

(38)
+ 3 cross Ref
Drees Homes
+ 2.00 Non

Instrument PG 1 OF 38
200600013477

200600013477
Filed for Record in
BOONE COUNTY, INDIANA
MARY ALICE "SAM" BALDWIN
12-15-2006 At 03:09 PM.
COVENANTS 90.00

MASTER
DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
BROOKHAVEN

SECTIONS I, II AND ALL SUBSEQUENT SECTIONS

**CROSS-REFERENCE: BROOKHAVEN-FIELDSTONE
MASTER HOMEOWNER'S ASSOCIATION
INSTRUMENT NO. 200600013476**

**CROSS-REFERENCE: FINAL PLAT
OF BROOKHAVEN RECORDED AS
INSTRUMENT NO. 200600007390
2006 0000 7391**

-i-

TABLE OF CONTENTS

ARTICLE I NAME 1

ARTICLE II DEFINITIONS 1

ARTICLE III APPLICATION 4

ARTICLE IV PROPERTY RIGHTS/Common Property 5

 4.1 Owners' Easement of Enjoyment of Common Property 5

 4.2 Rental of Dwellings 5

 4.3 Delegation of Use 5

 4.4 Conveyance and Maintenance of Common Property 6

 4.5 Airport Notification 6

ARTICLE V EASEMENTS/LOT MAINTENANCE 7

 5.1 Easements 7

 5.2 Landscape Maintenance Access Easements 8

 5.3 Sanitary Sewer Easements 8

 5.4 Sewer Easements 8

 5.5 Utility Access Easement 8

 5.6 Non-Access Easement 8

 5.7 Other Easement Rights 8

 5.8 Privat Utility Lines 9

 5.9 Relocaton of Easements 9

 5.10 Easement for Utilities and Public and Quasi-Public Vehicles 9

 5.11 The Brookhaven Legal Drain 9

ARTICLE VI PROTECTIVE COVENANTS AND USE RESTRICTIONS..... 10

- 6.1 Residential Use and Occupancy Restrictions 10
- 6.2 Dwelling Size 10
- 6.3 Building Lines and Combined Lots..... 10
- 6.4 Sidewalks..... 11
- 6.5 Construction, Completion, and Restoration of Dwellings 11
- 6.6 Compacted Fill material on Lots..... 11
- 6.7 Garages and Driveways..... 11
- 6.8 Exterior Construction 12
- 6.9 Sound Mitigation..... 12
- 6.10 Landscaping..... 12
- 6.11 Mailboxes..... 12
- 6.12 Fences 13
- 6.13 Swimming Pools 13
- 6.14 Trash Collection..... 13
- 6.15 Prohibited Items and Activities 13
- 6.16 Basketball Goals 13
- 6.17 Playground Equipment..... 13
- 6.18 Garage and Yard Sales; Holiday Lights 14
- 6.19 Prohibited Accesory Structures..... 14
- 6.20 Flagpoles 14
- 6.21 Yard Lights..... 14
- 6.22 Gardens 14

6.23 Window Coverings 14

6.24 Parking..... 14

6.25 Exterior Antennae 14

6.26 Additional Restrictions and Building Standards..... 15

6.27 Subdivision of Lots 15

6.28 Motor Vehicle Repair 15

6.29 Vehicle, Boat, or Travel Trailer Storage 15

6.30 Noxious or Offensive Activities..... 15

6.31 Lot and Dwelling Maintenance..... 15

6.32 Lakes..... 15

6.33 Business Activity..... 16

6.34 Animals..... 16

6.35 Compliance with Drainage Requirements/Subsurface Drains..... 16

6.36 Signs..... 16

6.37 Open Space Areas..... 17

6.38 Common Areas..... 17

6.39 Use of Recreational Facilities..... 17

6.40 Window Air Conditioners..... 17

ARTICLE VII ASSOCIATION 17

7.1 Membership 17

7.2 Classes of Membership 18

7.3 Co-Owners..... 18

7.4 Board of Directors 19

7.5 Responsibilities of the Association..... 19

7.6 Correction of Violations..... 19

7.7 Compensation..... 19

7.8 Non-Liability of Directors and Officers..... 20

7.9 Owner Disputes 20

ARTICLE VIII ASSESSMENTS..... 20

8.1 Covenant for Assessments 20

8.2 Initiation and Capital Fund Assessments 20

8.3 Purpose of Annual Assessments 20

8.4 Maximum Annual Assessment..... 21

8.5 Special Assessments for Capital Improvements and Operating Deficits..... 21

8.6 Special Assessments for Breaches of Standards 21

8.7 Notice and Quorum for Any Action Authorized Under Sections 8.3(b)
and 8.4..... 21

8.8 Uniform Rate of Assessment 22

8.9 Date of Commencement of Annual Assessments; Due Dates 22

8.10 Effect of Nonpayment of Assessments: Remedies of the Association..... 22

8.11 Subordination of the Lien to Mortgages 22

ARTICLE IX BROOKHAVEN ARCHITECTURAL REVIEW COMMITTEE..... 23

9.1 Creation 23

9.2 Purposes and Powers of the Committee..... 23

9.3 Approval Procedures and Standards 23

9.4 Enforcement..... 24

9.5 Committee Liability..... 24

9.6 Fees.....24

ARTICLE X MORTGAGES24

10.1 Notice to Association24

10.2 Notice to Mortgagees.....25

ARTICLE XI AMENDMENT25

11.1 Amendment by Association.....25

11.2 Recording.....26

11.3 Amendment by Developer26

ARTICLE XII INSURANCE26

12.1 Liability Insurance26

12.2 Other Insurance26

12.3 Insurance Proceeds26

12.4 Casualty.....27

ARTICLE XIII REAL ESTATE TAXES AND ASSESSMENTS27

13.1 Real Estate Taxes.....27

13.2 Allocation27

ARTICLE XIV GENERAL PROVISIONS.....27

14.1 Right of Enforcement27

14.2 Government Enforcement.....27

14.3 Delay or Failure to Enforce28

14.4 Duration28

14.5 Severability28

14.6 Titles28

14.7 Applicable Law.....28

14.8 Sales Offices and Models28

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

THIS DECLARATION is made this 12th day of December, 2006, by Brookhaven ("Developer"), and Drees Premier Homes, Inc.

Recitals

A. Developer is the owner of certain real estate more particularly described in **Exhibit A**, attached to and made a part of this Declaration (the "Real Estate").

B. Developer has subdivided, or intends to subdivide, the Real Estate into residential lots as generally shown on the Plat for "Brookhaven" as previously or hereafter recorded in the office of the Recorder of Boone County, Indiana.

C. Developer desires to subject the Real Estate to certain rights, privileges, covenants, conditions, restrictions, easements and liens for the purpose of preserving and protecting the value and desirability of the Real Estate for the benefit of each owner of all or any part thereof.

D. Developer further desires to create or provide for the creation of an organization to which shall be delegated and assigned, among other things, the powers of administering and enforcing the covenants, conditions and restrictions contained in this Declaration and set forth on the Plat of the Real Estate as previously or hereafter recorded in the office of the Recorder of Boone County, Indiana (the "Association").

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

Declaration

**ARTICLE I
NAME**

The name by which the Real Estate shall be known is "Brookhaven."

**ARTICLE II
DEFINITIONS**

The following terms, when used in this Declaration with initial capital letters, shall have the meanings set forth in this Article II:

2.1 "Agreement" means that certain Lot Purchase Agreement dated March 17, 2005 by and between Seller and Builder, as the same may be amended, modified, supplemented or restated from time to time by the parties thereto.

2.2 "Applicable Date" means the date that is twenty (20) years from the date this Declaration is recorded in the office of the Recorder of Boone County, Indiana.

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

2.4 "Board" means the Board of Directors of the Association.

2.5 "Brookhaven" means the Development.

2.6 "Brookhaven-Fieldstone Master Homeowner's Association Covenants, Conditions and Restrictions" means the Declaration of Conditions, Covenants and Restrictions governing the use of the shared amenity areas between the Brookhaven and Fieldstone Subdivisions.

2.7 "Builder" means Drees Premier Homes, Inc., its successors and assigns.

2.8 "Committee" means the Brookhaven Architectural Review Committee.

2.9 "Common Property" means (i) all areas designated on any Plat of all or any part of the Real Estate as "Common Property," (ii) all portions of the Real Estate shown on any Plat of all or any part of the Real Estate which are not Lots and which are not dedicated to the public, and (iii) all facilities and personal property owned or leased by the Association for the benefit, use, and enjoyment of the Owners from time to time.

2.10 "Developer" means Drees Premier Homes, Inc., its heirs, successors, and assigns, including, without limitation, any mortgagee acquiring title to any portion of the Real Estate pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Developer.

2.11 "Development" means all Neighborhoods, or sections of the recorded Plat for Brookhaven, a subdivision in Boone County, Indiana, and consisting of all the real estate from time to time made subject to the provisions of this Declaration.

2.12 "Development Period" means the period of time commencing with the date of recordation of this Declaration and ending on the later of the following: (a) the first date on which neither Builder nor Developer owns any Lot within or upon the Real Estate, or (b) the date which is three (3) years after the date on which all

improvements and installations required for the Development by the Boone County Subdivision requirements have been completed and, if applicable, accepted for public maintenance by all appropriate governmental units or agencies.

2.13 "Drainage Easements" mean those areas designated on any Plat of all or any part of the Real Estate as Drainage Easements, either separately or in combination with any other easement designated on such Plat.

2.14 "Dwelling" means the single-family residence constructed upon a Lot.

2.15 "Guidelines" means the architectural and ecological guidelines, standards, rules and regulations established by the Committee from time to time.

2.16 "Landscape Maintenance Access Easements" mean those areas designated on any Plat of all or any part of the Real Estate as Landscape Maintenance Access Easements, either separately or in combination with any other easement designated on such Plat.

2.17 "Lot" means any numbered parcel of land shown and identified as a Lot on any Plat of all or any part of the Real Estate.

2.18 "Mortgage" shall mean a recorded first mortgage on any Lot.

2.19 "Mortgagee" means the holder of a Mortgage.

2.20 "Neighborhood" means a group of Lots, together with adjacent streets and Common Property, as delineated by Developer and designated as such on the Plat or other supplemental drawing or document, which Lots are subject to common development standards applicable only to such Neighborhood.

2.21 "Non-Access Easements" means those areas designated on any Plat of all or any part of the Real Estate as Non-Access Easements, either separately or in combination with any other easement designated on such Plat.

2.22 "Owner" means the record owner, whether one or more persons or entities, of fee-simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation unless specifically indicated to the contrary.

2.23 "Plat" means each subdivision plat of the Real Estate identified as a Final Plat for Brookhaven as previously or hereafter recorded in the office of the Recorder of Boone County, Indiana (as the same may be amended or supplemented from time to time).

2.24 "Real Estate" means that real property located in Boone County, Indiana more particularly described in **Exhibit A, along with all subsequent platted sections and legal descriptions thereto.**

2.25 "Sanitary Sewer Easements" mean those areas designated on any Plat of all or any part of the Real Estate as Sanitary Sewer Easements, either separately or in combination with any other easement designated on such Plat.

2.26 "Sewer Easements" mean those areas designated on any Plat of all or any part of the Real Estate as Sewer Easements, either separately or in combination with any other easement designated on such Plat.

2.27 "Standards" shall mean: (a) all covenants, conditions, restrictions and provisions of this Declaration; (b) all covenants, conditions, and restrictions enumerated or depicted on any Plat of all or any part of the Real Estate; and (c) all duly adopted Guidelines, rules, regulations, restrictions, decisions and resolutions of the Association, the Board or the Committee, or their respective representatives.

2.28 "Utility Easements" mean those areas designated on any Plat of all or any part of the Real Estate as Utility Easements, either separately or in combination with any other easement designated on such Plat.

2.29 "Utility Access Easement" means that area designated on any Plat of all or any part of the Real Estate as a Utility Access Easement.

2.30 "Fieldstone Subdivision" means the adjoining residential neighborhood.

ARTICLE III **APPLICATION**

All Owners, their tenants, guests, invitees and mortgagees, or any other person using or occupying a Lot or any part of the Real Estate, shall be subject to and shall observe and comply with the covenants, conditions, restrictions, terms and provisions set forth in this Master Declaration.

The Owner of any Lot and all other persons, (i) by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from Seller, Developer, Builder, or a subsequent Owner of such Lot; or (ii) by the act of occupancy of such Lot, shall conclusively be deemed to have accepted such deed, executed such contract or undertaken such occupancy subject to the Standards. By acceptance of such deed, execution of such contract or undertaking of such occupancy, each Owner and all other persons acknowledge the rights and powers of Developer, Builder, and the Association provided for by this Declaration, and also for himself, his heirs, personal representatives, successors and assigns, covenants, agrees and

consents to and with Developer, Builder, and the Owners from time to time of the Lots, to keep, observe, comply with and perform the Standards.

ARTICLE IV
PROPERTY RIGHTS/COMMON PROPERTY

4.1 Owners' Easement of Enjoyment of Common Property. Developer hereby declares, creates, grants and reserves a non-exclusive easement in favor of each Owner for the use and enjoyment of the Common Property. Such easement shall run with and be appurtenant to each Lot, but shall extend to and be exercisable only by those individuals residing on such Lot, subject to the following:

(a) The right of the Association (after conveyance of the Common Property to the Association) to dedicate or transfer all or any part of the Common Property to any public agency, authority or utility for such purposes and subject to such conditions as may be set forth in the instrument of dedication or transfer, upon approval of Owners holding at least two-thirds (2/3) of the total voting power of the Association;

(b) The rights of Developer and Builder as provided in this Declaration and in any Plat of all or any part of the Real Estate;

(c) The terms and provisions of this Declaration and the Standards generally;

(d) The easements reserved elsewhere in this Declaration or in any Plat of all or any part of the Real Estate.

4.2 Rental of Dwellings. No Owner may lease his Dwelling to any person or entity except pursuant to a written lease for a term of not less than six (6) months that includes the full names and addresses of both landlord and tenant, a copy of which lease is provided to the Association prior to the commencement date thereof. If person(s) other than the deeded Owner occupies the property without a written lease, the Owner shall provide names and relationships of occupant(s) to the Association. The Owner will be held responsible for their tenant(s) and/or occupant(s) actions, behaviors, and violations.

4.3 Delegation of Use. Any Owner may delegate, in accordance with all applicable Standards and the by-laws of the Association, his right of enjoyment of the Common Property to his tenants or contract purchasers who reside in the Dwelling on such Owner's Lot. Any such delegation will terminate such Owner's right of enjoyment of the Common Property, but such Owner shall remain jointly and severally liable with the delegate for the violation of any Standard.

4.4 Conveyance and Maintenance of Common Property. Prior to the conveyance of the first Lot to an Owner, Developer shall convey all of its rights, title and interest in and to the Common Property to the Association. Such conveyance shall be by general warranty deed free and clear of all encumbrances (other than the lien of non-delinquent real estate taxes), and such Common Property shall then be the property of the Association. The Association shall thereafter be responsible for maintaining the common areas; this shall include but is not limited to wet retention areas, common area landscaping installed by the Developer and/or the Association, signage within the common areas or easements at the entrances of the Subdivision, and sidewalks in the right-of-way.

