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MARY L. CLARK  
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DECLARATION OF  
COVENANTS AND RESTRICTIONS

THIS DECLARATION, made this 12<sup>th</sup> day of November, 98 by Macs  
Landing L.L.C., Limited Liability Company (hereinafter referred to as the "Developer"),

WITNESSETH:

WHEREAS, the Developer is the owner of the lands contained in the area shown in Exhibit "A", attached hereto and made a part hereof, which lands will be subdivided (all of which are hereinafter referred to as the "Development"); and

WHEREAS, the Developer is about to sell and convey the residential lots situated within the platted areas of the Development and before doing so desires to subject and impose upon all real estate within the platted areas of the Development mutual and beneficial restrictions, covenants, conditions, and charges (hereinafter referred to as the "Restrictions") under a general plan or scheme of improvement for the benefit and complement of the lots and lands in the Development and the future owners thereof.

NOW, THEREFORE, the Developer hereby declares that all of the platted lots and lands located within the Development as they become platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said lots and lands in the Development, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of said lots situated therein. All of the Restrictions shall run with the land and shall be binding upon the Developer and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of the Developer and every one of the Developer's successors in title to any real estate in the Development.

1. DEFINITIONS.

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

- A. "Committee" shall mean the Brooks Landing Development Control Committee, composed of three members appointed by the Developer who shall be subject to removal by the Developer at any time with or without cause. Any vacancies from time to time existing shall be filled by appointment by the Developer. The Developer may, at its sole option, at any time hereafter relinquish to the Association the power to appoint and remove one or more members of the Committee.
- B. "Association" shall mean Brooks Landing Neighborhood Association, a not-for-profit corporation, the membership and powers of which are more fully described in Paragraph 10 of this Declaration.
- C. "Lot" shall mean any parcel of real estate excluding "Blocks", described by the plat of the Development which is recorded in the Office of the Recorder of Hamilton County, Indiana.

D. Approvals, determinations, permissions, or consents required herein shall be deemed given if they are given in writing, signed with respect to the Developer or the Association, by the President or a Vice President thereof, and with respect to the Committee, by two members thereof.

E. "Owner" shall mean a person who has or is acquiring any right, title or interest, legal or equitable, in and to a lot, but excluding those persons having such interest merely as security for the performance of any obligation.

## 2. CHARACTER OF THE DEVELOPMENT

A. In General. Every lot in the Development, unless it is otherwise designated by the Developer, is a residential lot and shall be used exclusively for single-family residential purposes. No structures shall be erected, placed or permitted to remain upon any of said residential lots except in single-family dwelling house and such outbuildings as are usually accessory to dwelling houses.

Prior to issuance of an Improvement Location Permit, a delineation of the lot shall be submitted for approval to the Development Control Committee. Said delineation shall indicate all trees which have a diameter of more than twelve (12) inches caliper at a point five feet about the tree's natural base and which are located outside the building and driving areas. These shall be designated by type and size and shall not be removed unless approved by the Development Control Committee upon proof of unusual hardship in the practical utilization of the lot and such removal shall not cause a materially adverse effect upon the aesthetic values of adjoining lands and rights-of-way.

Removal or destruction of such trees by a lot owner or his successors in title, other than by acts of God or circumstances beyond the lot owner's control shall be replaced, within ninety (90) days notice in writing, by a tree of a size and type established by the Development Control Committee, and upon failure to do so, the Development Control Committee shall cause such tree to be replaced and the cost of such replacement shall be a lien upon the property collectible in any court of law or equity together with reasonable attorney's fees for the enforcement of such lien. For the purposes of executing this covenant, an easement for ingress and egress shall be reserved on each lot for the performance thereof.

Also, adequate physical barriers, such a straw bales or snow fence, shall be provided by the builder to protect trees to be preserved from damage by construction equipment or otherwise in the erection of building improvements. Pruning of trees outside the building line shall be permitted subject to the review and approval of the Development Control Committee and shall be undertaken only by qualified persons having adequate equipment to properly protect and preserve such trees.

