



COPY

110000685 COVEN \$113.00
01/18/2011 11:32:42A 52 PGS
Debra Carnes
Hancock County Recorder IN
Recorded as Presented


**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS,
AND RESERVATION OF EASEMENTS FOR THE VILLAGES AT BROOKSIDE**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR THE VILLAGES AT BROOKSIDE ("Declaration") is made this 29th day of DECEMBER 2010, by **GRAND COMMUNITIES, LTD**, a Kentucky limited partnership company (hereinafter referred to as "Declarant") and **SHERWOOD HILLS SOUTH, INC.**, an Indiana corporation ("Sherwood"), under the circumstances:

A. Declarant is the owner in fee simple of certain real property located in Hancock County, Indiana, which is more particularly described in Exhibit A attached hereto (the "Declarant Owned Property");

B. Sherwood is the owner in fee simple of certain real property located in Hancock County, Indiana, which is more particularly described in Exhibit B attached hereto (the "Sherwood Owned Property" and together with the Declarant Owned Property, the "Property");

C. Pursuant to the terms and provisions of that certain Escrow Agreement dated as of the date hereof between Declarant, Sherwood, Fifth Third Bank and Stewart Title Company (the "Escrow Agreement"), Sherwood intends to convey and Declarant intends to obtain Parcel B West (as defined herein) subject to the terms and provisions set forth in the Escrow Agreement;

D. Declarant plans to develop the Declarant Property (as defined herein) into a residential community consisting of single family detached homes with permanent Common Elements (as defined herein) for the benefit of portions of the Property, upon and subject to the terms and provisions contained herein;

E. Sherwood may create a residential community consisting of single family detached homes, apartments and/or condominium units on portions of the Sherwood Property (as defined herein), as the case may be;

F. Sherwood desires to obtain, and the Declarant desires to provide Sherwood with, the right to use certain amenities located on the Declarant Property, subject to and upon the terms and conditions set forth herein;

G. Declarant and Sherwood desire to develop, improve, sell and convey the Property (as defined herein) subject to certain easements, restrictions, covenants, assessments and conditions set forth herein to protect the value and desirability of the Property;

H. Declarant and Sherwood desire to provide for the preservation of the values and amenities in said community and for the maintenance of said Common Elements, including the Recreational Facilities (as defined herein); and to this end, desire to subject the Property to the covenants, conditions, restrictions, easements, charges and liens, hereinafter set forth, each and

Handwritten note: Sherwood

all of which is and are for the benefit of said Property and the subsequent Owners (as defined herein) thereof;

I. Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an Association (as defined herein) to which should be delegated and assigned the powers and duties of maintaining and administering the Common Elements and administering and enforcing the within covenants and restrictions and disbursing the charges and assessments hereinafter created; and

J. Declarant has formed or will form the The Villages at Brookside Homeowners' Association, Inc., an Indiana non-profit corporation (the "Association"), which shall be responsible for the maintenance, management and control of the Common Elements on the Declarant Property.

NOW, THEREFORE, Declarant and Sherwood hereby declare that all of the Property described in Exhibit A and Exhibit B and such Additional Property as may be subjected to the provisions hereof, shall be held, sold and conveyed, subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, and any subdivision plat which includes the Property, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE 1 DEFINITIONS

The words in this Declaration which begin with capital letters, other than words which would be normally capitalized, unless the context otherwise requires, shall have the meanings set forth in this Section.

1.1. Additional Property. "Additional Property" means other real property in the vicinity of the Property which is owned and/or acquired by Declarant, which may be annexed to the Property in accordance with Article 11 below.

1.2. Architectural Guidelines. "Architectural Guidelines" as defined in Section 5.3 of this Declaration.

1.3. Areas of Common Responsibility. "Areas of Common Responsibility" shall mean and refer to the Common Elements, together with those areas, if any, which by the terms of this Declaration or by contract or agreement become the responsibility of the Association. The office of any property manager employed by or contracting with the Association, if located on the Declarant Property, or any public rights-of-way within or adjacent to the Declarant Property, may be part of the Areas of Common Responsibility.

1.4. Articles and Articles of Incorporation. "Articles" and "Articles of Incorporation" mean those articles, filed with the Secretary of the State of Indiana, incorporating the The Villages at Brookside Homeowners' Association, Inc., as a non-profit corporation under the provisions of Title 23 of Indiana Code, as the same may be amended from time to time.

1.5. Assessments. "Assessments" means Base Assessment, Special Assessment, Neighborhood Assessment, Individual Assessment and Working Capital Assessment.

1.6. Association. "Association" means The Villages at Brookside Homeowners' Association, Inc., an Indian non-profit corporation, any successor organization which owns, operates and maintains the Common Elements.

1.7. Base Assessment. "Base Assessment" means the charge established by Section 4.2 of this Declaration.

1.8. Board of Directors. "Board of Directors" (or sometimes, the "Board") means the Board of Directors of the Association established pursuant to its Articles of Incorporation, Code of Regulations and this Declaration.

1.9. Builder(s). "Builder(s)" means Fischer Single Family Homes II, LLC, a Kentucky limited liability company, its successors and assigns, and such other persons and entities as may acquire one or more Lots from Declarant for the purpose of constructing improvements thereon for resale, but only to the extent of such Lots acquired.

1.10. Class A Members or Class A Membership. "Class A Members" or "Class A Membership" means those members of the Association consisting of all Owners of the Declarant Property except, during the Control Period, Declarant.

1.11. Class B Member or Class B Membership. "Class B Member" or "Class B Membership" means, during the Control Period, Declarant, as a member of the Association.

1.12. Code of Regulations. "Code of Regulations" means the Bylaws of the Association, as the same may be amended from time to time, a copy of which is available upon request from the Association.

1.13. Common Elements. "Common Elements" shall mean and refer to all real property within the Declarant Property (or any other portion of the Property provided that the prior written consent of the Owner(s) of such Property is obtained) , or any interest therein, together with improvements located thereon, owned by, leased to the Association or granted as an easement to the Association, for the benefit, use and enjoyment of some or all of the Owners and Occupants, including undedicated arterial streets, the General Common Elements and the Villages at Brookside Common Elements.

1.14. Common Element Lakes. "Common Element Lakes" shall mean any and all lakes and other water facilities located on the Common Elements.

1.15. Common Element Lake Restrictions. "Common Element Lake Restrictions" shall mean all covenants, conditions, restrictions, easements, charges, liens and other obligations provided for in Section 6.3 of this Declaration.

1.16. Common Expenses. "Common Expenses" shall have the meaning set forth in Section 4.2 of this Declaration.

1.17. Common Private Driveway. "Common Private Driveway" shall mean and refer to any private road or driveway which is built or installed as part of the original construction or improvement of the Declarant Property by the Declarant to serve more than one (1) Lot; and which is situated on a dividing line between Lots or partly on one (1) Lot and partly on another Lot, together with any road or driveway which may be specifically designated by Declarant and/or Builder within a Common Private Driveway Easement, or a record plat and/or other recorded instrument.

1.18. Common Private Driveway Easement. "Common Private Driveway Easement" shall mean and refer to all private driveway easement(s) located on the Declarant Property as shown on any Record Plat recorded by Declarant. The areas within the easement(s) are sometimes referred to as the Common Private Driveway(s).

1.19. Community-Wide Standard. "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Declarant Property. Such standard may be more specifically determined by the Board of Directors and Declarant.

1.20. Conservation Easement. "Conservation Easement" shall mean and refer to that certain easement as created under Section 8.10 below.

1.21. Constituent Documents. "Constituent Documents" mean the Declaration, the Record Plat, the Code of Regulations, the Articles of Incorporation, the rules and regulations, if any, the management agreement, if any, entered into between the Association and any professional manager of the Declarant Property, and any other basic documents used to create and govern the Declarant Property.

1.22. Control Period. "Control Period" means the period commencing on the date on which this Declaration is recorded in the Hancock County, Indiana, Recorder's Office and terminating on the earlier to occur of (i) within thirty (30) days following the date when seventy-five percent (75%) of the Dwelling Units which may be built on the Declarant Property have been deeded by either Declarant and/or any Builder to a third party purchaser; or (ii) thirty (30) years from the date of recording of the Declaration

1.23. Declarant "Declarant" means Grand Communities, Ltd., a Kentucky limited liability partnership, its successors and assigns, or, if noted in a recorded affidavit, cross-referenced to this Declaration, its designee.

1.24. Declarant Owned Property. "Declarant Owned Property" has the meaning set forth in the Recitals.

1.25. Declarant Property. "Declarant Property" means the Declarant Owned Property and Parcel B West, collectively.

1.26. Declaration. "Declaration" means this Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for The Villages at Brookside, as the same may from time to time be amended in the manner prescribed herein.

1.27. Default. "Default" means any violation or breach of, or any failure to comply with, the Restrictions, this Declaration or any other Constituent Documents.

1.28. Development Period. "Development Period " means the period commencing on the date on which this Declaration is recorded in the Hancock County, Indiana Recorder's Office and terminating on the earlier to occur of (i) within sixty (60) days following the date when one hundred percent (100%) of the Dwelling Units which may be built on the Declarant Property have been deeded by either Declarant and/or any Builder to a third party purchaser; or (ii) thirty (30) years from the date of recording of the Declaration.

1.29. Dwelling Unit. "Dwelling Unit" shall mean and refer to any portion of a building situated upon a Lot designated and intended for use and occupancy as a residence by a single family, including a townhouse, condominium unit, patio home or apartment, whether detached or attached, located within the Property.

1.30. Escrow Agreement. "Escrow Agreement" has the meaning set forth in the Recitals.

1.31. Exclusive Common Elements. "Exclusive Common Elements" shall mean and refer to certain portions of the Common Elements which are for the exclusive use and benefit of one (1) or more, but less than all, Neighborhoods, as more particularly described in Section 8.3 of the Declaration.

1.32. General Common Elements. "General Common Elements" shall mean all real and personal property situated on the Declarant Property which the Association now or hereafter owns or otherwise holds for the common use and enjoyment of all Owners.

1.33. Individual Assessment. "Individual Assessment" means the charge established in Section 4.6 of this Declaration.

1.34. Landscape and Signage Easements. "Landscape and Signage Easements" shall mean and refer to all landscape easements, including structures, any entrance monuments, ponds or fountains located thereon as shown on any Record Plat. The areas within the easements are sometimes referred to as Landscape Easement Areas or Signage Easement Areas.

1.35. Lot(s). "Lot(s)" shall mean and refer to any condominium unit or any plot of land, with delineated boundary lines, shown upon any recorded subdivision plat of the Property, recorded condominium plans or otherwise established, with the exception of any common area, common open-space, streets, walkways or easements shown on any recorded plat or condominium plans. In the event any Lot is increased or decreased in size by re-subdivisions, through recordation of new subdivision plats, condominium plans or adjoining land transfers, any such newly reconfigured lot shall thereafter constitute a Lot for the purposes of this Declaration.

1.36. Maintenance Standards. "Maintenance Standards" mean those standards adopted by Declarant and/or the Board pursuant to Article 7 of the Declaration as the same may from time to time be amended.

1.37. Members. "Members" means all Class A Members and the Class B Member.

1.38. Multi-Family Lot. "Multi-Family Lot" shall mean and refer to any Lot zoned for multi-family purposes, including but not limited to condominium units and apartments.

1.39. Neighborhood. "Neighborhood" shall mean and refer to each separately developed residential area comprised of one (1) or more housing types subject to this Declaration, whether or not governed by an additional owners association, in which owners may have common interests other than those common to all Owners, such as a common theme, entry feature, development name, and/or Common Elements and facilities which are not available for use by all Owners.

Where the context permits or requires, the term Neighborhood shall also refer to the Neighborhood Association (as defined in Article 9 hereof) having jurisdiction over the property within the Neighborhood. It shall not be necessary for any Neighborhood to be governed by a Neighborhood Association except in the case of a condominium or otherwise as required by law.

1.40. Neighborhood Assessments. "Neighborhood Assessments" shall mean assessments levied against the Dwelling Units in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as more particularly described in Section 4.4 of this Declaration.

1.41. Neighborhood "E". Neighborhood "E" has the meaning set forth in Section 9.2.

1.42. Neighborhood Expenses. "Neighborhood Expenses" shall mean and include the actual and estimated expenses incurred by the Association for the benefit of Owners of Dwelling Units within a particular Neighborhood or Neighborhoods, which may include a reasonable reserve for capital repairs and replacements, all as may be specifically authorized from time to time by the Board of Directors and as more particularly authorized herein.

1.43. Occupant. "Occupant" means any person in possession of a Lot or Dwelling Unit whether or not such possession is lawful and shall include but not be limited to, an Owner's family members, guests, invitees, Tenants and lessees.

1.44. Open Spaces. "Open Spaces" shall mean and refer to all open spaces located on the Declarant Property as shown on any Record Plat, which are for the benefit of some or all of the Owners in the Subdivision.

1.45. Owner. "Owner" means, with respect to any Lot, the owner of record from time to time, whether one or more persons or entities, of an interest in fee simple, reversion, remainder or leasehold estate of 99 years or more, but shall not include the Association. Such term shall include contract sellers except those having an interest merely as security for the performance of an obligation. 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.