4.5 Airport Notification. The Owners of Lots in the Development are put on notice that Board of Commissioners of Boone County have established an AZ-Airport Zone Classification and that the Indianapolis Executive Airport has been zoned to that classification, as set out in Ordinance Number 2004-11 adopted August 23rd, 2004. The AZ-Airport Zone designation allows The Hamilton County Board of Aviation Commissioners, or another operating airport authority, to conduct airport-related activities, including the building and maintenance of hangars, and the taking off and landing of planes, as permitted in the definition of the AZ-Airport Zone Classification, subject to any limitations or restricting commitments agreed to by the Hamilton County Board of Aviation Commissioners, the owners of Indianapolis Executive Airport. The airport is allowed, as a matter of right, to own, operate and conduct its business as defined in the AZ-Airport Zone Classification, and all prospective and current Lot Owners are urged to examine the AZ-Airport Zone Classification so to understand the extent of the airport's ability to operate now and in the future. The permittee acknowledges for itself, its heirs, its successors, and its assigns, that the real estate described in this permit experiences or may experience significant levels of aircraft operations, and that the permittee is erecting a building designed for noise sensitive use upon the real estate, with the full knowledge and acceptance of the aircraft operations as well as any effects resulting from the aircraft operations. Further, the permittee acknowledges his or her understanding of Indiana Code 32-30-6-10 (or as it may be recodified) which limits the circumstances under which a public use airport operation may be a nuisance in order to reduce the potential for the state to lose the benefits to the state's air transportation system that are provided by public use airports. Specifically, a public use airport operation or any of the operation's appurtenances may not become a private or public nuisance by any changed condition in the vicinity of the locality that occurs after the public use airport operation operates continuously on the locality for more than one (1) year if the following conditions are met: (1) The public use airport operation was not a nuisance at the time when the operation began operating at that locality; (2) The public use airport operation is operated in accordance with the rules of the Indiana department of transportation, aeronautics section; and (3) There is no significant change in the hours of operation of the public use airport operation.

ARTICLE V
EASEMENTS/LOT MAINTENANCE

5.1 Easements (Generally). The strips of ground shown on the survey of Lots attached hereto and Regulated Designated Drainage and Utility Easements ("RDE" or "UE") either separately or together, are hereby created for the use (including required ingress and egress necessary as a part thereof) of public utility companies, governmental agencies, police, fire, ambulance and other emergency vehicles, and the Owners of the Lots herein as follows:

"Regulated Drainage Easements" (R.D.E.) are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of this and adjoining ground and/or the public drainage system. No structures, including fences, shall be built on a regulated drainage easement. No changes shall be made in the finished grade elevations of any Lot, whether in connection with the construction of improvements thereon or otherwise, so as to modify, alter or change the location or depth of any drainage swales, ditches or creeks located within any such drainage easement without the approval of all Federal, State, County or Municipal authorities from whom approvals are required by law, or which would in any way prohibit, impede, restrict or alter the natural flow of surface water drainage.

"Utility Easements" (U.E.) are created for the use of public and private utility companies, not including transportation companies, for the installation, operation and maintenance of mains, ducts, poles, lines and wires necessary to provide utility service to a Lot or Lots, subject to the condition that following any installation or maintenance, the affected area within such Utility Easement shall be returned to the condition existing prior thereto at the cost and expense of the party responsible for having such work performed.

No structures, including fences, shall be built on a regulated drainage easement (R.D.E.) or a utility easement (U.E.) which obstructs flow from the area being served, nor shall any changes be made in the finish grade elevations of any Lot, whether in connection with the construction of improvements thereon or otherwise, so as to modify, alter or change the location or depth of any drainage swales, ditches or creeks located within such drainage easement, without the approval of all federal, state, county or municipal authorities from whom approvals are required by law or which would in any way prohibit, impede, restrict or alter the natural flow of surface water drainage.

The Owners shall take title to the Lots subject to the foregoing easement rights in, along and through the strips of ground properly designated as hereinabove set forth on the recorded survey of the Lots for the purposes herein stated. Further, "Landscape Easements" (L.E.) has defined and referenced in Section 5.2.

5.2 Landscape Maintenance Access Easements. Developer hereby declares, creates, grants and reserves the Landscape Maintenance Access Easements (L.E.) for the benefit of the Owners and the Association for purposes of maintaining and preserving the Common Property in accordance with the provisions of this Declaration.

5.3 Sanitary Sewer Easements. Developer hereby declares, creates, grants and reserves the Sanitary Sewer Easements for the use of Developer and Builder during the Development Period and for the use of the Association and any governmental agency having jurisdiction there over for access to and installation, maintenance, repair and removal of, sewer lines, mains, stations, manholes and other equipment and facilities for the furnishing of sanitary sewer services. No permanent structure, except walks and driveways, to the extent permitted by applicable law and approved in accordance with this Declaration, shall be erected or maintained upon the Sanitary Sewer Easements.

5.4 Sewer Easements. Developer hereby declares, creates, grants, and reserves the Sewer Easements for the use of Developer and Builder during the Development Period and for the use of the Association and any governmental agency having jurisdiction there over for access to, installation, maintenance, repair or removal of underground storm sewer lines and mains, drains, and other equipment and facilities for the furnishing of storm sewer services. No permanent structure, except walks and driveways, to the extent permitted by applicable law and approved in accordance with this Declaration, shall be erected or maintained upon the Sewer Easements.

5.5 Utility Access Easement. Developer hereby declares, creates, grants and reserves the Utility Access Easement for the use of the utility companies, Builder, or Developer and all governmental agencies having appropriate jurisdiction for the purpose of ingress to and egress from the real estate more particularly illustrated on the secondary plat of record, attached to and made a part of this Declaration. No permanent or temporary structure shall be erected or maintained upon said Utility Access Easement, except that Developer, Builder, or the Association may erect a lockable gate across such easement if so desired.

5.6 Non-Access Easement. Developer hereby declares, creates, grants and reserves the Non-Access Easement in which no Owner or other party may erect, place or maintain any structure, improvement, or object of any sort, whether permanent or temporary, and through, over and under which no Owner or other party may pass to gain ingress to or egress from any portion of the Real Estate or for any other purpose except the maintenance of the Common Property, if any, situated thereon.

5.7 Other Easement Rights. Developer hereby declares, creates, grants, and reserves: (a) during the Development Period, a non-exclusive easement for the use of Developer and Builder over the Common Property for the construction, reconstruction, alteration and maintenance of all improvements to be located thereon;

(b) a non-exclusive access and construction easement over that portion of the Real Estate outside the Common Property for the temporary occupation thereof by Developer and Builder in order to facilitate the exercise of any of the easement rights granted to Developer and Builder under this Declaration; and (c) a non-exclusive easement in favor of Developer, Builder, the Committee, and the Association over the Lot of any Owner who is in violation of any Standard for the purpose of correcting or effecting the correction of such violation as provided for herein.

5.8 Private Utility Lines. The Owner of each Lot shall be responsible for the maintenance, repair or replacement of utility distribution lines and connections, as well as private sanitary sewer laterals (which connect a Lot to a sewer main) on such Lot. On such Lot, the Owner shall also be responsible for the maintenance, repair or replacement of storm sewer lines, mains, drains and other storm sewer system components located on the Lot, except to the extent such items are located within a Sewer Easement, in which case such maintenance, repair and replacement shall be the Association's responsibility.

5.9 Relocation of Easements. Developer reserves the right to relocate any easement granted herein without notice to or the consent of any Owner(s); provided, however, that such relocation shall not materially diminish or unreasonably disrupt the essential function or resulting benefit of the easement being relocated with respect to any Lot.

5.10 Easement for Utilities and Public and Quasi-Public Vehicles. All public and quasi-public vehicles, including but not limited to, police, fire, ambulance and other emergency vehicles, trash and garbage collection, post office vehicles, postal employees, utility company vehicles and personnel, privately owned delivery vehicles making deliveries to a Lot, as well as pedestrian traffic are hereby granted the right to enter upon and use the roadway throughout the subdivision in the performance of their duties, for deliveries, for ingress and egress, and for installation, replacement, repair and maintenance of all public utilities, including, but not limited to, water, sewer, gas, telephone, cable TV and electric. Further, the Boone County Emergency Management Agency shall have Easement Access to any and all emergency warning sirens which may be furnished and installed by Developer. The County of Boone and the Emergency Management Agency shall have full and complete legal liability and responsibility for the continued maintenance and repair of any sirens and developer and Power of Attorney are relieved of any and all liability and responsibility for maintenance and repairs.

5.11 The Brookhaven Legal Drain. All Lots within Subdivision are included in The Brookhaven Legal Drain. This legal drain has been established by the Boone County Drainage Board and the Boone County Surveyor to provide a method for future maintenance of the retention pond structures, storm sewers and the subsurface tile drains located in the Subdivision. The Boone County Drainage Board shall not maintain the pond itself. Easements have been provided on certain Lots as shown on the recorded plats in order that contractors employed by the Boone County Surveyor

may gain access across Lots in the Subdivision to maintain said drainage improvements. Each Lot will be assessed a yearly drainage fee as may be assessed by the Boone County Drainage Board. This fee is billed by the Boone County Treasurer and is payable at the time of property taxes in May and November. Failure to pay said assessment could result in a property being involved in a Tax Sale for failure to pay delinquent taxes. In the event of major reconstruction and/or repair of The Willows Legal Drain, the Boone County Drainage Board may, after public hearing, impose a Special Assessment to cover the costs of reconstruction and/or repair.

ARTICLE VI
PROTECTIVE COVENANTS AND USE RESTRICTIONS

6.1 Residential Use and Occupancy Restrictions. Except as provided in Section 6.33 below, every Lot is reserved exclusively for residential purposes. No permanent or temporary building, structure or improvement of any kind may be erected, constructed, or placed thereon except a single-family residence (a "Dwelling") and such accessory buildings, structures, and/or improvements, if any, as are approved in accordance with Article IX of this Declaration. Except as may be erected by Builder in connection with the construction of a Dwelling or other improvements in the Development, outbuildings, sheds, storage barns, and other accessory buildings, structures, and improvements not specifically addressed in this Declaration are prohibited. There shall be no more than one (1) Dwelling per Lot and no Dwelling may be occupied until all prerequisites to occupancy set forth herein have been satisfied and an occupancy permit or similar permit or approval has been issued by the governmental body or agency with responsibility therefore.

6.2 Dwelling Size. No single-story Dwelling containing less than 1800 square feet of living space shall be erected, constructed, or placed on any Lot. No multi-story Dwelling containing less than 2000 square feet of living space shall be erected, constructed, or placed on any Lot. For purposes of this Section 6.2, "living space" means all enclosed floor space within a Dwelling, excluding floor space contained within any basement, cellar, crawl space, porch, terrace, garage, carport, or other area of such Dwelling that is not equipped and intended for regular and continuous human habitation.

6.3 Building Lines and Combined Lots. Front yard, side yard, and rear yard building lines are as established on the Plat. No permanent or temporary Dwelling, building, structure, or improvement shall be erected, constructed, or placed on any building line and/or between any building line and the corresponding parallel Lot line. In the case of contiguous Lots owned by a single Owner, such Lots may be used for a single Dwelling and considered to be a single Lot for building line purposes under this Declaration only with the written approval of the Committee. Owners desiring such approval must submit a written request to the Committee. In the event approval is

granted, the affected Lots shall continue to be treated as a single Lot so long as each remains improved only with a single Dwelling.

6.4 Sidewalks. Each Lot must include sidewalks situated parallel to each Lot line that adjoins the right-of-way of any public or private street. Sidewalks shall be constructed and located in accordance with plans and specifications provided by the Committee. Except to the extent a temporary waiver is obtained from the Committee by the affected Owner, completion of all required sidewalks shall be a prerequisite to the occupancy of each Dwelling under this Declaration. Such temporary waiver may be requested only where inclement weather or other causes beyond the affected Owner's reasonable result in the inability to complete the sidewalks prior to the Dwelling being fully ready for occupancy. If at sometime in the future the Boone County requires the installation of sidewalks along County Road 300E, the Association will provide the financial means to facilitate this request. The Association will be responsible for the repair and maintenance of the sidewalks throughout the development under the direction of the Committee.

6.5 Construction, Completion, and Restoration of Dwellings. Except as approved by the Committee, every Dwelling, building, structure, and improvement to be constructed, erected, or placed on any Lot shall be built of new building materials and no pre-existing Dwelling, building, structure, or improvement may be relocated to or otherwise placed upon any Lot. The exterior construction of a Dwelling, building, structure or improvement shall be completed no later than six (6) months from the commencement of on-site construction activities related thereto. Restoration, replacement, or removal of any Dwelling, building, structure, or improvement partially or totally damaged or destroyed by fire or other casualty shall be commenced no more than ninety (90) days after the occurrence of such casualty and continuously and diligently prosecuted to completion thereafter. The Owner of the Lot upon which any Dwelling, building, structure or improvement partially or totally damaged or destroyed by fire or other casualty is or was located shall provide to the Association, no more than thirty (30) days from the date on which such casualty occurred, written notice of such Owner's intent to restore or remove such Dwelling, building, structure or improvement.

6.6 Compacted Fill Material on Lots. Lots may contain compacted fill material. This soil, although it has been properly compacted, may not contain similar engineering properties of undisturbed soil for the purpose of foundation construction. The Developer makes no representation, express or implied, as to the suitability of soil conditions for the purpose of foundation construction. The Owner of each Lot is solely responsible for determining the suitability of soil conditions prior to the purchase of a Lot and/or the commencement of construction.

6.7 Garages and Driveways. Each Dwelling must include an attached multiple-car garage consistent in design, construction, and materials with such Dwelling. No Lot shall be permitted to contain more than one driveway and each lot shall be allowed only one cut onto a public road adjoining the property. The driveway on each

Lot shall be cut and stone or gravel placed thereon prior to development or improvement of the Lot to the extent necessary to avoid the transmittal of mud from construction traffic to the Public Roads. Upon substantial completion of construction, each driveway shall be constructed of either hard mixed aggregate, concrete or concrete pavers, brick or other material acceptable to Developer. A driveway constructed on any Lot to and from the Public Road shall be constructed and maintained so as to provide the sole means of ingress and egress to such Lots for vehicular traffic. However, circular drives which provide more than one cut onto a public road may be allowed upon approval of the Developer. Under no conditions shall driveways be constructed over curb inlets of the storm sewer system within the right-of-way of the public road. No asphalt or concrete driveway shall be placed behind a curb containing these inlet grates. Each Lot Owner shall be required to obtain a Driveway Permit from the Boone County Highway Department prior to or at the time of an Application for a Building or Improvement Location Permit. Specific attention shall be paid to corner lots (lots with frontage on two public streets). No driveway shall be located within seventy-five feet (75') of right-of-way line of intersecting public streets. The following lots shall have driveway cuts only from the following public streets.

<u>Lot</u>	<u>Street</u>
------------	---------------

See Attached Exhibit "B"

6.8 Exterior Construction. The exterior color and finish materials of every Dwelling, building, structure, and improvement on any Lot shall be as approved by the Committee. Aluminum and vinyl siding is prohibited.

6.9 Sound Mitigation. Each residence to be constructed in Brookhaven Development shall include the following sound mitigation features: Ceiling R-value of at least R-38; Exterior wall R-value of at least R-19; Exterior surface consisting exclusively of brick and/or a cement-fiber siding; Roofing materials at least 250 lbs/sq in weight.

6.10 Landscaping. The front and side yards within a Lot must be sodded unless an in-ground irrigation system is installed, in which case hydroseeding is permitted. The rear yard within a Lot may be sodded or seeded. Within thirty (30) days following completion of a house on a lot, the Builder shall landscape the lot weather permitting. Landscaping by way of trees or shrubs is not permitted in any right-of-way.

6.11 Mailboxes. Each Dwelling must include a mailbox complying with the design, color, and placement standards established by the Committee from time to time. The mailbox shall not be constructed of brick, stone or masonry construction.

6.12 Fences. Except to the extent a taller fence is required under applicable law in connection with an in-ground swimming pool approved as required under Section 6.13 below, no fence shall be permitted on any Lot except for forty-eight inch (48") high decorative metal fences in the "wrought iron" style as approved by the Committee pursuant to Section 9.3 of this Declaration. For purposes of this Declaration, a fence is defined as that which is installed in proximity of the Lot boundary lines for the purposes of enclosing the majority of the rear portion of the lot. No chain link fencing will be allowed. No part of any fence may extend forward on the affected Lot beyond the primary rear wall of the Dwelling, cross any building line, or be located in a manner that impedes or restricts drainage of any Lot, or be constructed in any right-of-way area.