In addition to individual site plan restrictions and tree preservation requirements administered by the Development Control Committee, planted building lines, minimum distances between buildings and minimum front and rear building lines shall be established on each plat. Since two sides of the perimeter is heavily wooded, additional ornamental plantings or other landscape devices should be minimal with primary

emphasis being placed upon preservation of natural amenities and enforced by the Development Control Committee as hereinbefore stated.

- B. Occupation or Residential Use of Partially Completed Dwelling House Prohibited. No dwelling house constructed on any of the residential lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed. The determination of whether the house shall have been substantially completed shall be made by the Committee and such decision shall be binding on all parties. The foregoing is subject to the rules, regulations and ordinances of the City of Noblesville and of its building commissioners or directors of planning or appropriate entity.
- C. Other Restrictions. All tracts of land in the Development shall be subject to the easements, restrictions and limitations of record appearing on the recorded plat of the subdivision, on recorded easements, rights-of-way, and also to all governmental zoning authority and regulation affecting the Development, all of which are incorporated herein by reference.

3. RESTRICTIONS CONCERNING SIZE, PLACEMENT AND MAINTENANCE OF DWELLING HOUSES AND OTHER STRUCTURES.

- A. Minimum Living Space Areas. The minimum square footage of living space of dwellings constructed on various residential lots in the Development, exclusive of porches, terraces, garages, carports, or accessory buildings shall be specified in the recorded plat. Basements shall not be included in the computation of the minimum living areas except for that portion of a walkout basement which is to be finished as a living area.
- B. Residential Set-Back Requirements.
- i) In General. Unless otherwise provided in the Restrictions or on the recorded plat, no dwelling house or above-grade structure shall be constructed or placed on any residential lot in the Development except as provided herein.
  - ii) Definitions. "Side line" means a lot boundary line that extends from the road on which a lot abuts to the rear line of said lot. "Rear line" means the lot boundary that is the farthest from, and substantially parallel to, the road on which the lot abuts, except that on corner lots, it may be determined from either abutting road.
  - iii) Front Yards. The front building set-back lines shall be the designated number of feet from the right-of-way on the road upon which the lot abuts as set forth upon the plat of the Development.
  - iv) Side Yards. The side yard set-back lines shall not be less than nine (9) feet from either side line of the lot and the total of both side yards shall be not less than twenty percents (20%) of the minimum lot width.
  - v) Rear Yards. The rear set-back line shall be at least twenty (20) feet from the rear line.

- C. Fences and Trees. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Development, any fence must be approved by the Committee as to size, location, height and composition before it may be installed. A lot must have at least two (2) trees growing upon it in the front yard by the time the house is completed. Approval must be obtained by the Committee prior to planting of such trees as to size, species, and location.
- D. Individual Yard Lights Required on Each Lot. At the time that the owner of each lot in the Development completes the construction of a home on his lot, he shall cause to have installed a dusk to dawn yard light in the front yard of his lot. The design, type and location of the yard light shall be as stated in the Plat Restrictions.
- E. Mailboxes. The owner of each lot in the Development shall cause to have installed a mailbox which shall be in accordance with the design, type and location stated in the Plat Restrictions.
- F. Exterior Construction. The finished exterior of every building constructed or placed on any lot in the development shall be of material acceptable to and approved by the Committee. All driveways must be paved with asphalt or concrete from their point of connection with the abutting street or road.
- G. Heating Plants and Garages. Every house in the Development must contain a heating plant installed in compliance with the required codes and capable of providing adequate heat for year-round human habitation of the house. Every house in the Development must have a least a two car garage, attached of the same architectural design and materials as that of the house constructed on the lot.
- H. Diligence in Construction. Every building whose construction or placement on any residential lot in the Development is begun shall be completed within twelve (12) months after the beginning of such construction or placement. No improvement which has been partially or totally destroyed by fire or otherwise shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.
- I. Prohibition of Used Structures. All structures constructed or placed on any numbered lot in the Development shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such lot.
- J. Maintenance of Lots and Improvements. The owner of any such lot in the Development shall at all times maintain the lot and any improvements situated thereon in such a manner as to prevent the lot or improvements from becoming unsightly; and specifically, such owner shall:
- i) Mow the lot at such times as may be reasonably required in order to prevent unsightly growth of vegetation and noxious weeds;
  - ii) Remove all debris and rubbish;
  - iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development;

- iv) Cut down and remove dead trees;
- v) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly; and
- vi) Within sixty (60) days following completion of a house on a lot, the owner shall landscape the lot, weather permitting.

