development.

Section 10. Fences. No fence shall be erected in this Development without prior written approval of the Developer or Committee. No fences shall be constructed in areas designated for Retention or Detention nor shall fences be constructed in the Floodway. No fences shall be constructed in front of the building line on any Lot. In general, all fencing must be ornamental iron; its aluminum equivalent, or other such style designated by the Developer or Committee and must not be higher than six (6) feet from ground level. Fencing in rear or side yard areas of lake or brook Lots, however, should generally not exceed 42 inches. In no event will any stockade, horizontal wood, galvanized chain link, wire, solid aluminum or PVC fences be permitted within the Development.

Section 11. Sidewalks. Plans and specifications for this Development, on file with the Town of Westfield, require the installation of five (5) foot wide concrete sidewalks within the street rights-of-way in front of all Lots as shown on the approved plans. Installation of said sidewalks shall be the obligation of the builder or Owner of any such Lot, not of the Developer, and shall be completed within Thirty (30) days of home completion or within twelve (12) months of the purchase of the Lot, whichever ever occurs first. In the event the Owner has not installed the sidewalk within the time period allotted, the cost of said installation shall be the personal obligation of the Owner and a lien against any such Lot enforceable by the Westfield Planning Commission or the Developer or their successors. The Developer may, at Developer's sole discretion, install or have installed the sidewalk and bill the Owner for costs incurred in the installation of the sidewalk. If the Owner fails to reimburse Developer for the costs of the sidewalk within Thirty (30) days, the Developer is hereby authorized to place a lien against said Lot. In addition, interest on those expenditures shall accrue at a rate of twelve percent (12%) per annum and Developer shall be entitled to recover in an action at law or in equity from the Owner of the Lot of which the side walk was installed all of the attorneys' fees and related costs and expenses it incurred pursuant to the collection of the above funds. After the Applicable Date, the Association shall also have Developer's rights under this Section 11.

Section 12. Yard, Street Trees, Mailbox, and Other Equipment. All Lot Owners will be required, at a minimum, to install a \$3,500 (wholesale plant material costs only, excluding annuals, irrigation, street trees and lawns) landscape package that has been submitted and approved by the Developer or Committee. This package is to include at a minimum: sod or hydro-seeded with in ground irrigation system front and side yards and seed and straw in the back yards. Also required is the planting of four plants, two shade trees and two evergreen or ornamental trees. All trees and bushes must meet the Westfield/Washington Township Landscaping Standards. All plantings shall be maintained in an appropriate manner by the Lot Owner and any trees and bushes that die shall be replaced with the same, which shall meet the Town of Westfield Landscaping Standards.

Installation of required street trees and sod or hydro-seeded (when accompanied with an in ground, automatic irrigation system) in the right-of way in front of each Lot (the area located between the sidewalk and street curb) shall be the obligation of the builder or Owner of any such Lot, not of the Developer, and shall be completed within Thirty (30) days of home completion or within twelve (12) months of the purchase of the Lot, whichever occurs first. One street tree shall be installed approximately every fifty feet of Lot road frontage at locations and of the tree type designated by the Developer. In the event the Owner has not installed the lawn treatment and/or street trees within the time period allotted, the Developer or Association shall have the right (but not the obligation) to do so with the cost of said installation being the personal obligation of the Owner and a lien against any such Lot enforceable by the Developer or Committee. The Developer may, at Developer's sole discretion, install or have installed the lawn treatment and/or street trees and bill the Owner for costs incurred in the installation of the lawn treatment and/or street trees. If the Owner fails to reimburse Developer for the costs of the lawn treatment and/or street trees within Thirty (30) days, the Developer is hereby authorized to place a lien against said Lot. In addition, interest on those expenditures shall accrue at a rate of twelve percent (12%) per annum and Developer shall be entitled to recover in an action at law or in equity from the Owner of the Lot of which the lawn treatment and/or street trees were installed all of the attorneys' fees and related costs and expenses it incurred pursuant to the collection of the above funds. After the Applicable Date, the Association shall also have Developer's rights under this Section 12.