1.46. Parcel B West. "Parcel B West" means that portion of the Sherwood Owned Property more particularly described in Exhibit B-1 attached hereto.

1.47. Parcel E. "Parcel E" means that portion of the Sherwood Owned Property more particularly described in Exhibit B-2 attached hereto.

1.48. Pavilion. "Pavilion" means any building or improvement that may be located on the Declarant Property and used in connection with the Pool. The Pavilion may be designated for use by certain Owners as provided herein.

1.49. Pool. "Pool" means any swimming pool that may be located on the Declarant Property. The Pool may be designated for use by certain Owners as provided herein.

1.50. Property. "Property" means that certain land in the Town of McCordsville or Hancock County, Indiana, more particularly described in Exhibit A and Exhibit B to this Declaration. When portions of the Additional Property are subjected to this Declaration pursuant to Article 11 herein, those portions shall then be deemed part of the Property.

1.51. Record Plat. "Record Plat" means a plat of The Villages at Brookside, as recorded in the Hancock County, Indiana Recorder's Office records, including any subsequent plats or replats.

1.52. Recreational Facilities. "Recreational Facilities" shall mean any facilities now or hereafter installed on the Declarant Property for the benefit of some or all of the Owners and Occupants, which may include, but not be limited to, the Pool, Pavilion, clubhouse, workout facility, lakes, playfields, and surrounding areas and any portions of the Common Elements on which recreation activity is permitted.

1.53. Restrictions. "Restrictions" means all covenants, conditions, restrictions, easements, charges, liens and other obligations provided for in this Declaration, including, without limitation, the Maintenance Standards and all notices, rules and regulations issued in accordance with this Declaration.

1.54. Retention and Detention Areas. "Retention and Detention Areas" shall mean and refer to any area designated on any Record Plat as such, which shall be used or designated to retain or temporarily detain surface drainage which Declarant, its successors and assigns have been required to construct or make use of in connection with surface drainage by any official agency of the Town of McCordsville or Hancock County, Indiana, in connection with the development of the Declarant Property and the Additional Property.

1.55. Sherwood. "Sherwood" means Sherwood Hills South, Inc., an Indiana corporation, its successors and assigns.

1.56. Sherwood Owned Property. "Sherwood Owned Property" has the meaning set forth in the Recitals.

1.57. Sherwood Property. "Sherwood Property" means Parcel E.

1.58. Single Family Lot. "Single Family Lot" shall mean and refer to any Lot zoned for single family detached housing purposes situated on the Declarant Property and not a "Multi-Family Lot".

1.59. Single Family Lot Owner. "Single Family Lot Owner" shall mean and refer to the record owner whether one or more persons or entities of any Single Family Lot which is a part of the Declarant Property, including contract sellers, but excluding those having such interest in the Lot solely as security for the performance of an obligation.

1.60. Single Family Unit. "Single Family Unit" shall mean and refer to any portion of a building situated upon a Single Family Lot designated and intended for use and occupancy as a residence by a single family located within the Declarant Property.

1.61. Special Assessment. "Special Assessment" means the charge established by Section 4.5 of this Declaration.

1.62. Structure. "Structure" means:

(a) any thing or object (other than trees, shrubbery, landscaping and hedges which are less than two feet high) the placement of which upon any part of the Property may affect the appearance of the Property, including, without limitation, porch, shed, barn, storage facility, covered or uncovered patio, fence, curbing, paving, wall, signboard or any other temporary or permanent improvement; and

(b) any excavation, fill, ditch, dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any part of the Property, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any part of the Property.

1.63. Subdivision. "Subdivision" means all phases or sections of the Record Plat for The Villages at Brookside, a subdivision in the Town of McCordsville, Hancock County, Indiana, and consisting of all the property from time to time made subject to the provisions of this Declaration.

1.64. Supplemental Declaration. "Supplemental Declaration" shall mean an amendment or supplement to this Declaration executed by or consented to by Declarant which subjects all or any portion of the Additional Property to this Declaration; imposes, expressly or by reference, additional restrictions and obligations on the land subject to this Declaration.

1.65. Tenant. "Tenant" means any person occupying any Lot pursuant to a written or oral lease agreement with the Owner thereof or with any other person or entity claiming under the Owner.

1.66. The Villages at Brookside. "The Villages at Brookside" has the meaning set forth in Section 9.2.

1.67. Working Capital Assessment. "Working Capital Assessment" as defined in Section 4.7 of this Declaration.

ARTICLE 2
PROPERTY SUBJECT TO THIS DECLARATION

The Property, each portion thereof, and all Dwelling Units thereon shall be held, transferred, sold, conveyed, leased, mortgaged and occupied subject to the terms, provisions, covenants and conditions of this Declaration.

ARTICLE 3
ASSOCIATION MEMBERSHIP, MEETINGS AND BOARD

3.1. Formation of the Association. The Declarant has caused or will cause to be chartered in accordance with Title 23 of Indiana Code, a nonprofit corporation to be known as The Villages at Brookside Homeowners' Association, Inc., an Indiana not-for-profit corporation. The purpose of the Association is to provide for the administrative governance, maintenance, management and upkeep of the Declarant Property and to promote the general health and welfare of the Owners and Occupants of the Declarant Property.

3.2. Board of Directors. Until the third Annual Meeting, the initial Board of Directors shall consist of three (3) persons appointed by the Class B Member who shall serve until their respective successors are elected and qualified. Each member of the Board of Directors is defined as a "Director." Directors appointed by the Declarant need not be Members of the Association. However, a Director elected by Class A Members shall be an Owner of the Declarant Property or a spouse of an Owner of the Declarant Property, except that if such an Owner is a corporation, partnership, joint venturer, or other entity, such Owner may elect as a Director, an officer, partner, joint venturer, or like individual affiliated with such Owner.

At the third Annual Meeting, the Board of Directors shall expand from three (3) to five (5) Directors. At such meeting, the Class B Member shall appoint three (3) Directors for a three (3) year term. Thereafter, at each tri-annual meeting the Class B Member, until the Control Period Special Meeting (as hereinafter defined), shall appoint three (3) Directors for a three (3) year term.

At the third Annual Meeting, the Class A Members shall elect two (2) Directors. One of the Directors shall be elected for a three (3) year term and one (1) of the Directors shall be elected for a two (2) year term. At the expiration of the terms of such Directors, until such time as the Declarant shall transfer control of the Board to the Class A Members, the Class A Members shall, at the respective Annual Meeting, elect successor Directors for a three (3) year term.

Within ninety (90) days after the expiration of the Control Period, the President of the Association shall call a special membership meeting ("Control Period Special Meeting"). At the Control Period Special Meeting, all Declarant appointed Directors shall be deemed removed from office, and the Class A Members, including the Declarant if it is then an Owner, shall elect a Director to fill each vacancy on the Board. The terms of said elected Directors shall be from one (1) to three (3) years, as determined by the Board, so that in any one (1) year thereafter, the terms of no more than three (3) nor less than two (2) Directors shall expire. The three (3) Directors with the most votes shall be the Directors who shall serve the three-year term.

Additionally, after the Control Period Special Meeting, all Directors, and their successors, shall be elected by Class A Members and shall be elected for a three (3) year term.

Notwithstanding anything above to the contrary, the Class B Member may, by written notice to the Board, at or before any Annual Meeting, relinquish to the Class A Members, the Class B Member's right to appoint one or more Directors at such Annual Meeting pursuant to this Section.

3.3. Membership. The membership of the Association shall at all times consist exclusively of Owners of the Property. All such Owners shall be Members. Membership shall be appurtenant to and may not be separated from such ownership.

3.4. Members Rights and Duties. Each Member shall have the rights, duties and obligations set forth in this Declaration and all amendments duly made hereto in accordance with the terms herein.

3.5. Professional Management Contracts. The Association may delegate all or any portion of its authority to discharge its responsibilities herein to a manager or managing agent. Any management agreement shall not exceed three (3) years and shall provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice. The initial Manager of the Association shall be the Declarant until such time as Declarant voluntarily resigns this position by turning over management of the Association, which shall be professionally managed by a licensed property manager or real estate management company to assist with the management, administration, operation and maintenance of the Community.

3.6. 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 malfeasances, misconduct or other actions taken in bad faith. No Director shall receive compensation for his services as Director.

3.7. Owner Disputes. In addition to the responsibilities set forth in Articles and the bylaws for the Association, the Board shall, upon the receipt of a detailed written complaint from an Owner of a Lot in the Property summarizing a dispute between such Owner and any other Owner(s) of a Lot in the Property 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. In addition, the Board shall, upon the receipt, no later than twenty (20) days after the action taken, of a detailed written complaint from an Owner of a Lot in the Property summarizing its objection to a prior decision of the Board affecting such Owner, reconsider such decision, including making a review of any new information which the Owner provides to the Board. In the event the Board confirms its initial decision, the Owner may submit the dispute with the Board to the Association as a whole, at its next regularly scheduled

meeting, so long as such Owner has received the signatures of not less than ten percent (10%) of all of the Owners of the Property on a request to include the dispute on the agenda of the next regular Association meeting. Such request must be submitted to the Board not less than thirty (30) days prior to such meeting. The Board may establish rule and proceeds for the dispute resolutions process set forth above. No Owner involved in a dispute with another Owner or the Board involving this Declaration or the application thereof shall institute legal action regarding that dispute until the arbitration or Board or Association decision provided for in this Section has been completed or, with regard to disputes between Owners, all affected Owners have waived the requirement for arbitration.

ARTICLE 4 **ASSESSMENTS**

4.1. Creation of Assessments. There are hereby created Assessments for Association 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 this Section. There may be up to five (5) types of Assessments which are as follows: (1) Base Assessments to fund Common Expenses for the benefit of all Owners as described in Section 4.2 below; (2) Neighborhood Assessments for Neighborhood Expenses benefitting only Dwelling Units within a particular Neighborhood or Neighborhoods as described in Section 4.4 below; (3) Special Assessments as described in Section 4.5 below; (4) Individual Assessments as described in Section 4.6 below; and (5) Working Capital Assessment as described in Section 4.7 below. Each Owner, by acceptance of a deed or recorded contract of sale for any portion of the Property, is deemed to covenant and agree to pay these Assessments, upon and subject to the terms and provisions contained herein. Increases in the Assessments of more than \$500 per year per affected Member and/or Owner are subject to the limitations in Indiana Code Section 32-25.5-3-4

(a) No Owner may waive or otherwise exempt himself from liability for the Assessments provided for herein, including, by way of illustration and not limitation, by non-use of Common Elements or abandonment of the Dwelling Unit. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the Code of Regulations, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

(b) Notwithstanding any provision of this Declaration, the Articles of Incorporation or Code of Regulations to the contrary, Declarant and Builder, until the expiration of the Development Period, shall not be required to pay any Assessment for any recorded, unoccupied Lot in which they have the interest otherwise required for Class A Membership.

(c) Notwithstanding any provision of this Declaration, the Articles of Incorporation or Code of Regulations to the contrary, at anytime that Fifth Third Bank is the Owner of the Sherwood Property it shall not be required to pay any Assessment for any Lot on the Sherwood Property that it owns except as provided in Sections 4.6 and 4.7(b).

4.2. Base Assessment. The Base Assessment shall be levied by the Association against the Owner of each Dwelling Unit on the Property, as provided in Section 4.3 below, to be used currently, and to provide an adequate reserve fund for future use, for the improvement, expansion and maintenance of the General Common Elements that benefit all Dwelling Units on the Property (See Exhibit C attached hereto for the location of General Common Elements), including, but not limited to, the payment of real estate taxes on those portions of the General Common Elements to which the Association is the record owner; casualty and liability insurance for the General Common Elements to which the Association is the record owner and fidelity bonds; expenses related to lighting, landscaping and maintenance of the entrance, County Road 600 West Frontage and County Road 900 North Frontage, West Brookside Parkway, North Runway Boulevard and the circle amenity area to be located on the Declarant Property; the cost of supplying water to the General Common Elements; the cost of snow removal in the General Common Elements; mowing, edging and fertilization of all grass on the General Common Elements; the cost of spring time mulching and planting of flowers in landscape beds on the General Common Elements; the costs of operation, maintenance, improvement, and replacement of Open Spaces that benefit all the Dwelling Units on the Property; the cost of reasonable reserves for contingencies, replacements and working capital for the General Common Elements; management fees and organizational costs for the General Common Elements; legal costs for the enforcement of liens for the Base Assessments (collectively "Common Expenses"). The Base Assessment shall be estimated initially in accordance with Section 4.3 of this Declaration. The obligation to pay the Base Assessment shall not in any manner be dependent on or discharged, or otherwise affected by the use or non-use of the General Common Elements, or the actual occupancy of any Lot or Dwelling Unit of the Property.

4.3. Computation of Base Assessment. It shall be the duty of the Board, prior to the beginning of each fiscal year, to prepare a budget covering the estimated Common Expenses of the Association during the coming year, which shall comply with the requirements of Indiana Code Section 32-25.5-3-3, as in existence on the date hereof, including, without limitation, the requirement that the same be approved by the Owners as provided therein. The Board shall have the right to approve a budget which does not exceed 110% of the prior year's budget without the consent of the Owners if there is not a quorum of Members present to vote at the meeting at which the proposed budget is submitted for Member approval. The budget shall include a capital reserve account for the capital replacement, as needed.

