

**McKENZIE PLACE ASSOCIATION, INC.**  
**AMENDED COVENANTS, CONDITIONS AND RESTRICTIONS**

*“Whereas, it has become necessary to amend the McKenzie Place Association, Inc. Covenants, Conditions and Restrictions, previously recorded on July 16, 1996, Instrument Number 9607758 in the Office of the Recorder of Hancock County, Indiana, the following shall be fully applicable and enforceable from the date of record”*

**ARTICLE I: Function of the Corporation**

The Corporation has been formed for the purpose of: (a) providing for the maintenance, preservation and architectural control of the residence lots and dwelling units; (b) promote the health, safety and welfare of the residents; and (c) perform such other functions as may be designated in this document or the Bylaws.

**ARTICLE II: Definitions**

The following words and terms, unless the context clearly requires otherwise, shall have the following meanings:

- a. “Common Expenses” shall mean and refer to expenses of administration of the Corporation, and expenses for the upkeep, maintenance, repair and replacement of the Common Property, which are all sums lawfully assessed against the owners of the Corporation.
- b. “Common Property” shall mean and refer to (i) the McKenzie Place entrance structures and the trees along McKenzie Road; and (ii) items deemed Common Property for purposes of maintenance, but not the dwelling units for Real Estate tax purposes.
- c. “Dwelling Unit” shall refer to any building, structure or portion thereof situated on the Real Estate designed and intended for use and occupancy as a residence by a single family and shall include that portion of the lot upon which it resides and shall be deeded to an owner.
- d. “Lot” shall mean and refer to any and each portion of the Real Estate designed and intended for use as a building site for, or developed and improved for, use as a single family dwelling.
- e. “Mortgagee” shall mean and refer to the holder of a recorded first mortgage lien on a Lot or Dwelling Unit.

- f. “Person” shall mean and refer to an individual, firm, corporation, partnership, association, trust, or other legal entity.
- g. “Corporation complex” shall mean and refer to the parcel of real estate, known as McKenzie Place, Phase One, in Hancock County, City of Greenfield, Indiana as described in Exhibit A. (attached)
- h. “Developer” shall mean and refer to East Gate Developers, Inc, and any successors plus any principals of East Gate Developers, Inc, individually and any successors.
- i. “Owner” shall mean and refer to the recorded owner of the Dwelling Unit.

### **ARTICLE III: Membership and Voting**

#### **Section 1. Membership in Corporation**

Upon becoming an owner of a dwelling unit each owner shall automatically become a member of the Corporation and shall remain a member until such time as his/her ownership ceases.

#### **Section 2. Voting Rights**

Each member shall be entitled to one (1) vote for each dwelling unit of which member is the owner (one unit equals one vote). The member’s vote may be in the form of a Power of Attorney or Proxy at the direction of the owner.

### **ARTICLE IV: Management**

The business and affairs of the Corporation shall be governed and managed by the Board of Directors as provided in the Bylaws.

### **ARTICLE V: Easements**

The Corporation is granted a non-exclusive easement for the maintenance of the Common Property including but not limited to lawns. The easement shall permit the Corporation or its agents to enter onto any lot to make emergency repairs or to do other work reasonably necessary for the property maintenance and to enter onto any lot for the purpose of reconstruction and restoration in the event of casualty.

### **ARTICLE VI: Real Estate Taxes and Utilities**

#### **Section 1. Real Estate Taxes**

Real estate taxes on each dwelling unit shall be paid by the owner.

## **Section 2. Utilities**

Each owner shall pay for his/her own utilities which shall be separately metered to each dwelling unit.

## **ARTICLE VII: Maintenance, Repairs and Replacements**

### **Section 1. By Owners**

- a.** Except as provided in Section 2b of this Article, each owner shall, at his/her expense, be responsible for, and shall promptly perform as the need arises, all interior maintenance, repairs, decoration and replacement within his/her own dwelling unit.
- b.** Each owner shall furnish and be responsible for the maintenance of all portions of his/her dwelling unit, except (1) for such portions as may, in accordance with the terms of this document be designated as a part of the Common Property for purposes of maintenance only and (2) lawn maintenance as provided in Section 2 below.
- c.** Each owner shall be responsible for all fixtures and equipment installed within or as part of a dwelling unit, commencing at the points where the utility lines, pipes, wires, conduits or systems enter the dwelling unit.
- d.** Each owner shall promptly perform all maintenance and repair of his/her dwelling unit, which, if neglected, might adversely affect any other lot or dwelling unit. Such maintenance and repairs include but are not limited to heating and air conditioning system, any partitions and interior walls, internal water lines, plumbing, electric lines, gas lines, appliances, and all other fixtures, equipment and accessories belonging to the owner.
- e.** The owner shall be responsible for the maintenance, repair and replacement of all window frames, glass, screens, exterior doors and storm doors.
- f.** Each owner shall be responsible for the maintenance, repair and replacement of any interior concrete flooring in their dwelling unit. Exception: Repair required because of fire, casualty, or disaster covered by Corporation insurance.