6.13 Swimming Pools. All swimming or wading pools, other than professionally constructed, permanent, in-ground pools, are prohibited. No swimming pool of any type shall be permitted on any Lot except as approved by the Committee. Notwithstanding the foregoing, temporary wading pools measuring no more than six feet (6') in diameter are permitted without Committee approval. Such temporary wading pools must be drained and stored indoors on a nightly basis.

6.14 Trash Collection. Trash collection services for the Development shall be provided only by an entity selected and designated by the Association. Trash may be placed at the curb of each Lot no earlier than 6:00 pm the night before scheduled collection, and trash receptacles shall not be permitted to remain outside for more than twenty-four (24) consecutive hours. No burning of any trash and no accumulation or storage of litter, new or used building materials or refuse of any kind shall be permitted on any Lot. This provision shall not apply to any Lots owned by Builder and held for sale or open fires within a cooking grill for the purposes of preparing food.

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

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

6.17 Playground Equipment. Playsets and other recreational equipment or items must be approved by the Committee. All approved playsets must be located behind the Dwelling in the rear yard of the affected Lot and must be constructed primarily of wood. No playset may exceed twelve feet (12') in height. All playsets shall

be kept in good condition and repair, and shall be stained and/or painted as reasonably necessary as determined by the Committee.

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

6.19 Prohibited Accessory Structures. No permanent or temporary accessory building, storage shed, mobile homes or free standing greenhouse shall be erected or permitted to remain upon a Lot.

6.20 Flagpoles. Flagpoles must be approved by the Committee. No flagpoles shall exceed twenty feet (20') in height. Flags exceeding thirty (30) square feet are prohibited. No more than two (2) flags may be flown from a single flagpole at any time. Only one (1) flagpole will be allowed on each respective Lot. The Developer and/or Builder are exempt from this requirement.

6.21 Yard Lights. Each Dwelling shall include an outdoor dusk-to-dawn light located in the front yard of the Lot on which such Dwelling is located. Each Lot Owner shall keep the light located on such Owner's Lot in good and operable condition and repair at all times. Notwithstanding this requirement, no exterior lighting shall be directed outside the boundaries of any Lot, nor shall any lighting be used which constitutes more than normal convenience lighting or lighting required under this Declaration Section.

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

6.23 Window Coverings. All interior window coverings shall be specifically designed as window treatments, including but not limited to: blinds, shutters, or drapes. No sheets, towels, paper or other similar items, not expressly designed as window treatments, shall be used to cover a window.

6.24 Parking. Overnight parking on any public or private street in the Development is prohibited. Temporary parking of automobiles, SUVs, pickup trucks, and motorcycles is permitted only when the Owner of such Lot hosts a social function for which available driveway space is insufficient to accommodate all guests

6.25 Exterior Antennae. No antenna or satellite dish may be erected on any Dwelling or Lot without Committee approval. Approved satellite dishes must be no more than twenty-four inches (24") in diameter and must be mounted in an

inconspicuous location as approved by the Committee. There may be no more than one (1) satellite dish on any lot.

6.26 Additional Restrictions and Building Standards. Lots and Dwellings shall be constructed and maintained in compliance with, and Owners shall abide by, all additional rules and restrictions, as well as all construction material specifications and similar standards, adopted by the Committee from time to time.

6.27 Subdivision of Lots. No Lot shall hereafter be subdivided into parcels for additional residential purposes, except as approved by the Committee.

6.28 Motor Vehicle Repair. The repair or storage of inoperative motor vehicles or the material alteration of motor vehicles shall not be permitted on any Lot, unless entirely within a garage permitted to be constructed under this Declaration.

6.29 Vehicle, Boat, or Travel Trailer Storage. No camper, motor home, semi-truck or cab, trailer, recreational vehicle or boat of any kind may be stored on any Lot. Further, no recreational vehicle, mobile home, boat, personal watercraft, snowmobile, travel trailer or similar vehicle or equipment shall be parked or stored on any Lot for a period in excess of forty-eight (48) hours during any calendar month, unless the same is in the garage and completely out of view. Commercial vehicles and trucks exceeding a three-quarter (3/4) ton rating are prohibited, unless such commercial vehicles or trucks are kept in the garage and completely out of view.

6.30 Noxious or Offensive Activities. No noxious, unlawful or otherwise disruptive or offensive activity shall be carried on upon any Lot; nor shall anything be done thereon which may become an annoyance or nuisance to other Owners and/or their guests.

6.31 Lot and Dwelling Maintenance. Each Owner shall keep his Lot(s) and the Dwelling thereon in a good and well-maintained condition, free and clear of rubbish and trash and in good repair. Lot Owners shall keep their Lots reasonably clear from unsightly weeds and growth at all times. Lawns shall be groomed, well maintained, and regularly cut. Grass shall not be permitted to exceed six inches (6") in height.

6.32 Lakes. All lakes, ponds and streams within the Development, if any, shall be aesthetic amenities only and no other use thereof, including without limitation, swimming, boating, fishing, playing or use of personal flotation devices shall be permitted except in accordance with all applicable Standards. Neither Developer, Builder nor the Association shall be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of the lakes, ponds or streams within the Development.

6.33 Business Activity. No business shall be conducted on any Lot, other than the home occupations permitted in the Boone County Zoning Ordinance. Notwithstanding the above, and to the extent such a limitation is consistent with applicable law, no school, preschool, day-care facility, church or similar institution of any kind shall be maintained, conducted or operated upon any Lot.

6.34 Animals. No animals, livestock or poultry shall be raised, bred or kept on any Lot except that dogs, cats and other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose and that no more than two (2) outdoor pets (excluding fish) are kept on a given Lot in aggregate. The demeanor of any animal kept outside must be such as to not to create a problem. This determination shall be made by the Committee. Any dog or cat beyond the confines of the Lot must be attended to and be on a leash no longer than six feet (6") in length. Solid waste material must be picked up immediately if outside the confines of the owner's Lot.

6.35 Compliance with Drainage Requirements/Subsurface Drains. Each Owner of a Lot shall comply at all times with the provisions of any drainage plan as approved for the Development of all or any part of the Real Estate. It shall be the duty of every lot owner to keep open storm drainage ditches and/or swales unobstructed and in good maintenance and repair. Water must be discharged into the under drains provided on each Lot from sump pumps, geo-thermal systems or other forced water discharges. Under no circumstances shall the above-mentioned water sources be allowed to discharge above ground into the street or adjacent lots. Specific Lots within the subdivision have been provided access to plastic drains which are connected to the subdivision storm sewer system. These drainage tiles are designed to provide an outlet for the flow from drainage water from sump pump discharges. In no situation shall the discharge from sump pumps or downspouts be outletted directly into the street right-of-way or onto the street surface. Gravity drainage from downspouts may be drained by piping into the storm system. The water from downspouts shall be dispersed onto the lawn area around the home and allowed to flow naturally to drainage ways. All floor drains shall drain into the sewage disposal system of the home. In no situation shall sump pumps be outletted into the septic system of the home or in any ravine, swale or open ditch on or adjacent to the subdivision.

6.36 Signs. No signs of any type may be erected, posted or displayed on any Lot except street identification signs erected by the Builder, the Developer, or the Association and except one (1) temporary sign no more than six (6) square feet in area advertising the Lot upon which such sign is located for sale. This restriction shall not apply to Builder who may erect such signs as are authorized by the Developer. Further, informational, directional, or traffic signs shall be installed and maintained by the Association. All such signs must be a minimum of six-inch (6") letters on nine-inch (9") blades, in compliance with minimum INDOT Standards. Additionally, the poles for

the signage must also comply with INDOT Standards or have been approved by INDOT.

6.37 Open Space Areas. Open Space Areas are designated and described on the plat along a portion of the common boundary of the subdivision.

6.38 Common Areas "A-I". Common Areas A-I consist of drainage, utility and landscape easements to provide for drainage, utilities and landscape treatment at the entrance to the subdivision. Common Areas, including the wet retention pond, shall be maintained by the Property Owners Association as set out in Article IV. The Common Areas are intended for the use or enjoyment of the Owners and Occupants and their guests of Lots within the Development. The Common Areas are not to be considered public areas and not subject to public access.

6.39 Use of Recreational Facilities. All Builders and Owners specifically acknowledge that Developer has granted a license to use the Recreational Facilities for their intended purposes to any individual(s) who owns a residential lot within Brookhaven and specifically recognize the Fieldstone Subdivision. Such license shall extend to all Members of such individual's immediate family who reside with such individuals in Brookhaven or Fieldstone. The license for use of the Recreational Facilities is available in exchange for a mandatory annual fee, paid by such individual to the Association. Such fees shall not exceed thirty-five percent (35%) of the then amount of the then most recent annual assessment for Brookhaven and Fieldstone respectively. The Brookhaven Homeowner's Association and the Fieldstone Homeowner's Association have entered into the Brookhaven-Fieldstone Covenants, Conditions and Restrictions related to a Recreational Facilities Use and Access Agreement for the use of the community pool or other Recreational Facilities. All Builders and Owners specifically acknowledge that they have reviewed and understand the terms of said Agreement.

6.40 Window Air Conditioners. No window air conditioners or window fans may be permitted at any time.

ARTICLE VII **ASSOCIATION**

7.1 Membership. Each Owner shall, automatically upon becoming an Owner, be and become a member of the Association and shall remain a member of the Association until such time as his ownership of a Lot ceases, at which time his membership will terminate and the new Owner of his Lot shall be and become a member of the Association.

7.2 Classes of Membership. The Association shall have three (3) classes of voting membership:

(a) Class A Members. Class A Members shall be all Owners, except the Developer (if the Class B membership exists) and the Builder (if the Class C membership exists). Class A members shall be entitled to one (1) vote for each Lot owned but shall have no vote until both Class B and Class C membership ceases to exist

(b) Class B Members. The Class B member shall be the Developer. The Class B member shall be entitled to the number of votes necessary to constitute sixty percent (60%) of the total voting power of the Association. The Class B membership shall automatically cease to exist as such and shall be converted to Class A membership upon the occurrence of the earliest of the following:

(i) The sale of seventy-five percent (75%) of the Lots to individual Owners (other than Builder); or

(ii) The Applicable Date.

(c) Class C Members. The Class C member shall be the Builder. The Class C member shall be entitled to the number of votes necessary to constitute forty percent (40%) of the total voting power of the Association. The Class C membership shall automatically cease to exist as such and shall be converted to Class A membership upon the occurrence of the earliest of the following:

(i) The sale of seventy-five percent (75%) to individual Owners (other than Builder);

(ii) The termination of the Agreement and/or the Builder's obligation under the Agreement to purchase the Lots, and Builder's sale of all Lots owned by Builder at the time of such termination to individual Owners;

(iii) Builder's election, evidenced by a written statement executed by Builder and delivered to the Board, to convert its Class C membership to Class A membership; or

(iv) The Applicable Date.

7.3 Co-Owners. Where more than one person or entity constitutes the Owner of a particular Lot, all such persons or entities shall be members of the Association, but the vote in respect of such Lot shall be exercised as the persons or

entities holding an interest in such Lot determine among themselves. In the absence of such a determination, the vote in respect of such Lot may not be cast. In no event shall more than one (1) vote be cast with respect to such Lot.

7.4 Board of Directors. The Board shall manage the affairs of the Association.

7.5 Responsibilities of the Association. The responsibilities of the Association include, but shall not be limited to: (a) the administration and enforcement of the covenants, conditions and restrictions contained in this Declaration; (b) the maintenance and upkeep of the Common Property and the establishment and enforcement, from time to time, of rules and regulations governing the use thereof; (c) the payment of all assessments and charges against the Common Property, if any; and (d) maintaining the policy or policies of insurance required to be maintained by the Association by this Declaration. The Association may fulfill any or all of its responsibilities under this Declaration by contracting with a professional management company upon such terms and conditions as may be agreed upon between the Board and such management company; provided, however, that no such agreement shall be for a term longer than twelve (12) months.

7.6 Correction of Violations. In the event of an Owner's breach of any Standard, the Association may impose such fines, penalties, or other sanctions as it may determine to be reasonable and appropriate in its sole discretion and may pursue any and all other remedies provided under this Declaration or otherwise available at law or in equity. In addition, upon reasonable notice to the affected Owner and acting pursuant to a duly adopted resolution of the Board, Developer, Builder, or the Association may enter upon a Lot in order to correct, or direct an Owner to correct, a violation or breach of any Standard. Any costs or expenses incurred by the Association, Developer or Builder in correcting or attempting to correct a violation or breach under this Section 7.6 (including court costs, legal expenses, and reasonable attorneys' fees), as well as any unpaid fines imposed under this Section, shall be a charge against the affected Lot and a personal obligation of such Owner. The Association shall have a lien against said Lot for such costs, expenses, and amounts, together with all costs of collection. Such lien shall be subordinate to any Mortgage and other liens made superior by applicable law and may be imposed and foreclosed against the Lot in the manner that mechanics' liens are imposed and foreclosed in Indiana. Any lien sought to be imposed pursuant to this Section shall be perfected upon the filing in the office of the Recorder of Boone County, Indiana, at any time after the date payment is due, a notice of the intention to hold a lien in the same manner that a notice of intention to hold a mechanic's lien is filed in Indiana.

7.7 Compensation. No director of the Association shall receive compensation for his services as director.

7.8 Non-Liability of Directors and Officers. The directors and officers of the Association shall not be liable to the Owners or any other persons for any error or mistake of judgment in carrying out their duties and responsibilities as directors or officers of the Association, except for their own individual willful misconduct, bad faith or gross negligence.

7.9 Owner Disputes. In addition to the responsibilities set forth in Section 7.5 above, the Board shall, upon the receipt of a detailed written complaint from an Owner summarizing a dispute between such Owner and any other Owner(s) regarding the application of this Declaration or any rule or regulation promulgated hereunder, conduct a hearing to resolve such dispute. Such hearing shall be held no later than thirty (30) days after the Board's receipt of the complaint upon no fewer than five (5) days' written notice to the affected Owners. The Board shall serve as arbitrator at the hearing, shall entertain and review such evidence and arguments as it deems appropriate, and shall issue a written decision to the affected Owners no more than thirty (30) days after the hearing is concluded. No Owner involved in such dispute shall institute legal action regarding that dispute until the arbitration provided for in this Section has been completed or all affected Owners have waived this requirement for arbitration.

ARTICLE VIII ASSESSMENTS

8.1 Covenant for Assessments. Each Owner of any Lot (excluding Developer and Builder), by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (a) annual assessments, and (b) special assessments for the purposes herein provided, such annual and special assessments to be established and collected as hereinafter provided. The annual and special assessments, together with costs of collection and reasonable attorneys' fees and interest from the date such assessments are due at the rate of twelve percent (12%) per annum, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessments are made. Each such assessment, together with costs of collection and reasonable attorneys' fees and interest from the date such assessment is due at the rate of twelve percent (12%) per annum, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

8.2 Initiation and Capital Fund Assessment. Upon the initial conveyance of a Lot by the Developer or Builder to an Owner, the Owner shall pay an initial assessment of Two Hundred Fifty Dollars (\$250.00).

8.3 Purpose of Annual Assessments. The annual assessments levied by the Association shall be used exclusively: (a) for the maintenance and upkeep of the

Common Property; (b) to pay the premiums for the insurance required to be maintained by the Association by this Declaration; (c) to promote the health, safety and welfare of the Owners and residents occupying the Lots; (d) to pay all assessments and charges against the Common Property; and (e) for the effective management and operation, and the performance of the responsibilities and duties, of the Association. A portion of the annual assessments may be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of any buildings, structures or other amenities that are part of the Common Property.