K. Association's Right to Perform Certain Maintenance. In the event that the owner of any lot in the Development shall fail to maintain his lot and any improvements situated thereon in accordance with the provisions of these Restrictions, the Association shall have the right, but not the obligation, by and through its agents or employees or contractors, to enter upon said lot and repair, mow, clean or perform such other acts as may be reasonable necessary to make such lot and improvements situated thereon, if any, conform to the requirements of these Restrictions. The cost therefor to the Association shall be added to and become a part of the annual charge to which said lot is subject and may be collected in any manner in which such annual charge may be collected. Neither the Association or any of its agents, employees, or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

#### 4. PROVISIONS RESPECTING DISPOSAL OF SANITARY WASTE.

- A. Nuisance. No outside toilets shall be permitted on any lot in the Development (except during a period of construction and then only with the consent of the Committee), and no sanitary waste or any other wastes shall be permitted to enter any storm drain. By purchase of a lot, each owner agrees that any violation of this paragraph constitutes a nuisance which may be abated by the Indianapolis Water Company, the Developer or the Association in any manner provided at law or in equity. The cost or expense of abatement, including court costs and attorney's fees, shall become a charge or lien upon the lot, and may be collected in any manner provided by law or in equity for collection of a liquidated debt. Neither the Developer, nor the Association, nor the Indianapolis Water Company, nor any officer, agent, employee or contractor thereof, shall be liable for any damage which may result from enforcement of this paragraph.
- B. Construction of Sewage Lines. All sanitary sewage lines on the residential building lots shall be designed and constructed in accordance with the provisions and requirements of the City of Noblesville, Indiana, or other governing body.

#### 5. GENERAL PROHIBITIONS AND REQUIREMENTS

- A. In General. No noxious or offensive activities shall be carried on any lot in the Development, nor shall anything be done on any of said lots that shall become or be an unreasonable annoyance or nuisance to any owner of another lot in the Development.

- B. Signs. No signs or advertisements shall be displayed or placed on any lot or structures in the Development without the prior written approval of the Committee except for real estate sales signs.
- C. Animals. No animals shall be kept or maintained on any lot in the Development except the usual household pets, and in such case, such household pets shall be kept reasonably confined so as not to become a nuisance.
- D. Vehicle Parking. No trucks (one ton or larger), campers, trailers, commercial vehicles, boats, or similar vehicles shall be parked on any street or lot in the Development.
- E. Garbage and Other Refuse. No owner of a lot in the Development shall burn or permit the burning out of doors of garbage or other refuse, nor shall any such owner accumulate or permit the accumulation out of doors of such refuse on his lot except as may be permitted in Subparagraph F below. All houses built in the Development shall be equipped with a garbage disposal unit.
- F. Fuel Storage Tanks and Trash Receptacles. Every tank for the storage of fuel that is installed outside any building in the Development shall be buried below the surface of the ground. Any receptacle for trash, rubbish or garbage shall be so placed and kept as not to be visible from any street or lot within the Development at any time, except at the times when refuse collections are being made.
- G. Model Homes. No owner of any lot in the Development shall build or permit the building upon said lot of any dwelling house that is to be used as a model home or exhibit house without permission to do so from the Developer.
- H. Temporary Structures. No temporary structure of any kind, such as a house, trailer, tent, storage building, garage or other outbuilding shall be placed or erected on any lot, nor shall any overnight camping be permitted on any lot.
- I. Ditches and Swales. It shall be the duty of the owner on every lot in the Development on which any part of any open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon the lot continuously unobstructed and in good repair, and to provide for the installation of such culverts upon said lot as may be reasonably necessary to accomplish the purposes of this subsection. All owners, if necessary, shall install dry culverts between the road rights-of-way and their lots in conformity with specifications and recommendations of the City of Noblesville, Hamilton County, Indiana, and of the appropriate zoning bodies.
- J. Utility Services. Utility services shall be installed underground in or adjacent to public rights-of-way to minimize removal of trees. No utility services shall be installed, constructed, repaired, replaced and/or removed under finished streets except by jacking, drilling or boring and shall required the approval of the appropriate governmental body.
- K. Wells and Septic Tanks. No water wells shall be drilled on any of the lots nor shall any septic tanks be installed on any of the lots in the Development.

