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DECLARATION OF HORIZONTAL
PROPERTY OWNERSHIP
FOR
BROOKFIELD TOWNHOMES
HORIZONTAL PROPERTY REGIME

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7/2/96

**DECLARATION OF HORIZONTAL
PROPERTY OWNERSHIP**

Horizontal Property Regime

This Declaration, made this 11th day of July, 1996
by Mainstay, Inc., an Indiana corporation ("Declarant").

WITNESSETH:

WHEREAS, the following are true facts:

A. Declarant is the sole owner of the fee simple title to certain real estate, located in Johnson County, Indiana, more particularly described in Exhibit "A" attached hereto and made a part hereof (hereinafter referred to as the "Real Estate").

B. Declarant, by execution of this Declaration, hereby creates a Horizontal Property Regime upon the Tract, subject to the provisions of the Horizontal Property Law of the State of Indiana under the terms and conditions of this Declaration.

NOW, THEREFORE, Declarant 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) "Act" means the Horizontal Property Law of the State of Indiana, Acts 1963, Chapter 349, Sections 1 through 31, as amended. The Act is incorporated herein by reference.

(b) "Applicable Date" means the date determined pursuant to Section 3.02 of the By-Laws.

(c) "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Corporation, as hereinafter defined. the Articles of Incorporation are incorporated herein by reference.

(d) "Board of Directors" or "Board" means the governing body of the Corporation being the initial Board of Directors referred to in the By-

Laws or any subsequent Board of Directors elected by the Members in accordance with the By-Laws of the Corporation.

(e) "Building" means any structure on the Tract in which one or more Townhome Units are located. The Buildings are more particularly described and identified on the Plans and in paragraph 3 of this Declaration.

(f) "By-Laws" means the Code of By-Laws of the Corporation providing for the administration and management of the Property and restrictions on its use, as required by and in conformity with the Act. A true copy of the By-Laws is attached to this Declaration and incorporated herein by reference.

(g) "Common Area" means the common area and facilities appurtenant to the Property as defined in paragraph 6 of this Declaration.

(h) "Common Expense" means expenses for administration of the Corporation, and expenses for the upkeep, maintenance, repair and replacement of the exterior of the Townhome Units and the Common Area and those expenses declared Common Expenses by this Declaration or the By-Laws of the Corporation.

(i) "Townhome Unit" means each one of the living units constituting Brookfield Townhomes, each individual living unit being more particularly described and identified on the Plans and in paragraphs 4 and 5 of this Declaration. "Townhome Unit" includes the undivided interest in the Common Area pertaining to such unit.

(j) "Co-owners" means the owners of all the Townhome Units.

(k) "Corporation" means Brookfield Townhomes Homeowners Association, Inc., its successors and assigns, a not-for-profit corporation, whose Members shall be the Owners of Townhome Units, such Corporation being more particularly described in paragraph 15 of this Declaration.

(l) "Declarant" means and refers to Mainstay, Inc., an Indiana corporation, and any successors and assigns of it whom it designates in one or more written recorded instruments, to have the rights of Declarant hereunder.

(m) "Member" means a member of the Corporation.

(n) "Mortgagee" means the holder of a first mortgage lien on a Townhome Unit.

(o) "Brookfield Townhomes" means the name by which the Tract, which is the subject of this Declaration and which the Corporation manages, and the Horizontal Property Regime shall be known.

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

(q) "Percentage Interest" means the percentage of undivided interest in the fee simple title to the Common Areas pertaining to each Townhome Unit as specifically expressed in paragraphs 4 and 7 of this declaration.

(r) "Percentage Vote" means that percentage of the total vote accruing to all the Townhome Units which is appurtenant to each particular Townhome Unit and accrues to the Owner thereof. The Percentage Vote to which each Owner shall be entitled on any matter upon which the Owners are entitled to vote shall be the same percentage as the Percentage Interest pertinent to such Owner's Townhome Unit.

(s) "Property" means the Real Estate and appurtenant easements, the Townhome Units, the Buildings, garages, improvements and property of every kind and nature whatsoever, real, personal and mixed, located upon the Real Estate and used in connection with the operation, use and enjoyment of Brookfield Townhomes, but does not include the personal property of Owners.

(t) "Plans" means the floor and building plans and elevations of the Buildings and Townhome Units prepared by a registered architect, Michael Cope under date of August 23, 1995 and a site plan of the Tract and Buildings prepared by a registered professional engineer and surveyor, Steven Williams under date of July 5, 1995, all of which are incorporated herein by reference.

2. Declaration. Declarant hereby expressly declares that the Property shall be the Brookfield Townhomes Horizontal Property Regime in accordance with the provisions of the Act.

3. Description of Buildings. There are four (4) Buildings each being two (2) stories in height containing twenty-three (23) Townhome Units to be built on the Real Estate, as shown on the Plans. The Buildings are identified and referred to in the Plans and in the Declaration as Buildings, 1, 2, 3 and 4.

4. Legal Description and Percentage Interest. Each Townhome Unit is identified on the Plans by a Building number and Unit number. The legal description for each Townhome Unit shall consist of the Building number and Unit number as shown on the Plans, and shall be stated as "Building # _____, Unit # _____, in Brookfield Townhomes Horizontal Property Regime". The Percentage interest of each Owner in the Common Area as hereinafter defined shall be that Percentage Interest included in each Townhome Unit as set forth on Exhibit "B" attached hereto and made a part hereof.

5. Description of Townhome Units.

(a) Appurtenances. Each Townhome Unit shall consist of all space within the boundaries thereof, as hereinafter defined, and all portions of the Building situated within such boundaries, including but not limited to all fixtures, facilities, utilities, equipment, appliances, and structural components.

(b) Boundaries. The boundaries of each Townhome Unit shall be as shown on the Plans and the side boundary lines shall be a centered line between the sidewall of the Townhome Unit and the sidewall of any adjacent unit, if there is an adjacent unit, or the line of the exterior wall of the Townhome Unit, if there is no adjacent unit to the sidewall of the Townhome Unit; with said center line or line of the exterior wall extended to the closest edge of the street in front and extended to the property line at the rear of the Townhome Unit. The front boundary line shall be the closest edge of the street in front of the Townhome Unit. The rear boundary line shall be the property line to the rear of the Townhome Unit. In the event any boundary line as shown on the Plans does not coincide with the actual location of the respective wall, the boundary lines of each Townhome Unit shall be deemed to be and treated for purposes of ownership, occupancy, possession, maintenance, decoration, use and enjoyment, as in accordance with the actual existing construction. In such case, permanent appurtenant easements for exclusive use shall exist in favor of the Owner of each Townhome Unit in and to such space lying outside of the actual boundary lines of the Townhome Unit, but within the Townhome Unit.

6. Common Area.

(b) "Common Area" means the Real Estate, more particularly described in Exhibit "A", excepting and not including the Townhome Units as described in paragraph 5 above, but Common Area shall include central electricity, gas, water, air conditioning and sanitary sewer mains serving the Buildings, if any, exterior lighting fixtures and electrical service lighting the exterior of the Buildings unless separately metered to a particular Townhome Unit, pipes, ducts, electrical wiring and conduits and public utility lines which serve more than the Townhome Unit, all streets that are not dedicated and all facilities and appurtenances which are located outside the boundary lines of the Townhome Units.

7. Ownership of Common Areas and Percentage Interest. Each Owner shall have an undivided interest in the Common Area, as tenants in common with all other Owners, equal to his Townhome Unit's Percentage Interest. The Percentage Interest in the Common Area pertaining to each Townhome Unit is set forth in paragraph 4 of this Declaration. the Percentage Interest of each Townhome Unit shall be equal for all purposes and shall be a percentage equal to the number one (1) divided by the total number of Townhome Units, and subjected to the Act and this Declaration as herein provided. Except as otherwise provided or permitted herein, the Percentage Interest pertaining to each separate Townhome Unit and the Common Area shall be of a permanent nature and shall not be altered without the unanimous consent of all the Owners and Mortgagees and then only if in compliance with all requirements of the Act.

The Percentage Interest pertaining to each Townhome Unit shall also be the Percentage Vote allocable to the Owner thereof in all matters with respect to Brookfield Townhomes and the Corporation upon which the Co-owners are entitled to vote.

8. Encroachments and Easements for Common Areas. If, any Common Area now encroaches or shall hereafter encroach upon any Townhome Unit, then in such event, an easement shall be deemed to exist and run to the Co-owners and the Corporation for the maintenance, use and enjoyment of such Common Area.

Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities located in any of the other Townhome Units and serving his Townhome Unit.

9. Maintenance, Repair & Replacement of Exteriors of Townhome Units & Easement. All exteriors of the Townhome Units including, but not limited to the roofs, exterior walls, windows, exterior doors, porches,

porch railing, patios, exterior brick, exterior siding, exterior surface of garage doors, driveways, sidewalks, fences, yards (front and rear), shrubs, trees, and other landscaping shall be maintained, repaired and replaced by the Corporation with the expense therefor to be part of the Common Expenses.

The Corporation shall have a permanent and irrevocable easement from and for each Townhome Unit to effect the maintenance, repair and replacement of the exterior items, as described above, of each Townhome Unit.

10. Change, Alterations, Additions, Improvements to Exteriors of Townhomes. No Owners shall make any change, alteration, addition or improvement to the exteriors, as described in paragraph 9 hereof, of any Townhome Unit nor in any manner alter the exterior appearance of a Townhome Unit without the express written consent of the Corporation's Board of Directors.

11. Maintenance, Repair & Replacement of Interiors of Townhome Units. Each Owner shall, at the Owner's expense, be responsible for the maintenance, repair, and replacement within the Owner's Townhome Unit. Each Owner shall repair any defect occurring in the Owner's Townhome Unit, which if not repaired, might adversely affect any other Townhome Unit or Common Area or which might alter the exterior appearance of the Owner's or any other Townhome Unit.

12. Rules & Regulations of Board of Directors. The Board of Directors of the Corporation shall adopt rules and regulations concerning maintenance repairs, replacements, changes, alterations, improvements, appearance, and use of the exteriors of Townhome Units and may amend and modify same from time to time.

The Board of Directors may adopt rules and regulations concerning maintenance, repairs, replacements, changes, alterations, improvements, appearance, and use of the Common Area and may amend and modify same from time to time.

13. Real Estate Taxes. Real estate taxes are to be separately assessed and taxed to each Townhome Unit as provided in the Act. In the event that for any year real estate taxes are not separately assessed and taxed to each Townhome Unit, but are assessed and taxed on the Property (or the Property and any other portions of the Real Estate) as a whole, then each Owner shall pay his proportionate share of such taxes to the extent attributable to the Property in accordance with his respective Percentage Interest or, at the discretion of the

Directors, such taxes may be paid by the Corporation and treated as a Common Expense. Real estate taxes for Common Area, if any, shall be treated and paid by the Corporation as a Common Expense.

14. Utilities. Each Owner shall pay for his own utilities which are separately metered. Utilities which are not separately metered shall be treated as and paid as part of the Common Expenses. If such utilities paid as a Common Expense serve less than all of the Townhome Units, then the expense of those utilities shall be divided and assessed only to those Townhome Units served by the utilities.

15. Association of Owners. "This Corporation is a Mutual Benefit Corporation" and obligations of the Owners for the maintenance, repair, upkeep, replacement, administration, management and operation of the Corporation, the Property, and the exterior of the Townhomes and the Common Area as required herein shall be by the Corporation. Each Owner of the Townhome Unit shall, automatically upon becoming an owner of a Townhome Unit, be and become a member of the Corporation and shall remain a member until such time as his ownership ceases, but membership shall terminate when such person ceases to be an owner, and will be transferred to the new Owner.

The Corporation shall elect a Board of Directors annually (except for an Initial Board of Directors defined in the By-Laws) in accordance with and as prescribed by the By-Laws.

The Board of Directors shall be the governing body of the Corporation, representing all of the Owners in providing for the management, administration, operation, maintenance, repair, replacement and upkeep of the Property.