(a) The Base Assessment for all Dwelling Units on (i) the Declarant Property shall commence on the first day of the month following the conveyance of the first Dwelling Unit from either Builder or Declarant to an individual Owner of a Dwelling Unit on the Declarant Property, and (ii) the Sherwood Property shall commence on the first day of the month following the conveyance of the first Dwelling Unit from the Owner of the Sherwood Property to an individual Owner of a Dwelling Unit on the Sherwood Property.

(b) The Base Assessment to be levied against each Dwelling Unit on the Property for the coming year shall be determined by multiplying the total budgeted Common Expenses, including reserves, by a fraction, the numerator of which is the number "1," and the denominator of which is the total number of Dwelling Units subject to Assessment under Section 4.3(a) above.

(c) Notwithstanding the above, the Board may, in its sole discretion, reduce the Base Assessment determined pursuant to the above formula by taking into account.

(i) other sources of funds available to the Association; and

(ii) Assessments to be levied upon additional Dwelling Units reasonably anticipated to become subject to Assessments during the fiscal year.

(d) So long as Declarant has the right unilaterally to annex Additional Property pursuant to Section 11.1 below, Declarant may elect on an annual basis, but shall not be obligated, to reduce the resulting Base Assessment for any fiscal year by payment of a subsidy; provided, any such subsidy shall be conspicuously disclosed as a line item in the income portion of the Common Expense budget and shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate Declarant to continue payment of such subsidy in future years.

(e) The Board shall cause a copy of the proposed Common Expense budget and notice of the proposed amount of the Base Assessment to be levied against each Dwelling Unit for the following year (and notice of the amount increased or decreased from the prior year) to be delivered to each Owner prior to the meeting at which the budget will be considered and a copy of the final Common Expense budget and shall provide notice of the amount of the final Base Assessment to each Owner at least fifteen (15) days prior to the beginning of the fiscal year. If, in the event the Board fails for any reason so to determine the budget for any year, then and until such time as a budget shall have been determined by the Board, the budget in effect for the immediately preceding year shall continue.

4.4. Computation of Neighborhood Assessments; Specific Neighborhood Assessments.

(a) It shall be the duty of the Board, prior to the beginning of each fiscal year, to prepare a separate budget covering the estimated Neighborhood Expenses to be incurred by the Association for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year. The Association and any Neighborhood may agree that additional services or a higher level of services be provided by the Association, and in such case, any additional costs shall be added to such replacement of capital items within the Neighborhood, as appropriate. Neighborhood Expenses shall be allocated equally among all Dwelling Units within the Neighborhood benefitted thereby and levied as a Neighborhood Assessment. The Neighborhood Assessment budgets and the resulting assessments shall be subject to the same restrictions regarding notice and approval by the Owners within such Neighborhood as provided in Section 4.3 above.

(b) The Board shall cause a copy of such proposed budget and notice of the proposed amount of the Neighborhood Assessment to be levied on each Dwelling Unit in the Neighborhood for the coming year (and notice of the amount increased or decreased from the prior year) to be delivered to each Owner of a Dwelling Unit in the Neighborhood prior to the meeting at which the budget will be considered and a copy of the final Neighborhood Assessment budget and shall provide notice of the amount of the final Neighborhood Assessment

to each Owner at least fifteen (15) days prior to the beginning of the fiscal year. In the event that the Board fails for any reason so to determine the budget for any Neighborhood for any year, then and until such time as a budget shall have determined by the Board, the budget in effect for the immediately preceding year shall continue.

(c) The following Neighborhood Assessments shall be levied by the Association:

(i) Villages at Brookside. A Neighborhood Assessment shall be levied by the Association against the Owner of each Dwelling Unit on the Declarant Property, to be used currently, and to provide an adequate reserve fund for future use, for the improvement, expansion and maintenance of all Common Elements located on the Declarant Property that do not constitute General Common Elements pursuant to Section 4.2 above (collectively, the "Villages at Brookside Common Elements"), including, but not limited to, the payment of real estate taxes on those portions of the Villages at Brookside Common Elements to which the Association is the record owner; casualty and liability insurance for the Villages at Brookside Common Elements to which the Association is the record owner and fidelity bonds; the cost of repairing and maintaining the landscaping and street lights in the Villages at Brookside Common Elements; the cost of supplying water to the Villages at Brookside Common Elements; the cost of snow removal in the Villages at Brookside Common Elements; mowing, edging and fertilization of all grass on the Villages at Brookside Common Elements; the cost of spring time mulching of landscape beds in the Villages at Brookside Common Elements; the costs of operation, maintenance, improvement, and replacement of the Recreational Facilities, Open Spaces, Common Element Lakes and Retention and Detention Areas; the cost of reasonable reserves for contingencies, replacements and working capital; management fees; organizational costs; legal costs for the enforcement of liens and covenants in this Declaration and all other costs incurred by Declarant or the Board in the exercise of its powers and duties pursuant to this Declaration. The obligation to pay such Neighborhood Assessment shall not in any manner be dependent on or discharged, or otherwise affected by the use or non-use of the Villages at Brookside Common Elements, or the actual occupancy of any Lot or Dwelling Unit in the Villages at Brookside.

(ii) Neighborhood E. The Owner of each Dwelling Unit in Neighborhood "E" shall each be assessed as a Neighborhood Assessment an annual membership fee towards the use of the Pool and Pavilion, which such membership fee includes the cost and expense for normal maintenance and repair of the Pool and Pavilion. Each such Owner's fee shall be determined by multiplying the total budgeted membership fee attributable to the use of the Pool and Pavilion by a fraction, the numerator of which is the number "1," and the denominator of which is the total number of Dwelling Units that share in the use of the Pool and Pavilion on the Declarant Property. The Neighborhood Assessment and annual membership fee applicable to Neighborhood "E" shall not commence until such time as amenities such as the Pool and Pavilion are made available for use by the Owner of each Dwelling Unit in Neighborhood "E".

4.5. Special Assessment. In addition to the other Assessments authorized herein, and to the extent that the reserve fund is insufficient, the Association may levy Special Assessments against the Owner of each Dwelling Unit on the Declarant Property for the following reasons:

(a) The amount of any operating deficit incurred in any calendar year may be paid by means of a Special Assessment sufficient in an amount so as to allow the Association to satisfy such deficit in part or in whole, provided that any such Special Assessment shall have been approved in accordance with Section 4.5(c) below.

(b) To the extent that the capital budget is insufficient, the Association may levy Special Assessments to construct, structurally alter, or replace capital improvements which are a part of the Common Elements in any fiscal year.

(c) So long as the total amount of Special Assessments allocable to each Lot or Dwelling Unit does not exceed One Hundred Percent (100%) of the Base Assessment for that fiscal year and subject to the limitations in Indiana Code Section 32-25.3-3-4, the Board may impose the Special Assessment. Any Special Assessments which would cause the amount of Special Assessments allocable to any Lot or Dwelling Unit to exceed this limitation shall be effective only if approved by a majority vote of the Members present and voting at a meeting duly called for such purpose; any Special Assessments which require approval under Indiana Code Section 32-25.3-3-4 shall not be effective until the requirements set forth therein have been satisfied. Special Assessments shall be paid as determined by the Board, and the Board may permit Special Assessments to be paid in installments extending beyond the fiscal year in which the Special Assessment is imposed.

(d) The Association may not levy any Special Assessment against the Owner of any Dwelling Unit on the Sherwood Property; provided, however, that to the extent the capital budget is insufficient, the Association may levy Special Assessments to structurally alter or replace capital improvements which are a part of the General Common Elements in any fiscal year against the Owner of any Dwelling Unit on the Sherwood Property.

4.6. Individual Assessment. The Association after approval by a majority of the members of the Board shall have the right to assess an individual Lot or Dwelling Unit for any of the following ("Individual Assessment"):

(a) any costs incurred for maintenance or repair caused through the willful or negligent act of an Owner or Occupant or their family, tenants, guests or invitees, including attorney fees, court costs and other expenses incurred; and/or

(b) any costs associated with the enforcement of this Declaration or the Rules and Regulations, if any, of the Association, including, but not limited to attorneys fees, witness fees and costs, and court costs.

4.7. Working Capital Assessment.

(a) At the time of closing on the sale of each Lot from Builder or Declarant to a third party purchaser, the purchaser shall be required to pay One Hundred Dollars (\$100.00) as

such purchaser's initial capital contribution to the working capital of the Association ("Working Capital Assessment"). This Working Capital Assessment shall be used by the Association for its operating expenses. Such Working Capital Assessment is not an advance payment of the Base Assessment or any other Assessment established herein, and it will not be held in any sort of trust or reserve account. Declarant and Builder shall not be required to pay any Working Capital Assessment as described in this paragraph. The Working Capital Assessment provided for in this subsection may not be levied against any Dwelling Unit on the Sherwood Property.

(b) The Owner of Parcel E shall pay to Declarant a fee equal to One Thousand Dollars (\$1,000.00) multiplied by each Lot currently planned on such Owner's parcel. The fees shall be paid on a pro rata basis as each building permit is issued or on or before December 31, 2016, whichever occurs first.

4.8. Common Surplus. If the Base Assessment or Neighborhood Assessment collected in any given year is in excess of the actual Common Expenses or Neighborhood Expenses for that year, the Board may, at its sole discretion (a) return each Owner's share of the Common Surplus; (b) credit each Owner's share of the Common Surplus to each Owner's payment as for the Base Assessment or Neighborhood Assessment for the following year; or (c) apply the Common Surplus to the reserve.

4.9. Payment. Unless otherwise established by the Board, the Base Assessment and Neighborhood Assessment shall be paid in advance in quarterly installments not more than ten (10) days after the due dates established by the Board. The Board shall have the power at any time to adopt such billing, collection and payment procedures and payment time schedules as it shall deem appropriate. Additionally, any Special Assessment or Individual Assessment imposed by the Board shall become due upon the date designated in the notice, but not less than thirty (30) days after the mailing of the notice to the Owner by United States mail. At the time of closing on a Dwelling Unit from either Declarant or Builder to a third party purchaser, each third party purchaser of a Lot shall be required to pay the Working Capital Assessment as provided in Section 4.7 above and a prorata share of the Base Assessment and Neighborhood Assessment, if applicable, for the balance of the quarterly period in which the closing takes place.

4.10. Operating Deficit. If during the Development Period the Association incurs an operating deficit, Declarant and/or Builder may, at its option, loan funds to the Association to fund the deficit. In the event that Declarant and/or Builder elects to fund the deficit, the Association shall execute a loan agreement and promissory note for the benefit of Declarant and/or Builder, as the case may be, the form of which shall comply with the terms and conditions set forth in Exhibit D attached hereto and made a part hereof. The Association shall be obligated to repay to the Declarant and/or Builder, as the case may be, any and all monies lent by such entity to the Association in accordance with this Section in order to fund any deficit. Such repayment of monies shall be in accordance with the terms and conditions of said loan agreement and promissory note. Notwithstanding the foregoing or any other provision of this Declaration, any money borrowed, or intended to be borrowed, by the Association shall be subject to the terms of Section 32-25.5-3-5 of the Indiana Code.

4.11. Books and Records of the Association. The Association shall keep full and correct books of account. The Association shall make available to all Members and the holders

of all first mortgages on Lots, current copies of the books, records and financial statements of the Association upon reasonable request during normal business hours. All funds collected by the Association shall be held and expended solely for the purposes designated by this Declaration and shall be deemed to be held for the use, benefit and account of the Association and all of the Members.

4.12. Penalty for Late Payment. For each Lot as to which any installment of any Assessments are not paid within the period provided by the Board, there shall be added to the installment a penalty of ten percent (10%) thereof, and interest at the rate of twelve percent (12%) per annum, or such other amount established by or as the same may be adjusted from time to time by the Board (or, if less, the maximum rate allowable by law) from the due date on the amount of such installment plus penalty until paid. In addition, if any Assessment has not been paid within six (6) months of the date due, the voting rights of such Member shall be suspended until paid in full.

4.13. Creation of Lien and Personal Obligation of Assessment. All Assessments shall be a charge and lien on each Lot to the extent and for the period provided in Section 4.14 below, and shall also be the personal obligation of the Owner of each Lot against which they are made.

4.14. Liens. If any Assessment on a Lot is not paid within the period established by the Board pursuant to Section 4.9 herein, the amount thereof together with any interest, costs, penalties and reasonable attorneys' fees thereon shall constitute a lien on such Lot in favor of the Association prior to all other liens and encumbrances whatsoever, excepting real estate taxes and assessments and liens of record in favor of the United States of America, the State of Indiana, and all other political subdivisions or governmental instrumentalities of the State of Indiana to the extent made superior by applicable law, and all bona fide recorded first mortgages and the rights of any first mortgagee who comes into possession of a Lot pursuant to mortgage foreclosure or by deed in lieu thereof. Assessments shall become a lien on a Lot on the date the Board mails written notice of any such Assessment to the Owners of any Lot subject thereto. The Association may perfect the lien by recording a notice of lien with the Hancock County, Indiana Recorder's Office, in any legally recordable form. Nonpayment of any Assessment on a Lot shall be deemed and is hereby declared to be the happening of a condition or event that creates an interest in real estate.