**6. BROOKS LANDING DEVELOPMENT CONTROL COMMITTEE**

A. Statement of Purposes and Powers. The committee shall regulate the external design, appearance, use, location and maintenance of lands subject to these Restrictions and improvements thereon, in such a manner as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography.

i) Generally. No dwelling, building structure or improvement of any type or kind shall be constructed or placed on any lot in the Development without the prior approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee by the owner of the lot requesting authorization from the Committee. Such written application shall be in the manner and form prescribed from time to time by the Committee, and shall be accompanied by three (3) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon the lot and the location of the improvement proposed to be constructed or placed upon the lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other materials or information which the Committee may require. All building plans and drawings required to be submitted to the Committee shall be drawn to a scale of  $\frac{1}{4}" = 1'$  and all plot plans shall be drawn to a scale of  $1" = 30'$ , or to such other scale as the Committee shall require.

ii) Power of Disapproval. The committee may refuse to grant permission to construct, place or make the requested improvement, when:

(a) The plans, specifications, drawings or other materials submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of these Restrictions;

(b) The design, building materials or color scheme of a proposed improvement is not in harmony with the general surroundings of the lot or with adjacent buildings or structures;

(c) The proposed improvement, or any part hereof, would in the opinion of the Committee be contrary to the interests, welfare or rights of all or any part of other owners.

iii) Power to Grant Variances. The Committee may allow reasonable variances or adjustments of these Restrictions where literal application would result in unnecessary hardship, but any such variance or adjustment shall be granted in conformity with the general intent and purposes of these Restrictions and no variance or adjustment shall be granted which is materially detrimental or injurious to other lots in the Development.

- B. Duties of Committee.** The Committee shall approve or disapprove proposed improvements within a reasonable time after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons.
- C. Liability of Committee.** Neither the Committee nor any agent thereof, nor the Developer, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Committee does not make any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.
- D. Inspection.** The Committee may inspect work being performed with its permission to assure compliance with these Restrictions and applicable regulations.
- E. Continuation of Committee.** When the Developer notifies the Association of discontinuance of his Developmental Control Committee, then the Directors of the Association, or their designees shall continue the functions of the Committee with like powers.
- 7. RULES GOVERNING BUILDING ON SEVERAL CONTIGUOUS LOTS HAVING ONE OWNER.** Whenever two or more contiguous lots in the Development shall be owned by the same person, and such owner shall desire to use two or more of said lots as a site for a single-dwelling house, he shall apply in writing to the Committee for permission to so use said lots. If permission for such a use shall be granted, the lots constituting the site for such single-dwelling house shall be treated as a single lot for the purpose of applying these Restrictions, to said lots, so long as the lots remain improved with one single-dwelling house.

## **8. PROPERTY RIGHTS IN BLOCKS**

### **A. Landscape and Common Area Blocks, Brooks Landing**

- i) **LANDSCAPE BLOCKS.** Certain alphabetical blocks are created for the reserve for the benefit of the Developer and the Property Owners Association for the installation, construction, maintenance, repair, reconstruction and replacement of earthen mounds, plantings and other landscaping, walls, fences, entryways, columns, landscape irrigation systems, accent lighting systems, street lights, subdivision identification and other items.
- ii) **OWNERSHIP, USE AND ENJOYMENT OF LANDSCAPE EASEMENT BLOCKS AND COMMON AREA BLOCKS.** "Commons" and "Commons Area" and "Landscape Easements" shall mean those areas set aside for conveyance to the Association, as shown on the plat. Any commons depicted on the recorded plat of the Development shall remain private, and no act of the Developer, including the execution of the recording of the plat, is intended to be, or shall be construed as, a dedication to the public of the commons.



iii) A license upon such terms and conditions as the Developer, and the successors, assigns or licensees of the Developer, shall from time to time grant, for the use and enjoyment of the commons, is granted to the persons who are from time to time members of the Association. Ownership of any commons shall be conveyed in fee simple title, free of financial encumbrances to the Association upon their completion. Such conveyance shall be subject to easements and restrictions of record, and such other conditions as the Developer may at the time of such conveyance deem appropriate. Such conveyance shall be deemed to have been accepted by the Association and those persons who shall from time to time be members thereof upon the recording of a deed or deeds conveying such commons to the Association.