16. Insurance. The Co-owners, through the Corporation, shall purchase a master insurance policy affording fire and extended coverage insurance insuring the Property in an amount equal to the full replacement value of the building and improvements. If the Board of Directors can obtain such coverage for reasonable amounts they shall 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 it deems necessary to provide the insurance required above. If deemed advisable by the Board of Directors, the Board of Directors may cause such full replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a Common Expense. Such insurance coverage shall be for the benefit of each Owner, and, if applicable, the Mortgagee of each Owner upon the following terms and conditions:

All proceeds payable as a result of losses sustained, which are covered by insurance purchased by the Corporation as herein above set forth, shall be paid to it or to the Board of Directors, who shall act as the insurance trustees and hold such proceeds for the benefit of the individual Owners and Mortgagees. The proceeds shall be used or disbursed by the Corporation or Board of Directors, as appropriate, only in accordance with the provisions of this Declaration and any surety bond or bonds obtained by the Board of Directors concerning the officers of the Corporation, as provided in the By-Laws, shall specifically include protection for any insurance proceeds so received.

The interest of each damaged Owner in the trust fund of insurance proceeds shall be the ratio of the direct damage of each damaged Owner to the damages of all Owners directly damaged by any event insured under the said master insurance policy.

No Owner or any other party shall have priority over any rights of a Mortgagee pursuant to its mortgage in the case of distribution to each Owner of insurance proceeds or condemnation awards for losses to or a taking of Townhome Unit and/or Common Area.

Such master insurance policy, and "all risk" coverage if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Corporation, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) waives any defense based on the invalidity arising from the acts of the insured, and (c) contains an endorsement that such policy shall not be terminated for nonpayment of premiums without at least ten (10) days prior written notice to Mortgagees and providing further, if the Board of Directors is able to obtain such insurance upon reasonable terms, (i) that the insurer shall not be entitled to contribution against insurance which may be purchased by individual Owners as hereinafter permitted, and (ii) that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Owners do not elect to restore pursuant to paragraph 17 of this Declaration.

The Co-owners, through the Corporation, 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 Corporation, the Board of Directors, any committee or organ of the Corporation or Board of Directors, any managing agent appointed or employed by the Corporation, all persons acting or

who may come to act as agents or employees of any of the foregoing with respect to Brookfield Townhomes, and all Owners of Townhome Units.

The Co-owners, through the Corporation, shall also obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate. Such insurance shall inure to the benefit of each Owner, the Corporation, the Board of Directors and any managing agent acting on behalf of the Corporation.

The premiums for all such insurance herein above described shall be paid by the Corporation as part of the Common Expenses. When any such policy of insurance herein above described has been obtained by or on behalf of the Corporation, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner or Mortgagee whose interest may be affected thereby, which notice shall be furnished by the officer of the Corporation who is required to send notices of meetings of the Corporation.

In no event shall any distribution of proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance. In such event any remittances shall be to the Owner and his Mortgagee.

Each Owner shall be solely responsible for loss or damage to the contents of his Townhome Unit however caused (including but not limited to, all floor, ceiling and wall coverings and fixtures, betterment's and improvements installed by him) and his personal property wherever on the Property, and the Corporation shall have no liability to the Owner for loss or damage to the personal property or to the contents of any Townhome Unit. Each Owner shall be solely responsible for obtaining his own insurance to cover any such loss and risk. Each Owner shall have the right to purchase such additional insurance at his own expense as he may deem necessary, including but not limited to: (1) personal liability insurance provided all such insurance shall contain the provisions for waiver of subrogation as referred to in the foregoing provisions for the master insurance policy to be obtained by the Corporation, and (2) insurance upon his Townhome Unit, but such insurance shall provide that it shall be without contribution as against the insurance purchased by the Corporation. If a loss is sustained and there is a reduction in the amount of the proceeds which would otherwise be payable to this paragraph due to proration of insurance purchased by an Owner under this paragraph, the Owner agrees to assign the proceeds of this latter insurance, to the

extent of the amount of such reduction, to the Corporation to be distributed as herein provided.

17. Casualty and Restoration

(a) Except as hereinafter provided, damage to or destruction of any Building due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Corporation and the proceeds of insurance, if any, shall be applied for that purpose; provided, however, that repair and reconstruction shall not be compulsory in the event of "complete destruction of all the Buildings" (hereinafter defined) and shall only be done in accordance with the provisions hereinafter set forth. As used herein, the term "complete destruction of all of the Buildings" means a determination, made by a vote of two-thirds (2/3) of all Co-owners at a special meeting of the Corporation called for the purpose of making such determination, that total destruction of all of the Buildings has occurred. A special meeting of the Corporation shall be called and held within thirty (30) days after any fire or any other casualty or disaster damaging or destroying any of the Buildings for the purpose of making the determination of whether or not there has been a complete destruction of all of the Buildings. If such a special meeting is not called and held within such thirty (30) day period, or if the determination of whether or not there has been a complete destruction of all the Buildings has not been made within such thirty (30) day period, then it shall be conclusively presumed that the Co-owners determined that there was not a complete destruction of all the Buildings, and the Corporation shall proceed with repair and reconstruction as herein provided.

In the event of substantial damage to or destruction of any Townhome Unit or any part of the Common Area, the affected Mortgagee or Mortgagees shall be given timely written notice of such damage or destruction.

(b) If the insurance proceeds, if any, received by the Corporation as a result of any such fire or any other casualty of disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, and if the Property is not to be removed from the Horizontal Property Regime, the cost for restoring the damage and repairing and reconstructing the Building or Buildings so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any,) shall be paid by all of the Owners of Townhome Units in proportion to the ratio that the damage to such Townhome Unit bears to the total damage of all Townhome Units. Any such amounts payable by the Co-owners shall be assessed as part of the Common expenses and shall constitute a lien from the time of assessment as provided herein and in the Act.

(c) For the purpose of subparagraph (a) and (b) above, repair, reconstruction and restoration shall mean construction or rebuilding of the Townhome Units to as near as possible the same condition as they existed immediately prior to the damage or destruction and with the same type of architecture.

(d) If, under subparagraph (a) above, it is determined by the Co-owners at the special meeting of the Corporation referred to therein that there has been a complete destruction of all of the Buildings, the Co-owners shall, at said same special meeting, vote to determine whether or not such complete destruction of the Buildings shall be repaired and reconstructed. The Buildings shall not be reconstructed or repaired if it is the determination of the Co-owners at said special meeting that there has been a complete destruction of all of the Buildings, unless by a vote of two-thirds (2/3) of all of the Co-owners a decision is made to rebuild, reconstruct and repair the Buildings. If two-thirds (2/3) of all of the Co-owners vote and decide that the Buildings are to be rebuilt, reconstructed and repaired, the insurance proceeds, if any, received by the Corporation shall be applied and any excess of construction costs over insurance proceeds, if any, shall be contributed and paid as herein above provided in subparagraphs (a) and (b).

(e) If, in any case of the complete destruction of all of the Buildings, less than two-thirds (2/3) of all of the Co-owners vote in favor of the rebuilding, reconstruction and repair of the Buildings, the Buildings shall not be rebuilt, reconstructed or repaired and, in such event, the Property shall be deemed and considered as to be removed from the provisions of the Act under Section 28 of the Act and, in accordance with Section 21 of the Act:

(i) the Property shall be deemed to be owned in common by the Owners;

(ii) the undivided interest in the Property owned in common which shall pertain to each Owner shall be the percentage of undivided interest previously owned by such Owner in the Common Areas;

(iii) any liens affecting any of the Townhome Units shall be deemed to be transferred in accordance with the existing priorities to the percentage of the undivided interest of the Owner in the Property; and

(iv) the Property shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the Property, if any, shall be considered as one (1) fund and shall be divided among all the Owners in a percentage equal to the percentage of undivided interest owned by each Owner in the Property, after first paying out of the respective shares of the Owners, to the extent sufficient for the purpose, all liens on the undivided interest in the Property owned by each Owner.

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

(g) The proceeds of insurance collected on account of any such casualty, and the sums received by the Board of Directors from collections of assessments against Owners on account of such casualty, shall constitute a construction fund which shall be disbursed, if the Building or Buildings are to be reconstructed and repaired, in payment of the costs of reconstruction and repair in the following manner:

(i) If the amount of the estimated cost of reconstruction and repair is less than Fifty Thousand Dollars (\$50,000.00), then the construction fund shall be disbursed in payment of such costs upon order of the Board of Directors; provided, however, that upon request of a Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner hereinafter provided in the following paragraph (ii).

(ii) If the estimated cost of reconstruction and repair of the Building or other improvement is more than Fifty Thousand Dollars (\$50,000.00), then the construction fund shall be disbursed in payment of such costs upon approval of an architect qualified to practice in Indiana and employed by the Board or Directors to supervise such work, payment to be made from time to time as the work progresses. The architect shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors, material men, the architect, or other persons who have rendered services or furnished materials in connection with the work, (1) that the sums required by them in payment are justly due and owing and that said sums do not exceed the value of the services and materials furnished; (2) that there is no other outstanding indebtedness known to the said architect for the services and materials described; and (3) that the costs as estimated by said architect for the work remaining to be done subsequent to the date of such certificate, does not exceed the amount of the construction fund remaining after payment of the sum so requested.

(iii) Encroachments upon or in favor of Townhome Units which may be created as a result of such reconstruction or repair shall not

constitute a claim or basis of proceeding or action by the Owner upon who property such encroachment exists, provided that such reconstruction was either substantially in accordance with the plans and specifications or as the Buildings were originally constructed. Such encroachments shall be allowed to continue in existence for so long as the Buildings stand.

(iv) In the event that there is any surplus of monies in the construction fund after the reconstruction or repair sums may be retained by the Board of Directors as a reserve or may be used in the maintenance and operation of the Common Areas, or, in the discretion of the Board of Directors it may be distributed to the Owners in the Buildings affected and their Mortgagees who are the beneficial owners of the fund. The action of the Board of Directors in proceeds to repair or reconstruct damage shall not constitute a waiver of any rights against another Owner for committing willful or malicious damage.

(h) If any Townhome Unit or portion thereof or any of the Common Area is made the subject of a condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the affected Mortgagee or Mortgagees shall be given timely written notice of such proceeding or proposed acquisition.

18. Covenants and Restrictions. The covenants and restrictions applicable to the use and enjoyment of the Townhome Units and the Common Area are set forth in the By-Laws, including the limitation that each of the Townhome Units shall be limited to residential use. These 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 Corporation. Present or future Owners or the Corporation shall be entitled to injunctive relief against any violation or attempted violation of these provisions and shall be entitled to damages for any injuries resulting from any violations thereof and shall be entitled to all costs and attorney fees incurred in connection with said injunctive relief, but there shall be no right or reversion or forfeiture of title resulting from such violation.

19. Amendment of Declaration. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

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

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

(c) 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 By-Laws.

(d) Adoption. Any proposed amendment to this Declaration must be approved by a vote of no less than two thirds (66.6%) in the aggregate of the Percentage Vote. In the event any Townhome Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions of the By-Laws.

(e) Special Amendments. No amendment to this Declaration shall be adopted which changes (1) the Percentage Interest with respect to any Townhome Unit or the applicable share of an Owner's liability for the Common Expenses, without the approval of one hundred percent (100%) of the Co-owners and all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of the By-Laws.

(f) Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Corporation shall include an affidavit stating that Owners representing two-thirds (66.6%) of the aggregate of Percentage Vote have approved the amendment and shall be recorded in the Office of the Recorder of Johnson County, Indiana, and such amendment shall not become effective until so recorded.

(g) Special Requirements. Notwithstanding anything to the contrary contained herein, unless specifically controlled by a more restrictive provision under Indiana law or contained herein, the Corporation shall not without the prior written consent of at least two-thirds (2/3) of the first mortgagees (based upon one vote for each mortgage owned) of the Townhome Units or of the Owners, be entitled to:

- (i) by act or omission, seek to abandon or terminate the Horizontal Property Regime;
- (ii) change the pro rata interest or obligations of any individual Townhome Unit for the purpose of: (i)

levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Townhome Unit in the Common areas:

- iii. partition or subdivide any Townhome Unit;
- iv. by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this clause);
- v. use hazard insurance proceeds for losses to any part of the Property (whether to Townhome Units or to Common Area) for other than the repair, replacement of reconstruction of such Property, except as provided in paragraph 16 of this Declaration in case of substantial damage to the Townhome Units.