8.4 Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Five Hundred Seventy Five Dollars (\$575.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than fifteen percent (15%) above the maximum annual assessment for the previous year without a vote of the membership of the Association.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased by more than fifteen percent (15%) above the maximum annual assessment for the previous year only by a vote of two-thirds (2/3) of the total voting power of the Association at a meeting duly called for this purpose.

(c) The Board may fix the annual assessment at an amount not in excess of the maximum annual assessment.

8.5 Special Assessments for Capital Improvements and Operating Deficits. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year for the purpose of collecting or reimbursing in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Common Property, or to recover or offset an operating deficit incurred by the Association, provided that any such special assessment shall have the assent of two-thirds (2/3) of the total voting power of the Association at a meeting duly called for this purpose.

8.6 Special Assessments for Breaches of Standards. In addition to the corrective actions and remedies provided for in Section 7.6 above, the Association may establish and levy a special assessment on a Lot to secure the personal liability of the Owner of that Lot for costs and expenses incurred by the Association or the Committee in correcting or attempting to correct such Owner's breach of any Standard.

8.7 Notice and Quorum for Any Action Authorized Under Sections 8.5 and 8.6. Written notice of any meeting of the members of the Association called for the purpose of taking any action requiring a vote of the members of the Association under Sections 8.5 or 8.6 shall be sent to all members of the Association not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to sixty percent (60%) of the total voting power of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the total voting power represented at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

8.8 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

8.9 Date of Commencement of Annual Assessments; Due Dates. The annual assessment or prorated portion thereof for each Lot Owner of the Development shall commence on the day of the conveyance of the Lot from Developer or Builder to an Owner (other than the Builder). The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of the commencement of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due date(s) shall be established by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

8.10 Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, together with costs of collection and reasonable attorneys' fees, to recover a money judgment and such amounts may be further enforced by imposition of a lien and foreclosure of such lien against such Owner's Lot in the manner that mechanics' liens are imposed and foreclosed in Indiana. Any lien sought to be imposed pursuant to this Section shall be perfected upon the filing in the office of the Recorder of Boone County, Indiana, at any time after the date payment is due, a notice of the intention to hold a lien in the same manner that a notice of intention to hold a mechanic's lien is filed in Indiana.

8.11 Subordination of the Lien to Mortgages. The lien of the assessments provided for in Section 8.9 shall be subordinate to the lien of any Mortgage on the Lot. Sale or transfer of any Lot shall not affect the lien of the assessments provided for in Section 8.1. However, the sale or transfer of any Lot

pursuant to foreclosure or any proceeding in lieu thereof with respect to a Mortgage, shall extinguish the lien of the assessments provided for in Section 8.1 as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE IX
BROOKHAVEN ARCHITECTURAL REVIEW COMMITTEE

9.1 Creation. There shall be and hereby is, created and established the Brookhaven Architectural Review Committee (the "Committee"). The Committee shall perform the functions provided for herein. Until the earlier of the elimination of both Class B and Class C membership or the Applicable Date, the Committee shall consist of five (5) members appointed, from time to time, by Class B and Class C Members. Such members shall be subject to removal by Class B or Class C Members at any time with or without cause. After the earlier of the elimination of both Class B and Class C membership or the Applicable Date, the Committee shall be a standing committee of the Association, consisting of five (5) persons appointed, from time to time, by the Board.

9.2 Purposes and Powers of the Committee. The Committee shall regulate (a) the external design, construction, appearance and location of the Dwellings, buildings, structures, and improvements on the Lots; and (b) the removal or addition of any tree, vegetation or landscaping feature or element, from or to any Lot. The Committee shall promulgate, and shall subsequently have the right to modify, supplement, amend, and repeal at any time from time to time, architectural and ecological guidelines, standards, rules and regulations (collectively, the "Guidelines") for the review, approval, and completion of the items and actions referred to in this Section. The Guidelines shall include, but shall not be limited to, standards for landscaping, fences, and mailboxes. The Guidelines may set forth requirements in addition to those set forth in the Declaration or any Plat as long as such Guidelines are not inconsistent therewith. The Guidelines shall be binding on all Owners.

9.3 Approval Procedures and Standards. No Dwelling, building, fence, wall, or other permanent or temporary structure, or improvement of any kind shall be constructed, erected, placed or maintained on any Lot, nor shall any exterior change (including changes in the exterior color and/or material of a Dwelling or other improvement) or alteration of such Lot or a Dwelling or improvement thereon (including material changes in landscaping elements or features) be made without the prior written approval of the Committee (Builder, as defined, is exempt from this requirement). Such approval shall be obtained based upon a written application made to the Committee by the Owner of the affected Lot requesting authorization for such Owner's intended addition or change to his Lot from the Committee. Such written application shall be in the form prescribed from time to time by the Committee, and may include, as required by the Committee, any or all of the following: a proposed site plan; a proposed landscaping plan; architectural plans, including floor plans, cross sections, and

elevations; material specifications and samples; and certifications of conformance with applicable building, zoning and similar codes. The Committee shall approve or disapprove in writing any application submitted to it within thirty (30) days of such submission. Written disapproval shall specify the reason(s) for such disapproval, which may include:

(a) an inadequate or incomplete application;

(b) an application proposing an improvement or change that, if completed or made on the Lot, would: (i) result in the violation of a duly adopted Standard, or (ii) be aesthetically or otherwise inconsistent with or detrimental to the character, utility, function, or value of the Development as a whole or the affected Neighborhood therein; or

(c) an application proposing an improvement or change that would be dangerous, potentially damaging, or otherwise detrimental to the health, safety and welfare of any Owner or other person or property in the Development.

9.4 Enforcement. The Committee shall have the right to enforce this Article and impose fines for the violation thereof as provided for in Section 14.1 of this Declaration, any organizational document of the Association or any statute, law, rule or regulation. The Committee may, in its sole and exclusive discretion, refer such violations to the Board for enforcement under Section 7.6.

9.5 Committee Liability. The approval of plans and related application materials by the Committee shall not constitute a representation or warranty as to the legal or technical adequacy, completeness, or quality of such plans and materials, and neither the Committee nor the Association nor any member thereof shall be in any manner liable or responsible for defects or omissions in those plans or materials, any aspect of work performed there under, or alleged damages or losses connected with the Committee's approval or disapproval of any matter.

9.6 Fees. The Committee may charge a reasonable fee for the processing and review of plans and related application materials.

ARTICLE X MORTGAGES

10.1 Notice to Association. Any Mortgagee who places a Mortgage lien upon a Lot may notify the Secretary of the Association of the existence of such Mortgage and provide the name and address of such Mortgagee. A record of such Mortgagee's name and address shall be maintained by the Secretary of the Association and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the by-laws of the Association or otherwise shall be deemed effectively

given if mailed to 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, as herein provided, no notice to any Mortgagee as may be otherwise required by this Declaration, the by-laws of the Association or otherwise shall be required, and no Mortgagee shall be entitled to vote on any matter to which it otherwise may be entitled by virtue of this Declaration, the by-laws of the Association, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

10.2 Notice to Mortgagees. The Association, upon request, shall provide to any Mortgagee a written certificate or notice specifying defaults known to the Association, if any, of the Owner of the corresponding Lot in the performance of such Owner's obligations under this Declaration or any other applicable documents.

ARTICLE XI **AMENDMENT**

11.1 Amendment by Association. Except as otherwise provided in this Declaration or by applicable statute, amendments to this Declaration shall be proposed and adopted in the following manner:

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

(b) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board or Owners having in the aggregate at least a majority of the total voting power of the Association.

(c) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting of the members of the Association duly called and held in accordance with the provisions of the by-laws of the Association.

(d) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than two-thirds (2/3) of the total voting power of the Association; provided, however, that any such amendment shall require the prior written approval of Developer and Builder so long as Developer or Builder owns any Lot. In the event any Lot is subject to a 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 in accordance with the provisions of the foregoing Section 10.1.

(e) Notwithstanding this provision, Sections 5.1, 5.3, 5.13, and 6.28 of this Declaration may not be amended without approval of the Boone County Area Plan Commission and/or the Boone County Board of Zoning Appeals and/or the Boone County Drainage Board after a public hearing in accordance with their Rules and Regulations.

11.2 Recording. Each amendment to the Declaration made pursuant to Section 11.1 above shall be executed by the President or Vice President and Secretary of the Association. All amendments shall be recorded in the Office of the Recorder of Boone County, Indiana, and no amendment shall become effective until so recorded.

11.3 Amendment by Developer. Subject to Section 11.1 (e), Developer, may, subject to Builder's written consent, which consent may be granted or withheld in Builder's sole discretion, subject any additional real estate to the provisions of this Declaration by the execution and recording of a supplement hereto. Such annexation shall not require the consent of the Owners or the Association. Notwithstanding the foregoing, Developer is not obligated to subject any additional real estate to this Declaration. Any annexation made under this Subsection 11.3 shall be evidenced by filing a supplement to this Declaration, which shall be recorded in the Office of the Recorder of Boone County, Indiana. Such a supplement to this Declaration may contain such additional covenants, conditions, restrictions, easements and liens as Developer shall deem appropriate to impose upon the additional real estate being annexed, subject to Builder's approval of such additional consents, conditions, restrictions, easements or liens. Annexed additional real estate shall enjoy the benefit of all Common Property in the Development.

ARTICLE XII INSURANCE

12.1 Liability Insurance. The Association shall maintain at all times a policy or policies of comprehensive general liability insurance insuring the Association, the Board, Developer, Builder, and the Owners against liability for personal injury or property damage occurring in or about, or arising in connection with, the Common Property or any other areas of the Property maintained by the Association, or the acts or omissions of the Association. Such insurance shall be in such coverage amounts as the Board may determine, in its sole discretion, are appropriate from time to time.

12.2 Other Insurance. The Association may maintain officers' and directors' liability insurance and such insurance or extended coverage insurance insuring the Common Property in such amounts, against such perils, for such time periods and under such circumstances as the Board determines, in its sole discretion, are appropriate and in the best interest of the Development.

12.3 Insurance Proceeds. Any and all insurance proceeds received by the Association shall be held by the Association and used for the benefit of the Owners,

the Common Property and the Lots, as the Board shall, from time to time, determine. No Owner shall have any right in or to the proceeds of any such insurance.

12.4 Casualty. If any portion of the Common Property is damaged or destroyed, the Association shall restore the affected portion of the Common Property to substantially the same condition as existed immediately prior to such damage or destruction to the extent reasonably practicable. If such damage or destruction is not covered by insurance maintained by the Association, or the proceeds are insufficient to fully restore the affected portion of the Common Property as a result thereof, then the Association shall effect the restoration thereof in such a manner as the Association may determine appropriate in its sole judgment and shall levy a special assessment against each Owner for any deficiency in proportion to his respective share thereof.

ARTICLE XIII **REAL ESTATE TAXES AND ASSESSMENTS**

13.1 Real Estate Taxes. Seller and each Owner shall be responsible for and pay all taxes and assessments, general and special, levied or imposed upon his respective Lot and its improvements. The Association shall be responsible for and pay all real estate taxes and assessment levied against the Common Property.

13.2 Allocation. Prior to the time the Auditor of Boone County, Indiana, or any other applicable taxing authority, establishes separate tax parcels for each Lot, Developer (or, if the Class B membership no longer exists, Builder) shall allocate the real estate taxes and assessments upon the Real Estate among and against the Lots and against the remainder of the Real Estate in a fair and equitable manner as determined by Developer in its sole discretion. The allocation made in accordance with the terms hereof shall be binding upon Seller and all Owners.

ARTICLE XIV **GENERAL PROVISIONS**

14.1 Right of Enforcement. Each Owner, tenant, or occupant of a Lot shall comply with all Standards. Violation or threatened violation of any Standard shall be grounds for an action by Developer, Builder, the Association, the Committee, any Owner, and all persons or entities claiming under them, against the person or entity violating or threatening to violate any such Standard. Available relief in any such action shall include: recovery of damages or other sums due for such violation; injunctive relief against any such violation or threatened violation; declaratory relief and the recovery of costs and reasonable attorneys' fees incurred by any party successfully enforcing such covenants and restrictions; provided, however, that neither Developer nor Builder nor the Association nor the Committee shall be liable for damages of any kind to any person for failing to enforce or carry out any such Standards.

14.2 Government Enforcement. Neither the Boone County Planning Commission, nor any other political subdivision or agency, nor any of their respective successors and assigns, shall have the right, power or authority to enforce any Standard other than those covenants, conditions, restrictions or limitations, if any, that expressly run in favor of such entities.

14.3 Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to any violation or threatened violation of any Standard shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to it or him upon the occurrence, recurrence or continuance of such violation or violations of such covenants, conditions or restrictions.

14.4 Duration. These covenants, conditions and restrictions and all other provisions of this Declaration (as the same may be amended from time to time as herein provided) shall run with the land and shall be binding on all parties, entities and persons from time to time having any right, title or interest in the Real Estate, or any part thereof, and on all persons claiming under them, until the Applicable Date, and thereafter shall be automatically be extended for successive periods of ten (10) years each, unless, prior to the commencement of any such extension period, by vote of the majority of the total voting power of the Association, it is agreed that this Declaration shall be terminated in its entirety; provided, however, that no termination of the Declaration shall affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall consent thereto.

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

14.6 Titles. The underlined titles preceding the various Sections and Subsections of this Declaration are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provisions of this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

14.7 Applicable Law. This Declaration shall be governed, interpreted, construed and regulated by the laws of the State of Indiana.

14.8 Sales Offices and Models. Notwithstanding anything to the contrary contained in this Declaration or any Plat of all or any part of the Real Estate now or hereafter recorded in the office of the Recorder of Boone County, Indiana, Builder, any entity related to Builder, and any other person or entity with the prior written consent of Builder shall, during the Development Period, be entitled to construct, install, erect and maintain such facilities upon any portion of the Real Estate owned by Builder

or such person or entity as, in the sole opinion of Builder, may be reasonably required or convenient or incidental to the development of the Real Estate and the sale of Lots and the construction of residences thereon. Such facilities may include, without limitation, storage areas, parking areas, signs, model residences, construction offices and sales offices; provided, however, that such facilities shall comply with applicable law and ordinances.

IN WITNESS WHEREOF, this Declaration has been executed by Developer as of the date first above written.

DEVELOPER:

[Signature]
Drees Premier Homes, Inc.

STATE OF INDIANA)
) SS:
COUNTY OF Marion)

Before me, a Notary Public in and for the State of Indiana, personally appeared John W. Talbot, who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions for Drees Premier Homes, Inc.

WITNESS my hand and Notarial Seal this 12th day of December, 2006.



[Signature]
Notary Public
Jo Ann Diaz
Printed Name

My Commission Expires:
October 27, 2009

I am a resident of Marion
County, Indiana.

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

NAME [Signature]

EXHIBIT A
BROOKHAVEN
"REAL ESTATE"

PART OF THE SOUTHWEST QUARTER OF SECTION 13, TOWNSHIP 18 NORTH,
RANGE 2 EAST, BOONE COUNTY, INDIANA, BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID QUARTER; THENCE NORTH
00 DEGREES 44 MINUTES 59 SECONDS WEST ALONG THE WEST LINE OF
SAID QUARTER A DISTANCE OF 1541.45 FEET; THENCE NORTH 88
DEGREES 17 MINUTES 40 SECONDS EAST PARALLEL WITH THE SOUTH LINE
OF SAID QUARTER A DISTANCE OF 2658.35 FEET TO THE EAST LINE OF
SAID QUARTER; THENCE SOUTH 00 DEGREES 37 MINUTES 44 SECONDS
EAST ALONG SAID EAST LINE A DISTANCE OF 1541.50 FEET TO THE
SOUTHEAST CORNER OF SAID QUARTER; THENCE SOUTH 88 DEGREES 17
MINUTES 40 SECONDS WEST ALONG SAID SOUTH LINE A DISTANCE OF
2655.11 FEET TO THE POINT OF BEGINNING, CONTAINING 94.00 ACRES,
MORE OR LESS.