Lot Owners must install or have installed at least one photocell controlled exterior light (which must meet the requirements set forth in the Lighting Standards of the Westfield-Washington Township Zoning Ordinance) and mailbox in the front yard by the time the construction of the home on the Lot is complete. The Developer shall approve the design of the exterior light and shall determine the mailbox required. The Developer may require, for the purpose of uniformity and appearance that the mailbox and yard light be purchased from the Developer or its designee. Each Owner shall thereafter maintain such light(s) and mailbox so that they operate properly and are attractive in appearance.

No clothesline or clothes poles, or any other free-standing semi-permanent poles, rigs or devices, regardless of purpose, shall be constructed, erected or located or used on any Lot.

No sign of any kind shall be displayed to the public view on any Lot except one (1) professional sign of not more than one (1) square foot or one (1) licensed real estate agent sign of not more than five (5) square feet advertising the home for sale. For sale by owner signs shall not be permitted for the resale of lots. Signs used by a Builder and or Realtor to advertise the Home during the construction and sales periods and all Developer signs are exempt from this requirement.

No radio or television antenna on outside of roof shall be attached to any dwelling house. No free standing radio or television antenna, television receiving disk or dish shall be permitted on any Lot, with the exception of a television reception disk one (1) meter in diameter or less upon approval of the location by the Committee. No solar panels attached or detached shall be permitted.

No temporary basketball goals shall be permitted within Brookside. All basketball goals must be installed in a permanent manner and must have clear backboards. The Developer or Committee shall approve all basketball goals prior to their installation.

Section 13. Down Spouts. No down spouts shall be tied to the sub-surface drains. Sump pump lines are to be connected to the available sub-surface drains provide for each Lot.

Section 14. Time Period to Commence and Complete Construction and Landscaping. All construction upon, landscaping of and other improvement to a Lot shall be completed strictly in accordance with the plans approved by the Developer or Committee. All landscaping specified on the landscaping plan approved by the Developer or Committee shall be installed on the Lot strictly in accordance with such approved plans within thirty (30) days following substantial completion of the Dwelling unless the Developer or Committee agrees to a later landscaping completion date. Unless a delay is caused by strikes, war, court injunction or act of God, the Owner of any Lot which on the date

of purchase from Developer is not improved with a Dwelling shall commence construction of a Dwelling upon the Lot within one (1) year from the date the owner acquired title thereto (unless Lot purchase was in conjunction with other Lot purchases and then said time to commence construction of Dwelling shall be three (3) years) and shall complete construction of such Dwelling within one (1) year after the date of commencement of the building process, but in no event later than two (2) years (four (4) years for multiple lot purchases) after the date the Owner acquired title(s) to the Lot(s) unless such Lot is adjacent to a Lot upon which the Owner has constructed a Dwelling in which such owner permanently resides. If the Owner fails to commence or complete construction of a Dwelling within the time periods specified herein, or if the Owner should, without Developer's written approval, sell, contract to sell, convey, or otherwise dispose of, or attempt to sell, convey or otherwise dispose of, the Lot before completion of construction of a Dwelling on the Lot, then, in any of such events, Developer may:

- (i) Re-enter the Lot and divest the Owner of title thereto by tendering to the Owner or to the Clerk of the Circuit Court of Hamilton County the lesser of (i) the same net dollar amount as was received by Developer from such Owner as consideration for the conveyance by Developer of the Lot, together with such actual costs, if any, as the Owner may prove to have been incurred in connection with the commencement of construction of a Dwelling on the Lot, and (ii) the then fair market value of the Lot, as determined by averaging two (2) appraisals made by qualified appraisers appointed by the Judge of the Hamilton County Circuit or Superior Court;
- (ii) Obtain injunctive relief to force the Owner to proceed with construction of any Dwelling, a plan for which has been approved by the Developer or Committee upon application by such Owner; or
- (iii) Pursue other remedies at law or in equity as may be available to Developer.

The failure of the Owner of a Lot to apply for approval of, or receive approval from, the Developer or Committee of a plan shall not relieve such Owner from his obligation to commence and complete construction of a Dwelling upon the Lot within the time periods specified herein. For the purposes of this Section 14, construction of a Dwelling will be deemed "completed" when the exterior of the Dwelling (including but not limited to the foundation, walls, roof, windows, entry doors, gutters, downspouts, exterior trim, paved driveway and landscaping) has been completed in conformity with the submitted plans.