19. Acceptance and Ratification. All present and future Owners, Mortgagees, tenants and occupants of the Townhome Units shall be subject to and shall comply with the provisions of this Declaration, the Act, the By-Laws appended thereto, and the rules and regulations as adopted by the Board of Directors as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Townhome Unit shall constitute an agreement that the provisions of this Declaration, the Act, the By-Laws 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 bind any person having at anytime any interest or estate in a Townhome Unit or the Property 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 Townhome Unit or Townhome Units or any part of the Property in any manner shall be subject to the Declaration, the Act, the By-Laws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

20. 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 Corporation. Any Owner shall also pay the amount of any increase in insurance premiums occasioned by his use, misuse, occupancy or abandonment of his Townhome Unit or its appurtenances or of the Common Area.

21. Granting of Easements. The Board of Directors is granted the authority to grant easements to utility companies upon such terms and conditions and for such consideration as it deems appropriate.

22. 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 streets, and Common Area of Brookfield Townhomes in 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, sewers, gas, telephones, Cable T.V., and electricity on the Property.

23. Costs and Attorneys' Fees. In any proceeding arising because of failure of an Owner to make any payments required by this Declaration, the By-Laws or the Act, or to comply with any provision of the Declaration, the Act, the By-Laws, or the rules and regulations adopted pursuant thereto as each may be amended from time to time, the Corporation shall Be entitled to recover its costs and reasonable attorney's fees incurred in connection with such default or failure or with any proceeding for injunctive relief as described in paragraph 18 hereof.

24. Waiver. No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of the Common Area or by abandonment of the Townhome Unit.

25. Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provisions of this Declaration or the By-Laws filed herewith shall not impair or affect in any manner the validity or enforceability or otherwise affect the rest of this Declaration or the attached By-Laws.

26. Enforcement. The provisions of this Declaration, the By-Laws, the Articles of Incorporation or the Statute may be enforced by the Corporation or by

any aggrieved Owner through court proceedings for injunctive relief, for damages or for both.

27. Pronouns. Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include the masculine, feminine and neuter genders. Words in the singular shall include and refer to the plural, and vice-versa, as appropriate.

28. Floor Plans. The plans setting forth the layout, location, identification numbers, and dimensions of the Townhome Units and the Property are incorporated into this Declaration by reference, and have been filed in the Office of the Recorder of Johnson County, Indiana, in Horizontal Property Plan File, as Instrument No. 96015149. Plat Book C-779

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed the day and year first above written.

MAINSTAY, INC.

By [Signature] V.P.

ATTEST:

STATE OF Indiana)
COUNTY OF Johnson) SS

Before me, a Notary Public in and for said County and State, personally appeared Jeff Miller, by me known and by me known to be the VICE PRESIDENT of Mainstay, Inc., who acknowledged the execution of the foregoing "Declaration of Horizontal Property Ownership" on behalf of said Corporation.

Witness my hand and Notarial Seal this 11th day of JULY, 1996.

[Signature]
Notary Public

STEPHEN HURDLESTON
(Printed Signature)

My Commission Expires: 10-26-96

My County of Residence: JOHNSON

This instrument prepared by GARY Miller, Attorney at Law.

EXHIBIT B

itage Interest

Units 1 through 23 respectively

$1.00 \div 23 = 4.34\%$ per unit

LEGAL DESCRIPTION

A part of the East half of Section 13, Township 12 North, Range 4 East of the Second Principal Meridian, City of Franklin, Johnson County, Indiana, more particularly described as follows:

Commencing at the Southeast corner of said half section; thence North 87 degrees 37 minutes 30 seconds West along the South line of said half section a distance of 1068.78 feet; thence North 00 degrees 06 minutes 15 seconds West a distance of 1720.19 feet to the North right-of-way line of State Road 44; thence South 87 degrees 38 minutes 32 seconds West along said right-of-way line a distance of 122.69 feet; thence North 74 degrees 30 minutes 50 seconds West along said right-of-way line a distance of 23.18 feet; thence North 88 degrees 33 minutes 00 seconds West along said right-of-way line a distance of 589.77 feet to the Southwest corner of the right-of-way intersection of Eastview Drive, being the POINT OF BEGINNING; thence North 88 degrees 33 minutes 00 seconds West along the right-of-way line of State Road 44 a distance of 8.04 feet; thence North 89 degrees 04 minutes 02 seconds West along said right-of-way line a distance of 346.47 feet; thence North 00 degrees 22 minutes 27 seconds East a distance of 295.81 feet to the Southwest corner of Hillview Village Subdivision as recorded in Plat Book "C", Pages 337 & 338 in the office of the Recorder; thence South 89 degrees 44 minutes 00 seconds East along the South line a distance of 353.93 feet to the Southeast corner of said Subdivision; thence South 00 degrees 16 minutes 00 seconds West along the West right-of-way line of Eastview Drive a distance of 300.01 feet to the Point of Beginning, containing 2.422 acres more or less, subject to all legal right-of-ways, easements and restrictions of record.

CODE OF BY-LAWS
OF
BROOKFIELD TOWNHOMES
HORIZONTAL PROPERTY REGIME
AND OF
BROOKFIELD TOWNHOMES
HOMEOWNERS ASSOCIATION, INC.

CODE OF BY-LAWS
OF
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HORIZONTAL PROPERTY REGIME
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HOMEOWNERS ASSOCIATION, INC.

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CODE OF BY-LAWS
OF
BROOKFIELD TOWNHOMES
HORIZONTAL PROPERTY REGIME
AND OF
BROOKFIELD TOWNHOMES
HOMEOWNERS ASSOCIATION, INC.

ARTICLE I

Identification and Applicability

Section 1.01. Identification and Adoption. These By-Laws are adopted simultaneously with the execution of a certain Declaration creating Brookfield Townhomes Horizontal Property Regime (hereinafter sometimes referred to as "Brookfield Townhomes") to which these By-Laws are attached and made a part thereof. The Declaration is incorporated herein by reference, and all of the covenants, rights, restrictions and liabilities therein contained shall apply to and govern the interpretation of these By-Laws. The definitions and terms as defined and used in the Declaration shall have the same meaning in these By-Laws and reference is specifically made to paragraph 1 of the Declaration containing definitions of terms. The provisions of these By-Laws shall apply to the Property and the administration and conduct of the affairs of the Corporation. These By-Laws shall also constitute the By-Laws of the Corporation.

Section 1.02. Name, Principal Office and Resident Agent. The name of the Corporation is Brookfield Townhomes Homeowners Association, Inc. (hereinafter referred to as the "Corporation"). The post office address of the

principal office of the Corporation is 3033 East Main Street, Greenwood, Indiana, the name and post office address of the Resident Agent of the Corporation is Bradford Erney, 3033 East Main Street, Greenwood, Indiana. The location of the principal office of the Corporation, or the designation of its Resident Agent, or both, may be changed from time to time when authorized by the Board of Directors by filing with the Secretary of State on or before the day any such change is to take effect, or as soon as possible after the death of its Resident Agent or other unforeseen termination of its agent.

Section 1.03. Individual Application. All of the Owners, future Owners, tenants, future tenants, or their guests and invitees, or any other person that might use or occupy a Townhome Unit or any part of the Property, shall be subject to the restrictions, terms and conditions set forth in the Declaration, these By-Laws and the Act, and to any rules and regulations adopted by the Board of Directors as herein provided.

ARTICLE II

Meetings of Corporation

Section 2.01. Purpose of Meetings. At least annually, and at such other times as may be necessary, a meeting of the Owners shall be held for the purpose of electing the Board of Directors (subject to the provisions of Section 3.02 hereof), receiving the annual budget, and for such other purposes as may be necessary or required by the Declaration, these By-Laws or the Act.

Section 2.02. Annual Meetings. The annual meeting of the members of the Corporation shall be held on the first Tuesday of February in each calendar year. At the annual meeting the Owners shall (subject to the provisions of Section 3.02 hereof) elect the Board of Directors of the Corporation in accordance with the provisions of these By-Laws and transact such other business as may properly come before the meeting.

Section 2.03. Special Meetings. A special meeting of Owners may be called by the President, the Board of Directors, or Owners comprising twenty percent (20%), or more of the Association membership. The resolution or petition shall be presented to the President or Secretary of the Corporation and shall state the purpose for which the meeting is to be called. No business shall be transacted at a special meeting except as stated in the petition or resolution.

Section 2.04. Notice and Place of Meetings. All meetings of the members of the Corporation shall be held on the Property or at any suitable place in Johnson County, Indiana, as may be designated by the Board of Directors. Written notice stating the time, place of any meeting, and in the case of a special meeting the purpose or purposes for which the meeting is called, shall be delivered or mailed by the Secretary of the Corporation or the Managing Agent to each member entitled to vote thereat not less than fourteen (14) days prior to the date of such meeting. Any written notice delivered to the Owners as part of a newsletter or other publication regularly sent to the Owners constitutes a written notice. If at any meeting an amendment to the Declaration, the Articles of Incorporation, or these By-Laws is to be considered, the notice of such meeting shall describe the nature of such proposed amendment. All notices shall be mailed by first-class mail, postage prepaid, or delivered to the Owners at their respective addresses as the same shall appear upon the records of the Corporation. If an annual or special meeting of the Members is adjourned to a different date, time or place, notice is not required to be given of the new date, time or place if the new date, time or place is announced at the meeting before adjournment pursuant to the Act. A copy of each such written notice shall also be delivered or mailed simultaneously by the Secretary of the Corporation or the Managing Agent to each Mortgagee (1) who requests in writing that such notices be delivered to it, and (2) who has furnished the Corporation with its name and address in accordance with Section 8.01 of these By-Laws. Such Mortgagee may designate in writing a representative to

attend the meeting. Attendance at any meeting in person by agent or by proxy shall constitute a waiver of notice of such meeting.

Section 2.05. Voting and Conduct of meetings.

(a) Number of Votes. Each Owner shall be entitled to cast one vote for each Townhome Unit of which such Member is the Owner on each matter coming before the meeting. The total number of votes for or against any matter shall then be divided by the number of Townhome Units then in Brookfield Townhomes, as the same shall have been finally plated from time to time, to determine the respective proportions of Owners supporting or opposing such matter or by the number of Townhome Units the Owners of which are present or represented at such meeting, to determine the respective proportions of Owners present or represented at such meeting supporting or opposing such matter. In voting of directors, each Owner (or his or her representative) shall be entitled to cast one (1) vote for each directorship being filled at that meeting, and the candidate(s) receiving the highest number of votes shall fill the available directorship(s); provided that no Owner can be allowed to accumulate his or her votes. To the extent provided in the Act, and except as otherwise provided in the Declaration, the Articles of Incorporation or these By-Laws, plurality voting shall be permitted such that at a meeting, if a quorum exists, action on a matter is approved if the votes cast in favor of the action exceed the votes opposing the action.

(b) Multiple Owners. When more than one person or entity constitutes the Owner of a particular Townhome Unit, all such persons or entities shall be members of the Corporation, but all of such persons or entities shall have only one (1) vote for such Townhome Unit 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 Townhome Unit.

(c) Voting by Corporation or Trust. Where a corporation or trust is an Owner or is otherwise entitled to vote, the trustee may cast the vote on behalf of the trust, and the agent or other representative of the corporation duly empowered by the Board of Directors of such corporation may cast the vote to which the corporation is entitled. The Secretary of such Corporation or a trustee of the trust so entitled to vote shall deliver or cause to be delivered prior to the commencement of the meeting a certificate signed by such person to the Secretary of the Corporation stating who is authorized to vote on behalf of said corporation or trust.

(d) Proxy. An Owner may vote either in person or by his duly authorized and designated attorney-in-fact. Where voting is by proxy, the Owner shall duly designate his attorney-in-fact in writing, delivered to the Secretary of the Corporation prior to the commencement of the meeting.