EXHIBIT "B"

DRIVEWAY CUTS

LOTS

STREET

30	Abercairn Court
48	Abercairn Court
20	Brookline Court
28	Brookline Court
12	Abbitt Trail
13	Fontaine Way
54**	Still Creek Drive
55***	High Grove Circle
68****	Newbury Court
80*****	Newbury Court

* Subject to compliance with all Boone County Ordinances concerning driveway cuts in proximity to an intersection.

** If the home constructed on this particular lot, 54, has a side entry garage, the driveway access shall be from High Grove Circle. If a front entry access garage, the driveway access shall be from Still Creek Drive.

***Side load – Still Creek Drive
Front load – High Grove Circle

****Side load – Newbury Court
Front load – High Grove Circle

*****Side load – Newbury Court
Front load – High Grove Circle
Front load on bias – Newbury Court

35
+ 6 Cross Ref.
Drees Homes
+ 2.00 Non

Instrument PG 1 OF 35
200600013476

200600013476
Filed for Record in
BOONE COUNTY, INDIANA
MARY ALICE "SAM" BALDWIN
12-15-2006 AT 03:09 PM.
COVENANTS 87.00

Cross References

This instrument burdens certain real estate located in Boone County, Indiana. The last deeds conveying the burdened real estate was recorded in the Office of the Recorder of Boone County, Indiana, as Instrument No. ~~00508118~~²⁰⁰⁵⁻ on July 19, 2005 and as Instrument No. 200500513836 on November 21, 2005. This instrument also encumbers the real estate depicted in the recorded plats of the Brookhaven Subdivision heretofore recorded in the Office of the Recorder of Boone County, Indiana on July 17, 2006, at Plat Book 17, Pages 28-35, as Instruments Nos. 200600007390 and 200600007391, and the recorded plat of the Fieldstone Subdivision recorded in the Office of the Recorder of Boone County, Indiana on May 31, 2006, at Plat Book 17, Pages 10-14, as Instrument No. 200600005770. This instrument also supplements, and to the extent inconsistent, supersedes, those Declarations of Covenants, Conditions, and Restrictions of Fieldstone recorded in the Office of the Recorder of Boone County on May 31, 2006, as Instrument No. 200600005771.

Declaration of Covenants, Conditions and Restrictions of the Brookhaven-Fieldstone Master Homeowners Association, Inc.

This Declaration of Covenants, Conditions and Restrictions of the Brookhaven-Fieldstone Master Homeowners Association, Inc. (hereinafter referred to as "the Declaration" or "this Declaration"), made this 12th day of December, 2006, by Drees Premier Homes, Inc. ("Drees") and Fieldstone, LLC ("Fieldstone") (hereinafter referred to collectively as "Declarants");

WHEREAS, the following facts are true:

A. Drees is the owner of that certain real estate located in Boone County, Indiana, which is more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Brookhaven Real Estate"). The deed conveying the Real Estate to Declarant was recorded in, as Instrument No. ~~00508118~~²⁰⁰⁵⁻ on July 19, 2005 in the office of the Recorder of Boone County, Indiana;

B. Fieldstone is the owner of that certain real estate located in Boone County, Indiana, which is more particularly described in Exhibit B attached hereto and incorporated herein by reference (the "Fieldstone Real Estate"). The deeds conveying the Real Estate to Declarant were recorded in as Instrument Nos. 200500513836 on November 21, 2005 and 20040041503 on December 7, 2004 respectively, in the Office of the Recorder of Boone County, Indiana.

C. Drees, for its part, desires and intends to subdivide the Brookhaven Real Estate into residential lots in order to create a residential community to be known as "Brookhaven", and to this end, on or about July 17, 2006, recorded plats on a portion of the Brookhaven Real Estate in the Office of the Recorder of Boone County, Indiana at Plat Book 17, Pages 28-35, as Instruments Nos. 200600007390 and 200600007391 (the "Brookhaven Plats"). Drees also anticipates that additional portions of the Brookhaven Real Estate may be hereinafter laid out and platted, and such additional future plats, and any

amendments to the Brookhaven Plats and any such additional future plats, shall for all purposes be considered as part of the "Brookhaven Plats" as defined herein.

D. Fieldstone, for its part, desires and intends to subdivide the Fieldstone Real Estate into residential lots in order to create a residential community to be known as "Fieldstone", and to this end, on or about May 31, 2006 has recorded a plat on the Fieldstone Real Estate in the Office of the Recorder of Boone County, Indiana at Plat Book 17, Pages 10-14, as Instrument No. 200600005770 (the "Fieldstone Plat"). Fieldstone also anticipates that additional portions of the Fieldstone Real Estate may be hereinafter laid out and platted, and such additional future plats, and any amendments to the Fieldstone Plat and any such additional future plats, shall be all purposes be considered as part of the "Fieldstone Plat" as defined herein. Fieldstone has also recorded that certain Declaration of Covenants, Conditions and Restrictions for Fieldstone recorded in the Office of the Recorder of Boone County, Indiana as Instrument No. 200600005771 (the "Fieldstone Neighborhood Declaration").

E. Pursuant to the terms of this Declaration, Drees desires and intends to construct certain improvements and amenities within the Brookhaven community, more specifically, pool facilities and other amenities to be located on Common Area "B" shown on that certain plat recorded in the Office of the Recorder of Boone County on July 17, 2006, at Plat Book 17, Page 28, as Instrument No. 200600007390 (the "Brookhaven-Fieldstone Pool Site") for the benefit of both the Brookhaven community and the Fieldstone community;

F. Before so subdividing the Brookhaven Real Estate and the Fieldstone Real Estate, Declarants, respectively, desire to subject the Brookhaven Real Estate and Fieldstone Real Estate to certain easements, covenants, restrictions, reserved rights, assessments, charges, and liens as provided herein for the benefit of the respective communities and each owner of all or any part thereof;

G. Declarants, respectively, desire to provide for the preservation and enhancement of the property values, amenities, and opportunities in their respective communities and the common areas therein contained, and, to this end, Declarants, respectively, desire to subject the Brookhaven Real Estate and the Fieldstone Real Estate to certain rights, privileges, covenants, restrictions, easements, assessments, charges and liens, each and all to the extent herein provided, for the benefit of the respective communities and each owner of all or part thereof;

E. Declarants, respectively, deem it desirable, for the efficient preservation of the values and amenities in the respective communities, to create a master agency to which shall be delegated and assigned the powers of owning, maintaining and administering the Brookhaven-Fieldstone Pool Site, administering and enforcing the covenants and restrictions contained in this Declaration, collecting and

disbursing the assessments and charges imposed and created hereby and hereunder, and promoting the recreation, health, safety and welfare of the owners of the respective communities, and all parts thereof, and

F. Declarants have caused, or will cause, to be incorporated under the laws of the State of Indiana a not-for-profit corporation under the name "Brookhaven-Fieldstone Master Homeowners Association, Inc.", or a similar name, as such agency for the purpose of exercising such functions;

NOW THEREFORE, Declarants hereby declare that the Brookhaven Real Estate and the Fieldstone Real Estate and any additional real estate which is hereafter made subject to this Declaration by Supplemental Declaration (as defined herein) is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth, all of which are declared to be in furtherance of a plan for preservation and enhancement of the Brookhaven Real Estate and the Fieldstone Real Estate, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Brookhaven Real Estate and Fieldstone Real Estate as a whole and of each of the Lots situated therein. The restrictions shall run with the land and shall be binding upon Declarants, their successors and assigns, and upon the parties having or acquiring any interest in the Brookhaven Real Estate and the Fieldstone Real Estate, respectively, or any part or parts thereof subject to such restrictions, and shall inure to the benefit of Declarants and their successors in title to the Brookhaven Real Estate and Fieldstone Real Estate, respectively or any part or parts thereof.

This Declaration does not and is not intended to create a condominium within the meaning of the Indiana Horizontal Property Law, Indiana Code § 32-25-1, et seq.

ARTICLE I

Definitions

Section 1.1. The following words and terms, when used herein or in any supplement or amendment hereto, unless the context clearly requires otherwise, shall have the following meanings:

1.1.1 "Act" shall mean and refer to the Indiana Not-For-Profit Corporation Act of 1971, as amended.

1.1.2 "Articles" or "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Corporation, as the same may be amended from time to time.

1.1.3 "Board" or "Board of Directors" shall be the elected body having its normal meaning under Indiana corporate law.

1.1.4 "Brookhaven Applicable Date" shall mean the date which is the earlier of (a) Drees shall own less than one-quarter of all the platted Lots within the Brookhaven community or (b) December 31, 2015.

1.1.5 "By-Laws" shall mean and refer to the Code of By-Laws of the Corporation, as the same may be amended from time to time.

1.1.6 "Common Expenses" shall mean and refer to expenses of administration of the Corporation, and expenses for the upkeep, maintenance, improvement, repair and replacement of the Common Areas, and all sums lawfully assessed against the Owners by the Corporation, the performance of any other responsibilities and duties of the Corporation provided herein, assessments imposed by the Master Declaration with respect to the Real Estate, and all sums, costs and expenses declared by this Declaration to be Common Expenses.

1.1.7 "Corporation" shall mean and refer to The Brookhaven-Fieldstone Master Homeowners Association, Inc., an Indiana not-for-profit corporation which Declarants have caused, or will cause, to be incorporated under said name or a similar name, its successors and assigns.

1.1.8 "Declarants" shall mean and refer to Drees Premier Homes, Inc. an Indiana corporation, and Fieldstone, LLC, an Indiana limited liability company, respectively, and each of their respective successors, successors-in-title or assigns that take title to any portion of the Real Estate for the purpose of development and sale and are designated as the Declarants hereunder in a recorded instrument executed by the immediately preceding Declarant. For purposes of this Declaration, an "affiliate" of the Declarant shall be any entity which has executed a power of attorney authorizing Declarant to exercise control over any portion of the Real Estate, or any part thereof, owned by such entity for the purpose of exercising any of the rights granted to the Declarant under this Declaration or the By-Laws. Notwithstanding any other provision of this Declaration to the contrary, prior to the Brookhaven Applicable Date or Fieldstone Applicable Date, as applicable, all rights and powers vested in Declarant by this Declarant shall remain vested in the respective Declarant, notwithstanding that Declarant may sell or otherwise transfer any or all Lots, or any or all Lots in a section, to a person or entity engaged in and responsible for the original construction of single-family residences on a Lot.

1.1.9 "Dwelling Unit" shall mean and refer to any building, structure or portion thereof designed and intended for use and occupancy as a residence by one (1) family.

1.1.10 "Fieldstone Applicable Date" shall mean the date which is the earlier of (a) Fieldstone, or a designated successor Declarant as provided in Section 1.1.8, shall own less than one-quarter of all the platted Lots within the Fieldstone community or (b) December 31, 2015.

1.1.11 "Lot" shall mean any numbered parcel of land shown and identified as a Lot on any Plat including any portion of the Brookhaven Real Estate or the Fieldstone Real Estate.

1.1.12 "Maintenance Costs" means all of the costs necessary to keep the facilities to which the terms applies operational and in good condition, including but not limited to the cost of all upkeep, maintenance, repair, replacement of all or any part of any such facility, payment of all insurance with respect thereto, all taxes imposed on the facility and on the underlying land, leasehold, easement or right-of-way, and any other expense related to the continuous maintenance, operation or improvement of the facility.

1.1.13 "Member" shall mean and refer to a Person entitled to membership in the Corporation, as provided herein.

1.1.14 "Mortgage" shall mean and refer to the holder of a recorded first mortgage lien on any Lot.

1.1.15 "Mortgagee" shall mean and refer to the holder of a recorded mortgage lien on a Lot or Dwelling Unit.

1.1.16 "Mortgagor" shall mean and refer to any Person who gives a Mortgage.

1.1.17 "Owner" shall mean and refer to one (1) or more Persons who hold the record title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a recorded contract of sale, and the contract specifically so provides, then the purchaser (rather than the fee owner) will be considered the Owner. If a Lot is subject to a written lease with a term in excess of one (1) year and the lease specifically so provides, then upon filing a copy of the lease with the Board of Directors, the lessee (rather than the fee owner) will be considered the Owner for the purpose of exercising all privileges of membership in the Corporation. The term "Owner" as used herein shall include Declarant so long as Declarant shall own any Lot.

1.1.18 "Permitted Title Holder" shall mean (a) the Corporation, (b) a public or private educational institution, (c) the County of Boone, Indiana, or (d) a governmental entity or political subdivision located in Boone County, Indiana.

1.1.19 "Person" means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

1.1.20 "Regular Assessment" shall mean and refer to assessments levied against all Lots in the Real Estate to fund Common Expenses.

1.1.21 "Restrictions" shall mean and refer to the agreements, conditions, covenants, restrictions, easements, assessments, charges, liens and all other provisions set forth in this Declaration, as the same may be amended from time to time.

1.1.22 "Special Assessment" shall mean and refer to assessments levied in accordance with Section 9.5 of this Declaration.

1.1.23 "Supplemental Declaration" shall mean an amendment or supplement to this Declaration executed by or consented to by Declarant or its successors, and recorded in the public records of Boone County, Indiana, which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein. The term shall also refer to the instrument recorded by the Corporation pursuant to Section 2.2 of this Declaration to subject additional property to this Declaration.

ARTICLE II

Declaration of Restriction and Statement of Property Rights

Section 2.1. Declaration. Declarants hereby expressly declare that the Brookhaven Real Estate and the Fieldstone Real Estate, respectively, shall be held, transferred and occupied subject to these Restrictions. The Owners of any Lot subject to these Restrictions, and all other Persons, (i) by acceptance of a deed from Declarants, or their successors, conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarants or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall conclusively be deemed to have accepted such deed, executed such contract and undertaken such occupancy subject to each Restriction and agreement herein contained. By acceptance of such deed, or execution of such contract, or undertaking such occupancy, each Owner and all other Persons acknowledge the rights and powers of Declarants and of the Corporation with respect to these Restrictions, and also, for itself, its heirs, personal representatives, successors and assigns, covenant, agree and consent to and with Declarants, the Corporation, and the Owners and Subsequent Owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreement.

Section 2.2. Easements of Enjoyment.

2.2.1 Owners. No Person shall have any right or easement of enjoyment in or to the Brookhaven-Fieldstone Pool Site except to the extent granted by, and subject to the terms and provisions of this Declaration. Drees hereby declares creates, and grants to every Owner within both the Brookhaven community and the Fieldstone community a right and nonexclusive easement of use, access and enjoyment in and to the Brookhaven-Fieldstone Pool Site which shall be appurtenant to and shall pass with the title to every Lot within the respective Brookhaven and Fieldstone communities.

2.2.2. Additional Rights of Use. The members of the family of every Person who has a right of enjoyment to all or part of the Brookhaven-Fieldstone Pool Site may use the Brookhaven-Fieldstone Pool Site (or part thereof) on the same terms and subject to the same limitations as such Person subject to such general regulations consistent with the provisions of this Declaration as may be established from time to time by the Corporation. Except as otherwise provided herein, the Corporation may restrict use of the Brookhaven-Fieldstone Pool Site by guests of Persons whose use is authorized herein.