Section 15. Vehicles. No boats or other watercraft, campers, recreational vehicles, trailers of any kind, buses, mobile homes, commercial or business trucks or vans, motorcycles, minibikes, or any other vehicles of any description (other than normal passenger vehicles consisting of (i) trucks with a maximum load capacity of three-quarters (3/4) of a ton or less, (ii) vans or (iii) automobiles), shall be permitted, parked or stored anywhere within the Brookside Development; provided, however, that nothing herein shall prevent the parking or storage of such vehicles completely enclosed within a garage and the driving or using of such vehicles solely for the purpose of ingress and egress to and from the Development provided the shortest route to and from a main thoroughfare outside the community is used. No Owners or other residents shall repair or restore any vehicle of any kind within the Development, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility. "Commercial" vehicles are vehicles, regardless of size, on which commercial lettering or equipment is visible or which are larger than normally used for noncommercial purposes. No junk or derelict vehicle or other vehicle on which current registration plates are not displayed shall be kept on the Development. Driveway and street parking shall be limited to guests and temporary parking only. Any vehicle in violation of the above shall be subject to being towed at the expense of the owner thereof.

Section 16. Unacceptable Activities. No noxious, unlawful or other offensive activity shall be carried out on any Lot in this Development, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 17. Animals. No animals, livestock or poultry of any description shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for commercial purposes and do not unreasonably disturb other Owners or residents.

Section 18. Remonstrations. Lot owners, upon taking title, agree to waive all rights to oppose and or remonstrate against annexation and any future zoning changes and special permits necessary to complete the Master Plans of Brookside what so ever.

ARTICLE II

ARCHITECTURAL CONTROLS

Section 1. The Brookside Architectural Control Committee. Until the Developer resigns its position as the Architectural Control Committee or until the Developer no longer owns any of the Lots in Brookside, the Developer shall serve as the Architectural Control Committee. After one of the above events occurs, the members of the Architectural Control Committee ("Committee") shall be appointed by the Board of Directors of the Association. The Developer shall always have the sole authority to approve the original Dwelling and Landscaping on any Lot within the Development.

Section 2. Purpose. The Committee shall regulate size, type, external design, appearance, use, location and maintenance of any change or addition to the original Dwellings placed on any lands subject to these Covenants and improvements thereon, in such a manner as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography.

All fences, walls or other construction or improvements of any kind shall not be commenced, erected or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein be made without the prior approval of the Committee. Such approval shall be obtained only after the Owner of the Lot has made written application to the committee. The manner of application shall be in the form as prescribed from time to time by the Committee, and shall be accompanied by two sets of plans and specifications. Such plans shall include plot plan showing location of proposed improvements, specification of all exterior materials and colors and any proposed landscaping. In the event said Architectural Control Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required as long as said design meets all other requirements of the covenants and restrictions herein, and this Article will be deemed to have been fully complied with.

Section 3. Design Guidelines. The Developer has created the Design Guidelines for Brookside to establish minimum standards of design, construction and maintenance, which are consistent with the level of quality and character desired for Brookside and the Covenants and to assist builders and homeowners in the planning, design, maintenance, and construction of all site improvements. The Developer and the Committee reserve the right to make any amendments, repeals, or modifications to the Design Guidelines that they deem necessary or appropriate at any time and without notice.

ARTICLE III.

OTHER RESTRICTIONS, GUIDELINES AND RIGHTS

Section 1. Sanitary Sewer and Utility Easements. There are strips of ground as shown on the plat(s) and marked Sanitary Sewer and Utility Easements both solely and in combination with other easements, which are reserved for the use of public utilities for the installation of water and sewer mains, poles, ducts, lines and wires, subject at all times to the proper authorities and to the easement herein reserved. No structures of any kind are to be erected or maintained upon said strips of land, but Owners of Lots in this Development shall take their titles subject to the rights of public utilities.

Section 2. Drainage Easements. Areas shown on the plat(s) and marked as Drainage Easements both solely and in combination with other easements contain detention and or retention areas and shall be recorded as drainage easements. These areas are reserved for the installation and maintenance of storm sewer structures and drainage system and subject at all times to proper Town and County authorities and the easements herein reserved. The Town and County authorities reserve the right to enter said easements at any time and perform work deemed necessary to ensure proper drainage and water flow located within these easements without hindrance or complaint. These areas shall be maintained free of weeds, trash or other obstruction at all times by the Owner of each applicable Lot or Association as owner of the Common Areas. Within these areas there shall be located no structures including but not limited to trees, plants, landscape mounds, fences, out buildings, swing sets, play equipment, docks, decks, boats, etc. These areas shall be maintained with a properly cut stand of grass at all times. No change of grade shall be permitted within these areas.