(e) Quorum. Except where otherwise expressly provided in the Declaration, these By-Laws, the Act or the Indiana Non-Profit Corporation Act of 1991 (hereinafter referred to as the "Statute"), the Owners representing twenty percent (20%) of the Percentage Vote shall constitute a quorum at all meetings. The term 20% of Percentage Vote, as used in these By-Laws, shall mean the Owners entitled to at least twenty percent (20%) of the Percentage votes in accordance with the applicable percentage set forth in the Declaration, as such may be amended from time to time.

(f) Conduct of Annual Meeting. The President of the Corporation shall act as the Chairman of all annual meetings of the Corporation if he is present. At all annual meetings, the Chairman shall call the meeting to order at the duly designated time and business will be conducted in the following order:

(1) Reading of Minutes. The Secretary shall read the minutes of the last annual meeting and the minutes of any special meeting held subsequent thereto, unless such reading is waived by a majority of the Percentage Vote.

(2) Treasurer's Report. The Treasurer shall report to the Owners concerning the financial condition of the Corporation and answer relevant questions of the Owners concerning the Common Expenses and financial report for the prior year and the budget for the current year.

(3) Budget. The budget for the current fiscal year shall be presented to the Owners.

(4) Election of Board of Directors. Nominations for the Board of Directors may be made by any Owner from those persons eligible to serve. Such nominations can be in writing and presented to the Secretary of the Corporation at least seven (7) days prior to the date of the annual meeting, or nominations may be made from the floor. Voting for the Board of Directors will be by paper ballot. The ballot shall contain the name of each person nominated to serve as a Board member. Each Owner may cast the total number of votes to which he is entitled for as many nominees as are to be elected. He shall not be entitled to cumulate his votes. Those persons receiving the highest number of votes shall be elected. Each voting owner shall sign his ballot. The foregoing provisions are subject to the provisions of Section 3.02 hereof.

(5) Other Business. Other business may be brought before the meeting only upon a written request submitted to the Secretary of the Corporation at least seven (7) days prior to the date of the meeting; provided, however, that such written request may be waived at the meeting if agreed by a majority of the Percentage Vote.

(6) Adjournment.

(g) Conduct of Special Meeting. The President of the Corporation shall act as Chairman of any special meeting of the Corporation if he is present. the Chairman shall call the meeting to order at the duly designated time and the only business to be considered at such meeting shall be in consideration of the matters for which such ,meeting was called, as set for in the notice of such special meeting.

ARTICLE III
Board of Directors

Section 3.01. Management. The affairs of the Corporation and Brookfield Townhomes shall be governed and managed by the Board of Directors (herein collectively called "Board" or "Directors" and individually called "Director"). The Board of Directors shall be composed of three (3) persons. No person shall be eligible to serve as a Director unless he is, or is deemed in accordance with the Declaration to be, an Owner.

Section 3.02. Additional Qualifications. 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 Townhome Unit may be represented on the Board of Directors by more than one person at a time.

Section 3.03. Term of Office and Vacancy. Members of the Board of Directors shall be elected at each annual meeting of the Corporation. Each Director shall be elected at each annual meeting of the Corporation. Each Director shall serve a term of three (3) years. One-third (1/3) of the persons on the Board of Directors shall be elected at each annual meeting of the Corporation. In the event the number of persons on the Board is not divisible by three, the number of Directors' positions available for election at the annual meetings shall be such number as to as closely approximate as possible the one-third requirement. Any vacancy or vacancies occurring in the Board caused by a death, resignation, or otherwise other than a vacancy created by removal or an increase in the number of Directors, shall be filled until the next annual meeting of the Members through a vote of a majority of the remaining Directors. At the first annual meeting of the Members following any such vacancy, a Director shall be elected by the Owners

to serve for the balance of the term of the Director in respect to whom there has been a vacancy. Each Director shall hold office throughout the term of his or her election until his or her successor is elected and qualified.

Section 3.04. Initial Board, First Election, Removal of Directors. The first Board of Directors shall be appointed by Declarant and shall serve until February, 1998, unless removed as provided in this section. The annual meeting in February, 1998, shall elect three Directors for terms of one, two and three years respectively. Those initial Directors appointed by Declarant may or may not stand for election at the February, 1998, meeting. An initial Director, Directors elected by the Owners or elected by the Directors to fill a vacancy, may be removed by the Owners with or without cause if the number of votes cast to remove would be sufficient to elect the Director(s) at a meeting to elect Directors. A Director or Directors may be so removed by the Owners only at a meeting called for the purpose of removing the Director(s). The meeting notice must state that the purpose of the meeting is for voting upon the removal of the Director(s). In such case, his or their successor(s) shall be elected at the same meeting from eligible Owners nominated at the meeting to serve for the remainder of the term(s) of the removed Director(s).

Section 3.05. Duties of the Board of Directors. The Board of Directors shall provide for the administration of Brookfield Townhomes Horizontal Property Regime, the maintenance, upkeep and replacement of the exteriors of the Townhomes and Common Area, the establishment of a budget and the collection and disbursement of the Common Expenses. After the applicable Date, the Board may, on behalf of the Association, employ a reputable professional property management agent and/or employees (herein called the "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary. The Managing Agent shall assist the Board in carrying out its duties, which include, but are not limited to:

(a) protection, surveillance and patrol of the Common Area provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Corporation, the Board or any Managing Agent must provide any on-site or roving guards, security service or security system for protection or surveillance, and the same need not be furnished;

(b) procuring of utilities used in connection with Brookfield Townhomes, removal of garbage and waste, and snow removal from the Common Area;

(c) Maintenance, repairs and replacement of the exteriors of the Townhomes and Common Area;

(d) Surfacing, paving and maintaining private streets, parking areas, sidewalks, driveways and the Common Area.

(e) assessment and collection from the Owners of the Owner's share of the Common Expenses;

(f) preparation of the 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;

(g) 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;

(h) keeping a current, accurate and detailed record of receipts and expenses incurred in the prior year; such accounting shall be delivered to each Owner simultaneously with delivery of the proposal annual budget for the current year;

(i) procuring and maintaining for the benefit of the Owners, the Corporation and the Board the insurance coverages required under the Declaration and such other Insurance coverages as the Board, in its sole discretion, may deem necessary or advisable.

Section 3.06. 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 limit to, the power:

(a) to employ a Managing Agent and/or Management employees to assist the Board in performing its duties; provided, however, except as

otherwise provided in paragraph 2 of the Declaration, any management agreement shall be terminable by the Corporation for cause under thirty (30) days written notice and any such agreement may not exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods. Such Managing Agent may be the Declarant, a member of the Corporation or its Directors.

(b) to purchase for the benefit of the Owners such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;

(c) 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 Brookfield Townhomes.

(d) to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the maintenance, upkeep, repair and replacement of the Common Area and the exterior of the Townhomes.

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

(f) to open and maintain a bank account or accounts in the name of the Corporation;

(g) to adopt, revise, amend and alter from time to time rules and regulations with respect to use, occupancy, operation and enjoyment of the Property;

(h) to adopt an annual budget for each fiscal year for the purpose of estimating the total amount of Common Expenses for such fiscal year.

Section 3.07. Limitation on Board Action. After the Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than \$5,000.00 without the Board amending the budget, after notice to (but not approval of) the Owners, except that in the following cases such amendment and notice shall not be necessary:

(a) contracts for replacing or restoring portions of the Common Areas or Limited Areas damaged or destroyed by fire or other casualty where the costs thereof is payable out of insurance proceeds actually received;

(b) proposed contracts and proposed expenditures set forth in the annual budget. The Board of Directors may reallocate items in the budget so long as the total budgeted funds are not exceeded and by doing so, the total budget will not be increased; and

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

Section 3.08. Compensation. No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority of the Percentage Vote, unless such Director is contracted as the Managing Agent. The Managing Agent shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

Section 3.09. Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors. The Secretary shall give notice of regular meetings of the Board to each Director personally or by United States Mail at least five (5) days prior to the date of such meeting.

Special meetings of the Board may be called by the President or any two members of the Board. The person or persons calling such meeting shall give written notice thereof to the Secretary who shall either personally or by mail, and at least three (3) days prior to the date of such special meeting, give notice to the Board members. The notice of the meeting shall contain a statement of the purpose for which the meeting is called. Such meeting shall be held at such place and at such time within Johnson County, Indiana, as shall be designated in the notice.

Section 3.10. Waiver of Notice. Before any meeting of the Board, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. The presence of any Director at a meeting or his subsequent consent to the actions taken thereat, shall, as to such Manager, constitute a waiver of notice of the time, place and purpose thereof. If

all Directors are present at any meeting of the Board, no notice shall be required, and any business may be transacted at such meeting.

Section 3.11. Quorum. At all meetings of the Board a majority of the Directors shall constitute a quorum for the transaction of business and the votes of the majority of the Directors present at a meeting at which a quorum is present shall be in the decision of the Board.

Section 3.12. Standards of Conduct and Liability of Director and Officers. The standard and duty of conduct for and the standard or requirements for liability of the Directors and Officers of the Corporation shall be as set forth in the Act, as the same may be amended from time to time.

Section 3.13. Bond. The Board of Directors may but shall not be required to require the Managing Agent, Treasurer and such other officers as the Board deems necessary to provide surety bonds, indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors, and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense.

ARTICLE IV

Officers

Section 4.01. Officers of the Association. The principal officers of the Corporation shall be the President, Vice President, Secretary and Treasurer, all of whom shall be elected by the Board. The Directors may appoint an Assistant Treasurer and an Assistant Secretary and such other officers as in their judgment may be necessary. Any two or more offices may be held by the same person, except that the duties of the President and Secretary shall not be performed by the same person.

Section 4.02. Election of Officers. The officers of the Corporation shall be elected annually by the Board at the initial meeting of each new Board. Upon an affirmative vote of a majority of all members of the Board, any officer may be removed either with or without cause and his successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose.

Section 4.03. The President. The President shall be elected from among the Directors and shall be the chief executive officer of the Corporation. He shall preside at all meetings of the Corporation and of the Board, shall have and discharge all the general powers and duties usually vested in the office of president or chief executive officer of an association or a stock corporation organized under the laws of Indiana, including but not limited to the power to appoint committees from among the Owners as he may deem necessary to assist in the affairs of the Corporation and to perform such other duties as the Board may from time to time prescribe.

Section 4.04. The Vice President. The Vice President shall be elected from among the Directors and shall perform all duties incumbent upon the President during the absence or disability of the President. the Vice President shall also perform such other duties as these By-Laws may prescribe or as shall, from time to time, be imposed upon him by the Board or by the President.

Section 4.05. The Secretary. The Secretary shall be elected from among the Directors. the Secretary shall attend all meetings of the Corporation and of the Board and shall keep or cause to be kept a true and complete record of the proceedings of such meetings, shall perform all other duties as from time to time may be prescribed by the Board. The Secretary shall specifically see that all notices of the Corporation or the Board are duly given, mailed or delivered, in accordance with the provisions of these By-Laws.

Section 4.06. The Treasurer. The Board shall elect from among the Directors a Treasurer who shall maintain a correct and complete record of account showing accurately at all times the financial condition of the Corporation and who shall perform such other duties incident to the office of Treasurer. He shall be the legal custodian of all monies, notes, securities and other valuables which may from time to time come into possession of the Corporation. He shall immediately deposit all funds of the Corporation coming into his hands in some reliable bank or other depository to be designated by the Board and shall keep such bank account or accounts in the name of the Corporation. The Treasurer may permit the Managing Agent to handle and account for monies and other assets of the Association to the extent appropriate as part of its duties.

Section 4.07. Assistant Officers. The Board of Directors may, from time to time, designate and elect from among the Owners an Assistant Secretary and an Assistant Treasurer who shall have such powers and duties as the officers whom they are elected to assist shall delegate to them and such other powers and duties as the By-Laws or the Board of Directors may prescribe.

Section 4.08. Loans to Officers of the Corporation. The Association can never lend money to or guarantee the obligation of a Director or Officer.

Section 4.1. Indemnification of Directors. To the extent not inconsistent with the laws of the State of Indiana, every person (and the heirs and personal representatives of such person) who is or was a director of the Corporation shall be indemnified by the Corporation as provided in the Indiana Non-Profit Corporation Act of 1991, as it now exists or as hereinafter amended.