Section 2.3. Extent of Easements. The easements enjoyment created hereby shall be subject to the following:

2.3.1 this Declaration as it may be amended from time to time and to any restrictions or limitations contained in any deed conveying such property to the Corporation;

2.3.2 the right of the Corporation to limit the number of guests who may use any recreational facilities within the Brookhaven-Fieldstone Pool Site, and to establish reasonable rules regulating the use

and enjoyment of the Brookhaven-Fieldstone Pool Site (including, but not limited to, the use of identification cards);

2.3.3 the right of the Corporation to suspend the right of an Owner to use recreational facilities within the Brookhaven-Fieldstone Pool Site (i) for any period during which any charge against such Owner's Lot remains delinquent, and (ii) for a period not to exceed sixty (60) days for violations of this Declaration, By-Laws, or rules of the Corporation after notice and a hearing pursuant to the By-Laws;

2.3.4 the right of the Corporation to suspend the right of an Owner or any Person claiming through an Owner to sue the Brookhaven-Fieldstone Pool Site for a period not to exceed sixty (60) days for any other infraction of this Declaration.

2.3.5 the right of the Corporation to mortgage any or all of the Brookhaven-Fieldstone Pool Site and/or the facilities constructed thereon for the purposes of improvements to, or repair of, the Brookhaven-Fieldstone Pool Site pursuant to approval of a three-fourths supermajority of the votes of the Members voting in person or by proxy at a regular meeting of the Corporation or a meeting duly called for this purpose.

2.3.6 any other easements declared, created, granted or reserved elsewhere in this Declaration or in any Plat.

Neither Declarants nor the Corporation shall be responsible for any loss, damage, or injury to property or injury or death to persons arising out of the use of the Brookhaven-Fieldstone Pool Site and any equipment and facilities installed by Declarant or the Corporation therein or thereon. The Common Areas and all such equipment and facilities shall be used at the sole risk of the user.

Section 2.4. Conveyance of Title of the Brookhaven-Fieldstone Pool Site. Drees may retain legal title to the Brookhaven-Fieldstone Pool Site until the Brookhaven Applicable Date, but notwithstanding any provision herein, Drees hereby covenants that it will convey all of its right, title, and interest in and to the Brookhaven-Fieldstone Pool Site to the Corporation free and clear of all liens and other financial encumbrances exclusive of liens for taxes not yet due and payable not later than Brookhaven Applicable Date and such Brookhaven-Fieldstone Pool Site shall thereafter be the property of the Corporation. Notwithstanding any provision of this Declaration to the contrary, neither Drees, nor the Corporation, may convey legal title to the Brookhaven-Fieldstone Pool Site to any person or entity other than a Permitted Title Holder. No Dwelling Unit may be constructed upon the Brookhaven-Fieldstone Pool Site, and the Brookhaven-Fieldstone Pool Site may not be used for any other purpose other than a recreational amenity for the benefit of the Owners within the Brookhaven and Fieldstone Communities, rights-of-way, public utilities, or other public purposes. Notwithstanding any provision of this Declaration to the contrary, the Brookhaven-Fieldstone Pool Site shall remain private, and neither the Declarants' nor the Corporation's execution or recording of an instrument portraying the Brookhaven-Fieldstone Pool Site,

nor the doing of any other act by either of the Declarants is, or is intended to be, or shall be construed as, a dedication to the public of the Brookhaven-Fieldstone Pool Site.

Section 2.5. Density of Use. Declarants expressly disclaim any warranties or representations regarding the density of use of the Brookhaven-Fieldstone Pool Site or any facilities located thereon.

Section 2.6. Obligations of the Corporation. The Corporation, subject to the rights of Declarant and the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Brookhaven-Fieldstone Pool Site and all improvements thereon and, except as otherwise provided herein, shall keep the Brookhaven-Fieldstone Pool Site in good, clean, attractive and sanitary condition, order and repair.

Section 2.7. Damage or Destruction by Owner. In the event any Common Area is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents, members of his family, or any other Person having or gaining access to the Owner's Lot with the knowledge and consent of such Owner, such Owner authorizes the Corporation to repair said damaged area; the Corporation shall repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Corporation in the discretion of the Corporation. An amount equal to the costs incurred to effect such repairs shall be assessed against such Owner as a Special Assessment and shall constitute a lien upon the Lot of said Owner.

ARTICLE IV

Corporation; Membership; Voting; Functions

Section 4.1. Membership in Corporation. Declarants and each Owner of a Lot shall, automatically upon becoming an Owner, be and become a member of the Corporation and shall remain a member until such time as his ownership of a Lot ceases, but membership shall terminate when such Owner ceases to be an Owner, and will be transferred to the new Owner of his Lot; provided, however, that any Person who holds the interest of an Owner in a Lot merely as security for the performance of an obligation shall not be a member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a member of the Corporation.

Section 4.2. Voting Rights. The Corporation shall have the following classes of membership, with the following voting rights:

4.2.1 Class A. Class A members shall be all Owners within the Brookhaven community except Class C members (unless the Class C membership has been converted to Class A membership as provided in the following Section 4.2.3, in which event Declarant shall then be a Class A member). Until the

Brookhaven Applicable Date, except for each matter which this Declaration expressly provides shall be approved by all classes of members of the Corporation, the Class A membership shall have no votes with respect to any matter submitted to a vote of the members of the Corporation. From and after the Brookhaven Applicable Date, each Class A member shall be entitled to one (1) vote for each Lot of which such member is the Owner with respect to each matter submitted to a vote of members upon which the Class A members are entitled to vote. When more than one (1) Person constitutes the Owner of a particular Lot, all such Persons shall be members of the Corporation, but all of such Persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

4.2.2 Class B. Class B members shall be all Owners within the Fieldstone community except Class D members (unless the Class D membership has been converted to Class B membership as provided in the following Section 4.2.4, in which event Declarant shall then be a Class B member). Until the Fieldstone Applicable Date, except for each matter which this Declaration expressly provides shall be approved by all classes of members of the Corporation, the Class B membership shall have no votes with respect to any matter submitted to a vote of the members of the Corporation. From and after the Fieldstone Applicable Date, each Class B member shall be entitled to one (1) vote for each Lot of which such member is the Owner with respect to each matter submitted to a vote of members upon which the Class B members are entitled to vote. When more than one (1) Person constitutes the Owner of a particular Lot, all such Persons shall be members of the Corporation, but all of such Persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

4.2.3 Class C. Class C members shall be Drees and all successors and assigns of Drees as Declarant with respect to the Brookhaven Real Estate and which have been designated by Drees as Class C members in a written notice mailed or delivered to the resident agent of the Corporation. Until the Brookhaven Applicable Date, the Class C members shall be entitled to three (3) Class C memberships equating to three (3) votes on every matter submitted to the Corporation for every Lot owned by such Class C member and for each individually identified parcel of land shown upon, and identified as a Block on, any recorded subdivision plat of the Real Estate of which it is then the owner (either as to the entire numbered parcel or any part thereof) which is not a "Lot" as defined herein. The Class C membership shall cease and terminate as of the Brookhaven Applicable Date. Upon termination of Class C memberships, Class C memberships shall be converted to Class A memberships, and each former Class C member shall be entitled to one (1) Class A membership for each Lot owned and for each individually

identified parcel of land shown upon, and identified as a Block on, any recorded subdivision plat of the Real Estate of which it is then the owner (either as to the entire numbered parcel or any part thereof) which is not a "Lot" as defined herein.

4.2.4. Class D. Class D members shall be Fieldstone and all successors and assigns of Fieldstone as Declarant with respect to the Fieldstone Real Estate and which have been designated by Fieldstone as Class D members in a written notice mailed or delivered to the resident agent of the Corporation. Until the Fieldstone Applicable Date, the Class D members shall be entitled to three (3) Class D memberships equating to three (3) votes on every matter submitted to the Corporation for every Lot owned by such Class D member and for each individually identified parcel of land shown upon, and identified as a Block on, any recorded subdivision plat of the Real Estate of which it is then the owner (either as to the entire numbered parcel or any part thereof) which is not a "Lot" as defined herein. The Class D membership shall cease and terminate as of the Fieldstone Applicable Date. Upon termination of Class D memberships, Class D memberships shall be converted to Class B memberships, and each former Class D member shall be entitled to one (1) Class B membership for each Lot owned and for each individually identified parcel of land shown upon, and identified as a Block on, any recorded subdivision plat of the Real Estate of which it is then the owner (either as to the entire numbered parcel or any part thereof) which is not a "Lot" as defined herein.

4.2.5. Equivalency of Class A and Class B Members. Except with respect to the election of Directors as provided in Sections 5.5-5.7 hereof, Class A members shall be entitled to vote on every matter which a Class B member is entitled to vote upon, and visa versa, and, except as provided herein in Section Sections 5.5-5.7, such Class A and Class B memberships shall be equivalent for every other purpose under this Declaration.

4.2.5 Equivalency of Class C and Class D Members. Except with respect to the election of Directors as provided in Sections 5.5-5.7 hereof, Class C members shall be entitled to vote on every matter which a Class D member is entitled to vote upon, and visa versa, and, except as provided herein in Section 5.5-5.7, such Class C and Class D memberships shall be equivalent for every other purpose under this Declaration.

4.2.6 Special. Until the Brookhaven Applicable Date, Drees, or any successor Declarant designated by Drees, may appoint three (3) additional Special members of the Corporation to serve on the "Initial Board" pursuant to Section 5.2 hereof. Until the Fieldstone Applicable Date, Fieldstone, or any successor Declarant of Fieldstone, may appoint two (2) additional Special members of the Corporation to serve on the "Initial Board" pursuant to Section 5.2 hereof. Persons who are Special members shall not be

deemed or considered members of the Corporation nor Owners of Lots for any purpose other than to qualify to act as members of the Initial Board. Special members shall have no voting rights on any matters submitted to a vote of the members (unless such Special member is also a Class A or Class B member, in which event his voting rights shall be governed by Section 4.2.1 or Section 4.2.2, respectively).

Section 4.3. Functions. The Corporation has been (or will be) formed for the purpose of providing for the maintenance, repair, replacement, administration, operation and ownership of the Brookhaven-Fieldstone Pool Site as and to the extent provided herein, to pay taxes and other charges assessed against and payable with respect to the Brookhaven-Fieldstone Pool Site, to pay insurance premiums and any other necessary expenses and costs in connection with the Brookhaven-Fieldstone Pool Site and to serve any purpose described in the Articles of Incorporation filed for such corporation with the Secretary of State and to perform such other functions as may be designated for it to perform under this Declaration.

ARTICLE X

Board of Directors

Section 5.1. Management. The business and affairs of the Corporation shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he is, or is deemed in accordance with this Declaration to be, an Owner, including a person appointed by Declarant as provided in Section 5.2 hereof.

Section 5.2. Initial Board of Directors. The initial Board of Directors shall be composed of persons designated or to be designated by Declarants (herein referred to as the "Initial Board"), with three members of the Initial Board being appointed by Drees, or a successor Declarant designated by Drees (the "Brookhaven Initial Board Members"), and two members of the Initial Board being appointed by Fieldstone, or a successor Declarant designated by Fieldstone (the "Fieldstone Initial Board Members"). Notwithstanding anything to the contrary contained in, or any other provisions of, this Declaration, the Articles, the By-Laws or the Act (a) the Brookhaven Initial Board Members shall hold office until the first meeting of the members of the Corporation occurring on or after the Brookhaven Applicable Date, and the Fieldstone Initial Board Members shall hold office until the first meeting of the members of the Corporation occurring on or after the Fieldstone Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior the times specified in the foregoing Section 5.2(a), every such vacancy shall be filled by a person appointed by respective Declarant who initially appointed the original member, who shall thereafter be deemed a member of the Initial Board. Each Person serving on the Initial Board, whether as an original member thereof or as a member thereof

appointed by a Declarant to fill a vacancy, shall be deemed a Special member of the Corporation and an Owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose. No such Person serving on the Initial Board shall be deemed or considered a member of the Corporation or an Owner of a Lot for any other purpose (unless he is actually the Owner of a Lot and thereby a member of the Corporation).

Section 5.3. 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 Lot or Dwelling Unit may be represented on the Board of Directors by more than one Person at a time.

Section 5.4. Number of Board Members. The Board of Directors of the Corporation shall at all times consist of five (5) members.

Section 5.5. Classification of Board. Except as provided with respect to the Initial Board in Section 5.2 hereof, of the five members of the Corporation's Board of Directors, three (3) shall at all times be Owners within the Brookhaven community and shall be elected solely by a majority of the Class A members (the "Brookhaven Directors"). Except as provided with respect to the Initial Board in Section 5.2 hereof, of the five members of the Corporation's Board of Directors, two (2) shall at all times be Owners within the Fieldstone community and shall be elected solely by a majority of the Class B members (the "Fieldstone Directors").

Section 5.6. Term of Office and Vacancy. Subject to the provisions of Section 5.2, the entire membership of the Board of Directors shall be elected at each annual meeting of the Corporation. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the first meeting of the members occurring on or after the Brookhaven Applicable Date and Fieldstone Applicable Date, respectively, as provided in Section 5.2. Each member of the Board of Directors, other than the Initial Board, shall be elected for a term of one (1) year. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Subject to the provisions of Section 5.2 as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining members of the Board, provided that the replacement so selected for a Brookhaven Director shall also be an Owner within the Brookhaven community and the replacement so selected for a Fieldstone Director shall also be an Owner within the Fieldstone community, or by vote of the Owners in accordance with Section 5.7 if a Director is removed in accordance with

Section 5.7. The Director so filling a vacancy shall serve until the next annual meeting of the members and until his successor is elected and qualified.

Section 5.7. Removal of Directors. A Brookhaven Director(s), except the members of the Initial Board, may be removed with or without cause only by vote of a majority vote of the Class A members entitled to vote at a special meeting of the Owners duly called and constituted for such purpose. A Fieldstone Director(s), except the members of the Initial Board, may be removed with or without cause only by a vote of the majority vote of the Class B members entitled vote at a special meeting of the Owners duly called and constituted for such purpose. In such cases, the successor shall be elected at the same meeting from eligible Owners nominated at the meeting, and shall be elected in the manner provided in Section 5.5 hereof. A Director so elected shall serve until the next annual meeting of the Owners and until his successor is duly elected and qualified.

Section 5.8. Duties of the Board of Directors. The Board of Directors shall be the governing body of the Corporation representing all of the Owners and being responsible for the functions and duties of the Corporation, including but not limited to, providing for the administration of the Brookhaven-Fieldstone Pool Site and the management, maintenance, repair, upkeep and replacement thereof (unless the same are otherwise the responsibility or duty of the Owners), and the collection and disbursement of the Common Expenses. The Board may employ a Managing Agent upon such terms as the Board shall find, in its discretion, reasonable and customary.

Section 5.9. Reserve for Replacements. The Board of Directors shall establish and maintain a fund to meet the cost of periodic maintenance, repairs, renewal and replacement of the Brookhaven-Fieldstone Pool Site (the "Reserve for Replacements") by the allocation and payment to such reserve fund of an amount determined annually by the Board to be sufficient to met the cost of periodic maintenance, repair, renewal and replacement of the Brookhaven-Fieldstone Pool Site. In determining the amount, the Board shall take into consideration the expected useful life of the Brookhaven-Fieldstone Pool Site, projected increases in the cost of materials and labor, interest to be earned by such fund and the advice of such consultants as the Board may employ or otherwise consult. The Reserve for Replacements shall be deposited in a special account with a lending institution the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. Prior to the Brookhaven Applicable Date, funds from the Reserve for Replacements may be withdrawn and applied at the discretion Drees to meet the costs of periodic maintenance, repairs, renewal or replacement of the Brookhaven-Fieldstone Pool Site.

Section 5.10. Insurance, Taxes and Utilities. The Corporation shall maintain public liability and casualty insurance in prudent amounts insuring against risk of loss to the Corporation on account of injury to person or property and damage to property owned by the Corporation and shall pay all taxes assessed against such property and all utility charges incurred with respect to the Brookhaven-Fieldstone Pool Site.