### **Section 2. Common Property and Exteriors of Dwelling Units and Lawns**

- a.** Maintenance and replacements of the Common Property shall be furnished by the Corporation and the cost shall constitute a part of the Common Expenses.
- b.** In addition to maintenance of Common Property, the Corporation, as part of the Common Expenses, shall provide for:

(1) maintenance of the exteriors of each dwelling unit, including, but not limited to, roofs, gutters, garage doors (painting only) and exterior walls, excluding all exterior doors and window frames, glass and screens, shall be considered part of the Common Property for purposes of maintenance only;

(2) replacement of the exteriors of each dwelling unit, including, but not limited to, roofs, gutters, and exterior walls shall be considered part of the Common Expenses;

(3) maintenance of the lawns shall be considered part of the Common Property. Maintenance shall include fertilizing, trimming, weed control and mowing of the grass when necessary; and the care, trimming, removal and replacement of trees and shrubs planted along McKenzie Road and in the front lawns only;

(4) It is the responsibility of each owner to water his/her own lawn. If the owner fails to adequately water his/her own lawn, the Corporation has the right, but not the obligation, to water his/her lawn by using the water bibs of the non-complying owner and charge the owner for the labor cost to perform the watering;

(5) The owner shall keep his/her garage coach lights on from dusk to dawn as part of the security plan for the community. The Association shall replace the bulbs and sensors.

**c.** If repair or maintenance becomes necessary because of the willful, intentional or negligent acts or omissions of visitor to owner, or owner, then owner shall pay for the maintenance, repairs and replacements, as may be determined by the Corporation, unless such loss is covered by the Corporation's insurance and such policy has a waiver of subrogation clause (Subrogate means: to substitute a claim against one person for a claim against another person, or transfer a lien originally imposed on one piece of property to another piece of property.) If not paid by the owner upon demand by the Corporation, the cost of repairing such damage shall be added to and become a part of the assessment to which the owner's dwelling unit is subject.

**d.** Any authorized representatives of the Corporation shall be entitled to reasonable access to any dwelling unit as may be required in connection with maintenance, repairs or replacements of Common Property.

## **ARTICLE VIII: Architectural Control**

### **Section 1. The Architectural Review Committee**

There shall be an Architectural Review Committee, which shall serve as a standing committee of the Corporation. Membership of this committee shall consist of three (3) members of the Board of Directors and two (2) other owners.

## **Section 2. Purposes**

The committee shall work in conjunction with the Board of Directors to regulate the external design, appearance, use, location and maintenance of all real estate, keeping it consistent with the architecture of the neighborhood. It shall act in such a manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.

## **Section 3. Conditions**

No improvements, alterations, repairs, change of colors, excavations, changes in grade or other work which in any way alters the exterior of any dwelling unit shall be made or done without the prior approval of the Architectural Review Committee. No building, fence, wall, dwelling unit, or exterior structural change shall be commenced, erected, maintained, improved, altered, made or done on any lot without the prior written approval of the Architectural Review Committee.

## **Section 4. Fees**

Any addition to the dwelling unit must be approved by the Architectural Review Committee in writing prior to any work on said addition and the owner shall obtain a proper building permit and provide a copy to the Corporation prior to any work being performed on said addition. The Board of Directors may charge a onetime fee to cover future maintenance for any addition.

- a. This onetime fee will be determined by the Board of Directors and be based on the anticipated amount of maintenance involved.
- b. The fee must be paid before any work is performed

\*Note: Any addition completed before December 1, 2014 shall be considered grandfathered and shall incur no fee.

## **Section 5. Procedures**

In the event the Architectural Review Committee fails to act, in writing, within thirty (30) days after such application, including all plans, drawings, specifications and other items required to be submitted to it has been received, approval will be deemed denied.

## **ARTICLE IX: Party Walls**

### **Section 1. General Rules of Law to Apply**

Any wall which is built as a part of the original construction which connects two dwelling units shall constitute a party wall and, to the extent not inconsistent with the provisions of this Article,

the general rules of law regarding party walls and liability for property damage due to negligent or intentional or willful acts or omissions shall apply.

**Section 2. Sharing of Repair and Maintenance**

The cost of reasonable repair and maintenance of a party wall shall be shared, proportionately, by the owners who make use of the wall.

**Section 3. Destruction by Fire or Other Casualty**

If any party wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, any owner who has used the wall may restore it. If the other owners thereafter make use of the wall, they shall contribute to the cost of restoration in equitable proportions; without prejudice, however, to the right of any such owners to call for a larger contribution from the others under any rule of law regarding liability for negligent, intentional or willful acts or omissions.

**Section 4. Weatherproofing**

Notwithstanding any other provision of this Article, to the extent that such damage is not covered and paid by the insurance provided for herein, an owner who, by his/her negligent or willful act, causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against those elements.

**Section 5. Right to Contribution Runs with Land**

The right of any owner to contribution from any other owner under this Article shall be an adjunct to the land and shall pass to such owner's successors in title.

**Section 6. Arbitration**

In the event of any dispute arising concerning a party wall, or under the provision of this Article, each party shall choose one arbitrator from among disinterested owners, and such arbitrators shall choose an additional arbitrator, who need not be an owner, and the decision shall be by a majority of all the arbitrators. (Should any party refuse to appoint an arbitrator within ten (10) days after written request from another party, the Board of Directors of the Corporation shall select an arbitrator for the refusing party.)

**ARTICLE X: Assessments**

**Section 1. Annual Accounting**

Annually, within ninety (90) days following the close of the fiscal year the Board of Directors shall see that the Corporation's financial books are reviewed. A financial statement will then be

prepared and furnished to each owner. This statement shall show total receipts and expenditures for the preceding fiscal year.