Section 3. Drainage of Storm or Other Water. In the event storm water drainage from any Lot flows across another Lot, provision shall be made to permit such drainage to continue, without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, even though no specific drainage easement for such flow of water is provided on said plat(s).

No rain or storm water runoff or such things as roof water, street pavement or surface water caused by natural precipitation, shall at any time be discharged into or permitted to flow into the Sanitary Sewer System, which shall be a separate sewer system from the Storm Water and Surface Water Runoff Sewer System. No sanitary sewage shall at any time be discharged or permitted to flow into the above-mentioned Storm Water and Surface Water Runoff Sewer System.

Section 4. Common Areas. There are strips of ground as shown on the plat(s) and marked as Common Areas, which are reserved for the use and enjoyment of the residents of Brookside. Said areas may also contain or consist of drainage and utility easements which are reserved for the use of public utilities for the installation of water and sewer mains, poles, ducts, lines and wires, subject at all times to the proper authorities and to the easement herein reserved. Any Common Areas depicted on the recorded plat(s) of the Development shall remain private, and neither the Developer's execution or recording of the plat(s) nor the doing of any other act by the Developer is, or is intended to be, a dedication to the public of the Common Areas. Ownership of any of the Common Areas shall be conveyed in fee simple title, free of financial encumbrances to the Association upon their completion. Such conveyance shall be subject to easements and restrictions of record, and such other conditions, as the Developer at the time of conveyance deems appropriate. Such conveyance shall be deemed to have been accepted by the Association and those persons who shall be members thereof from time to time.

Developer shall be responsible for improving and or maintaining all Common Areas (including the required landscape plantings within them) until such time as the Common Areas are conveyed to the Association at which time the Association shall be responsible for the maintenance and repair of the Common Areas including the required landscaping plantings as presented in the primary plat of Brookside.

Section 5. Buffer, Landscape, Pathway, and Tree Preservation Easements. There are strips of ground as shown on the plat(s) as Buffer, Landscape, Pathway and Tree Preservation Easements both solely and in combination with other easements. The Association shall be solely responsible for maintenance and upkeep of the plants and trees within these areas to the standards set forth in the Town of Westfield's Landscape Ordinance only in the event these areas are located in Common Areas. In the event that these areas are located within a Lot, then it shall be the Lot Owner's responsibility to maintain these areas as set forth above. No work is to be performed within areas marked as Tree Preservation Easements without prior approval of the Developer or Committee and the contractors shall work within the parameters set forth in the Tree Preservation Plan for Brookside.

Section 6. Right of Way Enhancements. Association shall be solely responsible for maintenance, replacement and upkeep of the grass, plants and trees within Right of Way Enhancements to the standards set forth in the Town of Westfield's Landscape Ordinance only in the event these areas are located adjacent to Common Areas. In the event that these areas are located adjacent to a Lot, then it shall be the Lot Owner's responsibility to maintain these areas as set forth above and as set forth in Section 12 of these covenants.

Section 7. Street Signs, Traffic Control Signs, and Street Light Fixtures. If other than the standard Town Street Signs, Traffic Control Signs and Street Light Fixtures are installed, it shall be the Developer's responsibility to install said items and the Association's responsibility to maintain them. All Signs and Fixtures shall meet and be maintained to all of the Town of Westfield's minimum safety standards.

Section 8. Enforcement of Covenants. The Developer, Association, and any Owner shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of these Covenants. Failure by the Developer, Association, or by any Owner to enforce any Covenant shall in no event be deemed a waiver of the right to do so thereafter.

In the event the Developer, Association, or any Owner shall be successful in any proceeding, whether at law or in equity, brought to enforce any restriction, covenant, limitation, easement, condition, reservation, lien or charge now or hereinafter imposed by the provisions of the Covenants, limitations, easements and approvals appended to and made a part of the plat(s) of the community, it shall be entitled to recover from the party against whom the proceeding was brought all of the reasonable attorneys' fees and related costs and expenses it incurred in such proceeding.

