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DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS
FOR BROOKS PARK SUBDIVISION

THIS DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS FOR BROOKS PARK SUBDIVISION, ("Declaration"), made this 12th day of December, 2005 by Macs Landing, L.L.C., an Indiana limited liability company, (hereinafter referred to as "Declarant"),

WITNESSETH THAT:

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

WHEREAS, the Declarant is developing the Real Estate as a residential subdivision consisting of detached, one family dwellings located on separate lots, to be

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

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

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

ARTICLE I
General Purpose of This Declaration

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

Page 1 of 26
haphazard development thereof which may be inharmonious with other improvements on the Real Estate or within the Subdivision, to preserve and maintain proper setbacks from streets and adequate free space between structures, to provide for adequate and proper maintenance of the Real Estate so as to ensure a high quality appearance and condition on the Real Estate, all for the purpose of preserving the value of all Lots within the Subdivision and to ensure desired high standards of maintenance of the Real Estate to the benefit of all Owners within the Subdivision.

ARTICLE II

Definitions For All Purposes Of This Declaration

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

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

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

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

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

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

Section 6. Common Expense. "Common Expense" means the actual and estimated cost to the Association for maintenance, management, operation, repair, improvement, and replacement of Common Area and the Common Property, real estate taxes or personal property taxes assessed against any Common Area or Common Property, and any other cost or expense incurred by the Association for the benefit of the Common Area or
Common Property, and shall also include the cost of maintaining the landscaping upon the Lots if so desired by the Board of Directors of the Association, and any other cost or expense incurred by the Association pursuant to this Declaration or in the course of performance of its duties under this Declaration. Common Expenses shall not include any costs or expenses incurred in connection with the initial installation or completion of the streets, lakes, utility lines and mains, storm lights, or other improvements constructed by or installed on behalf of Declarant, but shall include the costs of any private water supply system to service the ponds.

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

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

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

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

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

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

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

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

Section 15. Plat Restrictions. "Plat Restrictions" shall mean all the restrictions, covenants, terms and conditions stated on the Plat.
Section 16. Sewage System. "Sewage System" means any sanitary sewer lines, lift stations, equipment, or facilities located in, upon, or under the Common Area or Easements and designed to provide for the discharge of sanitary sewage from any or all Lots, as the same are or may be constructed at any time, and any replacement thereof or substitution thereof, except such as may have been dedicated to the public and accepted for maintenance by the appropriate public agency.

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

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

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

ARTICLE III.

Use and Bulk Restrictions

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

Section 2. Types of Structures and Uses. Except as provided in this Section 2, no structure shall be erected, altered, placed, or permitted to remain on any Lot, other than one detached, single-family dwelling with an attached side-loading garage for at least two (2) but not more than four (4) cars unless otherwise permitted by the Architectural Committee. No such structure shall be erected on any Lot without the prior written approval of the Architectural Committee. Except as provided in this Section 2, any garage, pool houses, storage areas or any other structure which if detached would be considered an accessory building must be attached to and be under the same roofline or rooflines as the primary dwelling, shall be of a permanent type of construction and shall conform to the general architecture and appearance of said residence. No shack of any type, mobile home, modular home, manufactured housing, outhouse, detached storage shed...
or tool shed, cage, or barn of any kind whatsoever shall be erected, situated, stored, or otherwise located on any Lot, except such structures used by a builder during the construction of a proper single-family dwelling structure, provided such builder’s temporary structures shall be promptly removed from the lot upon substantial completion of the proper structure and shall not be permitted to remain on the lot in any event for more than twelve (12) months after the commencement of construction of the proper single-family dwelling structure, unless such period is extended in writing by the Developer or the Committee, and

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

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

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

Section 5. Floor Area. The ground floor of each multi-story dwelling constructed on a Lot, exclusive of one story open porches, terraces, balconies, and garages, shall not be less than 1400 square feet of finished and livable floor area, ranch style homes shall have not less than 2000 square feet and for two story homes shall have not less than 2400 square feet. Basement floor area shall not be counted in the above square footage and shall be in addition thereto. Notwithstanding the foregoing, Article XII Section 11, the Architectural Committee, or the Developer shall with respect to Lots on which no dwelling has been to be constructed, may increase each of the minimum square footages, may increase or decrease building setbacks for individual Lots or in the aggregate, may promulgate and amend construction guidelines which include, but are not limited to, heights, number of stories, widths, depths, styles, materials, roof pitches, garage locations, landscaping, and related matters. In addition to the foregoing, the owner of each Lot must comply with local zoning ordinances or seek variances thereof.
Section 6. Building Exteriors, Driveways, and Satellite Dishes. The finished exterior of every building constructed or placed on any Lot in the Subdivision shall be of material acceptable to and approved by the Architectural Committee. Notwithstanding the requirements set forth in this Section 6, the Architectural Committee may authorize the use of other materials as determined in its sole discretion; provided however, at no time shall the Architectural Committee approve the use of vinyl or aluminum siding, and/or vinyl windows on any dwelling on any Lot. For all buildings in the Subdivision, the first floor exterior shall be 3 sides minimum of a masonry type product defined as brick, stone, cultured stone, EIFS or dryvit. All buildings backing up to 104th Street or Georgia Road shall be wrapped on all sides of a masonry type product defined in the previous sentence. Masonry requirements may be modified and reduced upon approval of the Architectural Committee in its sole and controlling discretion on a case-by-case basis for Victorian, Colonial, Cape Cod, Country French, or other styles that lend themselves to the use of less brick stone, or dryvit material.

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

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

ARTICLE IV.
General Rights and Restrictions

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

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

No noxious, unlawful, or otherwise offensive activity shall be carried out on any
Lot in the Subdivision, nor shall anything be done thereon which may be or may become
an annoyance or nuisance to the Subdivision in the opinion of the Association or the
Declarant. No Lot or structure or improvement thereon shall be used in any manner which
causes or might reasonably be expected to cause any disturbance to the normal use and
enjoyment of surrounding or neighboring Lots, nor in any manner which causes injury to
the reputation of the Subdivision, including, without limitation, the burning of any refuse
or excessive noise by the use of any musical instruments, loud speakers, electrical
equipment, amplifiers or other equipment or machines.

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

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

Section 4. Vehicle Parking. Except as stated herein, all motor vehicles belonging
to members of a household of an owner of a Lot shall have permanent parking spaces in
garages or driveways constructed on the Lots in the Subdivision, and no disabled vehicle
shall be stored on any Lot in the Subdivision. No recreational vehicle; all terrain vehicle;
go-kart; motorcycle; racing car or parts thereof; bus; coach; boat; jet ski; watercraft;
snowmobile; boat, jet ski, watercraft, or snowmobile trailer; semi-trailer; semi tractor;
truck or van of any type (except minivan, conversion van, van with a maximum capacity
of fifteen (15) persons, or a pick-up truck owned by an Owner of a Lot), farm equipment,
equipment, excavation equipment, campers, motor home, tractor, or trailer of any kind may be stored,
parked, located, or otherwise situated at any time on any Lot or any street or the Common
Areas, provided, however, such vehicles may be stored in the garage of the primary
dwelling on the Lot if such vehicle cannot be seen from any street or any Lot in the
Subdivision. No vehicle shall be parked on a regular, recurrent, or permanent basis on any
street. This Section 4 shall not apply to any construction vehicles, trailers, or equipment of
Declarant or any other builder in the Subdivision during the development thereof nor shall
apply to any excavation equipment used to perform services for any utilities in the
Easements or the Common Area.
Section 5. **Signs.** No sign of any kind shall be displayed to the public view on any Lot (whether indoors or outdoors), except:
(a) that one sign of not more than six square feet may be displayed for the purpose of advertising a house for sale or rent,
(b) signs of not more than six square feet as may be erected by the builders or Owners (including Declarant) to advertise the property during construction and sale,
(c) such other signs as may be approved by the Architectural Committee and,
(d) if necessary under applicable zoning regulations or requirements, signs required by any zoning authority having jurisdiction thereof.

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 15. Title to Common Area and Common Property. Title to all Common Area and Common Property shall be held in the Association. Each Owner shall have as non-exclusive reciprocal easements appurtenant to his Lot:
   a. a right of access to his Lot over the streets as shown on the Plat (streets shown on the Plat hereinafter referred to as "Streets");
   b. the right to the use of all of the Common Area for its intended purposes;
   c. the right of access thereto over the Streets,
   d. the right of access to and use of the Water System, Drainage System, the Sewage System, and
   e. all utility lines and mains abutting or adjacent to his Lot;

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

Section 16. Remedies for Failure to Comply. In the event that any Owner fails to fully observe and perform the obligations set forth in this Declaration or the Plat Restrictions, and in the further event that such failure is not cured within thirty (30) days after written notice of the same is given by the Association or the Declarant, the Association, Architectural Committee (as to the matters for which it has responsibility), Declarant or any Owner shall have the right to commence judicial proceedings to abate or enjoin such failure, to collect damages for such failure, to take such further action at may be allowed at law or equity to correct such failure after commencement of such proceedings, or any combination of these remedies. In the event that such failure causes or

Page 10 of 26
threatens to cause immediate and substantial harm to any property outside of such defaulting Owner's Lot or to any person or entity, the Association or the Declarant shall have the right to enter upon such Lot for the purpose of correcting such failure and any harm or damage caused thereby, without any liability whatsoever on the part of the Association. All costs incurred by the Association, Architectural Committee or Declarant in connection with any act or proceeding undertaken to share, assist, or correct such failure; including court costs, interest, and attorney fees; shall be payable by the defaulting Owner upon demand by the Association, Architectural Committee or Declarant and shall immediately become a lien against his Lot, subject to payment and collection in the manner provided in Article VII for collection of Assessments (amount payable by defaulting Owner and lien against Lot collectively hereinafter referred to as “Default Assessment”). The rights in the Owners and the Association, Architectural Committee, or Declarant under this Section shall be in addition to all other enforcement rights hereunder or at law or in equity.

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

Section 18. Miscellaneous Rights and Restrictions.

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

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

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

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

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

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

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

(h) Other Memberships. An Owner of a Lot upon becoming an Owner shall automatically become a member of the Brooks Park Amenity Association, Inc. with all the rights and subject to all the obligations appertaining thereto. Such membership in the Brooks Park Amenity Association is mandatory as long as an Owner owns a Lot or Lots, and such membership may not be waived, assigned, or terminated in any way.

ARTICLE V.
Rights and Obligations for Structures

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

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

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

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

ARTICLE VI

Construction Approvals

Section 1. Plans, Specifications and Locations of Improvements. No building, structure, fence, driveway, patio, swimming pool, landscaping, antenna, tennis court, or other form of improvement shall be erected, placed, or altered on any Lot until the building plans, specifications, landscape plan, and plot plan showing the design, dimensions, color, materials, and location thereof have been approved by the Architectural Committee as to their conformity and harmony of external design with the existing buildings, structures, and other improvements in the Subdivision, and as to compliance with applicable law and the covenants herein contained. Provided, however, that no such approval shall be required for any improvements constructed by Declarant. Subject to Article IV Section 19(f), at no time shall there be the erection, construction, installation, or placement of figurines, statues, posters, pictures, photographs, portraits, mobiles, flags, banners, lamps, artistic creations or other items which the Architectural Committee in its sole discretion could cause embarrassment, discomfort, annoyance, or nuisance to the occupants of the Subdivision that is either (i) attached to the exterior of a dwelling located on a Lot or (ii) otherwise located in, on, or above a Lot. If the Architectural Committee fails to act upon any plans submitted to it for approval within a period of sixty (60) days from the submission date of such plans, such failure shall be deemed approval and the Owner may then proceed with the construction according to the plans submitted; provided, the commencement is made within one (1) year from the date of submission to the Architectural Committee for their approval. The Architectural Committee shall not be
entitled to any compensation for services performed pursuant to this Article VI, except as may be approved by the Board of Directors of the Association.