**9. BROOKS LANDING PROPERTY OWNER'S ASSOCIATION**

A. In General. There has been or will be created, under the laws of the State of Indiana, a not-for-profit corporation to be known as Brooks Landing Property Owner's Association, which is referred to as the "Association". Every owner of a residential lot in the Development shall be a member of the Association and shall be subject to all the requirements and limitations imposed in the Restrictions on other owners of residential lots within the Development and on members of the Association, including those provisions with respect to the payment of a semi-annual charge.

B. Classes of Membership. The Association shall have two classes of voting membership:

C. Class A. Class A members shall be all owners with the exception of the Developer and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they themselves determine, but in no event shall more than one vote be cast with respect to any lot.

D. Class B. The Class B member(s) shall be the Developer, who shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

i) On the date the Developer sells the last lot and no longer owns any lots or land in the Development; or

ii) On January 1, 2004

E. Board of Directors. The members shall elect a Board of Directors of the Association as prescribed by the Association's By-Laws. The Board of Directors shall manage the affairs of the Association.

F. Professional Management. No contract or agreement for professional management of the Association shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause without termination fee by written notice of ninety (90) days or less.

**G. Responsibilities of the Association.**

- i) The Association shall maintain and repair the Common Areas and Landscape Easements shown on the plat(s) including improvements thereof.
- ii) The Association shall maintain the landscaping located in Landscape Easement and the landscaping and any entrance treatments located in the right-of-way at the entrance and shall keep such areas in a neat, clean and presentable condition at all times.
- iii) The Association shall procure and maintain casualty insurance for the Common Areas, liability insurance (including directors' and officers' insurance) and such other insurance as it deems necessary or advisable.
- iv) The association shall maintain the intersection lighting, island lighting, mailboxes, yard lights and street signs and an easement is granted to the Association for this purpose.
- v) The Association may contract for such services as management, snow removal, security control, trash removal, and such other services as the Association deems necessary or advisable.
- vi) The Association shall provide a means for the promulgation and enforcement of regulations necessary to govern the use and enjoyment of Common Areas.

**10. COVENANT FOR MAINTENANCE ASSESSMENTS**

- A. Creation of the Lien and Personal Obligation of Assessments. Each owner of any lot in the subdivision, except the Developer, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) semi-annual assessments or charges; and (2) special assessments for capital improvements and operating deficits; such assessment to be established and collected as hereinafter provided. The semi-annual and special assessments, together with interest, cost, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. No charge or assessment shall ever be levied by the Association against the Developer.
- B. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents in the properties and for the improvement and maintenance of the Common Area and improvements, operated or maintained by the Association, and the landscape easements on the Development and other purposes as specifically provided herein.
- C. Special Assessments for Capital Improvements and Operating Deficits. In addition to the semi-annual assessments authorized above, the Association may levy a special

assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain or for operating deficits which the Association may from time to time incur; provided that any such assessment shall have the assent of a majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