4.15. Evidence of Payment. Upon the request of the Owner or any mortgagee or Tenant of any Lot or any prospective purchaser, mortgagee, or Tenant thereof, the Board or its designated representative shall furnish written evidence of the amount of the Assessments with respect to such Lot for the current year and the amount of any unpaid Assessments, penalty and interest, if any. Such evidence may be conclusively relied upon by any such party and by anyone furnishing any title evidence or opinion with respect to such Lot. The Board may impose a reasonable charge for furnishing such written evidence.

4.16. Enforcement of Lien. Any lien established under this Declaration may be enforced by the Association in the same manner and to the same extent (including appointment of a receiver, foreclosure sale and deficiency judgment) and subject to the same procedures as in the case of foreclosure of a real property mortgage under the laws of the State of Indiana or as otherwise provided under the laws of the State of Indiana. In any such enforcement proceeding,

the amount which may be recovered by the Association shall include all costs of such proceeding, including reasonable attorneys' fees. In any such foreclosure sale, the Association may become the purchaser.

4.17. Subordination of Lien to First Mortgage. The mortgagee of a first mortgage of record on a Lot shall have no obligation hereunder to collect any Assessments chargeable to such Lot. Failure of an Owner to pay any Assessments imposed in this Declaration shall not automatically be deemed a default under the first mortgage of record on that respective Lot. In addition, when the mortgagee of a first mortgage of record, or other purchaser of a Lot as a result of judicial execution, acquires title to the Lot as a result of foreclosure of the first mortgage or by deed in lieu of foreclosure, such acquirer of title, his, her or its heirs, successors and assigns, shall not be solely liable for the share of the Assessments chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Any lien against such Lot shall be canceled and voided, and shall become unenforceable. Such unpaid share of Assessments shall be deemed to be Common Expenses collectible from all of the Lots, including that of such acquirer, his, her or its heirs, successors or assigns. Notwithstanding anything contained herein to the contrary, Fifth Third Bank hereby agrees, by its execution of that certain Consent and Agreement attached hereto, that its Mortgage (as defined in the Consent and Agreement) is, and shall at all times be, subject and subordinate to any lien arising due to the failure of any Owner of Parcel E, as the case may be, to timely pay any Working Capital Assessment pursuant to Section 4.7(b) of this Declaration.

ARTICLE 5 ARCHITECTURAL REVIEW

5.1. Alteration of Dwelling Unit and Structures.

(a) Except for initial construction of Dwelling Units, accessory Structures and Common Elements by either Declarant or Builder, no building, fence, wall, deck or other Structure shall be commenced, constructed, erected, placed, moved onto or permitted to remain on any Lot on the Declarant Property, nor shall any Dwelling Unit and/or Structure on any Lot on the Declarant Property be remodeled, painted or altered or expanded in any way which changes the exterior appearance thereof, unless detailed plans and specifications therefor shall have been submitted to and approved in writing by the Board. In addition, except for the initial grading and installation of landscaping installed by either Declarant or Builder, no change of grading of more than 1' or change/installation of landscaping (excepting routine maintenance thereof), shall be permitted on any Lot on the Declarant Property unless detailed plans and specifications therefore shall have been submitted to and approved in writing by the Board. The foregoing referenced plans and specifications shall be in such form and shall contain such information as the Board may reasonably require, including but not limited to, any or all of the following: a site plan; patio and walkway locations; description of materials; location of lighting; architectural plans including cross-sections, floor plans and elevations; evidence of conformity with building codes; grading plan; and landscaping plan. The Board shall either approve the plans and specifications, disapprove them, or approve them with conditions or qualifications.

(b) No building, fence, wall, deck or other Structure shall be commenced, constructed, erected, placed, moved onto or permitted to remain on any Lot on the Sherwood

Property nor shall any Dwelling Unit and/or Structure on any Lot on the Sherwood Property be remodeled, painted or altered or expanded in any way which changes the exterior appearance thereof, unless detailed plans and specifications therefor shall have been submitted to the Board to confirm that all such work complies with the architectural standards of any amended PUD or other zoning ordinances and/or regulations applicable to such Property. The foregoing referenced plans and specifications shall be in such form and shall contain such information as the Board may reasonably require, including but not limited to, any or all of the following: a site plan; patio and walkway locations; description of materials; location of lighting; architectural plans including cross-sections, floor plans and elevations; evidence of conformity with building codes; grading plan; and landscaping plan. The Board shall either approve the plans and specifications, disapprove them, or approve them with conditions or qualifications; provided, that the Board shall only disapprove, condition or qualify its approval if such plans or specifications fail to comply with any architectural standards contained in any amended PUD or other zoning ordinances and/or regulations applicable to such Property.

5.2. Approval of Plans and Specifications.

(a) The Board shall approve plans and specifications submitted to it with respect to any Lot (or subdivision of Lots) on the Declarant Property if it finds that they comply with the requirements of Section 5.1(a) above, will further the purposes outlined in this Declaration and meets Architectural Guidelines adopted by the Board. Upon final approval thereof, a certified copy of the detailed plans and specifications shall be deposited for permanent record with the Board and a copy bearing the written approval of the Board shall be returned to the applicant. Approval by the Board of plans and specifications with respect to any Lot on the Declarant Property shall not impair the Board's right subsequently to approve a requested amendment of such plans and specifications relating to such Lot (subject to the requirements of this Section). The Board's approval of any plans and specifications shall not constitute a representation or warranty as to the quality of the plans and specifications or their compliance with applicable laws and codes.

(b) The Board shall approve plans and specifications submitted to it with respect to any Lot (or subdivision of Lots) on the Sherwood Property if it finds that they comply with the requirements of Section 5.1(b) above. Upon final approval thereof, a certified copy of the detailed plans and specifications shall be deposited for permanent record with the Board and a copy bearing the written approval of the Board shall be returned to the applicant. Approval by the Board of plans and specifications with respect to any Lot on the Sherwood Property shall not impair the Board's right subsequently to approve a requested amendment of such plans and specifications relating to such Lot (subject to the requirements of this Section). The Board's approval of any plans and specifications shall not constitute a representation or warranty as to the quality of the plans and specifications or their compliance with applicable laws and codes.

5.3. Architectural Guidelines. The Board may adopt reasonable architectural guidelines and rules relating to the construction, erection and placement of buildings, fences, walls and structures and the installation of landscaping and grading of land on the Declarant Property in order to fulfill its obligations under Article 5. Such guidelines and specifications may include but not be limited to building materials, minimum or maximum sizes, dimensions or heights, color schemes, material finishes, locations, setbacks, types of shrubs/trees, or other

reasonable requirements. Association may not adopt any architectural guidelines and rules relating to the Sherwood Property.

5.4. Disapproval of Plans and Specifications. If plans and specifications (whether schematic, preliminary or detailed) submitted to the Board with respect to any Lot on the Declarant Property do not comply with the Architectural Guidelines, if any, and the requirements of Section 5.1 as to the information required to be included in the plans and specifications, the Board shall either disapprove such plans and specifications or approve them subject to such conditions and qualifications as the Board may deem necessary to achieve compliance.

5.5. Failure of the Board to Act. If the Board shall fail to act upon any plans and specifications submitted to it within sixty (60) days after submission thereof, the Owner shall be entitled to provide the Board with a written demand for action and if the Board still fails to act within thirty (30) days of the demand for action, such plans and specifications shall be deemed to have been approved as submitted, and no further action by the Board shall be required. If construction of a Structure is not commenced on a Lot on or before six (6) months from the date of submission of plans and specifications, then such "deemed approval" shall be automatically canceled and a new submission shall be required.

5.6. Violations. If any Dwelling Unit and/or Structure situated upon any Lot shall have been constructed, erected, placed, remodeled or altered other than in accordance with the approved plans and specifications, the Board shall give notice of a Default to the Owner of the Lot involved, provided, however, that the Board may, upon such conditions as it may determine, waive any such Default if it finds that such Default does not substantially conflict with the policies of the Board.

5.7. Enforcement. In the event of a violation of the provisions of this Article 5, the Association shall have the right to enforce this Section by any proceedings authorized in this Declaration, Code of Regulations or rules and regulations, if any, as well as any other relief available at law or in equity.

5.8. Right of Entry. The Board through its authorized officers, employees, and agents, shall have the right to enter upon any Lot at all reasonable times for the purpose of ascertaining whether such Lot or the construction, erection, placement, remodeling, or alteration of any Dwelling Unit and/or Structure thereon is in compliance with the provisions of this Section, without the Board or such officer, employee or agent being deemed to have committed a trespass or wrongful act solely by reason of such action or actions.

5.9. Fees. The Board may charge reasonable fees for the processing of plans and specifications. Such fees may cover the cost of such processing, including inspection costs. Such fees shall be payable at the time of submission of the respective item for approval and shall be paid to the Association.

5.10. Approval of Plans by Declarant. Notwithstanding anything to the contrary in this Article 5, during the Development Period (which may still be in effect even after the Control Period Special Meeting as provided in Section above), the plans and specifications for the initial

construction of a Dwelling Unit shall be subject only to Declarant's approval and do not need to be approved by the Board.

ARTICLE 6
COVENANTS AND RESTRICTIONS OF USE AND OCCUPANCY

6.1. Purposes. In order to promote the health, safety and welfare of all Owners, Members and Occupants, and to preserve, beautify and maintain the Declarant Property and all Structures thereon as a subdivision of high quality and to preserve and promote a good environmental quality, the following covenants, restrictions and limitations as to use and occupancy are hereby adopted, declared and established. These covenants and restrictions shall hereinafter burden and benefit all Lots on the Property, shall run with the land, be binding on current and successor Owners of the Property, for the benefit of all Owners and all Lots on the Property.

6.2. Covenants and Restrictions for all of the Property. The following are the covenants and restrictions and limitations as to use and occupancy of all Lots on the Declarant Property:

(a) Land Use. Except as otherwise provided in this Declaration, no part of the Declarant Property other than Common Elements shall be used for other than residential housing and any Single Family Unit(s) constructed on a Single Family Lot shall be used only as a residence for a single family. To the extent permitted by law, an Owner of a Single Family Lot may use a portion of a Single Family Unit located thereon for his/her office or studio provided that the activities therein shall not interfere with the quiet enjoyment or comfort of any other Owner or Occupant; and provided further that such activities do not increase the normal flow of traffic or individuals in and out of the Declarant Property or in and out of said Owner's Single Family Lot. The foregoing notwithstanding, Declarant, its successors, assigns and affiliates, and any Builder may use Single Family Lots and Single Family Units for construction offices, sales purposes (i.e., including, but not limited to, model homes), and as offices to meet with prospective purchasers of Single Family Units. In addition, during the Development Period, Declarant reserves the right to use a portion of the clubhouse for sales purposes in order to meet with prospective purchasers of Single Family Units.

(b) Other Structures. No structures of a temporary character, trailer, shack, garage, barn or other temporary outbuilding shall be used or erected on any Single Family Lot after the permanent residence on each Single Family Lot has been completed. Notwithstanding the foregoing to the contrary, Structures may be placed on any Single Family Lot without the Board's prior written approval, as provided in Article 5 above.

(c) Parking. All Single Family Lots shall provide two (2) off-street parking spaces, exclusive of garage spaces. No parking spaces, streets or driveways nor any other part of the Common Elements nor any Single Family Lot upon which a Single Family Unit is constructed shall be used for parking of any trailer, truck, boat, or anything other than operative automobiles, motorcycles or scooters. Any of such vehicles may, however, be stored or parked in an enclosed garage provided such garage door is completely closed at all times when such a vehicle is parked therein. The word "trailer" shall include trailer coach, "RV", recreational

vehicle, house trailer, mobile home, automobile trailer, boat trailer, campcar, camper or any other vehicle, whether or not self-propelled, constructed or existing in such a manner as would permit the use and occupancy thereof for human habitation, for storage, or the conveyance of machinery, tools or equipment, whether resting on wheels, jacks, tires or other foundation. The word "truck" shall include and mean every type of motor vehicle other than passenger cars and other than any pick-up truck, sports utility vehicle or van which is used as a principal vehicle by an Owner of a Single Family Unit or his family. Notwithstanding the restrictions in this Section, vehicles being used for the purpose of construction, delivery or repair work to or upon any Single Family Lot or Single Family Unit may be permitted to be parked on any Single Family Lot and street in the Subdivision.

(d) Section 401 Water Quality Certification. Pursuant to Section 401 of the Federal Water Pollution Control Act, Public Law 95-217, the Declarant Property must comply with the applicable provisions of Sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act.

(e) Nuisances. No noxious or offensive activity shall be carried on upon any Single Family Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No Single Family Lot Owner shall permit anything to be done or kept in a Single Family Unit or other approved Structure on any Single Family Lot that would be in violation of any federal, state and local law. No waste shall be committed in or to any of the Common Elements.

(f) Oil and Mining Operations. No oil drilling, quarrying, or mining operations shall be permitted on any Single Family Lot.

(g) Garbage and Refuse Disposal. Except for the immediate purpose of trash and garbage collection and removal, trash, garbage, or other waste shall not be kept upon a Single Family Lot except in sanitary containers screened from visibility from the streets and drives of the Declarant Property. Yard waste may be composted in approved containers. No Single Family Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other waste.