### **Section 2. Proposed Annual Budget**

Annually, on or before the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared a proposed annual budget for the next fiscal year. This proposed budget shall be based on estimates of the total amount of the Common Expenses for the year and a copy shall be provided to each owner prior to the time, or at the same time, the notice of the annual meeting is mailed or delivered to the owners. The proposed budget shall be presented at the annual meeting of the Corporation for adoption and, if so adopted, shall be the basis for the Regular Assessments for the next fiscal year. At the annual meeting of the owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the owners present at the annual meeting; providing that any increase of more than fifteen percent (15%) must be approved by a vote of two-thirds (2/3) of members who are voting in person or by proxy. In no event shall an annual meeting be adjourned until an annual budget is adopted. The annual budget, the Regular Assessments and all other sums assessed by the Corporation shall be established by using generally accepted accounting principles applied on a consistent basis. The annual budget and the Regular Assessments shall be drawn to include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of those items deemed Common Property for purposes of maintenance only. The replacement and reserve fund shall be maintained by the Corporation in a separate interest-bearing account with one or more FDIC banks or other financial institutions authorized to conduct business in Hancock or Marion County, Indiana. Account placement shall be determined by the Board. The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the owners shall not constitute a waiver or release in any manner of the obligations of the owner to pay the Common Expenses as provided, whenever determined.

### **Section 3. Regular Assessments**

The annual budget adopted by the owners shall contain a proposed assessment against each dwelling unit. The assessment shall be computed as follows: all estimated Common Expenses plus (i) the estimated cost of the master casualty and master comprehensive public liability insurance policy(ies) provided for in Article XII, and (ii) the estimated cost of maintenance to be performed by the Corporation pursuant to Article VII, Section 2, shall be divided by the total

number of dwelling units and the quotient shall be the Regular Assessment for each dwelling unit. The portions of the Regular Assessment attributable to the replacement reserve funds shall be computed as a part of the estimated Common Expenses.

Immediately following the adoption of the annual budget, each owner shall be given written notice of the Regular Assessment against his/her respective dwelling unit. In the event the Regular Assessment is initially based upon a proposed budget, the assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the owners. The Regular Assessment against each dwelling unit shall be paid in advance in equal quarterly installments commencing on the first day of the first month of each fiscal year and quarterly thereafter. Owners may elect to pay their assessments semi-annually or annually, in advance. Payment of the Regular Assessment shall be made to the Board of Directors. In the event the Regular Assessment for a particular fiscal year of the Corporation was initially based upon a proposed budget and

(a) is less than the amount of the Regular Assessment based upon the final annual budget, the shortage shall be made applicable to the next payment and all payments thereafter during that fiscal year so that the total assessment shall be paid in full by the final payment of the fiscal year.

or

(b) if the assessment based upon the proposed budget exceeds the Regular Assessment based upon the final annual budget the excess shall be credited against the next payment. If an owner paid his/her assessment either semi-annually or annually in advance, the excess shall be refunded to the owner no later than the first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the owners.

If an owner has paid his/her regular assessment for the current fiscal year, in whole or in part, based upon a proposed budget, and then sells his/her dwelling unit, he/she and the new owner, jointly, shall be responsible for paying the Regular Assessment as finally determined.

Quarterly installments of Regular Assessments shall be due and payable automatically on their respective due dates and neither the Board nor the Corporation shall be responsible for providing a notice or statement to owners.

#### **Section 4. Special Assessments**

From time to time Common Expenses of an unusual, extraordinary or unanticipated nature may arise. At such time the Board of Directors may call for Special Assessments, pro-rated in equal shares, that shall become a lien on each dwelling unit. However, such assessments must be

approved by a majority vote of the members who are voting in person, by proxy, or by Power of Attorney at a meeting called for this purpose.

### **Section 5. Failure of Owner to Pay Assessments**

**a.** No owner may exempt himself/herself from paying Regular Assessments or Special Assessments, or from contributing toward the expenses of administration and of Common Property maintenance and repair. Each owner shall be personally liable for the payment of all Regular and Special Assessments. Where the owner constitutes more than one person, the liability shall be shared equally. If any owner shall fail, refuse or neglect to make any payment of any Regular or Special Assessments when due, the lien for such Assessment on the owner's dwelling unit may be filed and foreclosed by the Board of Directors for and on behalf of the Corporation as a mortgage on real property or as otherwise provided by law. Upon the failure of an owner to make timely payments of any Regular or Special Assessments when due, the Board of Directors may declare the entire balance immediately due and payable. In any action to foreclose the lien for any Assessments, the owner shall be liable for the payment to the Corporation of reasonable rental for the dwelling unit. The Board shall be entitled to appoint a receiver for the purpose of preserving the dwelling unit and to collect the rents and any other profits which are to be applied to the unpaid Regular or Special Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular or Special Assessment without foreclosing or waiving the lien securing the same. In any action to recover a Regular or Special Assessment, whether by foreclosure or otherwise, the Board, on behalf of the Corporation, shall be entitled to recover from the owner of the respective dwelling unit costs and expenses of such action incurred (including but limited to reasonable attorneys' fees) and interest from the date such Assessments were due until paid, at a rate not to exceed the maximum rate allowable under State Law.