The right to enforce these provisions by injunction, together with the right to cause the removal by due process of law, any structure or part thereof erected without proper approval or maintained in violation hereof, is hereby reserved to the Developer, the Association and to the Owners of the Lots in this Development and to their heirs successors, and assigns.

Section 9. Invalidation of Covenant. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 10. Term of Covenants, Conditions and Restrictions. The foregoing Declaration of Covenants, Conditions, and Restrictions is to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date of these plat(s), at which time said Declaration shall be automatically extended for successive periods of ten (10) years unless changed by vote of a majority of the then Owners of the Lots in whole or in part. The Developer may amend this Declaration of Covenants, Conditions, and Restrictions for, in the Developer's sole opinion, the betterment of the Development at any time prior to the Applicable Date. After the Applicable Date this Declaration of Covenants, Conditions, and Restrictions may be amended by a favorable vote of the Owners of at least 2/3 of the total number of Lots.

Section 11. Waiver of Rights to Remonstrate. Lot Owners, upon taking title, agree to waive all rights to oppose future zoning changes and special permits necessary to complete the Master Plan of Brookside. No Owner of any Lot shown herein shall have the right to remonstrate against annexation of that Lot or any other portion of Brookside into the Town of Westfield.

Section 12. Development and Sale Period. Nothing contained in Articles I, II & III shall be construed or interpreted to restrict the activities of the Developer and Builders in connection with the development and sale of the Development and the Construction and sale of Dwellings on said Development. The above shall be entitled to engage in such activities and to construct, install, erect and maintain such facilities, upon any portion of the Development at any time owned or leased by the Developer or Builder(s) as, in the sole opinion of the Developer or Builders, may be reasonably required, or convenient or incidental to, the development of Brookside and sale of the Lots and Homes on said Lots; such facilities may include, without limitation, storage areas, signs, parking areas, model residences, construction offices, sale offices and business offices.

ARTICLE IV.

BROOKSIDE PROPERTY OWNERS' ASSOCIATION

There has been or will be created, under the laws of the State of Indiana, not-for-profit corporation to be known as the "BROOKSIDE PROPERTY OWNERS' ASSOCIATION, INC.

Section 1. Membership in Association. Each Lot Owner shall, automatically upon taking deed to a Lot in the Development shall become a member of the Association and agree to abide by these Covenants and the By-Laws of the Association and shall remain an abiding member until such time as their ownership of a Lot ceases. Membership in the Association shall terminate when such Owner ceases to be an Owner and will be transferred to the new Owner of his Lot; provided, however, that any person who holds the interest of an Owner in a Lot in this Development merely as security for the performance of an obligation shall not be a member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a member of the Association.

Section 2. Voting Rights. The Association shall have the following classes of membership, with the following voting rights:

A. **Class A.** Class A members shall be all Owners except Class B members. Each Class A member shall be entitled to one (1) vote for each Lot of which such member is the Owner with respect to each matter submitted to a vote of the members upon which the Class A members are entitled to vote. When more than one (1) person constitutes the Owner of a particular Lot, all such persons shall be members of the Association, but all of such persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot. A membership in the Association shall only be transferred by the transfer of the record title of a Lot.

B. Class B. Class B members shall be the Developer and all successors and assigns of Developer designated by Developer as Class B members in a written notice mailed or delivered to the President of the Association. Each Class B member shall be entitled to five (5) votes for each Lot of which it is the Owner and five (5) votes for each individually numbered parcel of land shown upon, and identified as a Lot on, any Development plat(s) of the Development, or any part thereof, of which it is the Owner (either as to the entire numbered parcel or any part thereof) which is not a "Lot" as defined in this declaration of Covenants, Conditions and Restrictions, on all matters requiring a vote of the members of the Association. The Class B membership shall cease and terminate upon the Applicable Date.

Section 3. Functions.

A. The Association shall maintain the Common Areas shown on the plat(s) including the improvements thereon and shall keep such area in a neat, clean and presentable condition at all times.

B. The Association shall be responsible for the maintenance of street signs and traffic control signs to the standards set by the Town of Westfield.

C. The Association shall procure and maintain casualty insurance for the Common Areas, liability insurance and such other insurance, as it deems necessary or advisable.