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

Section 3. Completion of Work. Upon receipt of all approvals required pursuant to this Article, each Owner shall, as soon as practical, satisfy or cause to be satisfied all conditions thereof and diligently proceed with the commencement and completion of all approved construction. If the landscaping is not installed within the time period set forth in Article IV Section 6 above or if any other work is not substantially completed within eighteen months of the date of such approval, or such longer period as the Architectural Committee may approve prior to the expiration of such eighteen months, then the approval of the plans for such landscaping or work shall terminate automatically without any further act by any person, and such Owner shall not commence or continue such landscaping or construction without further approval of the Architectural Committee obtained in the manner of the initial approval as hereinabove provided. Failure to comply with the limitations set forth in this section shall constitute a breach of this Declaration and subject the defaulting party to all enforcement procedures set forth herein and any other remedies provided by law or equity. Furthermore, the Architectural Committee, at its discretion, may declare such uncompleted improvement to be a nuisance and shall have all remedies provided by law, in equity or in this Declaration or the Plat Restrictions, to abate such nuisance.

ARTICLE VII.

Covenants for Maintenance Assessments

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

Page 14 of 26
(a) A Pro-rata Share (as hereinafter defined) of the Annual Assessments fixed, established and determined from time to time as hereinafter provided.

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

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

Section 3. Liability for Assessments. Each Assessment, whether Annual, Special, or Default Assessment, together with any interest thereon and any costs of collection thereof, including attorney’s fees and court costs, shall be a charge on each Lot and shall constitute a lien upon each Lot from and after the due date thereof in favor of the Association. The Default Assessment is due and payable by the Owner is a lien on the Lot when notice is given the Owner of the said Default Assessment. Each such Assessment, together with any interest thereon and any costs of collection thereof, including attorney's fees and court costs, shall also be the personal obligation of the Owner of each Lot at the time when the Assessment is due. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. The lien for any Assessment shall for all purposes be subordinate to the lien of any Mortgage whose mortgage was recorded prior to the date such Assessment first became due and payable. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof, nor shall any sale or transfer relieve any Owner of the personal liability hereby imposed. The personal obligation for delinquent Assessments shall not pass to any successor in title unless such obligation is expressly assumed by such successor.

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

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

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

Section 7. Duties of the Association.

(a) The Board of Directors of the Association (sometimes hereinafter referred to as "Board of Directors") shall cause proper books and records of the levy and collection of each Annual, Special and Default Assessment (hereinafter collectively referred to as "Assessments" or "Assessments" as the case may require) to be kept and maintained, including a roster setting forth the identification of each and every Lot and each Assessment applicable thereto, which books and records shall be kept in the office of the Association and shall be available for the inspection and copying by each Owner (or duly authorized representative of any Owner) at all reasonable times during regular business hours of the Association. The Association shall cause audited financial statements to be prepared at least annually for each fiscal year of the Association, and shall furnish copies of the same to any Owner or Mortgagee upon request. The Board of Directors of the Association shall cause written notice of all Assessments levied by the Association upon the Lots and upon the Owners to be mailed to the Owners or their designated representatives. Notices of the amounts of the Annual Assessments and the amounts of the installments thereof shall be sent annually within thirty (30) days following the determination thereof. In the absence of any notice regarding the amount of the Annual Assessment, each Owner shall continue to pay the monthly amount for Annual Assessments previously paid by such Owner. Notices of the amounts of Special Assessments shall be sent as promptly as practicable and in any event not less than ten (10) days prior to the due date of such Assessment or any installment thereof. In the event notice of any Special Assessment is mailed less than ten (10) days prior to the due date of the Special Assessment to which such notice pertains, payment of such Special Assessment shall not be deemed past due for any purpose if paid by the Owner within ten (10) days after the date of actual mailing of such notice.

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

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


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

(b) If any Assessment upon any Lot is not paid within thirty (30) days after the due date, (1) the Board of Directors shall have the right to accelerate the payment of the entire unpaid balance of all Assessments (2) such Assessment and all costs of collection thereof, including attorneys' fees and court costs, shall bear interest from the date of delinquency until paid at a rate of twelve percent (12%) per annum or a higher rate if allowed by law, (3) the Association may bring an action in any court having jurisdiction against the delinquent Owner to enforce payment of the same and/or to foreclose the lien against said Owner's Lot, (4) there shall be added to the amount of such Assessment all costs of such action, including the Association's attorney's fees and court costs, and (5) in the event a judgment is obtained, such judgment shall include such interest, court costs, and attorneys' fees.

Section 9. Adjustments. In the event that the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for Assessments for the following fiscal year. Such deficit may be recouped either by inclusion in the budget for Annual Assessments or by the making of one or more Special Assessments for such purpose, at the option of the Association. In the event that the amounts budgeted and assessed for Common Expenses in any fiscal year exceed the amount actually expended by the Association for Common Expenses for that fiscal year, a pro-rata share of such excess shall be a credit against the Assessment(s) due from each Owner for the next fiscal year(s), in such amounts as the Board of Directors of the Association shall deem appropriate.
Section 10. *Initiation Fee and Declarant Liability.* No Assessments set forth in this Article VII shall be due from Declarant or due on any Lot owned by Declarant or any Lot owned by a company or entity in which Declarant has an equity, membership, partnership, or other interest. Upon the closing of the initial conveyance of a Lot by the Declarant to an Owner, the Owner shall pay an initiation fee of Five Hundred and no/100 dollars ($500.00) to the Declarant or the Association.

ARTICLE VIII.

Organization and Duties of Association

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

Section 2. **General Duties of the Association.** Except for the rights of individual Owners to enforce the terms of this Declaration or the Plat Restrictions, the Association is hereby authorized to act and shall act on behalf of, and in the name, place, and stead of, the individual Owners for the common benefit of all such Owners in all matters pertaining to the maintenance, repair, and replacement of the Common Area or Common Property, and the determination of Common Expenses, the collection of Annual, Special, and Default Assessments, the granting of any approvals wherever and to the extent called for by this Declaration, and the cure of, expunging of, or the collection of damages arising from the default by an Owner of the terms of this Declaration or Plat Restrictions. The Association shall also have the right, but not the obligation, to act on behalf of any Owner or Owners in seeking enforcement of the terms, covenants, conditions and restrictions contained in this Declaration or the Plat Restrictions. Neither the Association nor its officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color of authority of this Declaration, or for any failure to take any action called for by this Declaration or the Plat Restrictions, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct.

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

Section 4. Insurance.

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

B. The Association shall also maintain in force the master casualty policy, referred to in Article V hereinafore, and shall maintain adequate fire and extended coverage insurance for all the Common Area and Common Property for the benefit of all Owners and Mortgagors in the Subdivision, insuring against fire, windstorm, vandalism, and such other hazards as may be insurable under standard "extended coverage" provisions, in an amount equal to the full insurable value of such Common Area and Common Property, and shall contain the following endorsements if and to the extent obtainable at a reasonable cost in the State of Indiana: (i) replacement cost; (ii) inflation guard; (iii) demolition cost, contingent liability, and increased construction cost in connection with building code requirements; and (iv) steam boiler coverage if applicable. In the event that all or any part of the Common Area or Common Property is determined to be in a flood hazard area, the Association shall also obtain a master policy of flood insurance on all structures and improvements on the Common Area or Common Property within such flood hazard zone, in an amount at least equal to the lesser of 100% of the current replacement cost of all insurable property within the flood hazard area, or the maximum coverage available for such property under the National Flood Insurance Program. The amounts of coverages under the foregoing policies may be increased from time to time as determined appropriate by the Board of Directors or as may be required by law.

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

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

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

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

F. Each Owner shall have the right to purchase any additional insurance as he may deem necessary, and each Owner shall be solely responsible for loss or of damage to his personal property located on his Lot, however caused, including all floor and wall coverings, appliances, furniture and betterments installed by the Owner. Each Owner shall be solely responsible for obtaining his own insurance to cover any such loss and risk.

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

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

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

Section 8. Dealing with Common Area and Common Property. The Association shall not convey, dedicate, lease, mortgage, pledge, or otherwise transfer or encumber all or any part of the Common Area or Common Property, without the approval of the Owners of at least two-thirds (2/3) of the Lots. In dealing with the Common Area and the Common Property, the Association shall be deemed to hold the same in trust for the use and benefit of the Owners. Provided, however, the Board of Directors of the Association may approve easement grants across Common Area for utility, storm and sanitary sewer lines.

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

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

ARTICLE X

Term

This Declaration shall be effective for an initial term of twenty (20) years commencing with the date of recording of this Declaration and shall automatically renew for additional term of ten (10) years each, in perpetuity, unless as of the end of any term both the Owners of ninety percent (90%) of the Lots and the Mortgagors of at least ninety percent (90%) of the Lots vote to terminate this Declaration, in which case this Declaration shall terminate as of the end of the term during which such vote was taken. Notwithstanding the preceding sentence, all Easements created or reserved by this Declaration shall be perpetual unless otherwise expressly indicated herein or unless all persons or entities entitled to the beneficial use of such Easement shall consent thereto.

ARTICLE XI

Private Amenities and Services

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

ARTICLE XII.

Recreation Area

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

ARTICLE XIII.

General Provisions

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

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

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

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

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

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

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

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

Section 9. Deed Clause to Implement Declaration. Each Owner covenants and agrees that it shall not execute or deliver any deed or conveyance of a fee title interest in any Lot, or any portion thereof, unless such deed or conveyance contains a clause substantially as follows:
"By acceptance and recording of this conveyance, the Grantee herein covenants and agrees to be bound by (1) the Declaration of Covenants, Easements and Restrictions for Brooks Park Subdivision pertaining to the real estate hereby granted, which is recorded at Miscellaneous Record Book ____________, Page Number __________ in the Office of the Recorder of Hamilton County, Indiana and (2) the Plat Restrictions of Brooks Park pertaining to the real estate hereby granted which is recorded at Plat Book __________, Page __________ in the Office of the Recorder of Hamilton County, Indiana,"

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

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

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

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

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

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

Macs Landing, LLC
BY: Pam, Ltd., an Indiana limited partnership and manager of Macs Landing, LLC
BY: Pam, Inc. Managing General Partner of Pam, Ltd.

Michael H. Stukeleather, Vice President of Pam, Inc.

Date: November 29, 2005

DECLARANT

STATE OF INDIANA )

COUNTY OF Hamilton ) SS:

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Michael H. Stukeleather, Vice President of Pam, Inc., the managing general partner of Pam, Ltd., the manager of Macs Landing, LLC and having been duly sworn, acknowledged that all necessary authority has been granted for his execution of this document and acknowledged the execution of this Declaration of Covenants, Easements and Restrictions on behalf of Macs Landing, LLC as his free act and deed.

Witness my hand and Notarial Seal this 29 day of November, 2005.