**b.** Any lien for assessments on a Dwelling Unit shall be subordinate to the lien of any first mortgage. A sale or transfer of a Dwelling Unit to a mortgagee or lienholder pursuant to a foreclosure (or a transfer in lieu of foreclosure), shall extinguish the lien of any unpaid installment of any Regular or Special Assessment which became due prior to such sale or transfer. However, the extinguishment of such lien shall not relieve the prior owner from personal liability. No such sale or transfer shall relieve the Dwelling Unit, the purchaser at a foreclosure sale (or the grantee of any transfer in lieu of foreclosure), from liability for any installments of Regular or Special Assessments becoming due after the date of such sale or

transfer. Any unpaid Regular or Special Assessments extinguished as set forth in this Section 5 shall be deemed to be a Common Expense.

### **Section 6. Payment of Assessments**

The following policies shall govern the payment of Regular and Special Assessments.

1. All regular assessments are due the first day of each Quarter beginning with January 1.
2. Any special assessment shall be due within thirty (30) days of receipt of notice.
3. Any assessment payment not received by the 10<sup>th</sup> day of the month in which it is due shall be termed delinquent.
4. At the time an assessment becomes delinquent, a late charge of \$50.00 will be added to the account. A notice of delinquency shall be mailed to the owner by the 20th day of the month in which payment is due. The notice shall include the amount of the delinquent payment, the late charge and the total amount remaining unpaid. An additional late fee of \$50.00 shall be added on the 15th day of each month of the quarter that assessment is not paid.
5. If a delinquent account remains unpaid on the last day of the quarter in which it was due, interest will be charged to the account at a rate determined by the Board of Directors in accordance with Indiana law.
6. The interest will be calculated on the total account balance (including assessment fees, late fees, interest, fines, legal costs, and any other amounts which have been properly added to the homeowner's account) as of the first day of the quarter, after the quarter in which it became delinquent, less any payments received during the quarter. Charges posted to the account after the first of the quarter will not be subject to interest during the quarter in which the charges are posted.
7. Minimum charge: A minimum charge of \$5.00 will be assessed to the account in any quarter in which an interest charge of less than \$5.00 would otherwise be imposed.
8. If the account still remains delinquent at the end of the quarter in which it became delinquent, a list of the property(ies) in question and the names of the owners shall be turned over to counsel for the Association who shall send notice of non-payment and intent to file a lien. The charge for this procedure shall be added to the delinquent accounts.
9. If after fifteen (15) days of the attorney's notice being mailed the account still remains delinquent, counsel shall cause the lien(s) to be recorded and shall take other appropriate legal action. All legal fees will be added to the delinquent account and will be payable by the owner.

10. If after six (6) months from the original due date the account remains unpaid, foreclosure proceedings shall be undertaken. All legal fees incurred will be charged back to the owners for payment.

11. At the same time as the delinquent account is turned over to counsel, the right of the delinquent owner to vote, to serve on the Board of Directors or to serve on any committee established by the Board shall be suspended until delinquent assessments have been paid.

## **ARTICLE XI: Mortgages (Deleted Nov 2005)**

## **ARTICLE XII: Insurance**

### **Section 1. Casualty Insurance**

**a.** The Corporation shall purchase a master casualty insurance policy with an “agreed amount and inflation guard endorsement” and a “blanket building endorsement” affording fire and extended coverage insurance insuring each dwelling unit in an amount consistent with the full replacement value of the improvements which, in whole or in part, comprise the dwelling units, excluding all floor, ceiling and wall coverings and fixtures, betterments and improvements installed by any owner and excluding any personal property owned by any owner whether located on or in any dwelling unit or elsewhere. If the Board of Directors can obtain such coverage for reasonable amounts it shall also obtain “all Risks” coverage. The Board of Directors shall be responsible for reviewing, at least annually, the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed necessary or advisable by the Board, the Board may cause such full replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a Common Expense of the owners. Such insurance coverage shall be for the benefit of each owner, and if applicable, the Mortgagee of each such owner.

**b.** All proceeds payable as a result of casualty losses sustained, which are covered by insurance purchased by the Corporation, shall be paid to the Corporation. In the event that members of the Board of Directors have not posted surety bonds for the faithful performance of their duties or if such bonds do not equal or exceed the funds which will come into their hands, and there is damage resulting in a loss, the Board shall obtain and post a bond for the faithful performance of its duties in an amount to be determined by the Board. The amount shall not be less than 150% of the loss and shall be posted before the Board shall be entitled to receive the proceeds of the

insurance payable as a result of the loss. The sole duty of the Board, concerning insurance proceeds, shall be to receive such proceeds and to hold the proceeds for the benefit of the owners of the Corporation. The proceeds shall be used or disbursed by the Board, as appropriate, only in accordance with the provision of this document.

Casualty insurance policies, and “all risk” coverages if obtained, shall contain provisions that the insurer (1) waives its right to subrogation as to any claim against the Corporation, the Board of Directors, its agents and employees, owners, their respective agents and guests, and (2) waives any defense based on invalidity arising from the acts of the insured. If the Board of Directors is able to obtain such insurance at reasonable terms (i) the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual owners, and (ii) notwithstanding any provision giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Corporation does not elect to restore.