D. The Association may contract for such service as management, snow removal, security control, trash removal, and such other services as the Association deems necessary or advisable.

E. Owning all Common Areas when deeded to it and paying taxes and assessments levied and assessed against, and payable with respect to, the Common Areas paying any other necessary expenses and costs in connection with the Common Areas

Section 4. Assessments.

A. **Authority to Create Lien.** The Association and or Developer are hereby empowered to cause a lien to be placed against any Lot for the purposes of (1) recovering any funds due for annual assessments, special assessments, or recovering any funds expended by the Developer or the Association in maintaining any Lot in a neat and attractive condition as contemplated by Article 1, Section 1 and for the installation of sidewalks and or street trees as required within these Covenants, together with interest on those expenditures accruing at a rate of twelve percent (12%) per annum, or (2) recovering any attorneys' fees and related costs and expenses incurred by either the Developer or the Association in any proceeding initiated pursuant to the collection of the above funds or any proceeding initiated pursuant to Article 3, Section 5. No private individual Owner shall have such a right to create a lien against a neighboring Lot pursuant to the terms of this Section. No liens shall be created on any Lot or Common Area owned by the Developer.

B. **Creation of the Lien and Personal Obligation of Assessments.** Each Owner of any Lot in the Development, except the Developer, by acceptance of a deed or other conveyance therefore, whether or not it shall be expressed in such a deed, is deemed to covenant and agree to pay to the Developer or Association: (1) annual assessments or charges; (2) special assessments for capital improvements and operating deficits; such assessments to be established and collected as hereinafter provided; and (3) assessments or charges for expenditures by the Developer or the Association in maintaining the Lot in a neat and attractive condition as contemplated by Article 1, Section 1. The annual, special assessments, and maintenance assessments together with interest, costs, late fees, and reasonable attorney's fees, shall be a charge on the land until paid in full and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, late fees and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment was due. The personal obligation for delinquent assessment shall not pass to his successors in title unless expressly assumed by them or unless, prior to such transfer, a written notice of the lien for such assessments shall have been recorded in the office of the Recorder of Hamilton County, Indiana. No charge, lien, or assessment shall ever be levied by the Association or individual Lot Owner against the Developer.

C. **Date of Commencement of Annual Assessment.** Annual Assessments shall be set for each calendar year and due and payable in one lump sum in advance on the first day of March each year or, if so determined by the Association's Board of Directors or Developer, in such other periodic installments or due dates as may be specified by the Board of Directors or Developer. If ownership of a Lot is conveyed after the first of January, the Annual Assessment shall be paid at closing and the Annual Assessment shall be pro-rated, based on the calendar year, as of the date of closing. Without any approval or vote by the Owners, the Board of Directors shall fix the amount of the Annual Assessment in advance of the effective date of such assessment. Written notice of Annual Assessments and such

other assessments as the Board of Directors shall deem appropriate shall be sent to every Owner subject thereto. The Board of Directors shall establish the due dates for all assessments. The Association shall, at any time and for a reasonable fee of up to and including \$35.00, furnish a certificate in writing signed by an officer of the Association stating that the assessments on a specific Lot have been paid or that certain assessments or other charges against said Lot have not been paid, as the case may be.

Annual Assessments shall not commence for any Lot until the earlier of (1) the date the Lot is first sold or conveyed by the Developer to any person or entity; or (2) the date when the Town of Westfield issues a written statement that building permit(s) may be issued for that Lot. Prior to such time, the Developer shall not be liable for paying any assessments to the Association.

D. Special Assessments. In addition to the annual operating assessment, the Board of Directors or Developer may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have an assenting vote of the members who are voting in person or by proxy at a meeting duly called for this purpose. Written notices for such meetings shall be sent and voting quorums required as set forth in the By-Laws of the Association.