Section 4.2. Indemnification of Officers. To the extent not inconsistent with the laws of the State of Indiana, every person (and the heirs and personal representatives of such person) who is or was an officer of the Corporation shall be indemnified by the Corporation as provided in the Indiana Non-Profit Corporation Act of 1991, as it now exists or as hereinafter amended. In addition,

every person (and the heirs and personal representatives of such person) who is or was an officer of the Corporation shall be indemnified by the Corporation to the same and fullest extent that Directors are indemnified by the Corporation as provided in the Indiana Non-Profit Corporation Act of 1991, as it now exists or is hereinafter amended.

ARTICLE V

Assessments

Section 5.01. Annual Accounting. Annually, after the close of each fiscal year of the Corporation, the Board shall cause to be prepared and furnished to each Owner a financial statement, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

Section 5.02. Proposed Annual Budget. Annually, on or before the end of each fiscal year, the Board of Directors shall adopt an annual budget for the next fiscal year estimating the total amount of the Common Expenses for the next year. Such budget may not increase by more than twenty-five percent (25%) of the previous annual budget without the approval of a majority of the Owners. A copy of such budget shall be furnished to each Owner at or prior to the annual meeting of the Corporation. The annual budget as presented to the Owners at the annual meeting of the Corporation shall be the basis for the Regular Assessments (hereinafter defined) and Additional Assessments (as hereinafter defined) during such fiscal year. The annual budget, the Regular Assessments, Additional Assessments and all sums assessed by the Corporation shall be established by using generally accepted accounting principles applied on a consistent basis. The annual budget and the Regular and Additional Assessments shall, in addition, be established to include the establishment and maintenance of an adequate replacement reserve fund for capital expenditures and replacement and repair of the exteriors of the Townhomes and Common Area, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses.

Such replacement reserve fund for capital expenditures and replacement and repair shall be maintained by the Corporation in an separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Johnson County, Indiana, selected from time to time by the Board. The failure or delay of the Board of Directors to prepare an 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.

Section 5.03. Regular Assessments and Additional Assessments. The annual budget as adopted by the Board shall, based on the estimated cash requirement for the Common Expenses in the current fiscal year as set forth in said budget, contain an assessment against each Owner. Immediately following the adoption of the annual budget, each Owner shall be given written notice of the assessment against his respective Townhome Unit (herein called the "Regular Assessment"). 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 herein above provided. The Regular Assessment against each Townhome Unit shall be paid in advance in equal monthly installments, commencing on the first day of the first month of each fiscal year and monthly thereafter through and including the first day of the last month of such fiscal year. Payment of the monthly installments of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors; provided, however, Owners may elect to pay monthly assessments quarterly, semi-annually or annually, in advance. The Regular Assessment for the current fiscal year of the Corporation shall become a lien on each separate Townhome Unit as of the first day of each fiscal year of the Corporation, even though the final determination of the amount of such Regular Assessment or Additional Assessment may not have been made by that date. The

fact that an Owner has paid his Regular Assessment or Additional Assessment for the current fiscal year in whole or in part based upon a previous budget and thereafter, before the annual budget and Regular Assessment is finally determined and approved, sells, conveys or transfer his Townhome Unit or any interest therein, shall not relieve or release such owner or his successor as owner of such Townhome Unit from payment of the Regular Assessment and Additional Assessment for such Townhome Unit as finally determined, and such Owner and his successor as owner of such Townhome Unit shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Corporation pursuant to Section 8.02 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. Monthly installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Corporation, and neither the Board nor the Corporation shall be responsible for providing any notice or statements to Owners for the same.

Section 5.04. 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 these By-Laws, the Declaration or the Act, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Townhome Unit, prorated in accordance with the Percentage Interest of each Townhome Unit (herein called "Special Assessment"). 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, 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 therefor under the circumstances described in the Declaration.

Section 5.05. Failure of Owner to Pay Assessments.

(a) No Owner may exempt himself from paying Regular Assessments, or Special Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the exterior of the Townhomes and Common Area and, toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Area or by abandonment of the Townhome Unit belonging to the Owner. Each Owner shall be personally liable for the payment of all Regular and Special Assessments. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessments, or Special Assessments when due, the lien for such Assessment on the Owner's Townhome Unit may be filed and foreclosed by the Board for and on behalf of the Association as provided by law. Upon the failure of an Owner to make payments of any Regular Assessments or Special Assessments, within ten (10) days after such are due, the Board, in its discretion may (1) impose a late charge of up to twenty-five percent (25%) of the amount in default, (2) accelerate the entire balance of the unpaid Assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary, and (3) eliminate such Owner's right to vote. In any action to foreclose the lien for any Assessments, the Owner and any occupant of the Townhome Unit shall be jointly and severally liable for the payment to the Corporation of reasonable rental for such Townhome Unit, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Townhome Unit and to collect the rentals and other profits therefrom for the

benefit of the Corporation to be applied to the unpaid Regular Assessments or Special Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same. In any action to recover a Regular Assessment, or Special Assessment, whether by foreclosure or otherwise, the Board, for and on behalf of the Corporation, shall be entitled to recover costs and expenses of such action incurred, including but not limited to reasonable attorneys' fees, from the Owner of the respective Townhome Unit.

b) Notwithstanding anything contained in this Section or elsewhere in the Declaration and these By-Laws, any sale or transfer of a Townhome Unit 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 the 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 installments which became due prior to such sale, transfer or conveyance' provided, however, that the extinguishment of such lien shall not relieve the prior owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Townhome Unit or the purchaser 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 therefor. Such unpaid share of any Regular Assessment 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 Townhome Unit from which it arose), as provided in the Act.

Section 5.06. Maintenance and Repairs. Every Owner shall promptly perform all maintenance and repair within his own Townhome Unit which would affect the value of the Property. In addition, each Owner shall furnish, and shall be responsible at his own expense for, the maintenance, repairs and replacements

of his Townhome Unit and Limited, and all equipment serving the same. Such maintenance, repairs and replacements which each Owner is responsible to make personally and at his own expense include, but are not necessarily limited to, water lines, gas lines, plumbing and electric lines which service the Owner's Townhome Unit only and are located within exterior walls of the Townhome Unit including any lines in the area from below the floor to above the roof if they are within an extension of the exterior walls, ceilings and floors; appliances, to include garbage Disposals, dishwashers, stoves, range and refrigerators, telephones, air conditioning and heating equipment (whether located wholly or partially inside or outside the Townhome Unit), interior doors, screens and windows (including exterior and interior of all glass and screen surfaces), lamps and interior grouting and/or caulking and all other accessories appurtenant to the Townhome Unit or belonging to the Owner thereof. In addition, the Owner of any garage is responsible for the maintenance, repair and upkeep of the garage door, excluding the painting of the exterior of the garage door.

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 or other occupant or visitor of such Owner, damage shall be caused to the exterior of a Townhome Unit or Common Area, so that 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 Corporation, unless such loss is covered by the Corporation's insurance with such policy having a waiver of subrogation clause. Maintenance, repairs and replacements shall be subject to the rules and regulations adopted from time to time by the Board.

To the extent that equipment, facilities and fixtures within any Townhome Unit shall be connected to similar equipment, facilities or fixtures affecting or serving other Townhome Units or any Common Area, then the use thereof by the

owner of such Townhome Unit shall be subject to the rules and regulations adopted from time to time by the Board. The authorized representatives of the Corporation or Board of Directors or the Managing Agent for the Corporation, shall be entitled to reasonable access of any Townhome Unit as may be required in connection with maintenance, repairs or replacements of or to the Common Area or any parts thereof, or any equipment, facilities or fixtures affecting or serving other Townhome Units or the Common Area.

ARTICLE VI

Restrictions, Entry and Rules and Regulations

Section 6.01. Restrictions on Use. The following restrictions on the use and enjoyment of the Townhome Units, Common Area and the Property shall be applicable to Brookfield Townhomes and are in addition to those set forth in the Declaration.

(a) All Townhome Units shall be used exclusively for residential purposes and no Townhome Unit may be partitioned or subdivided. No more than five persons may occupy any Townhome Unit as a residence at any one time unless the Board of Directors grants express written permission.

(b) No additional buildings shall be erected or located on the Real Estate other than the Buildings designated in the Declaration or a supplement or amendment to the Declaration, and shown on the Plans or plans filed with such supplement or amendment to the Declaration, without the consent of the Board of Directors.

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

(d) No nuisance shall be permitted and no waste shall be committed to any Townhome Unit or Common Area.

(e) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows or placed on the outside walls of any Building, and no sign, awning, canopy, shutter, radio or television antenna, satellite dish, or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of any Building without the prior consent of the Board.

(f) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Townhome Unit or in the Common Area or on the Property, except that a maximum of two (2) combined pet dogs or cats, each weighing no more than seventy-five (75) pounds may be kept in a Townhome Unit, provided that such pets are not kept, bred or maintained for any commercial purpose, and do not create a nuisance. An Owner shall be fully liable for any injury or damage to persons or property including the Common Area, caused by his pet. The Board may adopt such rules and regulations regarding pets as it may deem necessary from time to time including, but not limited to, a requirement that any Owner desiring to bring a pet on the Property shall deposit with the Board a security deposit in an amount to be determined by the Board to cover any damage that may be caused by such pet to the Common Area. Any such security deposit shall be returned to the Owner when the pet is permanently removed from the Property, except to the extent said deposit has been used to repair damage caused by such pet. Any requirement for the depositing of such a security deposit shall not be deemed to release or in any way limit an Owner's responsibility and liability for injury and damage caused by his pets. Any pet which, in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from the Property within ten (10) days after written notice from the Board to the respective Owner to do so.

(g) Nothing shall be done or permitted in any Townhome Unit which will impair the structural integrity of any Building or which would structurally change any Building or which would affect the exterior appearance of the Townhome Unit, except as otherwise provided in the Declaration or these By-Laws. No Townhome Unit shall be used in any unlawful manner or in any manner which might cause injury to the reputation of Brookfield Townhomes or which might be a nuisance, annoyance, inconvenience or damaging to other Owners and occupants of Townhome Units or neighboring property, including without limiting the generality of the foregoing, noise by the use of any musical instruments, radio, television, loud speakers, electrical equipment, amplifiers or other equipment or machines or loud persons.

(h) No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on, or so as to be visible from, any part of the

Common Area. The Common Area shall be kept free and clear of rubbish, debris and other unsightly materials.

(i) No industry, trade, or other commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted on the Property; provided, however, that home professional pursuits without employees, public visits or non-residential storage, mail or other use of a Townhome Unit shall be permissible.

(j) No "for sale", "for rent" or "for lease" signs, or other signs, or other window advertising display shall be maintained or permitted on any part of the Property or any Townhome Unit without the prior written consent of the Board; provided, however, that the right is reserved by the Declarant and the Board to place or allow to be placed "for sale" or "for lease" signs on or about the Property in connection with any unsold or unoccupied Townhome Units.

(k) All Owners and members of their families, their guests, or invitees, and all occupants of any Townhome Unit or other persons entitled to use the same and to use and enjoy the Common 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 Townhome Units, the Common Areas and Limited Areas.

(l) Except for vehicles being used by Declarant or by persons providing services to the Declarant, the Corporation or an Owner, no boats, campers, trailers of any kind, buses, mobile homes, trucks (other than 3/4 ton or less pickup trucks), motorcycles, mini bikes, mopeds, or any other vehicles of any description other than normal passenger automobiles, shall be permitted, parked or stored anywhere within the Property; provided, however, that nothing herein shall prevent (1) the parking or storage of such vehicles completely enclosed within a Townhome Unit garage and (2) the driving or using of such vehicles for ingress and egress to and from such Owner's Townhome Unit provided the shortest route to and from a public road is used. No repair work shall be done on the Property on any vehicles, including passenger automobiles. No disabled or inoperative vehicles shall be permitted, parked or stored outside the Townhome garage or on the Common Area. No more than two (2) vehicles per Townhome Unit may be regularly permitted, parked or stored anywhere within the Property

(m) No Owner shall be allowed to plant trees flowers or other plants, landscape or do any gardening on the exterior of any Townhome or Common Area, except with express permission from the Board, and if such

permission is granted such Owner shall be obligated to maintain any such trees or landscaping.