(h) Antennas. No apparatus, free standing antennas or satellite dishes shall be constructed or used on any Single Family Lot; provided, however, that a satellite dish not exceeding one (1) meter in diameter may be placed on a roof top of a Single Family Unit if not visible from the street in front of the Single Family Unit. All television and radio antennae, including CB radio antennae, must be enclosed within the Single Family Unit located on the Single Family Lot. All telephone, electric and other wires of all kinds must be underground.

(i) Signs. No permanent sign shall be permitted on any Single Family Lot or building in the Subdivision. In addition, no permanent or temporary sign shall be permitted to be placed on any surface that is visible within the Subdivision. An Owner of a Single Family Unit is permitted to place and maintain a standard "For Sale" or "For Rent" sign on his/her Single Family Lot; provided, however it is of a typical size within the industry. An Owner must obtain the prior written consent of the Board in the event said Owner desires to maintain a "For Sale" or "For Rent" sign which is not of a typical size within the industry. This sign restriction shall not

apply to signs used by Declarant and/or Builder or their assigns, while Declarant and/or Builder is selling Single Family Units in the Subdivision, or to traffic, street names, Common Elements or subdivision identification signs.

(j) Animals. No animals of any kind shall be raised, bred, or kept on any Single Family Lot including the Common Elements, except that dogs or other household pets not totaling more than three (3) in number, may be kept on a Single Family Lot, subject to the Restrictions, provided that it is not kept, bred or maintained for any commercial purpose, and provided that it is kept subject to the rules and regulations, if any, of the Association, including, but not limited to, rules regarding weight limitations for certain types of pets. Any such pet or pets causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Declarant Property upon seven (7) days written notice from the Board. No such pets may be allowed to run unattended. Dogs, cats, or other household pets must be kept within the confines of the Owner's Single Family Lot except when being held on hand leash by the person attending the animal. A Single Family Lot Owner shall be responsible for cleaning up after his/her household pet. Notwithstanding the foregoing, the Association shall have the right to promulgate rules and regulations pertaining to size, number and type of such household pets and the right to levy fines and enforcement charges against persons who do not clean up after their pet.

(k) Laundry or Rubbish. No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the Declarant Property. No clotheslines shall be located on any Single Family Lot. The Declarant Property shall be kept free and clear of rubbish, debris and other unsightly materials.

(l) Rental of Single Family Units. The Owners of the respective Single Family Units or any first mortgagees in possession thereof shall have the right to lease the same subject to the covenants and restrictions in the Declaration and the Code of Regulations and rules and regulations, if any. However, neither an Owner nor any first mortgagee in possession shall lease less than an entire Single Family Unit nor shall any Single Family Unit be leased for a term of less than six (6) months. The respective Single Family Unit shall not be rented for transient or hotel purposes, which shall be defined as (i) rental for any period less than ninety (90), or (ii) any rental if the occupants of the Single Family Units are provided customary hotel service such as room service or food and beverage, maid service and furnishing of laundry and linen. All leases of any Single Family Unit shall be in writing. All such leases shall provide that they are subject to all the provisions of the Declaration, the Code of Regulations and the rules and regulations, if any, and that any failure of the lessee to comply with any such provision shall constitute a default under the lease. A copy of each such lease shall be given to the Association immediately after it is executed.

(m) Swimming Pools. No above-ground swimming pools shall be constructed, erected, placed or permitted to remain upon any Single Family Lot. In-ground swimming pools are permitted provided it is approved by the Board in accordance with Article 5 above. This Section shall not prohibit the construction, erection or placement of a diving board, slide or other equipment appurtenant to an otherwise conforming swimming pool.

(n) Fencing. No fences shall be erected or built on any part of any Single Family Lot between the rear of the building constructed thereon and the street in front of the building. Fences erected on said Single Family Lot from the rear of the building and the back property line shall comply at a minimum with the following requirements (except as expressly provided herein): (i) four foot black or white PVC (not chain link); (ii) four to six foot ornamental iron or decorative metal; (iii) six foot wood shadowbox; or (iv) wood fence constructed with cedar treated gothic top spaced picket panels (42"x8" panels with 3-3/8" pickets and no more than 2-1/2" between pickets) and shall otherwise be approved in writing by the Board or Declarant, as the case may be. Barbed wire, chain link or similar fences shall be prohibited. All fences must be kept in good repair by the Owner. On a corner Single Family Lot, the section or sections of fence running with the side street shall not extend closer to said side street at any point than the residence on said Single Family Lot. Entrance designations, Recreational Facilities, fences and any other Structure erected by Declarant, Builder and/or the Association are exempt from this Restriction.

Notwithstanding the foregoing, the Architectural Review Board may, in its sole discretion, approve fences different than those described herein if such fences are compatible with the Declarant's overall development plan for the Villages at Brookside and are of a style and quality which meets or exceeds the spirit and intent of the foregoing requirements.

(o) Swing Sets, Basketball Goals and Play Areas. Swing sets, basketball goals and play areas may be erected on a Single Family Lot only after the location and materials of those Structures are approved in writing by the Board in accordance with Article 5 above. Any basketball goals must be permanent goals with black posts and glass backboards. 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.

(p) Building Setbacks. No building shall be located nearer to any street than the building setback line shown in the Record Plat of the Subdivision, except as constructed by Declarant or Builder.

(q) Lawns. No weeds, underbrush or unsightly growths or objects of any kind shall be permitted to remain on any Single Family Lot within the Subdivision. All lawn areas shall be maintained in a neat and orderly manner and shall be mowed on a regular basis. Lot areas left in a naturalized state by the Declarant and/or Builder may be left in such naturalized state by the Single Family Lot Owner unless otherwise directed in writing by Declarant.

(r) Obligation to Keep Lot in Good Condition. Each Single Family Lot Owner or Occupant shall keep each Single Family Lot and all Structures thereon in such maintenance, repair, appearance and condition as shall comply with the provisions of this Declaration and applicable laws and ordinances.

(s) Mailboxes. Declarant or Builder reserves the right to establish a standard design for mailboxes for use by all Single Family Lot Owners. The decision of the type and color of material and paint to be used by each Owner shall be at sole discretion of Declarant and/or Builder. Declarant and/or Builder may designate different standard designs for each Neighborhood or area of homes within the Neighborhoods. Single Family Lot Owners shall be

responsible for maintenance of their individual mailboxes. Declarant and/or Builder may however, waive this right or establish the use of cluster mailboxes.

(t) Lot Grading. Neither the Single Family Lot Owner nor anyone claiming under the Single Family Lot Owner shall alter elevations and grades established by Builder for any building Lot without the prior written approval of Declarant and/or Declarant's designee during the Development Period; and, the prior written approval of the Board after the Development Period in accordance with Article 5 above. The purpose of this Restriction is to insure that the surface drainage plan originally established by Builder for sheet surface drainage and drainage swales over the yard areas of building Lots is not altered or impeded. Landscaping or plantings shall not be installed or maintained in such a manner as to impede sheet surface drainage or swale drainage.

(u) Additional Restrictions. As the Additional Property is annexed by means of a Supplemental Declaration, Single Family Units or Single Family Lots within specific Neighborhoods may be subject to additional covenants, rules and regulations established by Declarant at such time as such Single Family Units or Single Family Lots are annexed.

THE FOREGOING COVENANTS AND RESTRICTION CONTAINED UNDER THIS SECTION 6.2 IS NOT APPLICABLE TO ANY MULTI-FAMILY LOTS AND ONLY APPLIES TO THE SINGLE FAMILY LOTS.

6.3. Common Element Lakes and Water Facilities. The use of lakes and other water facilities (collectively, hereinafter "Common Element Lakes") located on the Common Elements on the Declarant Property is governed by the following Restrictions (hereinafter "Common Element Lake Restrictions"):

(a) Use. Use and enjoyment of the Common Elements Lakes is limited to Owners and Occupants and to their tenants, guests and invitees and is subject to any Rules and Regulations which may be established by the Association in addition to provisions of this Section.

(b) Swimming/Diving. No swimming, snorkeling or scuba diving is permitted within the Common Element Lakes.

(c) Ice-skating. No ice-skating is permitted within the Common Element Lakes.

(d) Pollution. No obnoxious, or offensive substance polluting the Common Element Lakes shall be discharged or be permitted to be discharged therein.

(e) Trash/Debris. No trash, debris or unsightly substances shall be placed or permitted to be placed in the Common Element Lakes.

(f) Withdrawal of Water. No water shall be withdrawn from the Common Element Lakes in such quantity as would materially lower the level thereof unless such water is withdrawn by or at the direction of the Declarant or the Association.

(g) Commercial Use. No commercial use of any kind shall be made of the Common Element Lakes. Only the Owners and Occupants of a Lot on the Declarant Property shall be permitted to fish in the Common Elements Lakes - commercial fishing is prohibited.

(h) Boats/Vehicles. No one shall be permitted to use on, or in the Common Element Lakes, any motorized boat, or motorized vehicle designed or used for the conveyance, movement or locomotion of persons or things. Rowboats, canoes, paddleboats and other self-propelled similar boats may be used subject to Rules and Regulations established by the Association. Rafts and homemade contraptions shall, however be expressly prohibited.

(i) Boat Docks/Structures. No boat docks or other structures shall be constructed or placed into or on the Common Element Lakes by Owners. This shall not prohibit Declarant or the Association from constructing recreational structures or other structures into or on the Common Element Lakes for the benefit of the Declarant Property.

(j) Shoreline Structures. Within the twenty foot (20') Shoreline Easement, no Owner shall erect any structure, sign, fence or wall, either permanent or temporary, park any vehicle, store any article, and/or maintain any tree, shrub, hedge, landscaping or planting, either natural or cultivated, except customary lawn grasses within said easement. This paragraph shall not apply to Declarant or the Association.

(k) Development/Maintenance. The Restrictions of this Section shall not prevent or restrict Declarant or Builder from constructing and developing improvements or buildings on, within or adjacent to the Common Element Lakes during the Development Period.

ARTICLE 7 MAINTENANCE STANDARDS

7.1. Adoption and Amendment. Declarant during the Development Period, and after the Development Period, the Board shall have the right to adopt, and may from time to time amend, Maintenance Standards pertaining to the maintenance, repair and appearance of all Lots on the Declarant Property, and the exterior of all Dwelling Units and Structures thereon. If any provision of any applicable building inspection, or similar maintenance statute, ordinance, resolution, regulation or order of the State of Indiana, any other political subdivision or governmental instrumentality of the State of Indiana, or the Board, is more stringent with regard to a Lot than a comparable provision of the Maintenance Standards, such more stringent provision shall be deemed incorporated in the Maintenance Standards. The Maintenance Standards shall provide, among other things, that:

(a) except as otherwise hereinafter provided, the Association shall be responsible for maintenance, repair and replacement of the Common Elements on the Declarant Property and all Structures thereon;

(b) each Owner shall maintain, repair and replace at his expense all portions of the Common Elements which may be damaged or destroyed by reason of his own intentional or negligent act or omission or by the intentional or negligent act or omission of any invitee, lessee, licensee, employee, agent, family member, guest, and/or pet(s) of such Owner;

(c) the obligation of the Association and of the Owners to repair, maintain and replace the portions of the Declarant Property for which they are respectively responsible shall not be limited, discharged or postponed by reason of the fact that any maintenance, repair or replacement may be necessary to cure any latent or patent defects in material or workmanship in the construction of the Declarant Property;

(d) notwithstanding the fact that the Association and/or any Owner may be entitled to the benefit of any guarantee of material and workmanship furnished by any construction trade responsible for any construction defects, or to benefits under any policies of insurance providing coverage for loss or damage for which they are respectively responsible, the existence of any construction guarantee or insurance coverage shall not excuse any delay by the Association or by any Owner in performing its or his obligation hereunder; and

(e) except as otherwise provided above in Section 7.1(a), each Owner shall maintain, repair and replace at his/her expense all portions of each Dwelling Unit and Structure located on each Lot on the Declarant Property owned by him/her and all internal and external installations of such Lot such as appliances, heating, plumbing, electrical and air conditioning fixtures or installations, and any portion of any other utility service facilities located within the boundaries of or serving such Lot.

7.2. Obligation to Keep Premises in Good Repair. Each Owner during his/her period of ownership and, during his/her tenancy, each Tenant leasing a Lot on the Declarant Property, shall keep such Lot, Dwelling Unit and all Structures thereon owned or leased by him/her in such maintenance, repair and appearance as shall comply with the Maintenance Standards.

7.3. Periodic Inspection. Periodically as needed, the Association may inspect each Lot on the Declarant Property and the exterior of the Dwelling Unit and all Structures thereon to determine whether each complies with the Maintenance Standards. After each such inspection, the Association shall, if any defects are found, issue an inspection report to the Owner with a copy to the Tenant, if applicable, listing such defects, if any, and the reasonable time within which they may be corrected. Such Owner shall correct such defects or cause them to be corrected within such reasonable period as is stated in the inspection report.

7.4. Drainage Swales. Neither the Owner nor anyone claiming under the Owner shall, except in an emergency, alter the location or grade of any open storm water drainage way on any Lot on the Declarant Property without the prior written consent of the Association.