E. Failure of Owner to Pay Assessments. No Owner may exempt himself or herself from paying Annual or Special Assessments or any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Areas, or by abandonment of the Lot belonging to such Owner. Each Owner shall be personally liable for the payment of all Annual and Special Assessments. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Annual or Special Assessments when due, the lien for such assessment on the Owner's Lot may be foreclosed by the Board for and on behalf of the Association as provided by law. Upon the failure of an Owner to make payments of any Annual or Special Assessments within ten (10) days after such are due, the Board, in its discretion, may:

- (1) impose a late charge, which will be considered an addition to the assessment, in an amount to be determined by the Board of up to twenty-five percent (25%) of the amount of the Assessment;
- (2) suspend such Owner's right to use the recreational facilities within the Development as provided in the Indiana Nonprofit Corporation Act of 1991, as amended; and
- (3) suspend such Owner's right to vote as provided in the Indiana Nonprofit Corporation Act of 1991, as amended.

In any action to foreclose the lien for any Assessments, the Owner and any occupant of the Lot shall be jointly and severally liable for the payment to the Association of reasonable rental for such Lot, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid Annual or Special Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Annual or Special Assessments without foreclosing or waiving the lien securing the same. In any action to recover a Annual or Special Assessment, whether by foreclosure or otherwise, the Board, for and on behalf of the Association, shall be entitled to recover costs and expenses of such action incurred, including but not limited to reasonable attorney's fees, from the Owner of the respective Lot.

F. Notification. Every Owner of a Lot in the Development and any person who may acquire any interest in any Lot in the Development, whether as Owner or otherwise, is hereby notified, and by acquisition of such interest agrees, that any such liens which may exist upon said Lot at the time of acquisition of such interest are valid liens and shall be paid. Every person who shall become an Owner of a Lot in the Development is hereby notified that by the act of acquiring, making such purchase or acquiring such title, such person shall be conclusively held to have covenanted to pay the Association and Developer all charges that the Association or Developer shall make pursuant to this section of the Covenants.

G. Subordination of Assessment Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Notwithstanding anything contained in this Declaration, the Articles or the By-Laws, any sale or transfer of a Lot to a first mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof; or a conveyance to any person at a public sale in a manner provided by law with respect to mortgage foreclosures shall extinguish the lien of any unpaid installment of any Annual Assessment or Special Assessment as to such installment which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien cannot relieve the prior owner from personal liability therefore. No such sale, transfer or

conveyance shall relieve the Lot or the purchaser at such foreclosure sale or grantee in the event of conveyance in lieu thereof, from liability for any installments of Annual Assessments or Special Assessments thereafter becoming due or from the lien therefore. Such unpaid share of any Annual Assessments or Special Assessments, the lien for which has been divested as aforesaid shall be deemed to be a Common Expense collectible from all Owners (including the party acquiring the subject Lot from which it arose).

Section 5. Management of Board of Directors. The business and affairs of the Association shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he is, or is deemed in accordance with this Declaration to be, an Owner.

Section 6. Initial Board of Directors. The initial Board of Directors shall be composed of the persons designated or to be designated by the Developer. Notwithstanding anything to the contrary contained in, or any other provisions of, this Declaration or these Articles, (a) the Initial Board shall hold office until the first meeting of the members of the Association occurring on or after the Applicable Date or until Developer no longer owns any of the Lots, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to such first meeting occurring on or after the Applicable Date determined as provided above, every such vacancy shall be filled by a person appointed by Developer, who shall thereafter be deemed a member of the Initial Board. Each Owner, by acceptance of a deed to a Lot with, or by acquisition of any interest in a dwelling house by any type of juridic acts inter vivos or causa mortis, or otherwise, shall be deemed to have appointed Initial Board of Directors as such Owner's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until the Applicable Date determined as provided above, to exercise all of said Owner's right to vote, and to vote as the Initial Board of Directors determines, on all matters as to which members of the Association are entitled to vote under the Declaration, these Articles or otherwise. This appointment of the Initial Board of Directors as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same. Each person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by Developer to fill a vacancy, shall be deemed a Special member of the Corporation and an Owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose. No such person serving on the Initial Board shall be deemed or considered either a member of the Association or an Owner of a Lot for any other purpose (unless he is actually the Owner of a Lot and thereby a member of the Association).

Section 7. Additional Qualifications of Board of Directors. Where an Owner consists of more than one person or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple Owner, or a partner or an officer or trustee, shall be eligible to serve on the Board of Directors, except that no single Lot or dwelling house may be represented on the Board of Directors by more than one person at a time.