SEAL

This document was prepared by Macs Landing, LLC.
BROOKS PARK

A part of the Southeast Quarter and the Northeast Quarter of Section 12, Township 17 North, Range 6 East and part of the Southwest Quarter of Section 7, Township 17 North, Range 8 East, Fall Creek Township, Hamilton County, Indiana, more particularly described as follows:

Commencing at the Northwest corner of said Quarter Section; thence North 85 degrees 54 minutes 00 seconds East along the South line of said Quarter Section 330.00 feet to the POINT OF BEGINNING of this description; thence continuing North 85 degrees 54 minutes 00 seconds East 1,323.75 feet to a point on the North line of the South half of the Northeast Quarter of said Section 12; thence North 85 degrees 39 minutes 21 seconds East along said North line 1,199.24 feet; thence South 04 degrees 13 minutes 54 seconds East 270.00 feet; thence North 85 degrees 36 minutes 21 seconds East 215.92 feet; thence South 62 degrees 48 minutes 58 seconds East 183.20 feet; thence South 00 degrees 00 minutes 00 seconds East 906.12 feet; thence South 10 degrees 10 minutes 17 seconds East 187.36 feet; thence South 07 degrees 00 minutes 48 seconds East 50.00 feet; thence South 00 degrees 01 minutes 33 seconds West 906.95 feet; thence South 17 degrees 42 minutes 25 seconds East 155.11 feet to a point on the West line of the Southeast Quarter of said Section 12; thence South 00 degrees 06 minutes 34 seconds West along said West line 230.94 feet; thence South 17 degrees 42 minutes 25 seconds West 218.97 feet; thence South 24 degrees 42 minutes 28 seconds West 161.70 feet; thence South 00 degrees 06 minutes 34 seconds West 203.61 feet; thence South 71 degrees 43 minutes 21 seconds West 273.22 feet; thence North 59 degrees 05 minutes 20 seconds West 242.28 feet; thence North 79 degrees 17 minutes 12 seconds West 501.00 feet; thence North 54 degrees 43 minutes 45 seconds West 434.90 feet; thence North 37 degrees 24 minutes 21 seconds West 58.86 feet; thence North 00 degrees 11 minutes 40 seconds East 21.24 feet; thence North 30 degrees 00 minutes 00 seconds West 269.54 feet; thence North 76 degrees 15 minutes 00 seconds West 295.00 feet; thence South 87 degrees 30 minutes 00 seconds West 309.00 feet; thence North 80 degrees 30 minutes 00 seconds West 141.00 feet; thence South 45 degrees 15 minutes 00 seconds West 149.00 feet; thence North 83 degrees 00 minutes 00 seconds West 18.50 feet; thence North 00 degrees 14 minutes 20 seconds East 1,215.73 feet to the place of beginning, containing 151.398 acres, more or less.

S:\47510\LEGAL\EXHIBIT-LEGAL
November 30, 2005
(R)\TWFF(W)WAB

EXHIBIT "A"
PLAT RESTRICTIONS OF BROOKS PARK

The undersigned, Marc Landis, L.I.C., an Indiana Limited Liability Company, (hereinafter referred to as the "Developer"), owner of the real estate shown and described herein, hereby certifies that it has laid off, platted and subdivided, and does hereby lay off, plat and subdivide said real estate in accordance with this plat and certificate. This subdivision shall be known and designated as Brooks Park, (hereinafter referred to as "Subdivision"), an addition in County of Hamilton, Town of Fishers, Indiana. In addition to the covenants and restrictions hereinafter set forth and contained in this plat, the real estate described in this plat is also subject to certain additional covenants and restrictions contained in that certain Declaration of Covenants, Easements, and Restrictions of Brooks Park recorded on the day of , 2005, in Miscellaneous Record page through page inclusive, in the office of the Recorder of Hamilton County, Indiana (the "Declaration"), and to the rights, powers, duties, and obligations of the Brooks Park Homeowners Association, Inc. (the "Association") and Brooks Park Architectural Committee (the "Architectural Committee") as set forth in the Declaration. If there is any irreconcilable conflict between any of the covenants and restrictions contained in this plat and any of the covenants and restrictions contained in the Declaration, the conflicting covenant or restriction contained in this plat shall govern and control to the extent only of the irreconcilable conflict, it being the intent hereof that all such covenants and restrictions shall be applicable to the said real estate to the greatest extent possible. All of the terms, provisions, covenants, conditions, and restrictions contained in the Declaration are hereby incorporated herein by this reference. In order to provide adequate protection to all present and future owners of lots in the Subdivision, the following covenants, restrictions, provisions, conditions, and limitations, in addition to those set forth in the Declaration, are hereby imposed upon and shall run with the land included in the Subdivision and shall be binding upon the Developer and anyone at anytime owning any part or portion of such land.

1. Right-of-Way. The right-of-way of 104th Street as shown on the within plat, if not hereinafore dedicated, is, subject to existing easements, hereby dedicated to the public, provided that the use of said space by any utilities shall be underground only.

2. Common Areas. The Association shall, in accordance with the terms of the Declaration, maintain the Common Areas and the costs and expenses of such maintenance of the Common Area (all of which are included in the Common Area) as set out in the plat, and any private water supply system to service the ponds shown in the Common Area shall be assessed as part of the general assessment against the owners of all lots in the Subdivision as provided in the Declaration. All Common Areas within the Subdivision shall be subject to the terms and provisions of the Declaration governing the use, development, and maintenance thereof.

3. Easements. There are strips of ground as shown on the within plat designated as various types of easements. All of the easements are reserved for the use of the public utility companies, governmental agencies and the Association. The owner of any lot or lots shall not construct any structure nor otherwise obstruct any easement. Any Drainage Easements shown on the Plat are hereby dedicated to the Hamilton County, Indiana Drainage Board ("Drainage Board") or any successor agency having jurisdiction over storm water drainage in Hamilton County, Indiana. The owners of the lots in the Subdivision shall take and hold title to their lots subject to all of the foregoing easements, to the rights of the public utility companies and governmental agencies and Association therein (which rights also include the right of ingress and egress in, across and through said Easements), to the jurisdiction of the proper authorities and the Easements herein granted and reserved.

BEST POSSIBLE IMAGE
ALL PAGES
4. Building Set Backs. Building setback lines are hereby established as twenty-five feet (25') as a front yard setback, five feet (5') as a side yard setback with a fifteen feet (15') aggregate, and thirty feet (30') as a rear yard setback unless otherwise shown on this plat. No building or structure shall be erected or maintained between the building setback lines and the property lines of the lots nor over any easement shown on the Plat.

5. Fences. Except to the extent a taller fence is required under applicable law in connection with an in-ground swimming pool approved as required under Section 25 of this declaration, no fence shall be permitted on any Lot except for forty-eight (48") high decorative metal fence in the "wrought iron" style as approved by the Architectural Committee pursuant to Section 20 of this Declaration. No part of any fence may extend forward on the affected Lot beyond the primary rear wall of the dwelling, cross any building line, or be located in a manner that impedes or restricts drainage of any Lot.

6. Drainage Plan. As to all lots in the Subdivision the owners shall be required to submit a drainage plan which shall show compliance with the minimum building pad elevation for the lot as provided by Developer or Developer's engineer to the Architectural Committee for its approval and which must also be submitted as part of the application for a building permit and satisfactory to the governmental agency which issues building permits. The minimum building pad elevation provided by Developer or Developer's engineer shall constitute the minimum elevation for all building on said lots.

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

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

8. Use of Lots. All lots in the Subdivision shall be used or occupied solely for residential purposes with no more than one nuclear family per lot. No business buildings shall be erected thereon and no commercial enterprise may be conducted on any part thereof including, but not limited to, hotel, motel, bed and breakfast, or transient use. No lease on any lot or portion thereof shall have a term of less than six (6) months. Except for those structures permitted under Section 9 below, no structure shall be erected, altered, placed, or permitted to remain on any residential lot herein, other than one detached single-family dwelling with an attached side loading private garage for at least two (2) but not more than four (4) cars unless permitted by the Architectural Committee. No lot or portion of any lot or portions of any lots may be sold or subdivided so that there will be thereby created a greater number of lots than the original number platted.

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

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

11. **Mobile homes, in-fa homes, mini barns.** No sheds, mobile home, modular home, manufactured housing, outhouses, accessory buildings, detached storage sheds or tool sheds, cages, or mini barns of any kind whatsoever shall be erected, situated, stored, or otherwise located on any lot, except such structures used by a builder during the construction of a proper single-family dwelling structure, provided such builder's temporary structures shall be promptly removed from the lot upon substantial completion of the proper structure and shall not be permitted to remain on the lot in any event for more than twelve (12) months after the commencement of construction of the proper single-family dwelling structure, unless such period is extended in writing by the Developer or the Architectural Committee.

12. **Parking.** Except as stated herein, all motor vehicles belonging to members of a household of an owner of a lot shall have permanent parking spaces in garages or driveways constructed on the lots in the Subdivision, and no disabled vehicle shall be stored on any lot in the Subdivision. No recreational vehicle, all terrain vehicle, go-kart, motorcycle, racing car or parts thereof; bus; coach; boat; jet ski; watercraft, snowmobile; boat; jet ski; watercraft or snowmobile trailer; semi-trailer; semi tractor truck or van of any type (except minivan, conversion van, van with a maximum capacity of fifteen (15) persons, or a pick-up truck owned by an owner of a lot), farm equipment, excavation equipment, camper, motor home, tractor, or trailer of any kind may be stored, parked, located, or otherwise situated at any time on any lot or any street or the Common Area; provided, however, such vehicles may be stored in the garage of the primary dwelling on the lot if such vehicle cannot be seen from any street or any lot in the Subdivision. No vehicle shall be parked on a regular, recurring, or permanent basis on any street. This Section 12 shall not apply to any construction vehicles, trailers, or equipment of Developer or any other builder in the Subdivision during the development thereof or shall apply to any excavation equipment used to perform services for any utilities in the Easements or the Common Area.

13. **Signs.** No sign of any kind shall be displayed to the public view on any lot (whether indoors or outdoors), except:
   
   (a) that one sign of not more than six square feet may be displayed for the purpose of advertising a house for sale or rent,
   
   (b) signs of not more than six square feet as may be erected by the builders or lot owners (including Developer) to advertise the property during construction and sale,
   
   (c) such other signs as may be approved by the Architectural Committee and,
   
   (d) if necessary under applicable zoning regulations or requirements, signs required by any zoning authority having jurisdiction thereof.

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

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

16. Assessments. The Association shall make regular and special assessments to cover any costs incurred in enforcing these covenants or in undertaking any maintenance or other activity which (i) may be undertaken by or is the responsibility of the Association, or (ii) is the responsibility of a lot owner hereunder or under the Declaration but which lot owner has not undertaken as required hereunder or under the Declaration. Any such assessment in the case of item (ii) above shall be assessed only against those lot owners whose failure to comply with the requirements of the covenants hereunder or under the Declaration necessitated the action to enforce such covenants or the undertaking of the maintenance or other activity.

17. Animals. No farm animals, birds or fowls, wild animals, domestic animals for commercial purposes, or any kind shall be kept or permitted on any lot or lots in the Subdivision at any time. Furthermore, at no time shall any dog runs, kennels, animal storage areas, pens, enclosures, or pastures, be created, constructed, erected, or placed on any lot in the Subdivision. At no time shall any animal storage, veterinary medicine, emergency animal care, or animal grooming or animal sitting activity be permitted on any lots in the Subdivision.

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

18. Offensive Activity. No noxious, unlawful, or otherwise offensive activity shall be carried out on any lot in the Subdivision, nor shall anything be done therein which may be or may become an annoyance or nuisance to the Subdivision in the opinion of the Association or the
Developer. No lot or structure or improvement thereon shall be used in any manner, which causes or might reasonably be expected to cause any disturbance to the normal use and enjoyment of surrounding lots, nor in any manner, which causes injury to the reputation of the Subdivision, including, without limitation, the burning of any refuse or excessive noise by the use of any musical instruments, loud speakers, electrical equipment, amplifiers or other equipment or machines.