- D. Notice and Quorum for Any Action Authorized Under Sections C and D. Written notice for any meeting called for the purpose of taking any action authorized under Section C or D shall be sent to all members 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 cast sixty percent (60%) of all the votes of the membership 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 required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.
- E. Date of Commencement of Semi-Annual Assessments; Due Dates. The semi-annual assessment provided for herein shall commence for each lot on the date of conveyance to the owner by deed or on the date the owner signs a land contract to purchase a lot. The Board of Directors shall fix any increase in the amount of the assessment at least thirty (30) days in advance of the effective date of such increase. Written notice for special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every owner subject thereto. The due dates for all assessments shall be January 1 and July 1 of each calendar year, and in the case of sale or transfer of a lot, a pro rata share of the assessment for the period between the closing date and the next applicable due date shall be collected at closing. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate from the Association regarding the status of assessment for any lot shall be binding upon the Association as of the date of its issuance.
- F. Effect of Non-Payment of Assessments; Remedies of the Association. Any charge levied or assessed against any lot, together with interest and other charges or costs as hereinafter provided, shall become and remain a lien upon that lot until paid in full and shall also be a personal obligation of the owner or owners of that lot at the time the charge fell due. Such charge shall bear interest at the rate of twelve (12%) per annum until paid in full. If, in the opinion of the Board of Directors of the Association, such charge has remained due and payable for an unreasonably long period of time, the Board may, on behalf of the Association, institute such procedures, either at law or in equity, by foreclosure or otherwise, to collect the amount owing in any court of competent jurisdiction. The owner of the lot or lots subject to the charge, shall, in addition to the amount of the charge at the time legal action is instituted, be obliged to pay an expense of costs, including attorneys' fees, incurred by the Association in collection the same. Every owner of a lot in the Development and any person who may acquire any interest in such lot, whether as an owner or otherwise, is hereby notified, and by acquisition of such interest agrees, that any such liens which may exist upon said lot at the time of the

acquisition of such interest are valid liens and shall be paid. Every person who shall become an owner of a lot in the Development is hereby notified that by the act of acquiring, making such purchase or acquiring such title, such person shall be conclusively held to have Covenanted to pay the Association all charges that the Association shall make pursuant to this paragraph of the Restrictions.

G. Subordination of the Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof. Provided, however, the sale or transfer of any lot pursuant to the foreclosure of any first mortgage on such lot (Without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer.

H. Suspension of Privileges of Membership. Notwithstanding any other provision contained herein, the Board of Directors of the Association shall have the right to suspend the voting rights, if any, and the services to be provided by the Association together with the right to use the facilities of the Association, if any, member (i) for any period during which any of the Association's charges or any fines assessed under these Restrictions owed by the member remains unpaid; (ii) during the period of any continuing violation of the restrictive covenants for the Development, after the existence of the violation shall have been declared by the Board of Directors of the Association; and (iii) during the period of any violation by the Articles of Incorporation, By-Laws, or regulations of the Association.

#### 11. REMEDIES.

A. In General. The Association or any party to whose benefit these Restriction incur, including the Developer, may proceed at law or in equity to prevent the occurrence of continuation of any violation of these Restriction, but neither the Developer nor the Association shall be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any of these Restrictions.

B. Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of these Restrictions shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, reoccurrence or continuance of such violation or violations of these Restrictions.

#### 12. EFFECT OF BECOMING AN OWNER.

The owners of any lot subject to these Restrictions by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from the Developer or a subsequent owner of such lot, shall accept such deed and execute such contract subject to each and every Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the owner acknowledges the rights and powers of the Developer, Committee and of the Association with respect to these Restrictions, and also, for themselves, their heirs, personal representatives, successors and assigns, such owners

covenant and agree and consent to and with the Developer, Committee and the Association and to and with the owners and subsequent owners of each lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreements.

**13. TITLES.**

The titles preceding the various paragraphs and subparagraphs of the Restrictions are for convenience of reference only, and none of them shall be used as an aid to the construction of any provisions of the Restrictions. 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. DURATION.**

The foregoing Covenants and Restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2080, at which time said Covenants and Restrictions shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part by vote of those persons who are then the owners of a majority of the numbered lots in the development.

**15. SEVERABILITY.**

Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.

IN TESTIMONY WHEREOF, witness the signature of the Declarant this 12<sup>th</sup> day of November 1998.

Macs Landing L.L.C.

By: 

STATE OF INDIANA )

) SS:

COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Macs Landing, L.L.C., by its President, who, for and on behalf of said Limited Liability Company, Acknowledged the execution of the foregoing Declaration of Restrictions of Brooks Landing.