Section 8. Term of Office and Vacancy of Board of Directors. Subject to the provisions of Section 6 of this Article IV, the Board of Directors shall be elected at each annual meeting of the Association. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the first meeting of the members occurring on or after the Applicable Date provided herein. After the Applicable Date each member of the Board of Directors shall be elected for a term of two (2) years, such terms shall be staggered. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Subject to the provisions of Section 6 of this Article IV as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining members of the Board or by vote of the Owners if a Director is removed in accordance with Section 9 of this Article IV. The Director so filling a vacancy shall serve until the next annual meeting of the members and until his successor is elected and qualified.

Section 9. Removal of Directors. A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the votes cast at a special meeting of the Owners duly called and constituted for such purpose. In such case, his successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Owners and until his successor is duly elected and qualified.

Section 10. Duties and Powers of the Board of Directors. The duties and powers of the Board of Directors shall be set forth in the By-Laws.

Section 11. Limitation of Board Action. After the Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than \$5,000.00 without obtaining the prior approval of a vote of the Owners, except that in the following cases such approval shall not be necessary:

a. Contracts for replacing or restoring portions of the Common Areas damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received or for which the insurance carrier has acknowledged coverage;

b. Proposed contracts and proposed expenditures expressly set forth in the annual budget as approved by the Board of Directors; and

c. Expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.

Section 12. Compensation of Board of Directors. No Director shall receive any compensation for his services as such, except to such extent as may be expressly authorized by a vote of the Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

Section 13. 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 exercised in carrying out their duties and responsibilities as Directors and officers, except for their own individual willful misconduct, bad faith or gross negligence. The Association shall indemnify and hold harmless and defend each of the Directors and officers against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Association, unless any such contract shall have been made in bad faith. It is intended that the Directors and officers shall have no personal liability with respect to any contract made by them on behalf of the Association.

Section 14. Additional Indemnity of Directors and Officers. The Association shall indemnify, hold harmless and defend any person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director or Officer of the Association, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director or officer is liable for gross negligence or misconduct in the performance of his duties. The Association shall also reimburse to any such Director or Officer the reasonable costs of settlement of or judgment rendered in any action, suite or proceeding, if it shall be found by a vote of the Owners that such Director or officer was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director or officer, no Director or Officer shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his 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 the Managing Agent (if any) or any other officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Corporation to render advice or service unless such director or officer had actual knowledge of the falsity or incorrectness thereof; nor shall a Director or officer be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

Section 15. Bond of Board of Directors. The Board of Directors may provide surety bonds and may require the Managing Agent (if any), the treasurer of the Association, and any other officers as the Board deems necessary, to provide surety bonds, indemnifying the Association against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense.

Section 16. Initial Management. Notwithstanding anything to the contrary contained in this Declaration, Developer shall have, and Developer hereby reserves to itself, the exclusive right to manage or designate a Managing Agent for the Real Estate and Common Areas, and to perform all the functions of the Corporation, until the Applicable Date. Developer may, at its option, engage the services of a Managing Agent affiliated with it to perform such functions and, in either case, Developer or such Managing Agent shall be entitled to reasonable compensation for its services.

Section 17. Termination of the Initial Board of Directors. The Initial Board of Directors shall hold office until the first meeting of the members of the Association occurring on or after the Applicable Date. At least Thirty (30) days prior to the Applicable Date the Association shall have a meeting of the Lot Owners at which a new Board of Directors shall be elected pursuant to the guidelines of the By-Laws. In the event that a Board of Directors have not been voted in by the Association by the Applicable Date, the Developer shall hire a Professional Property Agent which shall serve as the Board of Directors until such time as the Association elects a Board of Directors.

This Declaration of Covenants, Conditions And Restrictions is executed this 21 day of September, 2001.

Langston Development Company, Inc.

By: [Signature]
James R. Langston, Vice President

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

BEFORE ME, the undersigned, a Notary Public in and for said County and State, personally appeared James R. Langston, who acknowledged the execution of the foregoing instrument as his voluntary act and deed for the purposes therein expressed.

WITNESS my hand and seal, this 21st day of September 2001.

My Commission expires:
9-22-01



[Signature]
Notary Public

My County of Residence: Hamilton

BARBARA L. METSKE
(Printed Name)

This instrument prepared by:
James R. Langston.
Langston Development Company, Inc.
1132 S. Rangeline Rd. Suite 100
317-846-7017