19. **Wells and septic tanks.** No private or semi-private water supply, pumps or wells and/or sewage disposal system may be located upon any lot in the Subdivision except for private water supply, pumps or wells used by the Developer or the Association to supply water to ponds as shown on the plat of the Subdivision. No septic tank, absorption field, or any other method of on-lot method of sewage disposal shall be located or constructed on any lot or lots in the Subdivision. All owners of any lot or lots in the Subdivision shall ensure that the dwelling located on such lot or lots is connected with and solely utilizes the public sanitary sewer lines servicing the Subdivision.

20. **Construction approval.** Except for construction performed or improvements installed by the Developer, no construction shall be commenced nor shall any building, structure, fence, or other improvements be erected, placed, or altered on any lot in the Subdivision until the building plans, specifications, landscaping plan, drainage plan, and plot plan showing the location of such construction have been approved by the Architectural Committee (a) as to the compatibility of the same with the existing structures in the Subdivision, (b) with the intent of these covenants and those set forth in the Declaration, (c) with the construction guidelines promulgated by the Architectural Committee from time to time, and (d) in accordance with the procedures for such approval contained in the Declaration and all rules, regulations, and guidelines adopted by the Architectural Committee. If the Architectural Committee fails to act upon any plans submitted to it for its approval within a period of sixty (60) days from the date of submission of the plans to the Architectural Committee, the owner may proceed with the building or construction activity according to the plans as submitted, provided the commencement is made within one (1) year from the date of submission to the Architectural Committee for approval.

21. **Exterior building materials.** The finished exterior of every building constructed or placed on any lot in the Subdivision shall be of material acceptable to and approved by the Architectural Committee. Notwithstanding the requirements set forth in this Section 21, the Architectural Committee may authorize the use of other materials as determined in its sole discretion; provided, however, at no time shall the Architectural Committee approve the use of vinyl or aluminum siding on any dwelling and or vinyl windows on any lot. For all buildings in the Subdivision, the first floor exterior shall be a minimum 3 sides of a masonry type product defined as brick, stone, cultured stone, EIFS or dryvit. Any building on a lot that immediately abuts and backs up to 104th Street and Georgia Road shall have masonry on 4 sides of first floor. Masonry requirements may be modified and reduced upon approval of the Architectural Committee in its sole and controlling discretion on a case-by-case basis for Victorian, Colonial, Cape Cod, Country French, or other styles that lend them selves to the use of less brick, stone, or dryvit material.

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

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

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

24. **Corner Lots.** No hedge, shrub planting or retain walls which obstructs sight lines at elevations between two (2) and six (6) feet above the street, shall be placed or permitted to remain on any corner lot within the triangular area formed by the street lot lines and a line connecting points 25 feet from the intersection of said street lines, or in the case of a rounded property corner from the intersection of the street lines extended to form a corner. The same sight line limitations shall apply to any lot within 10 feet from the intersection of a street line with the edge of a driveway pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

25. **Drainage.** The Association, in accordance with the terms of the Declaration, but subject to the obligations of the individual lot owners to keep easements shown on the Plat free of obstructions so that the flow of water will be unimpaired and subject to the rights, authority, and jurisdiction of the Drainage Board, shall maintain the easements for the Subdivision, and for such purposes, shall have an easement over all portions of the Subdivision used as part of the storm drainage system. Such maintenance by the Association shall, by the extent necessary, include the maintenance of all inlet pipes, open ditches, swales, mounds, and pond banks. The costs and expenses of such maintenance of the storm drainage system, together with the maintenance and improvement of all Common Areas, shall be assessed as part of the general assessment against the owners of all lots in the Subdivision as provided in the Declaration. The assessment for such costs shall be based on and be part of the general assessment against the owners of all the lots in the Subdivision as provided in the Declaration. Sump pumps, gravity drains, and other drains servicing individual residences on lots shall not outfall or empty into the sanitary sewage system servicing the Subdivision or grass swales between lots, but only into major drainage swales or storm structures included in the storm drainage system for the Subdivision.

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

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

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

27. Offices. To the extent deemed necessary or desirable by Developer, Developer shall be permitted to place sales offices and construction and storage facilities for uses attributable to the construction, development, marketing, and maintenance of the Subdivision on any unsold lot or on any Common Area in the Subdivision until 180 days following the sale, closing and deed transfer to a lot owner other than the Developer of the last previously unsold lot in the Subdivision.

28. Pond Recreational Use. The right to use the Common Area and ponds located in the Common Area are only to be used for fishing by the owners of lots in the Subdivision and such owner’s guests, and the members of the households of the said lot owner and such household member’s guests. At no time shall any persons, owners of lots or owner’s guest be allowed to swim in the ponds. The development and enforcement of rules regarding the use, welfare, and maintenance of the Common Area and the ponds located in the Common Area shall be as set forth in the Declaration.

29. Enforcement. If an owner of all or part of a lot or lots in the Subdivision has purchased the lot or part thereof from the Developer, its successors in interest or assigns, or subsequent owners of all or a part of a lot or lots in the Subdivision shall violate or attempt to violate any of the covenants, restrictions, provisions, or conditions herein, or the Declaration, it shall be lawful for the Association, the Developer, the Architectural Committee (as to matters for which it has responsibility) or any other person owning any real property situated in the Subdivision to prosecute any proceedings at law or in equity against the person or persons or entity or entities violating or attempting to violate any such covenant, restrictions, provisions, or conditions, either to prevent him or them from doing so, to recover damages or other dues for such violations, to require the removal of structures or improvements erected in violation thereof, or any combination of these remedies. If the Association, Developer, Architectural Committee, or any other person owning any real property situated in the Subdivision prevails in such action, it shall be entitled to collect reasonable attorney’s fees and interest at twelve percent (12%) per annum or a higher amount if allowed by law.

30. Run with the Land. These covenants, restrictions, provisions, and conditions set forth herein run with the land, and shall be effective for an initial term of twenty (20) years from the date of recording of this plat and shall automatically renew for additional term of ten (10) years each, in perpetuity, unless as of the end of any term both the owners of ninety percent (90%) of the lots and the
mortgages of at least ninety percent (90%) of the lots vote to terminate this plat, in which case the covenants, restrictions, provisions and conditions shall terminate as of the end of the term during which such vote was taken. If at any time the Association or the owners of a majority of the lots desire to amend any of the covenants, restrictions, provisions, and conditions herein, then at a special meeting of the owners and mortgagees and where upon the owners of ninety percent (90%) of the lots and the mortgagees of at least ninety percent (90%) of the lots vote to amend the covenants, restrictions, provisions, and conditions herein such changes shall be effective as of January 1 of the calendar year following the vote to approve such change. In the event of the dissolution of the Association, the right, but not the obligation, of enforcement of these covenants, restrictions, provisions, or conditions is hereby granted to the Town of Fishers, Indiana Planning Commission, its successors or assigns, in addition to other persons and parties having the right to enforce the same.

31. **Severability.** Invalidation of any of the foregoing covenants, provisions, restrictions or conditions by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

32. **Storm Water Facility.** There shall be no alteration of any storm water drainage facility within the Subdivision unless authorized by the appropriate governmental authority.

33. **Replat Control.** At no time shall any owner of more than one lot replat the lots or portions thereof owned by Owner to one or any number of lots shown on the replat without the prior written approval of Developer or Association in its sole and controlling discretion. In any event of any approved replat, any assessment by the Association shall be on a per lot basis based on the lots as originally platted in the Plat, not on the basis of any replat.

34. **Additional Membership.** An owner of a lot in the Subdivision is automatically a member of the Brooks Park Amenity Association. Such membership is mandatory and the owner had all rights for members of and is subject to the covenants, conditions, rules and regulations issued by the Brooks Park Amenity Association.
IN WITNESS WHEREOF, the manager of Macs Landing, LLC, an Indiana limited liability company, does hereby execute this Plat Restrictions as of the date written below:

Macs Landing, LLC
BY: Pam, Ltd., an Indiana limited partnership and manager of Macs Landing, LLC
BY: Pam, Inc. Managing General Partner of Pam, Ltd.

BY: Michael H. Stikelather, Vice President of Pam, Inc.

Date: November 2, 2005

DECLARANT

STATE OF INDIANA

COUNTY OF Hamilton

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Michael H. Stikelather, Vice President of Pam, Inc., the managing general partner of Pam, Ltd., the manager of Macs Landing, LLC and having been duly sworn, acknowledged that all necessary authority has been granted for his execution of this document and acknowledged the execution of this Declaration of Covenants, Easements and Restrictions on behalf of Macs Landing, LLC as his free act and deed.

Witness my hand and Notarial Seal this 29th day of November, 2005.

SEAL

My Commission Expires: 07-24-11

Notary Public

Residing in County Printed Name

This document was prepared by Macs Landing, LLC
DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS

OF

BROOKS PARK AMENITY AREA
TABLE OF CONTENTS

1. Definitions ........................................................................................................ 4
2. Declaration ......................................................................................................... 6
3. Amenity Area ..................................................................................................... 6
4. Ownership of Amenity Area ........................................................................... 6
5. Delegation of Use of the Amenity Area .......................................................... 7
6. Easements in Amenity Area ........................................................................... 7
   (a) General ........................................................................................................... 7
   (b) Easement for Utilities and Public and Quasi-Public Vehicles ...................... 7
7. Association: Membership, Voting, Functions ............................................... 7
   (a) Membership in Association .......................................................................... 7
   (b) Voting Rights ................................................................................................. 8
   (c) Functions .................................................................................................... 8
8. Board of Directors ........................................................................................... 8
   (a) Management ................................................................................................ 8
   (b) Initial Board of Directors ............................................................................ 8
   (c) Additional Qualifications ........................................................................... 9
   (d) Term of Office, Vacancy ............................................................................ 9
   (e) Duties of the Board of Directors ................................................................. 9
   (f) Powers of the Board of Directors ............................................................... 10
   (g) Limitation on Board Action ....................................................................... 11
   (h) Compensation ............................................................................................ 11
   (i) Non-Liability of Directors ......................................................................... 11
   (j) Additional Indemnity of Directors .............................................................. 11
   (k) Bond ......................................................................................................... 12
9. Operations Committee .................................................................................... 12
10. Real Estate Taxes ............................................................................................ 12
11. Utilities .......................................................................................................... 12
12. Maintenance, Repairs and Replacements .................................................... 12
13. Assessments .................................................................................................... 13
   (a) Annual Accounting ................................................................................... 13
   (b) Proposed Annual Budget .......................................................................... 13
   (c) Regular Assessments .............................................................................. 13
   (d) Special Assessments .............................................................................. 15
   (e) Initial Contribution ................................................................................... 15
   (f) Failure of Owner to Pay Assessments ...................................................... 16
   (g) Subordination of Assessment Lien to Mortgage .................................... 16
14. Mortgages and Unpaid Assessments .............................................................. 17
   (a) Notice to Association ................................................................................ 17
   (b) Notice of Unpaid Assessments .................................................................. 17
   (c) Right of Mortgage to Pay Real Estate Taxes or Insurance Premiums .... 17
15. Insurance ........................................................................................................ 17
   (a) Casualty Insurance .................................................................................... 17
   (b) Public Liability Insurance ........................................................................ 18
   (c) Other Insurance ....................................................................................... 18
   (d) General Provisions ................................................................................... 18
16. Casualty and Restoration of Amenity Area .................................................... 18
17. Covenants and Restricions ........................................................................... 19
18. Amendment of Declaration ........................................................................... 20
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td></td>
</tr>
<tr>
<td>Generally</td>
<td>20</td>
</tr>
<tr>
<td>(b)</td>
<td></td>
</tr>
<tr>
<td>Amendments by Declarant Only</td>
<td>21</td>
</tr>
<tr>
<td>Acceptance and Ratification</td>
<td>21</td>
</tr>
<tr>
<td>Covenants Between Declarant and Drees</td>
<td>21</td>
</tr>
<tr>
<td>Negligence</td>
<td>22</td>
</tr>
<tr>
<td>Costs and Attorneys Fees</td>
<td>22</td>
</tr>
<tr>
<td>Waiver</td>
<td>22</td>
</tr>
<tr>
<td>Severability Clause</td>
<td>22</td>
</tr>
<tr>
<td>Pronouns</td>
<td>22</td>
</tr>
<tr>
<td>Interpretation</td>
<td>22</td>
</tr>
<tr>
<td>No Liability</td>
<td>22</td>
</tr>
<tr>
<td>Rules and Regulations</td>
<td>22</td>
</tr>
<tr>
<td>Controlling Document</td>
<td>22</td>
</tr>
<tr>
<td>Assignment</td>
<td>22</td>
</tr>
</tbody>
</table>
DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS OF BROOKS PARK AMENITY AREA

THIS DECLARATION is made effective as of February 23, 2006 (the "Effective Date"), by Macs Landing, LLC, an Indiana limited liability company ("Declarant"), and joined in by Drees Premier Homes, Inc., an Ohio corporation ("Drees").