## **Section 2. Public Liability Insurance**

The Corporation shall also purchase master comprehensive public liability insurance in such amount or amounts as the Board of Directors shall deem appropriate; provided, such coverage shall be at least One Million Dollars (\$1,000,000) for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Such comprehensive public liability insurance shall insure the Corporation, the Board of Directors, any committee of the Corporation or Board, all persons acting or who may act as agents or employees, all owners of dwelling units and all other persons entitled to occupy any lot or dwelling unit. Such public liability insurance shall contain a “severability of interest” clause or endorsement, which shall preclude the insurer from denying the claim of an owner because of negligent acts of the Corporation or other owners. In the event the Corporation is unable to obtain one million dollars (\$1,000,000) in coverage all members shall be notified.

## **Section 3. General Provisions**

**a.** The premiums for all insurance described above shall be assessed on a quarterly basis along with the Common Expenses. When any insurance policy described has been obtained by or on behalf of the Corporation, written notice shall be provided to each owner. Copies will be available by request. They will also be provided written notice of any changes in the policy or termination of the policy. Under no circumstance shall any insurance proceeds in excess of amounts needed to repair damage or pay off any first mortgage be distributed. Any such

insurance proceeds or condemnation awards shall be retained by the Corporation for use in the payment of its expenses of operation.

**b.** Other than for non-payment of premium, the company agent shall give a minimum of sixty (60) days notice of cancellation or non-renewal. The notification for non-payment of premium is ten (10) days plus mailing time.

#### **Section 4. Insurance by Owners**

Each owner shall be solely responsible, at his/her own expense, for obtaining any additional insurance as he/she deems necessary or desirable. Coverage should include: his/her own personal property; internal portions of his/her dwelling unit excluded from the master casualty insurance policy in Article XII, Section 1a; the contents of his/her dwelling unit; his/her personal property stored anywhere on his/her premises; and for his/her personal liability.

### **ARTICLE XIII: Casualty and Restoration: Condemnation: Termination**

#### **Section 1. Casualty and Restoration**

In the event of damage to or destruction of the structure or exterior of any building or dwelling due to fire or any other casualty or disaster, the Corporation shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Corporation shall be applied to the cost of repair and reconstruction.

If the insurance proceeds, if any, received by the Corporation are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, the cost of restoring the damage and repairing and reconstructing a building or dwelling unit damaged or destroyed, or the cost thereof in excess of insurance proceeds received, shall be assessed by the Corporation against all of the owners in equal shares. Any such amounts assessed against the owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment.

For purposes of this Article, repair, reconstruction and restoration shall mean constructing or rebuilding the damaged or destroyed building to as near as possible the same conditions that existed immediately prior to the damage or destruction, with the same type of architecture.

Immediately after a fire or other casualty or disaster causing damage to any property for which the Corporation has the responsibility of maintenance and repair, the Board shall obtain reliable and detailed estimates of the cost to place the damaged property in a condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors desires or deems necessary.

Encroachments upon any dwelling unit which may be created as a result of such reconstruction or repair of any building shall not constitute a claim or basis of a proceeding or action for the owner upon whose dwelling unit the encroachment exists, provided that the reconstruction was either substantially in accordance with the original plans and specifications or as the building was originally constructed.

## **Section 2. Total or Partial Condemnation**

**a.** In the event of the condemnation of all or any part of any dwelling unit or lot, the Board of Directors is authorized to negotiate with the condemning authority and/or to contest an award made for the appropriation of dwelling units. For the purpose of such negotiation and/or of contest of such award, the Board is declared to be the agent and attorney-in-fact of any owner affected by the condemnation. This appointment of the Board shall be deemed coupled with an interest and shall be irrevocable. Nothing contained herein shall preclude any owner from asserting any rights or claims to compensation that cannot be legally asserted by the Board.

**b.** Awards for the taking of all or part of a dwelling unit or lot shall be collected by the Board of Directors and distributed to the affected owners. To the extent possible, negotiated awards or awards resulting from a contest shall specify the allocation of the award among owners affected. In the event that an owner does not agree with the distribution of an award, the owner shall be entitled to have the dispute settled by arbitration. The protesting owner shall appoint one arbitrator, the Board, acting as agent for all other affected owners, shall appoint one arbitrator and the two appointed arbitrators shall appoint a third arbitrator. A majority decision of the arbitrators shall be binding on all owners and shall be enforceable.

## **Section 3. Termination**

In the event of condemnation of three-fourths (3/4) or more of the dwelling units, the remaining owners may terminate this document and dissolve the Corporation, provided that the restrictions set forth in the Plat (Exhibit A) and in Article XIV shall remain in full force and effect in accordance with the terms of the Plat (Exhibit A) and Article XVI of this document.

# **ARTICLE XIV: Restrictions, Covenants and Regulations**

## **Section 1. Restrictions on Use**

The following covenants and restrictions on use and enjoyment of the lots and dwelling units shall be in addition to any other covenants or restrictions contained herein. All such covenants and restrictions are for the mutual benefit and protection of the owners and shall run with the

land and be enforceable by the Corporation. Present or future owners or the Corporation shall be entitled to injunctive relief against any violations, but there shall be no right of reversion or forfeiture resulting from such violation.