7.5. Right of Entry. Declarant and the Association, through their authorized officers, employees, and agents, shall have the right to enter upon any Lot and/or Structure on the Declarant Property at all reasonable times and upon reasonable advance notice for the purpose of making inspections required by this Section without Declarant or the Association or such officer, employee or agent being deemed to have committed a trespass or wrongful act solely by reason of such entry or such action or actions. Any bona fide utility company, through its authorized officers, employees, and agents, shall have the right to enter upon the Common Elements on the Declarant Property or upon any utility easements located on any Lots on the Declarant Property, for the purpose of installing, repairing or servicing any of its equipment, or for reading meters, without Board approval; provided, however, that if any such activities by the utility require

alteration to or displacement of any waterscaping, landscaping, grass, sidewalks, fences, garages, or other Structures, then the prior approval of the Board shall be required.

7.6. Failure to Comply. Failure to comply with the Maintenance Standards or to correct the defects listed in any inspection report issued by the Association or to pay any fee hereunder shall constitute a Default, in which event Declarant or the Board shall have the right to enforce this Section by any proceedings authorized in this Declaration, Code of Regulations or rules and regulations, if any.

ARTICLE 8 **COMMON ELEMENTS AND EASEMENTS**

8.1. Description of Common Elements. The Common Elements in the Declarant Property shall include, but not be limited to: the General Common Elements (including those depicted on Exhibit C attached hereto), Pool, Pavilion, Recreational Facilities; and Landscape Easements; Shoreline Easements; Retention and Detention Areas, Common Element Lakes, and any other easements for open space, landscaping areas and mounding, walking paths, water retention/detention basins, Common Element utility easements, storm sewer and surface water drainage easements, water main easements, sanitary sewer easements, preservation areas, and private drainage easements; all as are or may be located, described and shown on the Record Plats of the Declarant Property (collectively, the "Common Elements"). Declarant and/or Builder may also create other Common Elements not now in existence but that might in the future be added, located and shown on any subsequent Record Plat to be recorded and creating additional Lots to be subjected to this Declaration. To the extent that the location of any General Common Elements identified on Exhibit C are more particularly described on a Record Plat, the more particular description set forth on the Record Plat shall control the location of said General Common Elements. Declarant hereby acknowledges and agrees that no portion of the Common Elements are or shall be located on or within the Sherwood Property, without the prior written consent of the Owner(s) of the Sherwood Property, which consent may be withheld, conditioned, or delayed based upon the sole and absolute discretion of the Owner(s) of the Sherwood Property.

8.2. Rights of Enjoyment in Common Elements and General Common Elements. Except as herein otherwise provided, (a) each Owner of the Declarant Property shall have a right and nonexclusive easement for use and enjoyment of the Common Elements, and such right and easement shall be appurtenant to, and shall pass with the title to his/her Lot, and (b) each Owner of the Property shall have a right and nonexclusive easement for use and enjoyment of the General Common Elements, and such right and easement shall be appurtenant to, and shall pass with the title to his/her Lot. Each Tenant of a Lot on the Declarant Property shall have a nontransferable right to use and enjoy the Common Elements, if any, which right shall terminate when such person ceases to have the status of a Tenant. Each Tenant of a Lot on the Property shall have a nontransferable right to use and enjoy the General Common Elements, if any, which right shall terminate when such person ceases to have the status of a Tenant. Such rights and privileges shall be subject, however, to the following:

(a) The right of the Board, with the approval of sixty-seven percent (67%) of the Class A Members, and the Class B Member, to borrow money, subject to the limitations in

Article 4 above, for the purpose of constructing, equipping, improving and maintaining the Common Elements and in aid thereof to mortgage the Common Elements.

(b) The right of the Board to adopt and enforce and from time to time amend reasonable limitations upon use and Rules and Regulations pertaining to the use of the Common Elements, including regulations limiting guests of Owners and Tenants who may use the Common Elements at any one time.

(c) The right of the Board to suspend the right of any Owner or the privilege of any Occupant to use such of the Common Elements that are recreational in nature as determined by the Board for any infraction of the Rules and Regulations relating to the Common Elements for a period not to exceed sixty (60) days for each such infraction, or for nonpayment or delinquency of the Assessments against such Owner's Lot for a period not to exceed the period of such nonpayment or delinquency.

(d) Such rights as the Board may have to grant easements or rights of way to any public utility corporation or public agency.

(e) All applicable provisions of valid agreements of the Association relating to the Common Elements.

(f) Such rights as the Board may have under the Declaration to convey or lease all or any part of the Common Elements.

(g) All other easements, restrictions and rights to which the Property is subject.

(h) The right of the Association to grant permits, licenses, and easements over the Common Elements for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Property.

8.3. Exclusive Common Elements.

(a) Certain portions of the Common Elements may be designated as Exclusive Common Elements and reserved for the exclusive use of Owners and Occupants of Dwelling Units within a particular Neighborhood or Neighborhoods. All costs associated with operation, maintenance, repair, replacement and insurance of Exclusive Common Elements shall be assessed as a Neighborhood Assessment, as defined herein, against the Owner of Dwelling Units in only those Neighborhoods to which the Exclusive Common Elements are assigned. By way of illustration and not limitation, Exclusive Common Elements may include recreational facilities or open space intended for the exclusive use of Owners within a particular Neighborhood or Neighborhoods and supported exclusively by Neighborhood Assessments.

(b) The use of the Pool and Pavilion to be located on the Declarant Property shall be designated for the exclusive use by the Owners of any Lot in The Villages at Brookside and Neighborhood "E". No other Owners of any portion of the Property shall have use of the Pool and Pavilion unless otherwise agreed to in writing by Declarant.

(c) After the date hereof, any other Exclusive Common Elements shall be designated as such and the exclusive use thereof shall be assigned in the deed conveying the Common Element to the Association; or on the Record Plan relating to such Common Element, or in a Supplemental Declaration. A portion of the Common Element may be assigned as Exclusive Common Element of a particular Neighborhood or Neighborhoods and Exclusive Common Element may be reassigned upon the vote of a majority of the total Association vote and the majority of the votes within the Neighborhood(s) to which the Exclusive Common Elements are assigned, if applicable, and the Neighborhood(s) to which the Exclusive Common Elements are to be assigned.

8.4. Subordination to Mortgage or Other Lien. The rights and privileges provided in this Section shall be subordinate to any mortgage or other lien given by the Association for the purposes of acquiring, improving or maintaining the Common Elements.

8.5. Additional Common Elements. Declarant may from time to time, during the Development Period, convey to the Association for nominal or other appropriate consideration and the Association may accept conveyance of any land owned by Declarant along with any Structure, improvement or other facility including related fixtures, equipment and furnishings located thereon.

8.6. Conveyance or Lease of Common Elements. Upon authorization by the Board and upon the approval of sixty-seven percent (67%) of Class A Members and the Class B Member, the Association may at any time convey or lease all or a part of the Common Elements to any public agency, authority, or utility or to any private entity, upon such terms and conditions as shall be agreed upon by the other party and Board, including, without limitation, terms and conditions providing for the use of such Common Elements by the public in general and terms and conditions pertaining to the maintenance and repair of such Common Elements and the assessments of Owners and/or Tenants for the costs of such maintenance and repair.

8.7. Use of Common Elements by Declarant and Builder. Declarant and Builder and its affiliates and associates shall have the same rights of use and enjoyment of the Common Elements as the Class A Members during the Development Period, and shall have the right to use the Common Elements for promotional, sales and similar purposes until all of the Dwelling Units have been sold.

8.8. Easements.

(a) In the event that, by reason of the construction, settlement or shifting of any of the Dwelling Units or other Structures located on Lots on the Declarant Property or by reason of the partial or total destruction and rebuilding of the buildings, any part of the Common Elements presently encroach or shall hereafter encroach upon any part of a Lot on the Declarant Property; or any part of a Dwelling Unit on the Declarant Property presently encroaches on or shall hereafter encroach upon any part of the Common Elements or any other Lot on the Declarant Property; or, if by reason of the design or construction of utility systems, any main pipes, ducts or conduits serving more than one Dwelling Unit on the Declarant Property presently encroach or shall hereafter encroach upon any part of any Dwelling Unit or Lot on the Declarant Property, valid easements for the maintenance of each encroachment and for the use of

such adjoining space are hereby established. These easements shall exist during the term of this Declaration for the benefit of such Lot or Dwelling Unit on the Declarant Property and the Common Elements, as the case may be. However, in no event shall a valid easement for any encroachment be created in favor of any Owner if such encroachment occurred due to the willful conduct of said Owner.

(b) The Association may hereafter grant easements for utility purposes for the benefit of the Declarant Property, including the right to install, lay, use, maintain, repair and replace water mains and pipes, sewer lines, gas mains, telephone wires and equipment, and electrical conduits and wires over, under, along and on any portion of the Common Elements, and each Owner of the Declarant Property hereby grants the Association an irrevocable power of attorney to execute, acknowledge, deliver and record, for and in the name of such Owner, such instruments as may be necessary to effectuate the foregoing.

(c) Declarant hereby reserves easements and the right to grant easements on, over and across certain Lots on the Declarant Property for open space, landscaping mounding and monument areas and for the installation, maintenance, use, repair and replacement of underground utilities, public utilities, water detention basins, storm sewer, sanitary sewer and surface water drainage easements, water mains, preservation areas and private drainage easements, and building setbacks, specifically as shown on the Record Plats now or hereinafter recorded for the Subdivision, and to cut and grade slopes in and along Lot boundaries at streets and drives built within the Declarant Property. The foregoing easements shall not be used for recreations purposes but are reserved for such aesthetic or utility purposes as indicated by the nature of the easement.

(d) A non-exclusive ingress and egress easement hereby created, for the benefit of all Owners of the Declarant Property, on, over and across any and all private roadways now or in the future located on the Declarant Property, which roadways shall be part of the Common Elements of the Association.

(e) All Lots on the Declarant Property shall be subject to and benefited by a maintenance easement in favor of the Association, the Declarant, the Builder and the adjoining Owner(s) for the purposes of maintaining, cleaning, repairing, improving, replacing and otherwise dealing with the Dwelling Unit situated on such a Lot ("Maintenance Easement"). Such Maintenance Easement shall encompass the side yard building set back area along all common Lot lines on the Declarant Property. Said Maintenance Easement shall specifically permit an Owner to temporarily place a ladder or scaffolding within the easement area of the neighboring Lot in order to perform maintenance and repairs on the Owners' Dwelling Unit.

(f) All easements and rights described in the Declaration are easements appurtenant, running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on Declarant, its successors and assigns, and any Owner, purchaser, mortgagee and other party now or hereafter having an interest in the Property, or any part or portion thereof. After the Development Period, the Association shall be deemed to be the successor of Declarant and, as such, shall be deemed to be the grantee of said easements provided in this Section, and shall hold such easements for the use, benefit and enjoyment of all

Owners in the Subdivision. All notes on the Record Plat that are pertinent to the specific easements set forth herein are incorporated herein by reference.

8.9. Common Private Driveway Easements. The Lots on the Declarant Property sharing a Common Private Driveway Easement shall be subject to and benefitted by a perpetual non-exclusive easement for ingress and egress, drainage, water, sewer, electric and all utility services over the Common Private Driveway. The Owners of such Lots shall use the Common Private Driveway situated on the easements with due regard for the rights of any other Owner and its use of such driveway and utility lines. No Owner shall use or permit the use of the driveway in a manner which impairs the right of way of any other Owner to its use, nor shall any Owner park or store vehicles or personal property on, or obstruct or encroach upon, or permit the use of, or permit the obstruction of or encroachment upon, the Common Private Driveway in any manner whatsoever without the concurrence of all Owners entitled to use the Common Private Driveway.

The Owners using the Common Private Driveway shall from time to time elect one of the respective Owners to act as an agent for the group ("Agent") to provide for the property maintenance and repair of said Common Private Driveway and embankment and when necessary, restore said Common Private Driveway and embankment to its original condition as constructed, and including snow removal, weed and grass cutting. Said Agent shall assess all of said costs equally against said Owners using the Common Private Driveway, who shall pay such charges to the Agent within thirty (30) days after billing. Any unpaid assessments shall become a lien against any such Lot in default upon certification by the Agent to the Recorder of Hancock County, Indiana. Such certification shall contain a description of the Property, the name or names of the Owner, and the amount of the delinquent assessment. Said lien shall remain valid for a period of five (5) years and may be foreclosed by the Agent on behalf of the Owners. The obligation of an Owner of a Common Private Driveway to share in the cost and expense of maintaining a Common Private Driveway, is separate and distinct from the obligation of such Owner to pay the Assessments levied pursuant to Article 4 above.

8.10. Conservation Easement. A non-exclusive and irrevocable easement is hereby created, for the benefit of the Declarant, the Association or its designees, on, over and across certain areas of the Declarant Property to be depicted on the Record Plat as "Conservation Easement" for the continual and perpetual conservation of streams and waterways located in the Conservation Easement areas ("Conservation Easement Areas"). The purpose of the Conservation Easement is for the mitigation monitoring of all streams and waterways located in the Conservation Easement Areas. No improvements of any kind may be built by any Owner and to prevent any use of the Conservation Easement Areas that will impair or interfere with the preservation of the Conservation Easement Areas in their condition following completion of mitigation construction condition.