WITNESSETH:

WHEREAS, the following facts are true:

A. Declarant is the sole owner in fee simple title to certain real estate located in Hamilton County, Indiana, more particularly designated on the attached Exhibit A, which is incorporated herein by reference (hereinafter referred to as the "Brooks Park Real Estate").

B. Drees is the sole owner in fee simple title to certain real estate located in Hamilton County, Indiana, more particularly designated on the attached Exhibit B, which is incorporated herein by reference (hereinafter referred to as the "Belmont Place Real Estate"), which is adjacent to the Brooks Park Real Estate.

C. Declarant intends to develop the Brooks Park Real Estate and Drees intends to develop the Belmont Place Real Estate into multiple residential areas for single-family homes.

D. Declarant and Drees, by execution and recording of this Declaration, are subjecting the Brooks Park Real Estate and the Belmont Place Real Estate to the terms and provisions of this Declaration and assuring that all properties which are conveyed which are a part of the Brooks Park Real Estate and the Belmont Place Real Estate shall be conveyed subject to the terms and conditions of this Declaration, which shall run with the Brooks Park Real Estate and the Belmont Place Real Estate and be binding upon all parties having any right, title or interest in the Brooks Park Real Estate and the Belmont Place Real Estate, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner.

NOW, THEREFORE, Declarant hereby makes this Declaration as follows:

1. Definitions. The following terms as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

   (a) "Amenity Area" means the swimming pool, clubhouse and related recreational facilities to be constructed by Declarant and to be located on the Brooks Park Real Estate, as more particularly depicted on Exhibit C attached hereto, and the Retention Pond and Common Area (as hereinafter defined).

   (b) "Applicable Date" means the first to occur of (i) the date upon which the written resignation of all Class B Members (as hereinafter defined) is delivered to the Secretary of the Association (as hereinafter defined), or (ii) the date when Declarant, any and all successors and assigns of Declarant designated by Declarant as Class B Members, have not owned any portion of the Brooks Park Real Estate for six (6) months, provided, however, that no Class B Member shall resign until six (6) months after the improvements described in Section 1(b) have been completed.
(c) "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Association (as hereinafter defined). The Articles of Incorporation are incorporated herein by reference.

(d) "Association" means a not-for-profit corporation named Brooks Park Amenity Area Association, Inc. or its successors and assigns, whose Members shall be the Owners of Lots or appointees as provided in Paragraph 7 of this Declaration; such Association being more particularly described in Paragraph 7 of this Declaration.

(e) "Belmont Place" means the name by which the Belmont Place Real Estate, which is the subject of this Declaration, shall be known.

(f) "Board of Directors" means the governing body of the Association elected by the Members in accordance with the Bylaws of the Association.

(g) "Brooks Park" means the name by which the Brooks Park Real Estate, which is the subject of this Declaration, shall be known.

(h) "Bylaws" means the Bylaws of the Association and shall provide for the election of directors and officers and other governing officials of the Association.

(i) "Common Areas" refers to those common areas adjacent to the Retention Pond (as hereinafter defined), which common areas are located on Section 3 of the Brooks Park Real Estate and Section 4 of the Belmont Place Real Estate as depicted on the survey drawing attached hereto as Exhibit D.

(j) "Common Expenses" means expenses for administration of the Association, expenses for the upkeep, maintenance, repair and replacement of the Amenity Area and expenses necessary for the Association and the Board of Directors to perform their duties and obligations as set forth in this Declaration, and all sums lawfully assessed against the Members of the Association.

(k) "Costs" means all direct, variable, out-of-pocket construction costs incurred and paid, on a bona fide arm's-length basis, for constructing and installing the swimming pool, clubhouse and related recreational facilities, and maintaining the Amenity Area, including, without limitation, construction contract sums paid to general contractors, and direct ancillary "soft" costs and fees incurred on a bona fide, arm's-length basis for services and matters related to the construction, installation and maintenance process, such as staking, construction and building permits, design and engineering, soil tests, inspections, and construction management (all to the extent paid to third parties), and fees or charges for performance or payment bonds, or other surety required by governmental authorities having jurisdiction over the Amenity Area. The Costs will not include general overhead, administration, unreasonable financing charges or unreasonable cost of funds, or mark-up.

(l) "Declarant" shall mean and refer to Maccs Landing, LLC, and any successors and assigns of Declarant whom it designates in one or more written recorded instruments, to have the rights of Declarant hereunder including, but not limited to, any mortgagee acquiring title to any portion of the Brooks Park Real Estate or the Belmont Place Real Estate pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant or Dess.

(m) " Dwelling Unit" means a living unit located upon a Lot.
(n) "Lot" means any plot of ground designated as such upon a Plat and upon which one (1) Dwelling Unit is constructed, may be constructed or exists thereon. When Lot is used it shall be deemed to include the Dwelling Unit, if any, located thereon.

(o) "Member" means a member of the Association.

(p) "Mortgages" means the holder of a first mortgage lien on a Lot.

(q) "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns the fee simple title to a Lot.

(r) "Plat" or "Plats" means a subdivision survey or surveys of all or a portion of the Brooks Park Real Estate and the Belmont Park Real Estate which are or will be recorded in the Office of the Recorder of Hamilton County, Indiana.

(s) "Quorum" means Members holding fifty percent (50%) of the aggregate voting rights in the Association.

(t) "Retention Pond" refers to the retention pond to be constructed by Declarant that will serve the Brooks Park Real Estate and the Belmont Place Real Estate, including appurtenant real property including common areas, water mains, culverts, piping, and other storm sewer and drainage improvements, which Retention Pond shall be located on Section 3 of the Brooks Park Real Estate and Section 4 of the Belmont Place Real Estate as depicted on the survey drawing attached hereto as Exhibit D.

2. Declaration. Declarant hereby expressly declares that the Brooks Park Real Estate shall be held, conveyed and transferred in accordance with the provisions of this Declaration. Declarant hereby expressly declares that the Belmont Place Real Estate shall be held, conveyed and transferred in accordance with the provisions of this Declaration.

3. Amenity Area. The Amenity Area shall be conveyed to the Association and the Association shall have the obligation to provide for the maintenance, upkeep, repairs and replacement of the Amenity Area at all times, even if the Amenity Area has not yet been conveyed to the Association. Declarant has the right, but not the obligation, to construct recreational facilities in any part of the Amenity Area, and if such facilities are constructed, such facilities shall be part of the Amenity Area. Declarant covenants that construction of the pool, clubhouse and related recreational facilities to be located within the Amenity Area shall be completed on or before November 1, 2006, with such facilities to be open by May 26, 2007. Construction of the pool, clubhouse and related recreational facilities to be located within the Amenity Area shall be deemed completed when the applicable local governmental authority issues a certificate of occupancy for such facilities. Until the Applicable Date, Declarant shall be entitled to maintain a sales office within the Amenity Area.

4. Ownership of Amenity Area. The Amenity Area shall be conveyed to or owned by the Association, and shall be held for the exclusive use and enjoyment of the Members, all of whom shall have the exclusive right and easement of enjoyment in and to the Amenity Area which right shall pass with title to every Lot, subject to the provisions of this Declaration, including but not limited to, the following:

(a) The right of the Association to adopt such rules and regulations regarding the Amenity Area as it deems necessary as provided in Paragraph 8.
(b) The Amenity Area shall be conveyed to or owned by the Association on the Applicable Date or earlier; provided, however, that the conveyance of the Amenity Area to the Association shall not prevent Declarant from improving the Amenity Area as Declarant deems appropriate (including but not limited to the construction of recreational facilities) at any time prior to the Applicable Date; and further provided the Association shall be responsible for any costs and expenses related to the Amenity Area, even if the Amenity Area or any part thereof has not been conveyed to the Association.

5. Delegation of Use of the Amenity Area. The Amenity Area is for the exclusive use by a Member, the Member's family and guests and any contract purchaser from a Member who resides on any Lot in accordance with provisions of this Declaration and the rules or regulations promulgated by the Association.


(a) General. Each Owner shall have an easement in common with each other Owners to use all pipes, wires, cables, conduits, utility lines, drainage facilities, sidewalks, roads and other common facilities, if any, located in the Amenity Area or otherwise designated in any Plat. Such easement and right to use shall pass with title to the Lots even though not expressly mentioned in the document passing title.

An easement is also granted to the Association, its officers, agents and employees and to any management company selected by the Association to enter in or to cross over the Amenity Area to perform its duties; provided, however, except in case of an emergency, reasonable notice shall be given to the Owner.

(b) Easement for Utilities and Public and Quasi-Public Vehicles. All public and quasi-public vehicles, including but not limited to, police, fire and other emergency vehicles, trash and garbage collection, post office vehicles and privately-owned delivery vehicles, shall have the right to enter upon the Amenity Area for the performance of their duties. An easement is also granted to all utilities and their agents for ingress-egress, installation, replacement, repairing and maintaining of such utilities, including but not limited to, water, sewer, gas, telephone, and electricity on the Amenity Area; provided, however, nothing herein shall permit the installation of sewer, electric lines, water lines or other utilities except as initially designed and approved by Declarant or as thereafter may be approved by the Board of Directors. By virtue of this easement, the electric and telephone utilities are expressly permitted to erect and maintain the necessary equipment on the Amenity Area and to affix and maintain electric and telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of the buildings provided such installation is first approved in writing by Declarant or the Board.

7. Association; Membership; Voting; Functions.

(a) Membership in Association. Declarant and each Owner of a Lot which is subject to assessment shall, automatically upon becoming an Owner, be and become a Member of the Association and shall remain a Member until such time as his ownership of a Lot ceases at which time his membership shall terminate 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 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.
(b) Voting Rights. The Association shall have two (2) classes of membership with the following voting rights:

(i) Class A. Class A Members shall be all Owners. Upon and after the Applicable Date, each Class A Member shall be entitled to one (1) vote for each Lot (as originally platted) of which such Member is the Owner with respect to each matter submitted to a vote of 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 each 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. If an Owner of more than one Lot in Belmont Place or Brooks Park replats its Lots into a lesser number of lots than was originally platted, they may still have one vote per Lot as originally platted, not as replatted.

(ii) Class B. Class B Members shall be Declarant and all successors and assigns of Declarant designated by Declarant as Class B Members in a written notice mailed or delivered to the Secretary of the Association. Until the Applicable Date, the Class B Members shall have all voting rights with respect to any matters submitted to the Members of the Association, and no other class of membership shall have any voting rights. The Class B membership shall cease and terminate upon the Applicable Date.