Section 5.11. Powers of the Board of Directors. The Board Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:

5.11.1 to employ a Managing Agent to assist the Board in performing its duties;

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

5.11.3 to employ legal counsel, architects, contractors, accountants and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Corporation;

5.11.4 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 Brookhaven-Fieldstone Pool Site and to perform all other maintenance, upkeep, repair and replacement duties of the Corporation and the Board;

5.11.5 to include the costs of performing all of its functions, duties and obligations as Common Expenses and to pay all of such costs therefrom;

5.11.6 to open and maintain a bank account or accounts in the name of the Corporation;

5.11.7 to promulgate, adopt, revise, amend and alter from time to time such additional rules and regulations with respect to use, occupancy, operation and enjoyment of the Brookhaven-Fieldstone Pool Site (in addition to those set forth in this Declaration) as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered to all Owners; and

5.11.8 to grant to such public or private companies, entities or bodies as the Board shall approve, such easements as may be necessary to provide the Brookhaven-Fieldstone Pool site with facilities for utility and similar services, including but not limited to cable television facilities and service.

Section 5.12. Limitation on Board Action. After the Brookhaven 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 \$2,500.00 without obtaining the prior approval of a majority of the cumulative vote of the Owners, except that in the following cases such approval shall not be necessary:

5.12.1 contracts for replacing or restoring portions of the Brookhaven-Fieldstone Pool Site damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received or for which the insurance carrier has acknowledged coverage;

5.12.2 proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; and

5.12.3 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 5.13. Compensation and Expenses. No Director shall receive any compensation for his services as such, except to such extent as may be expressly authorized by a majority vote of the Owners.

Section 5.14. Non-Liability of Directors and Officers. The Directors and officers of the Corporation shall not be liable to the Owners or any other Persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors and officers, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify and hold harmless and defend each of the Directors and officers against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Corporation, unless any such contract shall have been made in bad faith. It is intended that the Directors and officers shall have no personal liability with respect to any contract made by them on behalf of the Corporation.

Section 5.15. Additional Indemnity of Directors and Officers. The Corporation shall indemnify, hold harmless and defend any Person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director or officer of the Corporation against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director or officer is liable for gross negligence or misconduct in the performance of his duties. The Corporation shall also reimburse to any such Director or officer the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such Director or officer was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director or officer, no Director or officer shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director or officer relied on the books and records of the Corporation or statements or advice made by or prepared by the Managing Agent (if any) or any other officer or employee thereof, or any accountant,

attorney or other person, firm or corporation employed by the Corporation to render advice or service unless such Director or officer had actual knowledge of the falsity or incorrectness thereof; nor shall a Director or officer be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

ARTICLE VI

Management

Section 6.1. Duties of Managing Agent. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

6.1.1 protection, surveillance and replacement of the Brookhaven-Fieldstone Pool Site, unless the same are otherwise the responsibility or duty of the Owners of Lots; 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;

6.1.2 procuring of utilities used in connection with the Brookhaven-Fieldstone Pool Site (to the extent the same are not provided and billed directly to Owners of Lots and Dwelling Units by utility companies);

6.1.3 landscaping and maintenance and upkeep of the Brookhaven-Fieldstone Pool Site;

6.1.4 surfacing, paving and maintaining all streets and parking areas in the Brookhaven-Fieldstone Pool Site;

6.1.5 maintenance, repair and replacement of all signs, walls, pipes, lines, cables, conduits, pumps, gates, valves, grates, inlets, swales, equipment, structures, fixtures, and personal property of any type or description located in the Brookhaven-Fieldstone Pool Site;

6.1.6 assessment and collection from the Owners of the Owner's respective shares of the Common Expenses;

6.1.7 preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of the annual or special meeting at which the same is to be acted upon is mailed or delivered;

6.1.8 preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; if possible, such accounting shall be delivered to each Owner simultaneously with the delivery of the proposed annual budget for the current year;

6.1.9 keeping a current, accurate and detailed record of receipts and expenditures affecting the Brookhaven-Fieldstone Pool Site and the business and affairs of the Corporation, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an Owner at any time during normal business hours;

6.1.10 procuring and maintaining for the benefit of the Corporation, the Owners, any Managing Agent and the Board the insurance coverage required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;

6.1.11 paying taxes and assessments levied and assessed against, and payable with respect to, the Brookhaven-Fieldstone Pool Site and paying any other necessary expenses and costs in connection with the Brookhaven-Fieldstone Pool Site; and

6.1.12 all duties and obligations imposed upon the Corporation or the Board under this Declaration, the Articles, the By-Laws, the Act, or any recorded subdivision plat of the Brookhaven-Fieldstone Pool Site, whether heretofore or hereafter recorded.

Section 6.2. Compensation of Managing Agent. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense. Any Director may be reimbursed for expenses incurred on behalf of the Corporation upon approval of a majority of the other Directors.

Section 6.3. Bond. The Board of Directors may provide surety bonds and may require the Managing Agent (if any), the treasurer of the Corporation, 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 VII

Real Estate Taxes; Utilities

Section 7.1. Real Estate Taxes. Any real estate taxes or other assessments against the Brookhaven-Fieldstone Pool Site shall be paid by the Corporation and treated as a Common Expense.

Section 7.2. Utilities. Utilities for the Brookhaven-Fieldstone Pool Site shall be treated as and paid as part of the Common Expense, unless otherwise determined by the Corporation.

ARTICLE VIII

Maintenance, Repairs and Replacements

Section 8.1. By the Corporation. Maintenance, repairs, replacements and upkeep of the Brookhaven-Fieldstone Pool Site shall (except to the extent provided herein as the obligation of Owners) be furnished by the Corporation, as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses. The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the Brookhaven-Fieldstone Pool Site as it deems necessary,

provided that the same are not inconsistent with the express provisions of this Declaration. Notwithstanding any obligation or duty of the Corporation to repair or maintain the Brookhaven-Fieldstone Pool Site, if, due to the willful, intentional or negligent acts or omissions of an Owner or any of his guests, tenants, contractors, subcontractors, licensees, agents, members of his family, or any other Person having or gaining access to the Owner's Lot with the knowledge and consent of such Owner, damage shall be caused to the Brookhaven-Fieldstone Pool Site, or if maintenance, repairs or replacements shall be required thereby which would otherwise be at the 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. If not paid by such Owner, upon demand by the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's Lot is subject.

The authorized representatives of the Corporation, the Board and the Managing Agent for the Corporation (if any) shall be entitled to reasonable access to any Lot as may be required in connection with maintenance, repairs or replacements the Brookhaven-Fieldstone Pool Site for purposes of maintenance, including, but not limited to, access to any easements reserved, granted or created by any subdivision plat of any portion of the Real Estate for such purpose.

ARTICLE IX

Assessments and Budget

Section 9.1. Creation of Assessments. There are hereby created assessments for Corporation expenses as may from time to time specifically be authorized by the Board of Directors to be commenced at the time and in the manner set forth in Section 9.7. There shall be three (2) types of assessments: (a) Regular Assessments to fund Common Expenses for the benefit of all Members of the Corporation; and (b) Special Assessments as described in Section 9.5 below. Declarants, for each Lot now or hereafter owned by them, hereby covenant, and each Owner of a Lot by acceptance of a deed or recorded contract of sale therefore, whether or not it shall be so expressed in such deed contract of sale, is deemed to covenant and agree to pay these assessments.

Section 9.2. Annual Accounting. Annually, after the close of each fiscal year of the Corporation and prior to the date of the annual meeting of the Corporation next following the end of such fiscal year, the Board shall cause to be prepared and furnished to each Owner a financial statement prepared by a certified public accountant or firm of certified public accountants then serving the Corporation, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

Section 9.3. Proposed Annual Budget. Annually, on or before the date of the annual or special meeting of the Corporation at which the budget is to be acted upon, the Board of Directors shall cause to be prepared a proposed annual budget for the next ensuing fiscal year estimating the total amount of the Common Expenses for such next ensuing fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the designated meeting of the Corporation for adoption and, if so adopted, shall be the basis for the Regular Assessments for the next ensuing fiscal year. At such annual or special meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Owners; provided, however, that in no event shall such meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all sums assessed by the Corporation shall be established by using generally accepted accounting principles applied on a consistent basis. The annual budget and the Regular Assessments shall, in addition, be established to include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Brookhaven-Fieldstone Pool Site, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses of the Brookhaven-Fieldstone Pool Site. Such replacement reserve fund for capital expenditures and replacement and repair of the Brookhaven-Fieldstone Pool Site shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Boone County or Marion County, Indiana selected from time to time by the Board. The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined. Whenever, whether before or after the meeting of the Corporation at which the budget is to be acted upon, there is no annual budget approved by the Owners as herein provided for the current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, Regular based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

Section 9.4. Regular Assessments. The annual budget as adopted by the Owners shall, based on the estimated cash requirement for the Common Expenses in the fiscal year covered thereby as set forth in said budget, contain a proposed assessment against each Lot, which shall be the same amount for each Lot. Immediately following the adoption of the annual budget, each Owner shall be given written notice of

the assessment against his respective Lot (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Lot based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final budget, including reserve funds as herein above provided. The Regular Assessment against each Lot shall be paid in full in advance by a date specified by the Board which date shall not be earlier than fifteen (15) days after the written notice of such Regular Assessment is given to the Owners. However, at the option of the Board, the Regular Assessment against each Lot may be paid in advance in equal quarterly installments commencing on the first day of the first month of each fiscal year and quarterly thereafter through and including the first day of the last quarter of such fiscal year. Payment of the Regular Assessment, whether in one payment or in quarterly installments, shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors. In the event the Regular Assessment for a particular fiscal year of the Corporation was initially based upon a temporary budget,

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

9.4.2 if the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be credited against the next payment or payments of the Regular Assessment coming due, whether annual or quarterly, until the entire amount of such excess has been so credited;

provided, however, that if an Owner had paid his Regular Assessment in full in advance, then the adjustments set forth under (a) or (b) above shall be made by a cash payment by, or refund to, the Owner on the first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners. The Regular Assessment for each fiscal year of the Corporation shall become a lien on each separate Lot as of the first day of each fiscal year of the Corporation, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfers

his Lot or any interest therein, shall not relieve or release such Owner or his successor as owner of such Lot from payment of the Regular Assessment for such Lot as finally determined, and such Owner and his successor as owner of such Lot 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 10.2 hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year with respect to 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. Annual or quarterly (if so determined by the Board) 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 9.5. Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and without the approval of the Owners, unless otherwise provided in this Declaration, the Articles, the By-Laws 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 a given Lot, and, in the case of multiple Lots, such Assessment shall be prorated in equal shares (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 and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefore under the circumstances described in this Declaration.

Section 9.6. Failure of Owner to Pay Assessments.

9.6.1 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 Brookhaven-Fieldstone Pool Site, and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Brookhaven-Fieldstone Pool Site or by abandonment of the Lot belonging to him. Each Owner shall be personally liable for the payment of all Regular and Special Assessments against his Lot. Where the Owner constitutes or consists of 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 against his Lot when due, the lien for such Assessment on the Owner's Lot and Dwelling Unit may be filed and foreclosed by the Board for and on behalf of the

Corporation as a mortgage on real property or as otherwise provided or permitted by law. Upon the failure of an Owner to make timely payments of any such Regular or Special Assessments, when due, the Board may, in its discretion, accelerate the entire balance of the unpaid Assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. In any action to foreclose the lien for any Assessments, the Owner and any occupant of the Lot and Dwelling Unit which are the subject of such action shall be jointly and severally liable for the payment to the Corporation of reasonable rental for such Lot and Dwelling Unit, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and Dwelling Unit and to collect the rentals and other profits therefrom for the benefit of the Corporation to be applied to the unpaid Regular or Special Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing (and without thereby being deemed to have waived) the lien securing the same. In any action to recover any Regular Assessment or Special Assessment, or any other debts, dues or charges owed the Corporation, whether by foreclosure or otherwise, the Board, for and on behalf of the Corporation, shall be entitled to recover from the Owner of the respective Lot all of the costs and expenses of such action incurred (including but not limited to reasonable attorneys' fees) and interest from the date such Assessments or charges were due, until paid, at a rate equal to the "prime interest rate" then in effect as publicly quoted or published by Huntington Bank, of Boone County, Indiana (or if said Bank is no longer in existence, then such rate charged by another national bank in Boone County, Indiana selected by the Board).

9.6.2 Notwithstanding anything contained in this Section or elsewhere in this Declaration, the Articles or the By-Laws, any sale or transfer of a Lot to a Mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in 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 or other charges 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 Lot 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 other charges thereafter becoming due or from the lien therefor. Such unpaid share of any Assessments or other charges, the lien for which has been divested as aforesaid, shall, if not collected from the party personally liable therefor, be deemed to be a Common Expense, collectable from all Owners (including the party acquiring the subject Lot from which it arose).

Section 9.7. Initial Budgets and Assessments. Upon the first conveyance of a Lot in the Fieldstone community to an Owner other than Fieldstone, a successor Declarant designated by Fieldstone and/or a builder intending to initially construct a Dwelling Unit upon the Lot, the Owner shall pay to the Corporation an initial working capital assessment of Four Hundred Fifty (\$450) (the "Initial Assessment"). Upon the first conveyance of a Lot in the Brookhaven community to an Owner other than Drees, the Owner shall also pay to the Corporation the Initial Assessment. The Initial Assessment shall be a one-time charge and shall be payable by the applicable Owner within three (3) business days after closing at which such Owner first acquires title to the Lot. The Initial Assessments shall be considered Regular Assessments for all other purposes under this Declaration. Except for the Initial Assessment, notwithstanding anything to the contrary contained herein, in the Articles, in the By-Laws, in the Act or otherwise, the Regular Assessments as to any Lot may not exceed \$125 per Lot for the first calendar year following the recordation of this Declaration, \$150 per Lot for the second calendar year following the recordation of this Declaration, and \$175 per Lot for the third calendar year following recordation of this Declaration; provided, however, that Regular Assessments for any Lot within the Fieldstone community may also not exceed the Regular Assessments for Lots within the Brookhaven community. Regular Assessments within the Brookhaven community and the Fieldstone community shall be made on a uniform basis without regard to the limitations set forth in the preceding sentence, and no Lot in the Fieldstone community shall be assessed more in Regular Assessments than any Lot in the Brookhaven community and visa versa. Notwithstanding any provision in this Declaration to the contrary, in the event that any Regular Assessments (including, without limitation, as so capped during the first three years pursuant to first sentence of this Section 9.7) shall in any manner be insufficient to fund the Common Expenses of the Corporation and the Maintenance Costs of the Brookhaven-Fieldstone Pool Site, until the Brookhaven Applicable Date, Drees shall fund any such shortfall. Further, notwithstanding anything to the contrary contained herein, in the Articles, in the By-Laws, in the Act or otherwise until the Fieldstone Applicable Date, no Regular Assessments or Special Assessments or other charges shall be owed or payable by Fieldstone, or any successor Declarant designated by Fieldstone, with respect to any Lot or other portion of the Real Estate owned by Fieldstone, or any successor Declarant designated by Fieldstone, while the same is owned by Fieldstone or any successor Declarant designated by Fieldstone, nor shall any such Assessments or charges become a lien on any such Lot or other portion of the Fieldstone Real Estate owned by Fieldstone, or any successor Declarant designated by Fieldstone. Assessments against a Lot shall commence to accrue from the date each Lot is conveyed by Fieldstone, or a successor Declarant designated by Fieldstone, to an Owner other than Fieldstone, or a successor Declarant designated by

Fieldstone, and a prorated portion of the Regular Assessment for the balance of the fiscal year of the Corporation against each Lot so conveyed by Fieldstone, or a successor Declarant designated by Fieldstone, shall be paid by each purchaser upon such conveyance.