8.11. Easements to Other Residents. Declarant may designate that certain owners of real property outside of the Property or outside of the Declarant Property, as applicable, and such other persons as Declarant may designate, shall have an easement of enjoyment in and over the Common Elements or specific Common Elements, and the facilities located thereon, to the same extent as any Owner, subject to the provisions of Section 8.2. Such individuals shall be subject to the Rules and Regulations of the Association concerning the use of said Common Elements,

but shall not be subject to Assessments by the Association. The Association may, if appropriate, and at the sole discretion of the Board of Directors, charge a fee to such individuals for the use of such Common Elements, including the Recreational Facilities.

ARTICLE 9 **NEIGHBORHOODS**

9.1. Every Dwelling Unit shall be located within a Neighborhood as defined in Article 1. The Dwelling Units within a particular Neighborhood may be subject to additional covenants and/or the Owners may all be members of another owners association ("Neighborhood Association") in addition to the Association, but no such Neighborhood Association shall be required except in the case of a condominium, apartment or otherwise as required by law.

9.2. The Declarant hereby establishes the following Neighborhoods:

(a) "The Villages at Brookside" consisting of all the Lots to be located on the Declarant Property.

(b) Neighborhood "E" consisting of all the Lots to be located on Parcel E.

9.3. At such times as Declarant annexes portions of the Additional Property to this Declaration, Declarant shall specify in the Supplemental Declaration annexing such Additional Property the respective Neighborhood designation for each building Lot annexed. During the Development Period, Declarant reserve the right to add and/or establish additional Neighborhoods as Declarant so requires in the marketing of the Property during the Development Period. Declarant further reserves the right to add, subtract or otherwise reclassify Lots and/or Neighborhoods on the Declarant Property provided such revisions are made by Supplemental Declaration during the Development Period.

9.4. Dwelling Units or Lots within specific Neighborhoods may be subject to additional covenants, rules and regulations established by the Owner(s) of such Dwelling Units or Lots or, with regard to The Villages at Brookside, during the Development Period, by Declarant. Such covenants, rules and regulations may require the Association to provide for higher levels of service and special services for the benefit of Dwelling Units in such Neighborhood. In such event, the Association shall provide such services and the costs of such services shall be assessed against the Units within such Neighborhood as a Neighborhood Assessment pursuant to Section 4.4 hereof.

9.5. Each Neighborhood, upon the affirmative vote, written consent, or a combination thereof, of a majority of Owners within the Neighborhood, may require that the Association provide a higher level of service or special services for the benefit of Dwelling Units in such Neighborhood. In such event, the Association shall provide such services and the costs of such services shall be assessed against the Units within such Neighborhood as a Neighborhood Assessment pursuant to Section 4.4 hereof.

ARTICLE 10 **MAINTENANCE**

10.1. Association's Responsibility. The Association shall maintain and keep in good repair the Areas of Common Responsibility, such maintenance to be funded as hereinafter provided. The Areas of Common Responsibility shall include, but need not be limited to entry, landscaping and signage easements; water retention/detention basins; Common Element Lakes, including the shorelines; Common Element utility easements, storm sewer and surface water drainage easements; preservation areas; all landscaping and other flora, structures, and improvements, including any private streets, situated upon the Common Elements; landscaped medians within public right-of-way throughout the Declarant Property; the Recreational Facilities; and such portions of any Additional Property included within the Areas of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or by a contract or agreement for maintenance thereof by the Association. The Association may maintain other property which it does not own or share in the maintenance of, including, without limitation, property dedicated to the public or property owned by another homeowners' association, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(a) There are hereby reserved to the Association blanket easements over the Declarant Property and all other portions of the Property located within any Neighborhood that the Association agrees to provide additional services to as provided herein (but only to the extent that the Association and such Neighborhood agree that the Association shall provide such services), except where Dwelling Units have been constructed, as necessary to enable the Association to fulfill responsibilities under this Section.

(b) Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Areas of Common Responsibility shall be a Common Expense to be allocated among all Units on the Declarant Property as part of the Base Assessment, subject to the right of the Association to seek reimbursement from the Owner(s) of, or other persons responsible for, certain portions of the Areas of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the Owner(s) thereof. All costs associated with maintenance, repair and replacement of Exclusive Common Elements shall be a Neighborhood Expense assessed as Neighborhood Assessment solely against the Units within the Neighborhood(s) to which the Exclusive Common Elements are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

(c) The Association shall also be responsible for maintenance, repair and replacement of property within any Neighborhood to the extent designated in any Supplemental Declaration affecting the Neighborhood. The Association may also assume maintenance responsibilities with respect to any Neighborhood in addition to those that may be designated by any Supplemental Declaration. This assumption of responsibility may take place either where, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard of the Property. All costs of maintenance pursuant to this paragraph shall be assessed as a Neighborhood Assessment only against the Units within the Neighborhood to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class.

10.2. Owner's Responsibility. Each Owner of the Declarant Property shall maintain his or her Dwelling Unit and all Structures, and other improvements comprising the Dwelling Unit. Owners of Dwelling Units on the Declarant Property adjacent to any roadway within the Declarant Property shall maintain driveways serving their respective Dwelling Units, whether or not lying within the Dwelling Unit boundaries, and shall maintain and irrigate landscaping on that portion of the Common Element, if any, or right-of-way between the Dwelling Unit boundary and the back-of-curb of the adjacent street.

All maintenance required by this Section 10.2 shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to a Neighborhood pursuant to any additional declaration of covenants applicable to such Dwelling Unit. In addition to any other enforcement rights available to the Association, if any Owner of the Declarant Property fails properly to perform his or her maintenance responsibility, the Association may enter such Owner's property and perform the required maintenance. The costs and expense of such maintenance shall be charged to such Owner thereof as an Individual Assessment in accordance with Section 4.6; provided, however, except when entry is required due to an emergency situation, the Association shall afford such Owner reasonable notice and an opportunity to cure the problem prior to entry.

10.3. Professional Management Contracts. The Association may delegate all or any portion of its authority to discharge its responsibilities herein to a manager or managing agent, which shall be professionally managed by a licensed property manager or real estate management company to assist with the management, administration, operation and maintenance of the Community. Any management agreement shall not exceed three (3) years and shall provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

ARTICLE 11 COVENANT FOR STAGED DEVELOPMENT

11.1. Staged Development. Declarant reserves the right at any time within the Development Period to remove any portions of the Declarant Property from the scope of the Declaration or to make subject to or annex any portion of the Additional Property to the Declaration without the consent of the Members of the Association. However, Declarant is not bound to annex any of the Additional Property to this Declaration, and until such time as any of the Additional Property is annexed, the same shall not be subject to the provisions of this Declaration.

11.2. Total Dwelling Units. The total number of Dwelling Units or Lots for the Property and the Additional Property shall not exceed the total number of Dwelling Units and Lots authorized by the zoning authority having jurisdiction over the development of the Property.

11.3. Supplemental Declaration for Staged Development. Any annexations made pursuant to this Article 11, or otherwise, shall be made by recording a supplement to this Declaration with the Hancock County, Indiana Recorder's Office, which supplementary

Declaration shall extend this Declaration to such annexed property. The supplementary Declaration may either waive some of the existing covenants, conditions and restrictions or contain additional covenants, conditions, restrictions, easements and liens with respect to that Additional Property being annexed therein as either Declarant shall deem appropriate for the purpose of completing the development of the Property. Owners of Lots subject to such supplemental Declaration shall be Owners as defined by this Declaration.

ARTICLE 12
ENFORCEMENT

12.1. Curing Defaults; Lien. In the event of any Default with respect to any Lot under this Declaration, the Board shall give written notice to the Owner thereof, with a copy of such notice to each Tenant in Default and a copy to any first mortgagee of the Lot who has requested to receive such notices, setting forth with reasonable particularity the nature of such Default, and the specific action or actions required to remedy the Default. If the Owner or Tenant shall fail to take the specific action or actions within thirty (30) days after the mailing of the notice, the Board may, but shall not be required to exercise any or all of its rights hereunder. The Board may exercise without notice any of its rights hereunder with respect to any Default if it determines that an emergency exists requiring immediate action.

Costs incurred by the Association in exercising any of its rights with respect to any Lot shall be a binding personal obligation of the Owner thereof which shall be payable on demand. If the Owner fails to pay such costs within thirty (30) days after demand, the Association shall enter the amount of the obligation, the name of the Owner as it appears on its records and the description of the Lot in a lien record book to be maintained by the Board at its main office, together with the date of such entry. The Association shall have a prior lien on such Lot for such amount until paid and such lien shall have priority from the date of such entry over all other liens and encumbrances thereon whatsoever, excepting real estate taxes and assessments, liens of record as of the date of such entry and liens of the United States of America, the State of Indiana, and all other political subdivisions or governmental instrumentalities of the State of Indiana to the extent made superior by applicable law, all bona fide recorded first mortgages and the lien of any first mortgagee who comes into possession of a Lot pursuant to mortgage foreclosure or by deed in lieu thereof. The lien provided in this Section shall be recordable and shall be enforceable as provided in Article 4 hereof.

12.2. Remedies. Nothing contained in this Article 12 shall be deemed to affect or limit the rights of Declarant, Builder, the Association, any Owner, Occupant, or their legal representatives, heirs, devisees, successors or assigns, by appropriate judicial proceedings, to enforce the restrictions, or recover damages for any Default. It is hereby declared that irreparable harm will result to beneficiaries of this Declaration by reason of a Default, and, therefore, each beneficiary shall be entitled to relief by way of injunction or specific performance to enforce the provisions of this Declaration, as well as any other relief available at law or in equity.

12.3. Right and Easement of Entry. The Association, through its authorized officers, employees, and agents, shall have the right and easement to enter upon any Lot on the Declarant Property at all reasonable times and to do anything thereon necessary to perform the action or

actions specified in the notice to the Owner to abate, remedy, extinguish, remove or repair a Default, without the Association or such officer, employee or agent being deemed to have committed a trespass or wrongful act solely by reason of each entry or such action or actions as are carried out in accordance with the provisions of this Article 12, provided that no summary abatement or similar procedure may be utilized through non-judicial means to alter or demolish items of construction.

12.4. No Waiver. The failure of Declarant, Builder, the Association, any Owner, Tenant, or their legal representatives, heirs, devisees, successors or assigns, in any one or more instances, to insist upon compliance with any of the Restrictions, or to exercise any right or privilege conferred in this Declaration, shall not constitute or be construed as the waiver of such or any similar restriction, right or privilege, including the right to cure Default, but the same shall continue and remain in full force and effect as if no such forbearance had occurred.

12.5. Rules and Regulations. The Board may adopt and enforce, and from time to time amend, reasonable rules and regulations regarding the administration, interpretation and enforcement of the Restrictions (the "Rules and Regulations"). Each such rule and regulation shall be consistent with and designed to further the purposes outlined in this Declaration.

ARTICLE 13 REAL ESTATE TAXES AND ASSESSMENTS

13.1. Real Estate Taxes. The Owner of a Lot shall be responsible for and shall pay all taxes and assessments, general and special, levied or imposed upon the Lot and its improvements.

13.2. Common Elements. Taxes and assessments, general and special, charged against the Common Elements which are owned in fee simple by the Association shall be deemed a Common Expense. Assessments, charged against the Subdivision shall be paid by the Owners as set forth in Article 4 hereof.

ARTICLE 14 INSURANCE

14.1. Fire, Extended Coverage and Standard "All Risks" Insurance. The Association shall insure all buildings which are part of the Recreation Facilities and any other Common Elements, and may maintain insurance for all other structures and improvements now or hereinafter constructed on the Common Elements against any loss or damage by such hazards as are ordinarily insured by a comprehensive, extended coverage and "all-risks" policies issued in the amounts at all times sufficient to prevent the Association from becoming co-insurers under the terms of any applicable coinsurance clause or provision and in no event less than the actual replacement cost of such improvements, as determined from time to time by the insurer.

Any such insurance shall be obtained from a fire and casualty insurance company authorized to write such insurance in the State of Indiana which has a general policy holder rating of no less than A, as determined by the then latest edition of the Best's Insurance Reports or its successor guide, and shall be written in the name of the Association for the use and benefit of the Owners and their mortgagees as their interests may appear. The Board of Directors and/or

its authorized representatives shall have the exclusive right to negotiate and adjust all loss claims. Unless the Board of Directors determines otherwise, all such insurance shall contain a waiver of subrogation of rights by the carrier as to the Association, its officers or Directors, and all Owners and occupants.

14.2. Use of Fire Insurance Proceeds. Unless at least sixty-seven percent (67%) of the first mortgagees (based upon one vote for each first mortgage owned) or Owners (other than Declarant or Builder) of the individual lots have given their prior written approval, the Association shall not be entitled to use hazard insurance proceeds for losses to the Common Elements for other than the repair, replacement or reconstruction of such Common Elements.

14.3. Liability Insurance. The Association shall obtain and maintain a comprehensive policy of public liability insurance covering all Common Elements, and other areas for which the Association is responsible, and insuring the Association, the Directors, and the Owners and members of their respective families, tenants and occupants, in an amount determined by the Board but in no event less than One Million Dollars (\$1,000,000.00) per occurrence for personal injury and/or property. This insurance shall include protection against liability for risks arising out of the maintenance of the Areas of Common Responsibility and such other risks as are customarily covered with respect to developments similar in construction, location and use, as determined by the Board. This insurance shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim for an Owner, tenant or occupant because of negligent acts of the Association, the Board, or other Owners, tenants, or occupants.