(c) Functions. The Association has been formed for the purpose of providing for the maintenance, repair, upkeep, replacement, administration, operation and ownership of the Amenity Area, to pay taxes assessed against and payable with respect to the Amenity Area and to pay any other necessary expenses and costs in connection with the Amenity Area, and to perform such other functions as may be designated for it to perform under this Declaration.

8. Board of Directors

(a) Management. 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, or is a person appointed by Declarant as provided in subparagraph (b) of this Paragraph 8.

(b) Initial Board of Directors. The initial Board of Directors shall be composed of the three (3) persons designated by Declarant (herein referred to as the "Initial Board"). Two (2) members of the Initial Board shall be appointed by Declarant, and one (1) member of the Initial Board shall be appointed by Deeds. Notwithstanding anything to the contrary contained in this Declaration, the Articles or the Bylaws (a) the Initial Board shall hold office until the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to the Applicable Date, determined as provided above, every such vacancy shall be filled by a person appointed by the Declarant or Deeds, as applicable, who shall thereafter be deemed a member of the Initial Board. Each Owner, by acceptance of a deed to a Lot, or by acquisition of any interest in a Dwelling Unit by any method shall be deemed to have appointed Declarant 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 Declarant determines, on all matters as to which Members of the Association are entitled to vote under the Declaration, the Articles, the Bylaws or otherwise. This appointment of Declarant 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 Declarant to fill a vacancy, shall be deemed a Member of the Association 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 a Member of the Association nor an Owner of any Lot for any other purpose (unless he is actually the Owner of a Lot and thereby a Member of the Association).

(c) Additional Qualifications.

(i) 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 may be represented on the Board of Directors by more than one person at a time.

(ii) The Board of Directors (other than the Initial Board) shall be composed of one (1) person who owns a Lot within the Brooks Park Real Estate and one (1) person who owns a Lot within the Belmont Place Real Estate, and three (3) additional members who will be “at large” representatives and may reside in either Brooks Park or Belmont Place. The Members residing in Brooks Park shall elect the member of the Board to represent Brooks Park, and the Members residing in Belmont Place shall elect the member of the Board to represent Belmont Place. The “at large” representatives shall be elected by all Members of the Association.

(d) Term of Office, Vacancy. Members of the Board of Directors shall serve for such terms, and vacancies in the Board of Directors shall be filled, as provided in the Bylaws of the Association.

(e) Duties of the Board of Directors. The Board of Directors shall be the governing body of the Association representing all of the Owners and being responsible for the functions and duties of the Association, including but not limited to, providing for the administration of the Association, the management, maintenance, repair, upkeep and replacement of the Amenity Area (unless the same are otherwise the responsibility or duty of Owners) and the collection and disbursement of the Common Expenses. The Board may, on behalf of the Association, employ a reputable and recognized professional property management agent (herein called the “Managing Agent”) upon such terms as the Board shall find, in its discretion, reasonable and customary. The Managing Agent, if one is employed, shall assist the Board in carrying out the Board's duties and the Association's responsibilities, which include, but are not limited to:

(i) Maintenance, repair, upkeep and replacement of the Amenity Area (except as is otherwise the obligation of an Owner), including but not limited to, the maintenance, repair, upkeep and replacement of the following (if located within the Amenity Area): (1) swimming pool, (2) signage, (3) walls, fences and gates, (4) flowers, plant material, grass and other landscaping, (5) irrigation system, (6) lighting, (7) clubhouse, (8) Retention Pond, (9) Common Area, and (10) recreational facilities;
(ii) Repair, upkeep, maintenance and replacement of any security system and providing for any security personnel;

(iii) Assessment and collection from the Owners of each Owner's respective share of the Common Expenses;

(iv) Preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered;

(v) Preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be delivered to each Owner simultaneously with delivery of the proposed annual budget for the current year;

(vi) Procuring and maintaining for the benefit of the Association and the Board any insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;

(vii) Paying taxes assessed against and payable with respect to the Amenity Area and paying any other necessary expenses and costs in connection with the Amenity Area; and

(viii) Maintenance of any security gates, including any locks and security devices.

(f) Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:

(i) To employ a Managing Agent to assist the Board in performing its duties;

(ii) To purchase, lease or otherwise obtain for the Association, to enable it to perform its functions and duties, such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;

(iii) To employ legal counsel, architects, contractors, accountants and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Association;

(iv) To employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the Board of Directors to perform its duties;

(v) To include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;

(vi) To open and maintain a bank account or accounts in the name of the Association;
(vii) To promulgate, adopt, revise, amend and alter from time to time such additional rules and regulations with respect to use, occupancy, operation and enjoyment of the Amenity Area (in addition to those set forth in this Declaration) as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered or mailed to all Owners.

(g) Limitation on Board Action. The provisions of this subsection (g) do not apply to Declarant or the Initial Board. 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 $10,000.00 without obtaining the prior approval of a majority of the Owners, except that in the following cases such approval shall not be necessary:

(i) Contracts for replacing or restoring portions of the Amenity Area damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;

(ii) Proposed contracts and proposed expenditures covered in the annual budget; and

(iii) 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.

(h) Compensation. No Director shall receive any compensation for his services as such except to the extent as may be expressly authorized by a majority 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.

(i) Non-Liability of Directors. The Directors 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, 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 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 shall have no personal liability with respect to any contract made by them on behalf of the Association.

(j) Additional Indemnity of Directors. 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 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 actions, suits or proceedings where such Director is adjudged liable for bad faith, gross negligence or willful misconduct in the performance of his duties. The Association shall also reimburse any such Director the reasonable cost of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a vote of the Members constituting sixty percent (60%) of a Quorum that such Director 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, no Director 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 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 officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director 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.

(k) Bond. The Board of Directors may provide surety bonds and may require the Managing Agent (if any), the treasurer of the Association, and such other officers as the Board deems necessary, to provide surety bonds, indemnifying the Association against larceny, theft, embezzlement, forgery, misappropriation, 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 bond shall be a Common Expense.

9. Operations Committee. The Initial Board and the Board may appoint an Operations Committee comprised of Owners of Lots within the Brooks Park Real Estate and the Belmont Place Real Estate to assist the Initial Board and the Board with day-to-day operations of the Amenity Area. The Operations Committee shall consist of at least three (3) but no more than nine (9) persons and shall have exclusive jurisdiction to perform such tasks and to serve for such periods as may be designated by a resolution adopted by the Initial Board or the Board. Until the Applicable Date, the Initial Board retains the right to appoint all members of the Operations Committee, who shall serve and be removed at the discretion of the Initial Board. After the Applicable Date, the Board shall appoint the members of the Operations Committee who shall serve and may be removed at the discretion of the Board.

10. Real Estate Taxes. Real estate taxes are to be separately assessed and taxed to the Amenity Area. In the event that for any year the real estate taxes are not separately assessed and taxed to the Amenity Area but are assessed and taxed on the Brooks Park Real Estate or the Belmont Place Real Estate or part thereof as a whole, without a breakdown for the Amenity Area, then each Owner shall pay his proportionate share of the real estate taxes assessed to the land comprising the Amenity Area or that part thereof that is assessed as a whole as determined by the Board. Real estate taxes or other assessments which are chargeable against the Amenity Area shall be paid by the Association, and treated as a Common Expense of the Association, even if not then owned by the Association.

11. Utilities. Utilities applicable to the Amenity Area shall be an Common Expense. Utilities which are not separately metered, if any, shall be treated as and paid as part of the Common Expense unless otherwise determined by the Association.

12. Maintenance, Repairs and Replacements. Maintenance, repairs, replacements and upkeep of the Amenity Area (except as such is the obligation of the individual Owners) as provided in Paragraph 8(c), including the Retention Pond and Common Area, shall be furnished by the Association, as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses. The Association shall maintain the Amenity Area, including the Retention Pond and Common Area, in a good condition and repair, and shall take all actions necessary to provide for continuous proper functioning of the Amenity Area, including the Retention Pond and Common Area, including, without limitation, removal of debris or other materials, maintenance of piping and related facilities and mowing.

Notwithstanding any obligation or duty of the Association to repair or maintain the Amenity Area, if, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused, or if maintenance, repairs or replacements shall be required thereby, which would otherwise be a
Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association, unless such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Association, the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's Lot is subject.

13. **Assessments.**

(a) **Annual Accounting.** Annually, after the close of each fiscal year of the Association, the Board shall cause to be prepared and a copy furnished to each Owner who so requests a financial statement prepared by an accounting group approved by the Board, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

(b) **Proposed Annual Budget.** Annually, before the date of the annual meeting of the Association, the Board of Directors shall cause to be prepared a proposed annual budget for the next fiscal year estimating the total amount of the Common Expenses for the next fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Members at the annual meeting of the Association for adoption and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the next fiscal year. At the annual meeting of the Members, notwithstanding any other provision in this Declaration, the Articles or the Bylaws, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of those Members present either in person or by proxy, provided, however, that in no event shall the annual meeting of the Members be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all sums assessed by the Association shall be established by using generally accepted accounting principles applied on a consistent basis.

The annual budget and the Regular Assessments shall, in addition, be established to include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Amenity Area that must be repaired and replaced on a periodic basis, which replacement reserve fund shall be used for those purposes and for annual and ordinary repair expenses. Such replacement reserve fund for capital expenditures and replacement and repair of the Amenity Area shall be maintained by the Association in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Hamilton County, Indiana selected from time to time by the Board and shall constitute a portion of the Regular Assessment.

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 Owners to pay the Common Expenses as herein provided, whenever determined. Whenever, whether before or after the annual meeting of the Association, there is no annual budget approved by the Owners as herein provided for such current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

(c) **Regular Assessments.** The annual budget, as adopted by the Members, shall, based on the estimated cash requirement for the Common Expenses in the current fiscal year as
set forth in said budget, contain a proposed assessment, against each Lot (as originally platted). The assessment against each Lot shall be equal to the Common Expenses multiplied by a percentage equal to one (1) divided by the number of Lots in the Brooks Park Real Estate and Belmont Place Real Estate combined. Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his respective Lot (herein called the "Regular Assessment"). The Regular Assessment for the first fiscal year shall be Three Hundred Dollars ($300.00) if construction of the swimming pool has been completed, or One Hundred Dollars ($100.00) until construction of the swimming pool is completed. In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Members, to reflect the assessment against each Lot based upon such annual budget as finally adopted by the Members. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as hereinabove provided. The Regular Assessment against each Lot shall be paid in advance in equal monthly installments with the first payment due on the first day of the month following the date such Lot is platted and prorated to the first day of the month when the next monthly payment is due. Thereafter, payment of the Regular Assessment shall be paid monthly. Owners of Lots shall remit the monthly payments of the Regular Assessments (and any other assessments) to the Board of Directors or the Managing Agent, as directed by the Board of Directors by the first (1st) day of the following month; provided, however, the Board may elect to have the Owners pay assessments quarterly, semi-annually or annually, in advance. In the event the Regular Assessment for a particular fiscal year of the Association was initially based upon a temporary budget:

(i) If the Regular Assessment based upon the final annual budget adopted by the Members exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid with such next payment, and all payments thereafter during such fiscal year, shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year, or

(ii) If the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Members, such excess shall be allocated as determined by the Initial Board or the Board in its sole discretion;

provided, however, that if an Owner had paid his Regular Assessment annually in advance, then the adjustments set forth under (i) or (ii) above shall be made by a cash payment by, or credit against future assessments to, the Owner on the first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Members.