Covenants and restrictions are as follows:

1. **Residential Purpose:** All lots and dwelling units must be used only for residential purposes.
2. **Insurance:** Nothing shall be done or kept in any dwelling unit, or on any lot, or anywhere within the Corporation complex, which will or might cause an increase in the rate of insurance on any dwelling unit or on the contents thereof. No owner shall permit anything to be done or kept in his/her dwelling unit or on his/her lot or anywhere within the Corporation complex which will or might result in a cancellation of insurance on any dwelling unit or in any way affecting the Corporation, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.
3. **Nuisance or Waste:** No resident or visitor shall be permitted to cause a nuisance and no waste shall be permitted in any dwelling unit or on any lot or anywhere else in the Corporation complex.
4. **Outside Hangings or Displays:** Nothing shall be hung or displayed on the outside of the windows of any dwelling unit or placed on the outside walls of any building. No sign, awning, canopy, shutter or radio or television antenna or other attachment shall be affixed to or placed upon the exterior wall or roof or any other part of the dwelling unit without the prior written consent of the Architectural Review Committee.
5. **Animals/Pets:** No animals, livestock or poultry of any kind shall be raised, bred or kept in any dwelling unit or any lot or anywhere on Corporation complex. No more than two (2) pets, dogs, cats or other customary household pets, weight not to exceed forty (40) pounds each, (Effective January 1, 2012) may be kept in a dwelling unit for personal enjoyment only. No pet may be kept, bred or maintained for commercial purposes. Pets shall be taken outdoors only under leash or other restraint and must be attended at all times by the owner. The owner shall be fully liable for any injury or damage to any persons or any property caused by his/her pet. The tethering of pets in any area outside an owner's dwelling unit does not constitute "attended". ***Note: Any owner having more than two (2) pets on January 1, 2012 may keep those animals until the pet's death but cannot replace a pet after January 1, 2012 if the number of pets exceeds two (2).***
6. **Pet Nuisance:** No pet may disturb the quiet enjoyment of another owner or owners. The owner is solely responsible for cleaning up any droppings or debris left by his/her pet. Any pet, which, in the judgment of the Board of Directors, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from the Real Estate within ten (10) days after written notice from the Board to the respective owner to do so.

7. **Structural Changes:** Nothing shall be done or permitted in or on any dwelling unit or on any lot, which will impair the structural integrity of any Corporation properties.
8. **Unlawful/Annoying Use:** No dwelling unit or lot shall be used in any unlawful manner or in any manner which might cause injury to the reputation of the homes developed on the Real Estate, or which might be a nuisance, annoyance, inconvenience or damage to other owners and occupants of dwelling units or neighboring property. Potential nuisances may include musical instruments, radio, stereo, television, loud speakers, electrical equipment, amplifiers or other noisy equipment or machine or loud persons.
9. **Hanging Items:** No clothes, sheets, blankets, rugs, laundry or other things shall be hung out, or exposed, so as to be visible from other dwelling units and lots, cars or other vehicles, or on any public street.
10. **Commercial Use:** No industry, trade, or other commercial or religious organization, educational or otherwise, designed for profit, non-profit, or otherwise, shall be conducted, practiced, or permitted in the Corporation complex.
11. **Soliciting:** No soliciting is permitted within the Corporation complex unless prior approval has been received from the Board of Directors, which may use its discretion for certain limited purposes.
12. **Units for Sale:** “For Sale” signs may only be placed in a landscape area not requiring mowing. No “For Sale” sign shall be placed in any other location on the lot.
13. **Signage:** No signs or other window or advertising display shall be permitted on any part of the dwelling unit or lot without prior consent of the Board of Directors. However, the Board reserves the right to place, or have placed, such signs on or about the Real Estate in connection with any unsold or unoccupied lots and dwelling units.
14. **Visitors and Guests:** All visitors and guests shall observe and be governed by all the Covenants, Conditions, and Restrictions of the Corporation.
15. **Prohibited Vehicles/Parking:** No boats, campers, trailers of any kind, buses, motor homes, mobile homes, trucks, motorcycles, mini bikes, mopeds, or any other vehicles of any type or description other than normal passenger vehicles, shall be permitted, parked or stored anywhere within the Corporation complex. However, any vehicle may be stored if completely enclosed within a garage. At no time shall vehicles of any type be parked on the grass or on any unsold or unused lots. The above restriction does not prohibit the temporary parking of such vehicles for loading and unloading purposes either on the street or in the driveway, as long as it is removed from the Corporation complex within twenty-four (24) hours of its being parked on the Corporation complex.
16. **Landscaping:** With prior approval of the Architectural Review Committee, an owner may plant or have planted, bushes, trees and other landscaping items. Owners are

responsible for pruning, trimming and cutting of all trees and shrubbery on their lot (exception: trees planted by the developer along McKenzie Road and in front lawns), all to be done in a manner and at such frequency as is consistent with good property management. Owners are also responsible for the weeding of all landscape beds, both front and back. If landscape projects are started without Architectural Review Committee approval, fines are applicable. See Article XIV. Section 3.