Subscribed and sworn to before me this 12th day of November, 1998

Holly J. Lee  
NOTARY PUBLIC Holly J. Lee  
A Resident of Hamilton County

My Commission Expires: April 1, 2000



This instrument prepared by Michael H. Stikeleather, Attorney at Law,  
8395 Keystone Crossing, Suite 315, Indianapolis, Indiana 46240

## EXHIBIT A

A part of the South Half of the Southeast Quarter of Section 1, Township 17 North, Range 5 East, and a part of the North Half of the Northeast Quarter of Section 12, Township 17 North, Range 5 East in Hamilton County, Indiana, more particularly described as follows:

Commencing at a railroad spike in 104<sup>th</sup> Street at the Southeast Corner of the North Half of the Northeast Quarter of Section 12, Township 17 North, Range 5 East; thence along the south line of said North Half, South 89 degrees 56 minutes 16 seconds West 909.53 feet to the Point of Beginning; thence continuing along the south line of said North Half, South 89 degrees 56 minutes 16 seconds West 915.12 feet to a railroad spike in 104<sup>th</sup> Street; thence parallel with the west line of said North Half, North 04 degrees 25 minutes 47 seconds East 1329.92 feet to a 5/8" x 24" rebar with a plastic cap stamped "P. I. Cripe, Inc." (hereinafter called a PIC rebar) on the north line of said North Half; thence along said north line North 89 degrees 55 minutes 09 seconds East 344.81 feet to a PIC rebar; thence passing into the South Half of the Southeast Quarter of Section 1, Township 17 North, Range 5 East, North 00 degrees 37 minutes 47 seconds East 332.41 feet to a PIC rebar; thence North 88 degrees 46 minutes 54 seconds East 85.89 feet to a PIC rebar; thence South 84 degrees 54 minutes 29 seconds East 102.25 feet to the centerline of Thor Run Creek (the next 22 calls being along said creek); 1. South 75 degrees 02 minutes 54 seconds East 37.89 feet; 2. North 66 degrees 15 minutes 48 seconds East 49.18 feet; 3. North 60 degrees 33 minutes 09 seconds East 51.97 feet; 4. South 85 degrees 14 minutes 56 seconds East 32.24 feet; 5. South 36 degrees 06 minutes 08 seconds East 43.87 feet; 6. South 85 degrees 36 minutes 30 seconds East 18.22 feet; 7. North 57 degrees 26 minutes 43 seconds East 16.34 feet; 8. South 68 degrees 39 minutes 37 seconds East 56.72 feet; 9. South 22 degrees 19 minutes 56 seconds East 44.14 feet; 10. South 25 degrees 58 minutes 38 seconds West 39.95 feet; 11. South 25 degrees 00 minutes 06 seconds East 46.90 feet; 12. South 58 degrees 11 minutes 15 seconds East 15.46 feet; 13. North 81 degrees 41 minutes 53 seconds East 25.35 feet; 14. North 57 degrees 19 minutes 40 seconds East 85.02 feet; 15. North 85 degrees 21 minutes 00 seconds East 33.43 feet; 16. South 49 degrees 52 minutes 33 seconds East 22.20 feet; 17. South 19 degrees 13 minutes 05 seconds West 53.33 feet; 18. South 00 degrees 32 minutes 08 seconds East 104.34 feet; 19. returning to Section 12, South 41 degrees 31 minutes 28 seconds East 126.75 feet; 20. South 73 degrees 49 minutes 08 seconds East 32.66 feet; 21. returning to Section 1, North 51 degrees 49 minutes 50 seconds East 75.11 feet; 22. North 34 degrees 48 minutes 20 seconds East 20.82 feet; thence South 06 degrees 26 minutes 49 seconds West 335.14 feet; thence South 89 degrees 42 minutes 21 seconds East 44.79 feet; thence South 00 degrees 17 minutes 39 seconds West 190.00 feet; thence North 89 degrees 42 minutes 21 seconds West 190.00 feet; thence South 25 degrees 58 minutes 51 seconds West 453.73 feet; thence South 52 degrees 56 minutes 28 seconds West 31.83 feet; thence South 00 degrees 03 minutes 44 seconds East 109.21 feet; thence North 89 degrees 56 minutes 16 seconds East 50.78 feet; thence South 00 degrees 03 minutes 44 seconds East 285.00 feet to the Point of Beginning containing 34.87 acres more or less.