Declarant and Drees (and any entity to which Declarant or Drees shall assign their interest in this Declaration) shall not be obligated to pay any Regular Assessments, Special Assessments or Initial Contributions

The Regular Assessment for the current fiscal year of the Association shall become a lien on each separate Lot as of the first day of each fiscal year of the Association, even though the final determination of the amount of such Regular Assessment may have not been made by that
date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or
transfers his Lot or any interest therein, shall not relieve or release such Owner or his successor as
Owner of such Lot from payment of the Regular Assessment for such Lots as finally determined,
and such Owner and his successor as Owner of such Lots shall be jointly and severally liable for
the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by
the Association pursuant to Paragraph 14 hereof prior to the final determination and adoption of
the annual budget and Regular Assessment for the year in which such statement is made shall
state that the matters set forth therein are subject to adjustment upon determination and adoption
of the final budget and Regular Assessment for such year, and all parties to whom any such
statement may be delivered or who may rely thereon shall be bound by such final determinations.
Semi-annual installments or annual installments of Regular Assessments (as applicable) shall be
due and payable automatically on their respective due dates without any notice from the Board or
the Association, and neither the Board nor the Association shall be responsible for providing any
notice or statement to Owners for the same.

(d) Special Assessments. From time to time, Common Expenses of an unusual or
extraordinary nature or not otherwise anticipated may arise. At such time and without the
approval of the Owners, unless otherwise provided in this Declaration, the Board of Directors
shall have the full right, power and authority to make special assessments which, upon resolution
of the Board, shall be the equal obligation of all Owners and shall become a lien on each Lot (as
originally platted) (herein called "Special Assessment"). The Board shall be obligated to provide
the Owners with notice of the date of the Board of Directors' meeting when the vote for any
resolution for a Special Assessment is to be made. Without limiting the generality of the
foregoing provisions, Special Assessments may be made by the Board of Directors from time to
time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of
damage caused by fire or other casualty or disaster to the extent insurance proceeds are
insufficient therefore. Such Special Assessment shall be collected directly by the homeowners'
associations of Brooks Park and Belmont Place and then remitted by said homeowners'
associations to the Association.

(c) Initial Contribution. Upon the initial purchase of a Lot by a person, such
purchaser shall pay up to $1,500.00 ("Initial Contribution") for deposit in a construction fund,
which fund is to be used only for the Costs of constructing the Amenity Area improvements
(excluding the Retention Pond and Common Area). The Initial Contribution shall be collected
and remitted to the Declarant at the time of the initial purchase of a Lot in Brooks Park or
Belmont Place; provided, however, that if construction of the Amenity Area improvements
(excluding the Retention Pond and Common Area) is not completed by November 1, 2006, as
required by Section 3 hereof, then the Initial Contribution shall be placed into escrow with
Midwest Title Corporation. In such event, the Declarant may submit to Dress and the Escrow
Agent, on a monthly basis, a request for payment for the Costs of constructing the Amenity Area
improvements (excluding the Retention Pond and Common Area) to the date of such request.
The request for payment shall show, in reasonable detail, the actual Costs incurred by Declarant
in constructing the Amenity Area improvements (excluding the Retention Pond and Common
Area). If Dress does not provide the Declarant and the Escrow Agent with an objection, in
writing, to the request for payment within ten (10) days from the date of the request for payment,
then the Escrow Agent shall pay the Costs reflected in the request for payment to Declarant.
Upon completion of construction of the Amenity Area improvements (excluding the Retention
Pond and Common Area), the Initial Contribution shall no longer be placed into escrow but shall
be paid directly to Declarant. Such Initial Contribution amount shall be paid by all initial
purchasers of Lots (other than Declarant and Drees and any entity to which Declarant or Drees shall assign their interest in this Declaration) even if such purchase occurs after the Applicable Date. The construction plans and budget for construction of the Amenity Area improvements and the amount of the Initial Contribution shall be subject to the reasonable review of Drees and the review and approval of the Initial Board.

Payment of the Regular Assessment prior to the Applicable Date with respect to each Lot shall commence on the first day of the month following the date that the Lots are platted ("Commencement Date"). The first payment shall be payable on the Commencement Date. Thereafter, payments of the Regular Assessment shall be paid monthly.

(f) Failure of Owner to Pay Assessments. No Owner may exempt himself from paying Regular Assessments, Special Assessments, or Initial Contribution or from contributing toward the Common Expenses or toward any other expense lawfully agreed upon by waiver of the use or enjoyment of the Amenity Area or by abandonment of the Lot belonging to him. Each Owner shall be personally liable for the payment of all Regular and Special Assessment and Initial Contribution. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessment or Special Assessment when due, the lien for such assessment on the Owner’s Lot and Dwelling Unit may be filed and foreclosed by the Board of Directors for and on behalf of the Association as a mortgage on real property or as otherwise provided by law. Upon the failure of the Owner to make timely payments of any Regular Assessment or Special Assessment or Initial Contribution when due the Board may, in its discretion, accelerate the entire balance of unpaid assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. The Board may, at its option, bring suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment or Initial Contribution without foreclosing or waiving the lien securing the same. In any action to recover a Regular Assessment or Special Assessment or Initial Contribution, whether by foreclosure or otherwise, the Board for and on behalf of the Association shall be entitled to recover from the Owner of the respective Lot and Dwelling Unit costs and expenses of such action incurred (including but not limited to reasonable attorneys’ fees) and interest from the date such assessments were due until paid at the rate equal to the prime interest rate as announced by Chase Bank, Indiana, NA, from time to time or if said bank is no longer in existence then such rate charged by a national bank in Hamilton County, Indiana, selected by the Board of Directors) during the unpaid period plus four percent (4%).

(g) Subordination of Assessment Lien to Mortgage. Notwithstanding anything contained in this Declaration, the Articles or the Bylaws, any sale or transfer of a Lot to a 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 Regular 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 therefor. No such sale, transfer or conveyance shall relieve the Lot and Dwelling Unit or the purchaser thereof at such foreclosure sale or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments or Special Assessments thereafter becoming due or from the lien therefore. Such unpaid share of any Regular 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 Lots from which it arose).

(a) Notice to Association. Any Owner who places a first mortgage lien upon his Lot, or the Mortgagor, shall notify the Secretary of the Association thereof and provide the name and address of the Mortgagor. A record of such Mortgagor and name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagor pursuant to the terms of this Declaration, the Bylaws or otherwise shall be deemed effectively given if mailed to such Mortgagor at the address shown in such record at the time provided. Unless notification of any such mortgage and the name and address of Mortgagor are furnished to the Secretary, either by the Owner or the Mortgagor, no notice to any Mortgagor, as may be otherwise required by this Declaration, the Bylaws or otherwise, shall be required and no Mortgagee shall be entitled to vote on any matter to which it otherwise may be entitled by virtue of this Declaration, the Bylaws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

The Association shall, upon request of a Mortgagee who has furnished the Association with its name and address as hereinabove provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under this Declaration or the Bylaws which is not cured within sixty (60) days.

(b) Notice of Unpaid Assessments. The Association shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments or Initial Contribution or other charges against the Lot, which statement shall be binding upon the Association and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Paragraph 13 hereof.

(c) Right of Mortgagee to Pay Real Estate Taxes or Insurance Premiums. Mortgagees shall have the right, but not the obligation, (1) to pay any taxes or other charges against the Amenity Area which are in default and (2) to pay any overdue premiums on hazard insurance for the Amenity Area or to secure new hazard insurance for the Amenity Area on the lapse of a policy. Any mortgagee making such payment shall be owed immediate reimbursement by the Association.

15. Insurance.

(a) Casualty Insurance. The Association shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring all of the Amenity Area in an amount equal to the full replacement value of the improvements which in whole or in part, comprise the Amenity Area, unless the Board determines that a lesser amount of insurance is appropriate. If the Board of Directors can obtain such coverage for reasonable amounts they shall also obtain "all-risk" 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.
All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Association as hereinabove set forth shall be paid to it or to the Board of Directors. The proceeds shall be used or disbursed by the Association or Board of Directors, as appropriate.

Such master casualty insurance policy, and "all risk" coverage, if obtained, shall be in the amount of $1,000,000. Each and every claim against the Association, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and any person acting or who may come to act as agents or employees of any of the foregoing with respect to the Amenity Area. Such policy shall not be reduced for any reason without at least thirty (30) days written notice to the Owners.

(b) Public Liability Insurance. The Association shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover the Association, the Board of Directors, any committee of the Association or Board, any Managing Agent appointed or employed by the Association, and persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Amenity Area. Such policy shall not be reduced for any reason without at least thirty (30) days written notice to the Owners.

(c) Other Insurance. The Association shall also obtain any other insurance required by law to be maintained, including but not limited to workers' compensation and occupational disease insurance, and such other insurance as the Board of Directors from time to time deem necessary, advisable, or appropriate, including, but not limited to, liability insurance on vehicles owned or leased by the Association and officers and directors' liability policies. Such insurance shall inure to the benefit of each Owner, the Association, the Board of Directors, any Managing Agent acting on behalf of the Association. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Association.

(d) General Provisions. The premiums for all insurance hereinabove described shall be paid by the Association as part of the Common Expenses.

16. Casualty and Restoration of Amenity Area. In the event of damage to or destruction of any portion of the Amenity Area due to fire or any other casualty or disaster, the Association shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Association, if any, shall be applied to the cost of such repair and reconstruction.

In the event the insurance proceeds, if any, received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction of the Amenity Area, or in the event there are no insurance proceeds, the cost for repairing the damage and reconstructing the Amenity Area so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Association 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 as provided herein.
For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the Amenity Area to as near as possible the same condition as it existed immediately prior to the damage or destruction.

17. Covenant and Restrictions. The following covenants and restrictions on the use and enjoyment of the Amenity Area shall be in addition to any other covenants or restrictions contained herein, in the Plats or in the Declarations for Brooks Park or Belmont Place, and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or by the Association. Present or future Owners or the Association shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

(a) Nothing shall be done or kept in or on the Amenity Area which will cause an increase in the rate of insurance on the Amenity Area. No Owner shall permit anything to be done or kept in his Dwelling Unit or on his Lot or on any of the Amenity Area which will result in a cancellation of insurance on any part of the Amenity Area, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.

(b) No noxious, unlawful or otherwise disruptive or offensive activity shall be carried on or upon any part of the Amenity Area, nor shall anything be done thereon which may become an annoyance or nuisance to other Owners and/or their guests.

(c) All garbage and trash containers, bottled gas tanks, swimming pool equipment, heating and sprinkler pumps and other such outdoor equipment must be placed underground, walled-in or placed in sight-screened or fenced-in areas so that such equipment shall not be readily visible from any adjacent street or Lot.

(d) All Owners and members of their families, their guests, or invitees, and all occupants of any Dwelling Unit or other persons entitled to use the same and to use and enjoy the Amenity Area or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Amenity Area.

(e) No Owner shall be allowed to plant trees, landscape or do any gardening in any part of the Amenity Area or any other area where it is the obligation of the Association to maintain except with express permission from the Board.

(f) The Owner of each Lot shall retain the right to possess and do whatever such Owner shall choose upon such Owner's Lot, provided that neither Owner shall interfere with, nor permit any interference of, or use of the Amenity Area improvements, including the Retention Pond and the Common Area, or do any other thing thereon that is inconsistent with the provisions of this Declaration. No Owner shall construct, install or expand any buildings, structures or other improvements in, on, under or through the Amenity Area, including the Retention Pond, Common Area and outflow piping from the Retention Pond without the Board's prior written consent.
18. **Amendment of Declaration.**

(a) **Generally.** Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

(i) **Notice.** Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered which notice shall be sent at least fourteen (14) days prior to the date of the meeting.

(ii) **Resolution.** A resolution to adopt a proposed amendment may be proposed by the Board of Directors or at least ten percent (10%) of the Members.