17. **Removal of Trees/Shrubbery:** No owner shall remove, or have removed, any trees, bushes, or shrubs in front lawns without consent of the Architectural Review Committee or the Lawn Care Committee. The Corporation reserves the right to remove or trim any tree, bush or shrub that may, in either committee's opinion, cause structural or foundation damage.
18. **Shrubs/Climbing Vines:** No shrub or climbing vine that may harmfully affect the structure shall be planted by an owner.
19. **Dwelling Condition:** Each owner shall keep his/her dwelling unit in good order, condition and repair and free of debris. In the event an owner shall fail to so maintain his/her dwelling unit, through his/her own negligence, the Corporation, after giving notice to the owner and a majority vote of all unit owners, shall have the right to enter upon said dwelling unit to correct, repair, maintain and restore the dwelling unit. All costs incurred by the Association related to such correction, repair, maintenance or restoration shall be and constitute a Special Assessment against such dwelling unit, payable by the owner upon demand by the Board of Directors.
20. **Trash Collection:** All garbage, trash and refuse shall be stored in appropriate containers inside the dwelling units and shall be kept therein until not earlier than the evening before scheduled trash collection. Garbage, trash and refuse shall be placed in sealed disposable plastic bags or other containers approved by the Board of Directors. All trash containers shall be placed directly on the curb in front of the owner's unit or other locations the Board may designate for trash collections.
21. **Fences:**
  - a. Fences, not to exceed six (6) feet in height or twelve (12) feet in length, of either wood or vinyl may be installed if prior approval is received from the Architectural Review Committee. Such fences must be painted or stained to blend with the color of the siding and shall not interfere with mowing or trimming.
  - b. Under no conditions will chain link fences be permitted.
22. **Storage Sheds/Mini Barns:** No storage sheds or mini barns will be permitted.
23. **Required Masonry:** All dwelling units shall have a minimum of 50% masonry front, exclusive of doors, windows, and gables. The side elevation of all corner lot homes shall have a minimum masonry height of three (3) feet exclusive of doors, windows, and gables.
24. **New Construction Approval Required:** No additions or modifications to dwelling units, such as: greenhouses, porches, garages, fences, or any other permanent fixture

- shall be erected without prior approval of the Architectural Review Committee. Such approval must be obtained prior to the commencement of construction and shall take into account restrictions as to the type of materials, exterior facade, design, layout, location, and landscaping and finished grade elevations. The owner shall obtain a proper building permit and provide a copy to the Corporation prior to any work being performed.
25. **Construction Without Approval:** Construction, of any kind, started without approval of the Architectural Review Committee must be ceased immediately until and if approved by the Architectural Review Committee. The developer of McKenzie Place shall consult with the Architectural Review Committee regarding building new dwelling units prior to beginning construction.
  26. **Outdoor Sports Equipment:** No basketball or other outdoor sports equipment of any kind is permitted.
  27. **Satellite Dishes:** Only satellite dishes of 20 inches or less are permitted with prior approval of the Architectural Review Committee. Satellite dishes shall not be installed on shingles, siding, or front of dwelling and must be as inconspicuous as possible. The Association shall not be responsible/liable for any property damage or personal injury caused by satellite dishes.
  28. **Rental or Lease of a Dwelling Unit:** The rental or lease of a Dwelling Unit is prohibited by any owner of a Dwelling Unit or Lot, other than an owner who is a Developer.
  29. **Vacant Lot Use:** Unsold or vacant lots must be kept totally clear. No storage, parking, or other use is permitted at any time without approval of the Board of Directors.
  30. **Lawn Care:** The Corporation is responsible for all lawn care. However, if a lawn must be replaced due to owner's failure to water, the Board may consider doing so at owner's expense.
  31. **Garage/Yard Sales:** Only garage or yard sales sponsored by the Corporation shall be allowed.
  32. **Tree and Shrub Replacement:** When trees or shrubs are replaced by the Association in front lawns, for any reason, the owner shall be responsible for watering to keep the plant alive. If the plant dies because of owner negligence, replacement shall be at the owner's expense.
  33. **Sale by Contract:** Any Owner that sells their Dwelling Unit to a purchaser via contract, rather than outright purchase by new owner, shall provide a full copy of said Contract to the Board of Directors within 10 days of entering into said Contract. Further, any owner who sells their Dwelling Unit by contract, shall provide a copy of the McKenzie Place CCRs to said purchaser before said purchaser moves in to said Dwelling Unit. Lastly, any Owner who sells their Dwelling Unit via contract, shall

remain responsible for all infractions committed by purchaser.

34. Residents are not to use grills in their garage. It is required that the use of grills be a minimum of four (4) feet from the building. Repairs to any building and/or landscape caused by a grill will be at the homeowner's expense.

**Section 2. Enforcement:**

**a.** Violations of any Corporation Rule or Regulation which can be reoccurring are subject to the following:

1. The individual owning the dwelling unit will be advised by the Board of Directors of a violation or violations.
2. If the violation(s) continue, the individual owning the dwelling unit will be notified by certified letter of the violation or violations and a date established when a fine may begin.
3. If compliance does not occur by the date noted, the Board of Directors shall notify the owner of dwelling unit that a Twenty Dollar (\$20.00) per day (or per occurrence) fine will be levied until compliance occurs.
4. If the dwelling unit owner fails to pay the fine, the Board of Directors shall have the authority to place a lien on the dwelling unit of the owner. All costs to collect will be assessed against the owner.

**b.** Violation of any Corporation Rule or Regulation which is a one-time violation and cannot, or is not likely to, reoccur is subject to the following:

1. Concerning any violation occurring without prior approval of the Architectural Review Committee a fine of up to but not to exceed Five Hundred Dollars (\$500) shall be levied. The amount of the fine will be determined by the Board of Directors. If the Board of Directors deems it reasonable to restore the project to its original condition a deadline for compliance will be set. In addition, continued failure to comply after notice is duly given shall incur an additional fine of Twenty Dollars (\$20.00) per day until such violation is corrected. Any fine imposed by the Board pursuant to this Section 2 shall be collectible in the same manner as any Assessment payable pursuant to these Covenants, including the imposition of a lien against such Dwelling Unit. *\*See Article X, Section 5. b.*
2. If the dwelling unit owner fails to pay the fine, the Board of Directors shall have the authority to place a lien on the dwelling unit of the owner. All costs to collect will be assessed against the owner.