(n) All garbage, trash and refuse shall be deposited only in covered sanitary containers or dumpsters placed by the Corporation on the Common Area. Garbage, trash and refuse shall be placed in sealed disposable plastic bags or other containers approved by the Board for deposit in the appropriate sanitary containers. No open fires shall be permitted on any part of the Property other than fires in charcoal grills or other similar devices located within the Townhome Unit.

(o) Common Area shall be used only for the purposes for which it is designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board.

(p) No Owner may rent or lease his Townhome Unit for transient or hotel purposes.

(q) Any Owner who leases a Townhome Unit shall lease the entire Townhome Unit and shall have a written lease which shall provide that the lease is subject to the provisions of the Declaration, the By-Laws and the Rules and Regulations as adopted by the Board and any failure of the lessee to comply with the terms of such documents shall be a default under the lease.

Section 6.02. Compliance with Covenants, Conditions and Restrictions.

Every Owner, mortgagee, lessee or other occupant of a Townhome Unit shall comply strictly with the covenants, conditions and restrictions set forth in the Declaration, with these By-Laws and with the Rules and Regulations in relation to the use and operation of the Property. A violation committed by any persons residing in, occupying or visiting a Townhome Unit at the behest or with the implied or express permission of the Owner or any other occupant of the Townhome Unit, or committed by any agent, employee, business invitee, or contractor of the Owner or of any person occupying a Townhome Unit, shall be attributed to that Townhome Unit and the Owner thereof. The Board may also prohibit any Owner from entering into any new lease of his Townhome Unit with anyone so long as he is in default in the performance of any of his obligations under the Declaration, By-Laws, or Rules and Regulations. An action seeking a

declaratory judgment, the recovery of sums due for damages, or injunctive relief, or any or all of them may be maintained by the Corporation against any Owner, or any person entitled to occupy a Townhome Unit who refuses to comply or threatens to refuse to comply with any provisions of the Declaration, these By-Laws, the Rules and Regulations, or any other document establishing ownership or control over any part of the Property,

After giving no less than ten (10) days prior written notice to an Owner who has not complied, and after giving such party the opportunity to be heard by the Board of Directors, the Board of Directors shall have the right to impose a fine of not more than \$100.00 for the second violation attributable to a particular Owner in a calendar year against that Owner and the Townhome Unit in which such Owner holds an ownership interest. For a third violation attributable to the same Owner in the same calendar year (whether or not this third violation involves the same term or provision of the above -described Townhome Unit instruments as the first or second violations), the Board of Directors, after giving the above-described notice and opportunity to be heard, may levy a fine against that Owner and the Townhome Unit in which such Owner holds an ownership interest in an amount not in excess of \$200.00. For the fourth and every subsequent such violation of said Townhome Unit instruments by the same Owner in the same calendar year (whether or not these violations involve the same provisions as the previous violations), the Board of Directors, after giving the above-described notice and opportunity to be heard, may levy a fine against that Owner and the Townhome Unit in which such Owner holds an ownership interest in double the amount of the fine for the immediately preceding violation in that calendar.

All fines described above, any fines imposed by the Board of Directors and any and all expenses incurred by the Corporation in enforcing any of the terms and provisions of the Townhome Unit instruments, including reasonable attorney's

fees, may be levied as a special assessment against the Owner in question and his Townhome Unit.

Any action brought by the Corporation hereunder may be brought in its own name, in the name of its Board of Directors or in the name of the Managing Agent. In any case of flagrant or repeated violation by an Owner, he may be required by the Board of Directors to give sufficient surety or sureties for his future compliance with the covenants, conditions and restrictions contained in this Declaration and with the By-Laws and Rules and Regulations.

Section 6.03. Right of Entry. All Owners and occupants of a Townhome Unit shall be deemed to have granted the right of entry thereto to the Managing Agent or any other person authorized by the Board in case of an emergency originating in or threatening his Townhome Unit or the building in which it is located, whether the Owner is present at the time or not. Any Owner shall permit other persons, or their representatives when so required, to enter his Townhome Unit for the purpose of performing installations, alterations or repairs to the mechanical or electrical services, or to make structural repairs provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Owner. In case of emergencies, such right of entry shall be immediate.

Section 6.04. Right of Board to Adopt Rules and Regulations. The Board may promulgate such additional rules and regulations regarding the operating of the Property, including but not limited to the use of the Common Area, as it may deem necessary from time to time and such rules as are adopted may be amended by a vote of a majority of the Board, and the Board shall cause copies of such rules and regulations and all amendments thereto be delivered or mailed promptly to all Owners.

ARTICLE VII

Amendment to By-Laws

Section 7.01. Amendment to By-Laws. Subject to any contrary, overriding or superseding provisions set forth herein or in the Declaration, these By-Laws may be amended in the same manner, and subject to the same limitations and requirements, as amendments to the Declaration, as set forth in paragraph 18 of the Declaration. Amendments to these By-Laws shall be considered as amendments of the Declaration and shall be recorded in the Office of the Recorder of Johnson County, Indiana, as required by the Declaration and the Act.

ARTICLE VIII

Mortgages

Section 8.01. Notice to Association. Any Owner who places a first mortgage lien upon his Townhome Unit or the Mortgagee shall notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagee. A record of such Mortgagee and name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of the Declaration, these By-Laws or the Act shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled by virtue of the Declaration, these By-Laws, the Act, or proxy granted to such Mortgagee in connection with the mortgage.

The Corporation shall, upon request of a Mortgagee who has furnished the Corporation with its name and address as herein above provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under the Declaration or these By-Laws which is not cured within thirty (30) days. Any Mortgagee shall have the right to inspect the books and records of the Corporation during normal business hours.

Section 8.02. Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Townhome Unit, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments against the Townhome Unit, which statement shall be binding upon the Corporation and the Owners, and any Mortgagee or grantee of the Townhome Unit shall not be liable for nor shall the Townhome Unit conveyed to be subject to a lien for any unpaid assessments in excess of the amount set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Section 5.03 hereof.

ARTICLE IX

Miscellaneous

Section 9.01. Fiscal Year. The fiscal year of the Corporation shall be the calendar year.

Section 9.02. Membership Certificates. Each member of the Corporation shall receive a certificate from the Corporation, signed by the President or Vice President, and Secretary or Assistant Secretary thereof, stating that he is a member of the Corporation. Such certificates shall be non-transferable and a member's certificate shall become void and of no force and effect upon sale by a member of his Townhome Unit. Such membership certificates shall be in a form and style determined by the Board.

Section 9.03. Personal Interests. No member of the Corporation shall have or receive any earnings from the Corporation, except a member who is an officer, director or employee of the Corporation may receive fair and reasonable compensation for his services as officer, director or employee, and a member may also receive principal and interest on monies loaned or advanced to the Corporation as provided in the Statute. Nothing herein shall prohibit the Declarant or members of the Corporation from ownership of or a financial interest in the

Managing Agent and the Managing Agent may be the Declarant or a member of the Corporation provided that fees for the Managing Agent's services shall be consistent with those normally charged by others for similar duties.

Section 9.04. Contracts, Checks, Notes, Etc. All contracts and agreements entered into by the Corporation and all checks, drafts and bills of exchange and orders for the payment of money shall, in the conduct of the ordinary course of business of the Corporation, unless otherwise directed by the Board of Directors, or unless otherwise required by law, be signed by the President or in his absence the Treasurer, or Managing Agent. Any one of the documents heretofore mentioned in this section for use outside the ordinary course of business of the Corporation or any notes or bonds of the Corporation shall be executed by and require the signature of the President and Secretary.

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RESTRICTIVE COVENANTS

We, the undersigned Mainstay, Inc., owners of the real estate shown and described herein, do hereby lay off, plat and subdivide said real estate in accordance with the herein plat.

This subdivision shall be known and designated as BROOKFIELD TOWNHOMES, an addition to the City of Franklin, Johnson County, State of Indiana.

The foregoing covenants are to run with the land and shall be binding on all parties and all persons claiming under them until July 1, 2016, at which time said covenants shall be automatically extended for successive periods of ten (10) years unless by vote of a majority of the then owners of the tracts and townhomes covered by these covenants, it is agreed to change such covenants in whole or in part.

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Invalidation of any one of the foregoing covenants by judgment or court order shall in no way affect any of the other covenants which shall remain in full force and effect.

In order to afford adequate protection to all present and future owners of lots, tracts and townhomes in this subdivision, the undersigned owners hereby adopt and establish the following protective covenants, each and all for the benefit of each and every owner of any lots, tract or townhome in the subdivision, binding all the same, now and hereafter, and their grantees, their heirs and personal representatives, and where applicable, their successors and assigns.

1. Each lot shall be divided into separately designated tracts and each tract shall be conveyed as a separately designated legally described freehold estate, subject to the terms, conditions and provisions in these covenants set forth. The tracts shall be delineated and described as a metes and bounds part of the lot of which it is a part, done at such time as the townhomes are complete enough to establish the relationship of the party wall to the lots perimeter.
2. Lots designated in this plat are hereby reserved for attached single-family residential use and will have erected thereon townhomes which shall share common wall(s) with other similar single-family townhomes on the lot, such common wall(s) comprising a part of the common tract lines between such tracts. Each wall which is built as a part of the original construction of the townhomes upon the lots and connects two dwelling units shall constitute a common wall or party wall, and to the extent not inconsistent with the provisions of these restrictions, the general rules of law regarding common walls or party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Hereafter, the terms common wall and party wall shall be used interchangeably.
3. The division wall between any tract described herein and the tract immediately adjoining it shall be a common wall or party wall and the adjoining landowners shall have cross easements in the wall, and the wall shall be used for the joint purposes of the building separated by it.
4. This common wall covenant and the covenants herein contained, shall run with both parcels of land utilizing the common wall, but shall not operate to convey to either party the fee to any part of the land owned or to be acquired by

the other party, the creation of rights to a common wall being the sole purpose hereof.

5. In the event of a dispute or controversy as to any matter within or arising out of these covenants, such dispute or controversy shall be submitted to the arbitration of the homeowners association, and the arbitration of such matters shall be an express condition precedent to any legal or equitable action or proceeding of any nature whatsoever.

6. MAINSTAY, INC., will cause, to be incorporated under the laws of the State of Indiana, a not for profit corporation under the name "Brookfield Townhomes Homeowners Association, Inc.", or a similar name, as such agency for the purpose of ownership and maintenance of all common areas as designated on the recorded plat, and to administer and enforce the recorded covenants, disbursing the assessments and charges imposed and created hereby and hereunder or by and under any other agreement to which the property may at any time be subject, and promoting the health, safety and welfare of the owners of the property, and all parts thereof and that said association shall have the power to establish by-laws, duly recorded in the Office of the Recorder, Johnson County, Indiana, establishing procedures and rules for the efficient execution of these recorded covenants. Each owner of a tract and townhome shall automatically upon becoming an owner be and become a member of the corporation and shall remain a member until such time his ownership ceases.

7. The following restrictions on the use and enjoyment of the lots, tracts, townhomes and common area shall be applicable to Brookfield Townhomes

(a) All townhomes shall be used exclusively for residential purposes. No more than five (5) persons may occupy any townhome as a residence at any one time unless the homeowners association grants express written permission.

(b) No additional buildings shall be erected or located on the Real Estate other than those shown on the plans, without the consent of the homeowners association.

(c) Nothing shall be done or kept in any townhome or in the common area which will cause an increase in the rate of insurance on any building or the contents thereof. No owner shall permit anything to be done or kept in his townhome or in the common area which will result in a cancellation of insurance, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.

(d) No nuisance shall be permitted and no waste shall be committed to any townhome or common area.

(e) No owner shall cause or permit anything to be hung or displayed on the outside of the windows or placed on the outside walls of any building, and no sign, awning, canopy, shutter, radio or television antenna, satellite dish, or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of any building without the prior consent of the homeowners association.