(iii) **Meeting.** The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the Bylaws.

(iv) **Adoption.** Any proposed amendment to this Declaration must be approved by a vote of not less than seventy-five percent (75%) in the aggregate of the votes of all Members constituting a Quorum; provided, however, that prior to the Applicable Date all proposed amendments shall require the written consent of the Declarant. In the event any Lot or Dwelling Unit is subject to a first mortgage, the Mortgagor shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagor has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.

(v) **Special Amendments.** No amendment to this Declaration shall be adopted which changes (1) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same, or (2) the provisions of this Declaration of Paragraph 15 with respect to casualty insurance to be maintained by the Association, or (3) the provisions of Paragraph 13 of this Declaration with respect to the commencement of assessments on any Lot, or (4) the provisions of paragraph 18(b) of this Declaration with respect to amendments solely by Declarant, or (5) the provisions of Paragraph 8 relating to the makeup of the Board and the duties of the Board and the Association without, in each and any of such circumstances, the approval of seventy-five percent (75%) of all Members, including Declarant so long as Declarant owns any Lot, and of all Mortgagors whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of this Declaration.

(vi) **Recording.** Each amendment to the Declaration shall be executed by the President and Secretary of the Association and shall be recorded in the Office of the Recorder of Hamilton County, Indiana, and such amendment shall not become effective until so recorded.

(vii) **Membership.** An Owner's membership in the Association may not be terminated by the Association, the Declarant, the Initial Board or the Board without the consent of the Owner whose interest is being terminated. This provision shall not preclude the exercise of all other available legal and
equitable rights and remedies by the Association, the Declarant, the Initial Board or the Board against an Owner in default under the terms of this Declaration.

(b) Amendments by Declarant Only. Notwithstanding the foregoing or anything elsewhere contained herein or in any other document, the Declarant shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the Association, the Board of Directors, any Mortgagees or any other person to amend or supplement this Declaration at any time and from time to time if such amendment or supplement is made (a) to bring this Declaration into compliance with any statutory requirements, (b) to correct clerical, typographical or other errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto, or (c) to clarify Declarant's original intent. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to any amendments described in this Paragraph 18 on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot or Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record any such amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Paragraph 18 shall terminate at such time as six (6) months after the Declarant no longer hold or control title to any part or portion of the Brooks Park Real Estate.

19. Acceptance and Ratification. All present and future Owners, Mortgagees, tenants and occupants of the Lots shall be subject to and shall comply with the provisions of this Declaration, the Articles, and the Bylaws incorporated herein by reference, and the rules and regulations as adopted by the Board of Directors as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Lots shall constitute an agreement that the provisions of this Declaration, the Articles, the Bylaws, and rules and regulations, as each may be amended or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall be binding on any person having at any time any interest or estate in a Lot or the Brooks Park Real Estate or Belmont Place Real Estate as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All persons, corporations, partnerships, trusts, associations, or other legal entities who may occupy, use, enjoy or control a Lot or Lots or any part of the Brooks Park Real Estate or Belmont Place Real Estate in any manner shall be subject to the Declaration, the Articles of Incorporation, the Bylaws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

20. Covenants Between Declarant and Drees. Declarant and Drees warrant to each other that Brooks Park and Belmont Place shall have their own separate free-standing independent homeowners' associations and separate Plats which shall not include any adjoining real property. Drees warrants that at no time shall Drees use the words "Brooks", "Park", or "Brooks Park" in any form whatsoever nor directly or indirectly in connection with all or any part of Belmont Place, or expressly or by implication represent or indicate in any way whatsoever that all or any part of Belmont Place is part of any adjacent community or subdivision(s) constructed by or on behalf of or at the direction of Declarant. This covenant shall apply to, but not be limited to, in any way the name, signage, marketing material, drawings, plans, customer material regarding Belmont Place. Notwithstanding this covenant, Declarant and Drees acknowledge that Drees only in its model home may orally or in simple written form inform potential and actual Owners of Lots within Belmont Place that such potential and actual owners shall be members of the Association and shall enjoy the rights to use the Amenity Area, as provided in this Declaration; provided, however, that Drees shall be permitted to use photographs, drawings, maps, etc.
plans and elevations of the amenity area in the developer's marketing and customer materials in the developer's model home or on the developer's website, so long as the words "Brooks" or "Brooks Park" are not used in conjunction with such photographs, drawings, maps, site plans and elevations.

21. **Negligence.** Each owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees to the extent that such expense is not covered by the proceeds of insurance carried by the Association.

22. **Costs and Attorneys' Fees.** In any proceeding arising because of failure of an owner to make any payments required or to comply with any provision of this Declaration, the Articles of Incorporation, the Bylaws, or the rules and regulations adopted pursuant thereto as each may be amended from time to time, the Association shall be entitled to recover the reasonable attorneys' fees incurred in connection with such default or failure.

23. **Waiver.** No owner may exempt himself from liability for his contribution toward the common expenses by waiver of the use or enjoyment of any of the amenity area or by abandonment of his lot.

24. **Severability Clause.** The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles or the Bylaws, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles, or the Bylaws, and each shall be enforced to the greatest extent permitted by law.

25. **Pronouns.** Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires to the contrary, be deemed to refer to and include all genders. And the singular shall include and refer to the plural and vice versa as appropriate.

26. **Interpretation.** The captions and titles of the various articles, sections, subsections, paragraphs and sub-paragraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

27. **No Liability.** Declarant and the Board may grant, withhold or deny their permission or approval in any instance where their permission or approval is permitted or required without liability of any nature to Owner or any other person for any reason whatsoever and any permission or approval granted shall be binding upon all persons.

28. **Rules and Regulations.** The Board of Directors shall have the right to promulgate and establish rules and regulations relating to the requirements for maintenance and use of the amenity area.

29. **Controlling Document.** In the event there is any conflict between the provisions of this Declaration and any Declaration (or supplements or amendments thereto) of Brooks Park or Belmont Place or any Plat (as such may be amended or supplemented), the terms and provisions of this Declaration as supplemented or amended shall be controlling.

Conflict, as used herein, shall mean a situation where the application of the language in one document contradicts the language in another document. Conflict does not occur where language in one document is simply more restrictive than language in another document.
30. **Assignment** Macs Landing and Drees may assign their interest in this Declaration; provided, however, this Declaration may not be assigned by Drees without the written consent of Macs Landing, which consent shall not be unreasonably withheld. Notwithstanding the above, Drees shall have the right, without the consent of Macs Landing, to assign this Declaration to a corporation, partnership or limited liability company in which Drees is one of the shareholders, general partners or members of such entity. In the event of an assignment of this Declaration, neither Macs Landing nor Drees shall be released from any of their respective obligations under this Declaration.

**IN WITNESS WHEREOF,** the undersigned have caused this Declaration to be executed as of the day and year first above written.

MAC LANDING, LLC, an Indiana limited liability company

By: Pam, L.P., Managing Member of Macs Landing, LLC
By: Pam, Inc., Managing General Partner of Pam, L.P.

By: _________________________________
Michael H. Stikeleather, Vice President

STATE OF INDIANA
COUNTY OF HAMILTON

Before me, a Notary Public in and for said County and State, personally appeared Michael H. Stikeleather, by me known and by me known to be the Vice President of Pam, Inc., Managing General Partner of Pam, L.P., the Managing Member of Macs Landing, LLC, who acknowledged the execution of the foregoing “Declaration of Easements, Covenants and Restrictions of Brooks Park Amenity Area” on behalf of said limited liability company.

Witness my hand and Notarial Seal this 3th day of February 2006.

Notary Public (Written)

Ashley J. Wickleseiness
Notary Public (Printed)

My Commission Expires: March 28, 2013

Hamilton
My County of Residence:

STATE OF INDIANA
Notary Public

09:24 PM
3/28/2013
Joined in by Drees Premier Homes, Inc., as owner of the Belmont Place Real Estate.

DREES PREMIER HOMES, INC., an Ohio corporation

By: __________________________
    David Drees, President

STATE OF Kentucky  )
COUNTY OF Kenton   ) SS:

Before me, a Notary Public in and for said County and State, personally appeared David Drees by me known and by me known to be the President of Drees Premier Homes, Inc., who acknowledged the execution of the foregoing "Declaration of Easements, Covenants and Restrictions of Brooks Park Amenity Area" on behalf of said corporation.

Witness my hand and Notarial Seal this 30th day of January 2006.

[Signature]
Notary Public (Written)

[Seal]
My Commission Expires

This instrument prepared by William M. Branan, Attorney-at-Law, Bingham McHale LLP, 970 Logan Street, Noblesville, Indiana 46060.
EXHIBIT AMENITY AREA

1. The undersigned Registered Land Surveyor hereby certify that the enclosed plat correctly represents a subdivision of land on the South half of the Northeast Quarter of Section 12, Township 17 North, Range 5 East, Fall Creek Township, Hamilton County, Indiana, more particularly described as follows:

Commencing at the Northeast corner of said Half Quarter Section, thence South 85 degrees 30 minutes 21 seconds East along the North line of said Half Quarter Section and along the centerline of 10441 State Street 139.18 feet, thence South 04 degrees 20 minutes 39 seconds East 70.00 feet to the POINT OF BEGINNING of this description; thence continuing South 04 degrees 20 minutes 39 seconds East 137.62 feet; thence South 39 degrees 47 minutes 24 seconds West 85.92 feet; thence South 85 degrees 30 minutes 21 seconds West 681.00 feet; thence South 04 degrees 20 minutes 39 seconds West 130.00 feet; thence South 85 degrees 30 minutes 21 seconds West 15.39 feet to the point of curvature of a curve concave northerly, the radius point of said curve being North 04 degrees 20 minutes 39 seconds West 100.00 feet; thence northeasterly along said curve 31.42 feet to the point of tangency of said curve, said point being South 85 degrees 30 minutes 21 seconds West 20.00 feet from the point of tangency of said curve; thence North 04 degrees 20 minutes 39 seconds West 162.31 feet to the point of curvature of a curve concave southerly, the radius point of said curve being North 05 degrees 30 minutes 21 seconds East 100.00 feet from said point; thence northerly along said curve 22.19 feet to the point of tangency of said curve, said point being North 85 degrees 46 minutes 24 seconds West 130.00 feet from the point of tangency of said curve; thence North 07 degrees 13 minutes 36 seconds East 137.62 feet to the point of curvature of a curve concave southerly, the radius point of said curve being North 05 degrees 46 minutes 24 seconds West 200.00 feet from said point; thence northerly along said curve 100.00 feet to the point of tangency of said curve; said point being North 05 degrees 46 minutes 24 seconds West 200.00 feet from the point of tangency of said curve; thence North 85 degrees 30 minutes 21 seconds East 137.62 feet; thence North 85 degrees 30 minutes 21 seconds East 511.51 feet to the place of beginning, containing 2.523 acres more or less.

C. /4751051/Legal/Exhibit Amenity Area

EXHIBIT C
Prescribed by the
State Board of Accounts
(2005)

County Form 170

Declaration

This form is to be signed by the preparer of a document and recorded with each document in
accordance with IC 36-2-7.5-5(a).

I, the undersigned preparer of the attached document, in accordance with IC 36-2-7.5, do hereby
affirm under the penalties of perjury:

1. I have reviewed the attached document for the purpose of identifying and, to the
extent permitted by law, redacting all Social Security numbers;

2. I have redacted, to the extent permitted by law, each Social Security number in the
attached document.

I, the undersigned, affirm under the penalties of perjury, that the foregoing declarations are true.

[Signature of Declarant]

Wendy S. Feng

[Printed Name of Declarant]