### Section 3. Maintenance Responsibilities

The following is a list of maintenance responsibilities that apply to McKenzie Place Association, Inc. by either owners or the Corporation. This list may be amended as per Article XVIII. of this document.

<u>Owner</u>	<u>Corp.</u>	<u>Description</u>
X		1. Lawn care (except as assigned to the Corporation in # 24)
X		2. Exterior doors (entry, sliding and garage) including hardware
X		3. Glass surfaces, window frames and screens
X		4. Fences
X		5. Water pipes
X		6. Wiring – electrical, telephone, etc. (interior & exterior)
X		7. Garage door openers
X		8. Concrete – interior flooring, add-ons, patios *See Article VII. <i>Section 1. g</i>
X		9. Heating and air-conditioning equipment
X		10. Sealing of concrete and drives, except extensions
X		11. Satellite dishes
X		12. Weeding – all landscape beds, both front and back
X		13. Trees and shrubbery – pruning, mulching, replacement, etc.
X		a. Back and side
	X	b. Along McKenzie Road and front lawns only
		14. Mailboxes
X		a. Near front of dwelling unit
	X	b. Along street only
		15. Lights
X		a. Exterior – attached to unit
	X	b. Exterior – coach light bulbs and sensors
	X	16. Chimney, siding, exposed flue, and flashing
	X	17. Painting and caulking of exterior door frames and window frames - only when painting and caulking the entire building or when repairs are made to the unit's exterior door frames or

<u>Owner</u>	<u>Corp.</u>	<u>Description</u>
		window frames
X		18. Foundation walls, footings
X		19. Exterior – structure, siding, paint
X		20. Roof – shingles, flashing, gutters, downspouts
X		21. Gutter cleaning
X		22. Exterior concrete – (only driveways and sidewalks leading to front doors) - cracks in concrete that exceed 1/2 inch or more in width or 1/2 inch or more in vertical displacement will be considered for repair (expansion and contraction joints not included)
X		23. Steps and stoops
X		24. Lawn – cutting, trimming, fertilization, and weed control
X		25. Snow removal – driveways and walks – excluding public sidewalks

**ARTICLE XV: Acceptance and Ratification**

All persons who may own, occupy, use, enjoy or control a lot or dwelling unit or any part of the Corporation complex shall be subject to these Covenants, Conditions and Restrictions; the Articles of Incorporation; and the Bylaws as each may be amended or supplemented from time to time.

**ARTICLE XVI: Benefit and Enforcement**

This document shall run with and bind the real estate for a term commencing on the date this document is recorded in the office of the Recorder of Hancock County, Indiana, and expiring December 31, 2013, after which time it shall be automatically extended for successive periods of ten (10) years each unless by vote of a majority of the then owners of dwelling units or lots, it is agreed to change this document in whole or in part, or to terminate the same.

In the event of a violation, or threatened violation, of any of the covenants, conditions or restrictions set forth in this document, the Board of Directors shall have the right to enforce the covenants, conditions and restrictions contained herein.

## **ARTICLE XVII: Severability Clause**

The invalidity of any covenant, restriction, condition, limitation or other provision of this document, the Articles of Incorporation or the Bylaws shall not impair or affect the validity, enforceability or effect of the rest of this document, the Articles of Incorporation or the Bylaws. Each shall be enforceable to the greatest extent permitted by law.

## **ARTICLE XVIII: Amendments**

Amendments to this document shall be proposed and adopted in the following manner:

### **Section 1. Proposed Amendments**

- a.** Owners may propose an amendment by presenting a petition to the Board of Directors. The petition shall contain the signatures of at least twenty-five (25%) percent of all owners.
- b.** The Board of Directors may also propose amendments.
- c.** Proposed amendments shall only be considered at an annual or special meeting of the members.

### **Section 2. Notice**

Notice of the subject matter of any proposed amendment shall be provided to the owners at least thirty (30) days preceding an annual or special meeting at which the proposed amendment is to be considered.

### **Section 3. Adoption**

Any proposed amendment to this document must be approved by two-thirds (2/3) of all owners attending or voting by proxy at an annual or special meeting.

### **Section 4. Recording**

Each amendment to this document shall be executed by the President and Secretary of the Corporation and shall be recorded in the office of the Recorder of Hancock County, Indiana, and such amendment shall not become effective until so recorded.

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President: Louise Moates

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Date

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Secretary: Marsha Ellett

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Date

Revised: September, 2003

Recorded: November 25, 2003

Instrument number: 9607758

Recorded number: 03002 5138

Revised: November 21, 2005

Recorded: May 3, 2006

Recorded number: 060004957

Revised: April 23, 2007

Recorded: May 31, 2007

Recorded number: I070006125

Amended November 9, 2009

Recorded December 23, 2009

Recorded number: 090013496

Amended November 14, 2011

Recorded November 22, 2011

Recorded number 110010763

Amended November 12, 2012

Recorded 120013286

Amended November 10, 2014

Prepared by: \_\_\_\_\_