(f) No animals, livestock or poultry of any kind shall be raised, bred or kept in any townhome, tract, or common area or on the property, except that a maximum of two (2) combined pet dogs or cats, each weighing no more than seventy-five (75) pounds may be kept in a townhome, provided that such pets are not kept, bred or maintained for any commercial purpose, and do not create a nuisance. An owner shall be fully liable for any injury or damage to persons or property including the common area, caused by his pet. The homeowners association may adopt such rules and regulations regarding pets as it may deem necessary from time to time. Any pet which, in the judgment of the homeowners association, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from the property within ten (10) days after written notice from the homeowners association to the respective

owner to do so. No pets shall be chained or tethered outside the townhome and must be attended on a leash at all times when outside the townhome.

(g) Nothing shall be done or permitted in any townhome which will impair the structural integrity of any building or which would structurally change any building or which would affect the exterior appearance of the building. No townhome shall be used in any unlawful manner or in any manner which might cause injury to the reputation of Brookfield Townhomes or which might be a nuisance, annoyance, inconvenience or damaging to other owners and occupants of townhomes or neighboring property, including without limiting the generality of the foregoing, noise by the use of any musical instruments, radio, television, loud speakers, electrical equipment, amplifiers or other equipment or machines or loud persons.

(h) No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on, or so as to be visible from, any part of the common area. The common area shall be kept free and clear of rubbish, debris and other unsightly materials.

(i) No industry, trade, or other commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted on the property; provided, however, that home professional pursuits without employees, public visits or nonresidential storage, mail or other use of a townhome shall be permissible.

(j) No "For Sale", "For Rent" or "For Lease" signs, or other signs, or other window advertising display shall be maintained or permitted on any part of the property or any townhome without the prior written consent of the homeowners association, provided, however, that the right is reserved by Mainstay, Inc. and the homeowners association to place or allow to be placed "For Sale", or "For Lease" signs on or about the property in connection with any unsold or unoccupied townhomes.

(k) All owners and members of their families, their guests, or invitees, and all occupants of any townhome or other persons entitled to use the same and to use and enjoy the common 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 homeowners association governing the operation, use and enjoyment of the townhomes and common areas.

(l) No boats, campers, trailers of any kind, buses, mobile homes, motor homes, trucks (other than 3/4 ton or less pickup trucks), motorcycles, minibikes, mopeds, or any other vehicles of any description other than normal passenger automobiles, shall be permitted, parked or stored anywhere within the property; provided, however, that nothing herein shall prevent the parking or storage of such vehicles completely enclosed within a townhome garage. No repair work shall be done on the property on any vehicles, including passenger automobiles. No disabled or inoperative vehicles shall be permitted, parked or stored outside the townhome garage or on the common area. No more than two (2) vehicles per townhome may be regularly permitted, parked or stored anywhere within the property.

(m) No owner shall be allowed to plant trees, flowers, or other plants, landscape or do any gardening on the exterior of any townhome or common area, except with express permission from the homeowners association, and if such permission is granted such owner shall be obligated to maintain any such trees or landscaping.

(n) No owner shall construct any fence, of any type, any storage building or other building, any above ground pools, hot tubs, or any other structure or object that will change the exterior appearance of the townhome, it being understood that all exterior surfaces and areas are to be uniform and under the exclusive maintenance and control of the homeowners association

(o) All garbage, trash and refuse shall be deposited only in covered sanitary containers or dumpsters placed by the homeowners association on the common area. Garbage, trash and refuse shall be placed in sealed disposable plastic bags or other containers approved by the homeowners association and deposited in the appropriate sanitary containers. No open fires shall be permitted on any part of the property other than fires in charcoal grills or other similar devices located within the townhome.

(p) Common area shall be used only for the purposes for which it is designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the homeowners association

(q) No owner may rent or lease his townhome for transient or hotel purposes.

(r) Any owner who leases a townhome shall lease the entire townhome and shall have a written lease which shall provide that the lease is subject to the provisions of these Restrictive Covenants, the By-Laws and the Rules and Regulations as adopted by the homeowners association and any failure of the Lessee to comply with the terms of such documents shall be a default under the lease.

8. All exteriors of the townhomes including, but not limited to the roofs, exterior walls, windows, exterior doors, porches, porch railing, patios, exterior brick, exterior siding, exterior surface of garage doors, driveways, sidewalks, fences, yards (front and rear), shrubs, trees, and other landscaping shall be maintained, repaired and replaced by the Corporation with the expense therefor to be part of the common Expenses and nothing shall be done to modify, change or alter the appearance of the above without the written consent of the homeowners association.

The Corporation shall have a permanent and irrevocable easement from and for each townhome to effect the maintenance, repair and replacement of the exterior items, as described above, of each townhome.

9. No owners shall make any change, alteration, addition or improvement to the exteriors of any townhome nor in any manner alter the exterior appearance of a townhome without the express written consent of the homeowners association.
10. Each owner shall, at the owner's expense, be responsible for the maintenance, repair, and replacement within the owner's townhome. Each

owner shall repair any defect occurring in the owner's townhome, which if not repaired, might adversely affect any other townhome or common area or which might alter the exterior appearance of the owner's or any other townhome.

11. The homeowners association may adopt rules and regulations concerning maintenance repairs, replacements, changes, alterations, improvements, appearance, and use of the exteriors of townhomes and may amend and modify same from time to time.

The homeowners association may adopt rules and regulations concerning maintenance, repairs, replacements, changes, alterations, improvements, appearance, and use of the common area and may amend and modify same from time to time.

12. Real estate taxes are to be separately assessed and taxed to each townhome. In the event that for any year real estate taxes are not separately assessed and taxed to each townhome, but are assessed and taxed on the property (or the property and any other portions of the real estate) as a whole, then each owner shall pay his proportionate share of such taxes to the extent attributable to the property in accordance with his respective percentage interest or, at the discretion of the homeowners association, such taxes may be paid by the homeowners association and treated as a common expense. Real estate taxes for common area, if any, shall be treated and paid by the homeowners association as a common expense.

13. Each owner shall pay for his own utilities which are separately metered. Utilities which are not separately metered shall be treated as and paid as

part of the common expenses. If such utilities paid as a common expense serve less than all of the townhomes, then the expense of those utilities shall be divided and assessed only to those townhomes served by the utilities.

14. The owners, through the homeowners association, shall purchase a master insurance policy affording fire and extended coverage insurance insuring the property in an amount equal to the full replacement value of all of the building and improvements. If the homeowners association can obtain such coverage for reasonable amounts they shall obtain "all risk" coverage. The homeowners association shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as it deems necessary to provide the insurance required above. If deemed advisable by the homeowners association, the homeowners association may cause such full replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a common expense. Such insurance coverage shall be for the benefit of each owner, and, if applicable, the mortgagee of each owner upon the following terms and conditions:

All proceeds payable as a result of losses sustained, which are covered by insurance purchased by the homeowners association as herein above set forth, shall be paid to the homeowners association, which shall act as the insurance trustee and hold such proceeds for the benefit of the individual owners and mortgagees. The proceeds shall be used or disbursed by the homeowners association, as appropriate, only in accordance with the provisions of these Restrictive Covenants.

The interest of each damaged owner in the first fund of insurance proceeds shall be the ratio of the direct damage of each damaged owner to the damages of all owners directly damaged by any event insured under the said master insurance policy.

No owner or any other party shall have priority over any rights of a mortgagee pursuant to its mortgage in the case of distribution to each owner of insurance proceeds for losses to a townhome.

Such master insurance policy, and "all risk" coverage if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the homeowners association, its Board of Directors, its officers, its agents and employees, owners, their respective agents and guests, and (b) waives any defense based on the invalidity arising from the acts of the insured, and (c) contains an endorsement that such policy shall not be terminated for nonpayment of premiums without at least ten (10) days prior written notice to mortgagees and providing further, if the homeowners association is able to obtain such insurance upon reasonable terms, (i) that the insurer shall not be entitled to contribution against insurance which may be purchased by individual owners as hereinafter permitted, and (ii) that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the owners do not elect to restore pursuant to these Restrictive Covenants.

The owners, through the homeowners association, shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the homeowners association shall deem appropriate

from time to time. Such comprehensive public liability insurance policy shall cover the homeowners association, the Board of Directors, any committee or organ of the homeowners association or Board of Directors, any managing agent appointed or employed by the homeowners association, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to Brookfield Townhomes, and all owners of townhomes.

The owners, through the homeowners association, shall also obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation insurance, and such other insurance as the homeowners association shall from time to time deem necessary, advisable or appropriate. Such insurance shall inure to the benefit of each owner, the homeowners association, the Board or Directors and any managing agent acting on behalf of the homeowners association.

In no event shall any distribution of proceeds be made by the homeowners association directly to an owner where there is a mortgagee endorsement on the certificate of insurance. In such event any remittances shall be to the owner and his mortgagee.

Each owner shall be solely responsible for loss or damage to the contents of his townhome however caused (including but not limited to, all floor, ceiling and wall coverings and fixtures, betterment's and improvements installed by him) and his personal property wherever on the property, and the homeowners association shall have no liability to the owner for loss or damage to the personal property or to the contents of any townhome. Each owner shall be solely responsible for obtaining his own

insurance to cover any such loss and risk. Each owner shall have the right to purchase such additional insurance at his own expense as he may deem necessary, including but not limited to: (1) personal liability insurance; provided all such insurance shall contain the provisions for waiver of subrogation as referred to in the foregoing provisions for the master insurance policy to be obtained by the homeowners association, and (2) insurance upon his townhome, but such insurance shall provide that it shall be without contribution as against the insurance purchased by the homeowners association. If a loss is sustained and there is a reduction in the amount of the proceeds which would otherwise be payable to this paragraph due to proration of insurance purchased by an owner under this paragraph, the owner agrees to assign the proceeds of this latter insurance, to the extent of the amount of such reduction, to the homeowners association to be distributed as herein provided.

15. Except as hereinafter provided, damage to or destruction of any building due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the homeowners association and the proceeds of insurance, if any, shall be applied for that purpose; provided, however, that repair and reconstruction shall not be compulsory in the event of "complete destruction of all the buildings" (hereinafter defined) and shall only be done in accordance with the provisions hereinafter set forth. As used herein, the term "complete destruction of all of the buildings" means a determination, made by a vote of two-thirds (2/3) of the owners at a special meeting of the homeowners association called for the purpose of making such determination, that total destruction of all of the buildings has occurred. A special meeting of the homeowners association shall be called and held

within thirty (30) days after any fire or any other casualty or disaster damaging or destroying any of the buildings for the purpose of making the determination of whether or not there has been a complete destruction of all of the buildings. If such a special meeting is not called and held within such thirty (30) day period, or if the determination of whether or not there has been a complete destruction of all of the buildings has not been made within such thirty (30) day period, then it shall be conclusively presumed that the owners determined that there was not a complete destruction of all the buildings, and the homeowners association shall proceed with repair and reconstruction as herein provided.

In the event of substantial damage to or destruction of any townhome or any part of the common area, the affected mortgagee or mortgagees shall be given timely written notice of such damage or destruction.

Repair, reconstruction and restoration shall mean construction or rebuilding of the townhomes to as near as possible to the same condition as they existed immediately prior to the damage or destruction and with the same type of architecture.

If it is determined by the owners at the special meeting of the homeowners association referred to therein that there has been a complete destruction of all of the buildings, the owners shall, at said same special meeting, vote to determine whether or not such complete destruction of the buildings shall be repaired and reconstructed. The buildings shall not be reconstructed or repaired if it is the determination of the owners at said special meeting that there has been a complete destruction of all of the buildings, unless by a vote of two-thirds (2/3) of all of the owners a

decision is made to rebuild, reconstruct and repair the buildings. If two-thirds (2/3) of all of the owners vote and decide that the buildings are to be rebuilt, reconstructed and repaired, the insurance proceeds, received by the Corporation shall be applied as herein above provided.