ARTICLE X

Mortgages

Section 10.1. Notice to Corporation. Any Owner, who places a first mortgage lien upon his Lot, or the Mortgagee, shall notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagee. A record of each such first mortgage, and name and address of the Mortgagee, shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws or otherwise 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 by this Declaration, the By-Laws or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled by virtue of this Declaration, the By-Laws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

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

Section 10.2. 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 Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Lot, which statement shall be binding upon the Corporation and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Section 9.4 hereof.

Section 10.3. Condemnation and Insurance Awards. No provisions of this Declaration, or any amendment thereto, shall give an Owner, or any other party, priority over any rights of the first mortgagee of a Lot pursuant to its mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Area property.

Section 10.4. Right of First Refusal. The Corporation DOES NOT have the "right of first refusal" to purchase any Dwelling Unit. Any right of "right of first refusal" subsequently granted to the Corporation through amendment of the Declaration, Corporation Articles, Corporation By-Laws or any other document governing the development and administration of the Real Estate must receive the prior written approval of the Federal Housing Administration or Secretary of the Department of Housing and Urban Development. Any "right of first refusal" subsequently added in any Declaration, Corporation Articles, Corporation By-Laws or any other document governing the development and administration of the Real Estate must not impair the rights of a first mortgagee to:

- 10.4.1 Foreclose or take title to a Lot pursuant to the remedies in the mortgage;
- 10.4.2 Accept a deed assignment in lieu of foreclosure in the event of default by a mortgagor; or
- 10.4.3 Sell or lease a unit acquired by default by the mortgagee.

ARTICLE XI

Insurance

Section 11.1. Casualty Insurance. The Corporation shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring the Brookhaven-Fieldstone Pool Site in an amount consonant with the full replacement value of the improvements, if any, which, in whole or in part, comprise the Brookhaven-Fieldstone Pool Site. If the Board of Directors can obtain such coverage for reasonable amounts they shall also obtain "all risk" coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Board, the Board may cause such full replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a Common Expense. Such insurance coverage shall name the Corporation as the insured, for the benefit of each Owner (to the extent, if any, that individual Owners have an independent interest in the property covered thereby). All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Corporation as hereinabove set forth shall be paid to it or to the Board of Directors. In the event that the Board of Directors has not posted surety bonds for the faithful performance of their duties as such Directors or if such bonds do not exceed the funds which will come into its hands, and there is damage to a part or all of the Common Areas resulting in a loss, the Board of Directors shall obtain and post a bond for the faithful performance of its duties in an amount to be determined by the Board, but not less than 150% of the loss, before the Board shall be entitled to receive the proceeds of the insurance payable as a result of such loss. The sole duty of the Board in connection

with any such insurance proceeds shall be to receive such proceeds as are paid and to hold the same for the purposes elsewhere stated herein, and for the benefit of the Owners. The proceeds shall be used or disbursed by the Corporation or the Board, as appropriate, only in accordance with the provisions of this Declaration.

Such master casualty 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 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 casualty insurance which may be purchased by individual Owners, 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 Corporation does not elect to restore.

Section 11.2. Public Liability Insurance. 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, but in any event with a minimum combined limit of \$1,000,000.00 per occurrence. Such comprehensive public liability insurance policy shall cover the Brookhaven-Fieldstone Pool Site and shall insure the Corporation or Board, 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 the Brookhaven-Fieldstone Pool Site, all Owners of Lots and all other persons entitled to occupy any Lot or Dwelling Unit. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Corporation or other Owners.

Section 11.3. Other Insurance. The Corporation shall also obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation and occupational disease insurance, and such other insurance as the Board of Directors may from time to time deem necessary, advisable or appropriate, including but not limited to, liability insurance on vehicles owned or leased by the Corporation and officers' and directors' liability policies. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. 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. Each Owner shall be deemed to have delegated to the Board of

Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Corporation.

Section 11.4. General Provisions. The premiums for all insurance hereinabove described shall be paid by the Corporation as part of the Common Expenses. When any such policy of insurance hereinabove 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 (accompanied by copies of such policies or any changes thereto, or certificates indicating the coverages included therein) 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 insurance proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance or insurance policy as it applies to such Owner's share of such proceeds. In such event any remittances shall be to the Owner and his Mortgagee jointly. The same method of distribution shall also apply to the distribution of any condemnation awards in connection with any taking of any of the Common Areas. Notwithstanding the foregoing, under no circumstances shall any distribution of insurance proceeds or condemnation awards be made by the Corporation, to any Owners or Mortgagees if to do so would be in violation of the Act or if the same would constitute a distribution of earnings, profits or pecuniary gain to the members of the Corporation; in any such event, any such insurance proceeds or condemnation awards shall be retained by the Corporation for use in the payment of its expenses of operation.

Section 11.5. Insurance by Owners. Each Owner shall be solely responsible for and may obtain such additional insurance as he deems necessary or desirable, at his own expense, affording coverage upon his personal property, his Lot, his Dwelling Unit, the contents of his Dwelling Unit, his personal property stored anywhere on the Real Estate, and for his personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Corporation.

ARTICLE XII

Casualty and Restoration

Section 12. In the event of damage to or destruction of any part of the Brookhaven-Fieldstone Pool Site due to fire or any other casualty or disaster, the Corporation shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Corporation, if any, shall be applied to the cost of such repair and reconstruction.

If the insurance proceeds, if any, received by the Corporation as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction of the Brookhaven-Fieldstone Pool Site, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Brookhaven-Fieldstone Pool Site so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Corporation against all of the Owners in equal shares. Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the Brookhaven-Fieldstone Pool Site to as near as possible the same condition as it existed immediately prior to the damage or destruction.

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 hereunder, the Board shall obtain reliable and detailed estimates of the cost to place the damaged property in a condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors desires or deems necessary. Encroachments upon any Lot which may be created as a result of such reconstruction or repair of any of the Brookhaven-Fieldstone Pool Site shall not constitute a claim or basis of a proceeding or action by the Owner upon whose Lot such encroachment exists, provided that such reconstruction was either substantially in accordance with the plans and specifications or as the Brookhaven-Fieldstone Pool Site was originally constructed.

ARTICLE XIII

Amendment

Section 13.1. Generally. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

13.1.1 Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.

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

13.1.3 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.

13.1.4 Adoption. Prior to the Brookhaven Applicable Date, any proposed amendment to this Declaration must be approved separately by (a) the Class C Member, **and** (b) the Class D Member, if prior to the Fieldstone Applicable Date, or if after the Fieldstone Applicable Date, seventy-five percent (75%) of

the Class B Members. Prior to the Fieldstone Applicable Date, any proposed amendment to this Declaration must be approved separately by (c) the Class D Member, and (d) the Class C Member, if prior to the Brookhaven Applicable Date, or if after the Brookhaven Applicable Date, seventy-five percent (75%) of the Class A Members. After both the Brookhaven Applicable Date and the Fieldstone Applicable Date, any proposed amendment to this Declaration must be approved by a separate vote of not less than seventy-five percent (75%) of the Class A Members and not less than seventy-five percent (75%) of the Class B Members. In the event any Lot or Dwelling 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 hereof.

13.1.5 Special Amendments. No amendments to this Declaration shall be adopted which changes (1) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same, or (2) the provisions of Section 11.1 of this Declaration with respect to casualty insurance to be maintained by the corporation, or (3) the provisions of Section 12.1 of this Declaration with respect to reconstruction or repairs of the Brookhaven-Fieldstone Pool Site in the event of fire or any other casualty or disaster, without, in each and any of such circumstances, the unanimous approval of all Owners and of all Mortgagees whose mortgage interest have been made known to the Board of Directors in accordance with the provisions of this Declaration.

13.1.6 Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Corporation and shall be recorded in the office of the Recorder of Boone County, Indiana, and such amendment shall not become effective until so recorded.

ARTICLE XIV

Acceptance and Ratification

Section 14. All present and future Owners, Mortgagees, tenants and occupants of the Lots and Dwelling Units, and other Persons claiming by, through or under them, shall be subject to and shall comply with the provisions of this Declaration, the Articles, the By-Laws and the rules, regulations and guidelines 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 Lot shall constitute an agreement that the provisions of this Declaration, the Articles, the By-Laws and rules, regulations and guidelines, 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 any time any interest or estate in a Lot or the Brookhaven Real Estate or the

Fieldstone Real Estate, all as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All Persons who may own, occupy, use, enjoy or control a Lot or any part of the Brookhaven Real Estate or Fieldstone Real Estate in any manner shall be subject to this and guidelines applicable thereto as each may be amended or supplemented from time to time.

ARTICLE XV

Negligence

Section 15. 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, invitees or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Corporation. An Owner shall pay the amount of any increase in insurance premiums occasioned by his violation of any of the Restrictions or any violation thereof by any member of his family or his or their guests, employees, agents, invitees or tenants.

ARTICLE XVI

Benefit and Enforcement

Section 16. This Declaration and the Restrictions shall run with and bind the Brookhaven Real Estate and the Fieldstone Real Estate for a term commencing on the date this Declaration is recorded in the office of the Recorder of Boone County, Indiana and expiring December 31, 2026, after which time they shall be automatically extended for successive periods of ten (10) years each, unless by vote of separate vote both (a) a majority of the then Class A Members and (b) a majority of the then Class B Members it is agreed to change this Declaration or the Restrictions in whole or in part, or to terminate the same. The failure or delay at any time of Declarant, the Corporation, the Owners, the Committee, or any other Person entitled to enforce this Declaration and the Restrictions, to enforce any of the same shall in no event be deemed a waiver of the same, or of the right to enforce the same at any time or from time to time thereafter, or an estoppel against the enforcement thereof.

ARTICLE XVII

Miscellaneous

Section 17.1. Costs and Attorneys' Fees. In any proceeding arising because of failure of an Owner to make any payments required by this Declaration, the Articles or the By-Laws, or to comply with any provision of this Declaration, the Articles, the By-Laws, or the rules, regulations and guidelines adopted pursuant thereto, as each may be amended from time to time, the Corporation shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with such default or failure.

Section 17.2. HUD Amendment Approval. All other provisions of the Declaration, Corporation Articles, Corporation By-Laws or any other document governing the development and administration of the Real Estate notwithstanding, so long as there is a Class C or Class D membership, the following actions will require the prior approval of the Federal Housing Administration or Secretary of the Department of Urban Housing and Urban Development:

20.2.1 Annexation of additional properties other than the Additional Real Estate;

20.2.2 Dedication of the Brookhaven-Fieldstone Pool Site; and

20.2.3 Amendment of the Declaration of Covenants, Conditions and Restrictions.

Section 17.3. Assignment. Declarants may assign or otherwise transfer any and all of their rights as Declarants in whole or in part.

Section 17.4. Condemnation, Destruction or Liquidation. The Corporation shall be designated to represent the Owners in any proceedings, negotiations, settlements or agreements for the handling of any losses or proceeds from condemnation, destruction or liquidation of all or a part of the Brookhaven-Fieldstone Pool Site, or from the termination of the development. Each Owner, by his acceptance of a deed, appoints the Corporation as his attorney-in-fact for this purpose. Proceeds from the settlement will be payable to the Corporation for the benefit of the Owners and their mortgage holders. Any distribution of funds in connection with the termination of this development shall be made on a reasonable and an equitable basis.

Section 17.5. Waiver. No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any the Brookhaven-Fieldstone Pool Site or by abandonment of his Lot.

Section 17.6. Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles or the By-Laws shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles or the By-Laws and each shall be enforceable to the greatest extent permitted by law.

Section 17.7. Indemnity. The Owner of each Lot shall indemnify and hold Declarant harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which may arise out of or are connected with, or are claimed to arise out of or be connected with, any work done by such Owner, its contractor and their respective employees, agents, or subcontractors which is not in compliance with the erosion control plan implemented by the Declarant.

Section 17.8. 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 all genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

Section 17.9 Interpretation. The captions and titles of the various articles, sections, sub-sections, paragraphs and sub-paragraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

IN WITNESS WHEREOF, Drees Premier Homes, Inc. and Fieldstone, LLC, Declarants herein, has executed this Declaration of Covenants, Conditions and Restrictions as of the date first above written.

DREES PREMIER HOMES, INC, an Indiana corporation

By: [Signature]
Printed: John Talbot
Title: Land Acquisition and Development Manager

STATE OF INDIANA)
) SS:
COUNTY OF Marion)

Before me, a Notary Public in and for said County and State, personally appeared John Talbot, known to me to be the Land A&D Manager of Drees Premier Homes, Inc., who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions as such officer acting for and on behalf of said limited partnership, and who having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 15th day of December, 2006.

[Signature]
Printed: Vickey L
My Commission Expires: 11-03-14-09
County of Residence: Marion

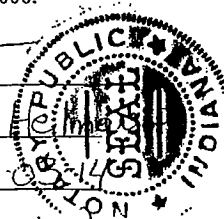


EXHIBIT A
BROOKHAVEN
"REAL ESTATE"

PART OF THE SOUTHWEST QUARTER OF SECTION 13, TOWNSHIP 18 NORTH,
RANGE 2 EAST, BOONE COUNTY, INDIANA, BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID QUARTER; THENCE NORTH
00 DEGREES 44 MINUTES 59 SECONDS WEST ALONG THE WEST LINE OF
SAID QUARTER A DISTANCE OF 1541.45 FEET; THENCE NORTH 88
DEGREES 17 MINUTES 40 SECONDS EAST PARALLEL WITH THE SOUTH LINE
OF SAID QUARTER A DISTANCE OF 2658.35 FEET TO THE EAST LINE OF
SAID QUARTER; THENCE SOUTH 00 DEGREES 37 MINUTES 44 SECONDS
EAST ALONG SAID EAST LINE A DISTANCE OF 1541.50 FEET TO THE
SOUTHEAST CORNER OF SAID QUARTER; THENCE SOUTH 88 DEGREES 17
MINUTES 40 SECONDS WEST ALONG SAID SOUTH LINE A DISTANCE OF
2655.11 FEET TO THE POINT OF BEGINNING, CONTAINING 94.00 ACRES,
MORE OR LESS.

FIELDSTONE
EXHIBIT B - LEGAL DESCRIPTION

LAND DESCRIPTION

Part of the Southeast Quarter of Section 13, Township 18 North, Range 2 East, Boone County, Indiana, being more particularly described as follows:

Beginning at the Southwest Corner of the Southeast Quarter of said Section 13; thence North 00 degrees 37 minutes 44 seconds West (assumed bearing) along the West Line of said Southeast Quarter a distance of 1273.85 feet; thence North 89 degrees 22 minutes 16 seconds East a distance of 67.15 feet; thence North 70 degrees 43 minutes 19 seconds East a distance of 200.00 feet; thence South 19 degrees 16 minutes 41 seconds East a distance of 24.67 feet; thence North 70 degrees 43 minutes 19 seconds East a distance of 150.00 feet; thence North 19 degrees 16 minutes 41 seconds West a distance of 100.00 feet; thence South 88 degrees 01 minutes 30 seconds East a distance of 126.39 feet; thence North 88 degrees 12 minutes 05 seconds East a distance of 419.58 feet; thence South 19 degrees 48 minutes 53 seconds East a distance of 46.77 feet; thence North 69 degrees 35 minutes 02 seconds East a distance of 155.92 feet to a curve having a radius of 175.00 feet, the radius point of which bears South 78 degrees 13 minutes 55 seconds West; thence Northerly along said curve an arc distance of 2.29 feet to a point which bears North 77 degrees 28 minutes 55 seconds East from said radius point; thence North 89 degrees 24 minutes 28 seconds East a distance of 243.67 feet; thence South 00 degrees 35 minutes 32 seconds East a distance of 1445.98 feet to the South Line of said Southeast Quarter; thence South 88 degrees 18 minutes 13 seconds West along the South Line of said Southeast Quarter a distance of 1325.04 feet to the BEGINNING POINT, containing 42.636 acres more or less.