If, in any case of the complete destruction of all of the buildings, less than two-thirds (2/3) of all of the owners vote in favor of the rebuilding, reconstruction and repair of the buildings, the buildings shall not be rebuilt, reconstructed or repaired and in such event:

(i) the property shall be deemed to be owned in common by the owners;

(ii) the undivided interest in the property owned in common which shall pertain to each owner shall be the percentage of interest previously owned by such owner in all the buildings;

(iii) any liens affecting any of the townhomes shall be deemed to be transferred in accordance with the existing priorities to the percentage of the undivided interest of the owner in the property; and

(iv) the property shall be subject to an action for partition at the suit of any owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one (1) fund and shall be divided among all the owners in a percentage equal to the percentage of undivided interest owned by each owner in the property, after first paying out of the respective shares of the owners, to the extent sufficient for the purpose, all liens on the undivided interest in the property owned by each owner.

Immediately after a fire or other casualty or disaster causing damage to any property for which the homeowners association has the responsibility of maintenance and repair, the homeowners association shall obtain reliable and detailed estimates of the cost to place the damaged

property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the homeowners association desire.

The proceeds of insurance collected on account of any such casualty, shall constitute a construction fund which shall be disbursed, if the building or buildings are to be reconstructed and repaired, in payment of the costs of reconstruction and repair in the following manner:

(i) If the amount of the estimated cost of reconstruction and repair is less than Fifty Thousand Dollars (\$50,000.00), then the construction fund shall be disbursed in payment of such costs upon order of the homeowners association; provided, however, that upon request of a mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner hereinafter provided in the following paragraph (ii).

(ii) If the estimated cost of reconstruction and repair of the building or other improvement is more than Fifth Thousand Dollars (\$50,000.00), then the construction fund shall be disbursed in payment of such costs upon approval of an architect qualified to practice in Indiana and employed by the homeowners association to supervise such work, payment to be made from time to time as the work progresses. The architect shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors, material men, the architect, or other persons who have rendered services or furnished materials in connection with the work, (1) that the sums required by them in payment are justly due and owing and that said sums do not exceed the value of the services and materials furnished; (2) that there is no other outstanding indebtedness known to the said architect for the services and materials described' and (3) that the costs as estimated by said architect for the work remaining to be done subsequent to the date of such certificate, does not exceed the amount of the construction fund remaining after payment of the sum so requested.

(iii) Encroachments upon or in favor of townhomes which may be created as a result of such reconstruction or repair shall not

constitute a claim or basis of proceeding or action by the owner upon whose property such encroachment exists, provided that such reconstruction was either substantially in accordance with the plans and specification or as the buildings were originally constructed. Such encroachments shall be allowed to continue in existence for so long as the buildings stand.

In the event that there is any surplus of monies in the construction fund after the reconstruction or repair, such sums may be retained by the homeowners association as a reserve or may be used in the maintenance and operation of the common areas, or, in the discretion of the homeowners association it may be distributed to the owners of the buildings affected and their mortgagees who are the beneficial owners of the fund. The action of the homeowners association to repair or reconstruct damage shall not constitute a waiver of any rights against another owner for committing willful or malicious damage.

16. Each owner of a tract or townhome by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay assessments by the homeowners association as the same become due in a manner herein provided. All such assessments, together with the interest thereon and costs of collection thereof as herein provided, shall be a charge on the land and shall be a continuing lien upon the tract or townhome against which each such assessment is made until paid in full. Such assessments shall also be the personal obligation of the owner of the tract or townhome at the time when the assessment became due and payable. Any assessment not paid within 30 (30) days after the date the same becomes due and payable shall bear interest from the due date at a percentage rate not greater than twelve per centum (12%) per annum. The homeowners association, or any member thereof, shall be entitled to institute in any court of competent jurisdiction such procedures, at law or in equity, by foreclosure or otherwise, to collect the delinquent assessment,

plus any expenses or costs, including attorney fees, incurred by the homeowners association, or such member, in collecting the same. If the homeowners association has provided for collection of any assessment in installments, upon default in the payment of any one or more installments, the homeowners association may accelerate payment and declare the entire balance of said assessment due and payable in full. No owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his tract or townhome or otherwise. The lien of the assessments provided for herein shall be subordinate to the lien of any recorded first mortgage covering such tract and townhome and to any valid tax or special assessment lien on such tract and townhome in favor of any governmental taxing or assessing authority. Sale or transfer of any tract and townhome pursuant to mortgage foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such tract and townhome from liability for any assessments thereafter becoming due or from the lien thereof. The homeowners association shall, upon demand, at any time, furnish a certificate in writing, signed by a member of the homeowners association, that the assessments on a tract and townhome have been paid, or that certain assessments remain unpaid, as the case may be. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid. Any easement granted herein or any property shown on the within easement granted herein or any property shown on the within plat as dedicated and intended for acceptance by the local public authority and devoted for public use shall be exempt from the assessments, charges and liens created herein.

17. The right of enforcement of each of the foregoing restrictions by injunction, together with the right to cause the removal by due process of law of structures erected or maintained in violation thereof, is reserved to the homeowners association, and the owners of the tracts and townhomes in the subdivision, their heirs and personal representatives, their successors or assigns, who are entitled to such relief without being required to show any damage of any kind to the homeowners association, or to any other owner or owners. The right of enforcement of the covenants is hereby also granted to the Plan Commission of the City of Franklin, its successors or assigns.
18. The foregoing restrictions may be amended at any time by the owners of at least two-thirds (2/3) of the tracts and townhomes subject to such restrictions. Each such amendment must be evidenced by a written instrument, signed and acknowledged by the owner or owners concurring therein, setting forth facts sufficient to indicate compliance with this paragraph, and recorded in the Johnson County Recorder's Office. Except as the same may be amended from time to time, the foregoing covenants will be in full force and effect until July 1, 2016, at which time they will be automatically extended for successive periods of ten year (10), unless by a vote of the majority of the then owners it is agreed that these covenants shall terminate in whole or in part.
19. Invalidation of any of these covenants and restrictions or any part thereof by judgment or court order shall not affect or render the remainder of said covenants and restrictions invalid or inoperative.

WITNESS OUR HAND AND SEAL THIS 31ST DAY OF July
1996.

A handwritten signature in black ink, appearing to read "Gary W. Miller", written over a horizontal line.


Gary W. Miller, President
Mainstay, Inc.

STATE OF INDIANA)
) SS:
COUNTY OF JOHNSON)

Before me, the undersigned Notary Public, in and for the County and State, personally appeared Gary W. Miller, President of Mainstay, Inc., and who separately and severally acknowledged the execution of the foregoing instrument as his voluntary act and deed, for the purpose therein expressed.

WITNESS MY HAND AND NOTARIAL SEAL THIS 31ST DAY OF July, 1996.

prepared by:
Stephen R. Huddleston

Stephen Huddleston
Stephen R. Huddleston
Notary


Residing in Johnson County
My Commission expires 10/26/96.

16-80

RECEIVED FOR RECORD
JOHNSON COUNTY RECORDER
JEAN HARRISON

96017628

95 AUG -7 PM 3:17

AMENDMENT TO
DECLARATION OF HORIZONTAL PROPERTY OWNERSHIP
FOR BROOKFIELD TOWNHOMES HORIZONTAL PROPERTY REGIME

Gary Miller, being first duly sworn upon his oath, deposes and says:

1. That Gary Miller is Secretary and Treasurer of Brookfield Townhomes Homeowners' Association, Inc. and President of Mainstay, Inc., both corporations organized and existing under the laws of the State of Indiana.
2. That on the 17th day of July 1996 a Declaration of Horizontal Property Ownership for Brookfield Townhomes Horizontal Property Regime was recorded with the Recorder of Johnson County, Indiana under instrument number 96015568.
3. That said Declaration is hereby amended by declaring the entire Declaration null and void as to the real estate described in said Declaration, a copy of the description of said real estate is attached hereto, made a part hereof and marked as Exhibit "A".
4. That one hundred percent (100%) of the owners of said real estate have consented to this Amendment, which said Consent is attached hereto, made a part hereof and marked as Exhibit "B".
5. That this Amendment shall be recorded with the Recorder of Johnson County, Indiana and shall become effective on the date of said recordation.



Gary Miller, Secretary/
Treasurer of Brookfield
Townhomes Homeowners'
Association and President of
Mainstay, Inc.

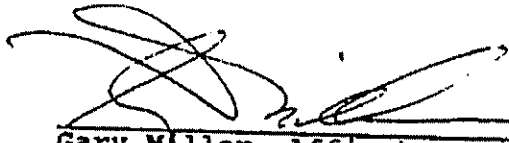
STATE OF INDIANA)
) SS:
COUNTY OF JOHNSON)

Gary Miller, Secretary/Treasurer of Brookfield Townhomes Homeowner's Association and President of Mainstay, Inc., being

first duly sworn upon his oath according to law, deposes and says:

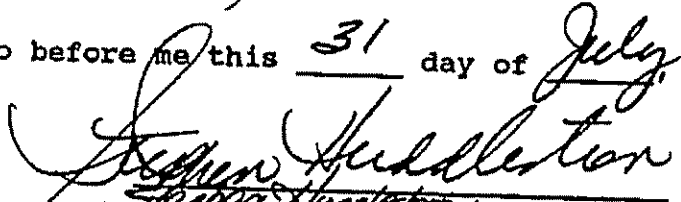
That the matters and facts set forth in the above and foregoing Affidavit are true and correct.

And further Affiant saith not.



Gary Miller, Affiant

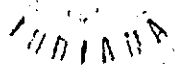
Subscribed and sworn to before me this 31 day of July 1996.



~~Stephen L. Huddleston~~ Notary Public
Residing in Johnson County,
Indiana

My Commission Expires:

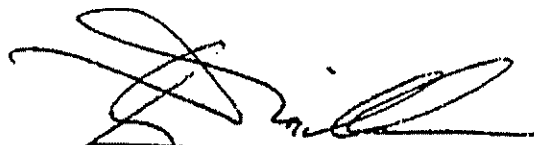
10/26/96 10-26-96



This Amendment prepared by
Stephen L. Huddleston
Attorney at Law
Clarke House
98 West Jefferson Street
Post Office Box 9
Franklin, Indiana 46131

CONSENT

Comes now Gary Miller, President of Mainstay, Inc., who is the owner of one hundred percent (100%) of all of the real estate described in Exhibit "A", which is attached hereto and made a part hereof, and hereby consents to the Amendment to Declaration of Horizontal Property Ownership for Brookfield Townhomes Horizontal Property Regime.



Gary Miller, President of
Mainstay, Inc.

LEGAL DESCRIPTION

A part of the East half of Section 13, Township 12 North, Range 4 East of the Second Principal Meridian, City of Franklin, Johnson County, Indiana, more particularly described as follows:

Commencing at the Southeast corner of said half section; thence North 87 degrees 37 minutes 30 seconds West along the South line of said half section a distance of 1068.78 feet; thence North 00 degrees 06 minutes 15 seconds West a distance of 1720.19 feet to the North right-of-way line of State Road 44; thence South 87 degrees 38 minutes 32 seconds West along said right-of-way line a distance of 122.69 feet; thence North 74 degrees 30 minutes 50 seconds West along said right-of-way line a distance of 23.18 feet; thence North 88 degrees 33 minutes 00 seconds West along said right-of-way line a distance of 589.77 feet to the Southwest corner of the right-of-way intersection of Eastview Drive, being the POINT OF BEGINNING; thence North 88 degrees 33 minutes 00 seconds West along the right-of-way line of State Road 44 a distance of 8.04 feet; thence North 89 degrees 04 minutes 02 seconds West along said right-of-way line a distance of 346.47 feet; thence North 00 degrees 22 minutes 27 seconds East a distance of 295.81 feet to the Southwest corner of Hillview Village Subdivision as recorded in Plat Book "C", Pages 337 & 338 in the office of the Recorder; thence South 89 degrees 44 minutes 00 seconds East along the South line a distance of 353.93 feet to the Southeast corner of said Subdivision; thence South 00 degrees 16 minutes 00 seconds West along the West right-of-way line of Eastview Drive a distance of 300.01 feet to the Point of Beginning, containing 2.422 acres more or less, subject to all legal right-of-ways, easements and restrictions of record.

EXHIBIT "A"