14.4. Other Insurance. In addition, the Board may purchase and maintain contractual liability insurance, trustees' and officers' liability insurance, and such other insurance as the Board may deem desirable from time to time.

14.5. Insufficient Insurance. In the event the improvements forming a part of the Common Elements or any other area for which the Association is responsible, or any portion thereof, shall suffer damage or destruction from any cause or peril which is not insured against, or, if insured against, the insurance proceeds from which shall not be sufficient to pay the cost of repair, restoration or reconstruction, then, the Association shall advance such costs in excess of available insurance proceeds. The amount so advanced by the Association shall become a Special Assessment against all of the Lots, and such Assessments shall have the same force and effect, and, if not paid, may be enforced in the same manner as herein provided for the non-payment of Assessments. The action required to be taken by the Association under this Section shall not require any vote of the Members of the Association.

14.6. Fidelity Bonds. The Board shall obtain as a Common Expense to the Association fidelity bond coverage with respect to any person who either handles or is responsible for funds held or administered by the Association, in an amount no less than the maximum funds that will be in the custody of the Association or its management agent at any time while the bond is in force; provided, however, the fidelity bond coverage must at least equal the sum of three months' Assessments on all Dwelling Units on the Property, plus the Association's reserve funds. A management agent handling funds for the Association shall also be covered by its own fidelity bond, naming the Association as an additional obligee, at the sole cost of said agent.

ARTICLE 15
DURATION, AMENDMENT AND TERMINATION

15.1. Duration. The Restrictions shall be covenants running with the land and shall bind the Property and every part thereof, or, to the extent the Restrictions, by the express provisions of this Declaration, affect only a part of the Property, shall bind that part of the Property subject thereto, and every part thereof, and shall (regardless of whether any such beneficiary owns an interest in any Lot) inure to the benefit of and be enforceable by, the Board and each Owner and Tenant and their legal representatives, heirs, devisees, successors and assigns, and shall continue in full force and effect for twenty (20) years from the date on which this Declaration is recorded in the Hancock County, Indiana Recorder's Office. Thereafter the Restrictions shall be automatically renewed for successive ten-year periods unless amended or terminated as provided in this Article 15.

15.2. Amendment or Termination. Prior to the end of the Development Period, any provision of this Declaration may be amended in whole or in part or terminated by a recorded instrument executed by Declarant and approved by the Owners of at least sixty-seven percent (67%) of all Lots located on the Declarant Property. After the end of the Development Period, any provision of this Declaration may be amended in whole or in part or terminated by a recorded instrument approved by the Owners of at least sixty-seven percent (67%) of all Lots located in the Declarant Property. Notwithstanding anything above to the contrary, any amendment of this Declaration that materially affects the Owners of all or any part of the Sherwood Property must be approved by the Owners of at least sixty-seven percent (67%) of all Lots located on the Sherwood Property.

The President of the Board shall determine whether the persons who have approved of any amendments or termination of this Declaration constitute Owners of at least sixty-seven percent (67%) of all Lots on the Declarant Property and, if required, on the Sherwood Property. Promptly after the approval of any amendment or termination of any part of this Declaration, the President of the Board shall cause to be recorded the written instrument of amendment or termination executed in properly recordable form by the President of the Association and Declarant, if during the Development Period, and the certificate of the President of the Association that the Owners of at least sixty-seven percent (67%) of all Lots on the Declarant Property and, if required, on the Sherwood Property have approved such instrument.

The Board shall maintain such copies filed with it by the President as a permanent record and shall make copies thereof available to any Owner at a reasonable cost.

Notwithstanding anything above to the contrary, this Declaration may be amended at any time during the Development Period without the vote of any Owners by a written instrument executed by Declarant for the purpose of eliminating or correcting any typographical or other inadvertent error herein; eliminating or resolving any ambiguity herein; making changes which Declarant deems necessary to market homes for sale in the current local or national economic market; clarifying Declarant's original intent; making any changes necessary or desirable to meet the requirements of any institutional lender, Federal National Mortgage Association, or other agency which may insure loans on a Lot; provided, however, that no such amendment shall materially affect any Owner's interest in the Association or right, if any, to use the Common

Elements or the similar rights of the Owners of the Lots on the Sherwood Property. Each Owner and his or her mortgagees, by acceptance of a deed to a Lot or a mortgage encumbering such Lot, shall be deemed to have consented to and approved of the provisions of this paragraph and the amendment of this Declaration by Declarant as provided in the immediately preceding sentence. All such Owners and their mortgagees, upon request of Declarant, shall execute and deliver from time to time all such instruments and perform all such acts as may be deemed by Declarant to be necessary or proper to effectuate the provisions of this paragraph.

ARTICLE 16 MISCELLANEOUS

16.1. No Reverter. No covenant, condition, restriction or reservation or easement contained in this Declaration is intended to create, or shall be construed as creating, a condition subsequent or a possibility of reverter.

16.2. Notices. Any notice required or permitted to be given to an Owner or Tenant by the Board pursuant to the provisions of this Declaration shall be deemed given when mailed by United States mail, postage prepaid, addressed to his or her last address as it appears on the records of the Association.

16.3. Construction. The Board shall have the right to construe the provisions of this Declaration, and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, such construction shall be final and binding as to all persons and entities benefitted or bound by the provisions of this Declaration.

16.4. Invalidity. The determination by a court of competent jurisdiction that any provision of this Declaration is invalid for any reason shall not affect the validity of any other provision hereof.

16.5. Headings. The headings of the Sections are for convenience only and shall not affect the meaning or construction of the contents of this Declaration.

16.6. Gender. Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular the plural, and vice versa.

16.7. Conflict. If there are conflicts or inconsistencies between the provisions of the laws of the State of Indiana, the Articles of Incorporation, this Declaration, the Code of Regulations, Architectural Guidelines and the Rules and Regulations, it shall be agreed that the provisions of the laws of the State of Indiana, this Declaration, the Articles of Incorporation, the Code of Regulations, the Architectural Guidelines and the Rules and Regulations (in that order) shall prevail.

16.8. Covenants Running with Land. This Declaration and all amendments hereto shall be, and shall be construed as, covenants running with the land, shall be binding upon Declarant, Builder, any mortgagee, the Association, its Members, each Owner, each Occupant and all claiming under each Owner or Occupant, and shall (regardless of whether or not any such beneficiary owns an interest in any Lot) inure to the benefit of and be enforceable by: (i)

Declarant; (ii) Builder; (iii) the Association; and (iv) each Owner and all claiming under each Owner.

16.9. Availability of Documents. The Association shall make available to Members, Owners, and lenders, and to holders, insurers, or guarantors of any first mortgage, current copies of the Declaration, rules and regulations, if any, and other rules concerning the Property. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

16.10. Right of Entry. The Association shall have a reasonable right of entry upon any Lot on the Declarant Property to make emergency repairs and to do other work reasonably necessary for the proper maintenance or operation of the Declarant Property.

16.11. Condemnation. In the event any Lot or any portion thereof, is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the net proceeds of any award or settlement shall be the property of the Owner and the holder of the first mortgage, to the extent of their respective interests. Each Owner shall give the holder of a first mortgage on the Owner's Lot timely written notice of such proceeding or proposed acquisition.

In the event the Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceedings or other sought to be acquired by a condemning authority, the proceeds of any award or settlement shall be distributed to the Association for the common benefit of the Owners and their mortgagees, as their interests appear.

[The Remainder of this Page is Intentionally Left Blank]

EXHIBIT A

Declarant Owned Property

Parcel A:

Part of Section 23, Township 17 North, Range 05 East of the Second Principal Meridian, Town of McCordsville, Vernon Township, Hancock County, Indiana, described as follows:

Commencing at a Harrison Monument found at the northeast corner of the northeast quarter of Section 23; thence North 89 degrees 42 minutes 25 seconds West along the north line thereof 1425.87 feet to the northwest corner of the land described in a General Warranty Deed to PKCW Olio 86 Partner, LLC as recorded in Instrument 07-0006507 in the Office of the Recorder of Hancock County (the next two courses are along the lines of said land) and the POINT OF BEGINNING; thence South 01 degrees 09 minutes 35 seconds West 1,081.89 feet; thence South 89 degrees 43 minutes 22 seconds East 574.02 feet; thence South 00 degrees 17 minutes 35 seconds West 76.21 feet; thence North 89 degrees 42 minutes 25 seconds West 446.03 feet; thence South 25 degrees 42 minutes 07 seconds West 93.19 feet; thence South 21 degrees 41 minutes 10 seconds West 108.83 feet; thence South 05 degrees 14 minutes 19 seconds West 108.03 feet; thence South 11 degrees 38 minutes 17 seconds East 18.29 feet; thence North 89 degrees 44 minutes 13 seconds West 473.78 feet; thence North 00 degrees 17 minutes 35 seconds East 155.00 feet; thence North 89 degrees 44 minutes 13 seconds West 245.05 feet to the east line of the plat of Deer Crossing Section Two recorded in Plat Cabinet C, Slide 86; thence North 01 degrees 08 minutes 47 seconds East along the east line thereof and the east line of the plat of Deer Crossing Section One recorded in Plat Cabinet C, Slide 72 a distance of 1,314.36 feet to the north line of the northeast quarter; thence South 89 degrees 42 minutes 25 seconds East along said north line 672.84 feet to the POINT OF BEGINNING, containing 23.331 acres, more or less.

Parcel B East

Part of Section 23, Township 17 North, Range 05 East of the Second Principal Meridian, Town of McCordsville, Vernon Township, Hancock County, Indiana, described as follows:

Commencing at a Harrison Monument found at the southeast corner of the northeast quarter of Section 23; thence North 01 degree 09 minutes 35 seconds East along the east line thereof 1545.04 feet; thence North 89 degrees 43 minutes 21 seconds West 70.01 feet to the west right of way line of Mount Comfort Road (County Road 600 West) per plat of Villages at Brookside Section 1 as recorded in Instrument 090006706 in the Office of the Recorder of Hancock County, said point also being the POINT OF BEGINNING; thence North 89 degrees 43 minutes 21 seconds West 781.85 feet; thence South 00 degrees 17 minutes 35 seconds West 76.22 feet; thence North 89 degrees 42 minutes 25 seconds West 446.03 feet; thence South 25 degrees 42 minutes 07 seconds West 93.19 feet; thence South 21 degrees 41 minutes 10 seconds West 108.83 feet; thence South 05 degrees 14 minutes 19 seconds West 108.03 feet; thence South 11 degrees 38 minutes 17 seconds East 24.19 feet; thence South 00 degrees 17 minutes

35 seconds West 335.00 feet; thence South 56 degrees 57 minutes 07 seconds East 234.55 feet; thence South 43 degrees 01 minutes 53 seconds East 186.08 feet; thence South 59 degrees 00 minutes 11 seconds West 167.47 feet to a non tangent curve to the right having a radius of 400.00 feet; thence southeasterly along said curve an arc length of 104.05 feet (said curve being subtended by a chord of South 23 degrees 32 minutes 41 seconds East 103.76 feet); thence North 68 degrees 44 minutes 40 seconds East 175.93 feet to a curve to the right having a radius of 214.00 feet; thence easterly along said curve an arc length of 83.72 feet (said curve being subtended by a chord of North 79 degrees 57 minutes 08 seconds East 83.19 feet); thence South 88 degrees 50 minutes 25 seconds East 265.24 feet to the west right of way line of West Brookside Parkway per plat of Villages at Brookside Section 1 as recorded in Instrument 090006706 (the next six courses along said right of way lines); thence North 01 degrees 09 minutes 35 seconds East 72.00 feet to a non tangent curve to the left having a radius of 24.00 feet; thence northeasterly along said curve an arc length of 37.70 feet (said curve being subtended by a chord of North 46 degrees 09 minutes 35 seconds East 33.94 feet); thence South 88 degrees 50 minutes 25 seconds East 72.00 feet to a non tangent curve to the left having a radius of 24.00 feet; thence southeasterly along said curve an arc length of 37.70 feet (said curve being subtended by a chord of South 43 degrees 50 minutes 25 seconds East 33.94 feet); thence South 88 degrees 50 minutes 25 seconds East 411.79 feet; thence North 46 degrees 09 minutes 35 seconds East 41.01 feet to the west right of way line of Mount Comfort Road (County Road 600 West); thence North 01 degrees 09 minutes 35 seconds East along said right of way line 1,004.46 feet to the POINT OF BEGINNING, containing 29.275 acres, more or less.

Parcel D

Part of Section 23, Township 17 North, Range 05 East of the Second Principal Meridian, Town of McCordsville, Vernon Township, Hancock County, Indiana, described as follows:

Commencing at a Harrison Monument found at the southeast corner of the northeast quarter of Section 23; thence North 01 degree 09 minutes 35 seconds East along the east line thereof 1545.04 feet; thence North 89 degrees 43 minutes 21 seconds West 70.01 feet to the west right of way line of Mount Comfort Road (County Road 600 West) per plat of Villages at Brookside Section 1 as recorded in Instrument 090006706 in the Office of the Recorder of Hancock County; thence North 89 degrees 43 minutes 21 seconds West 781.85 feet; thence South 00 degrees 17 minutes 35 seconds West 76.22 feet; thence North 89 degrees 42 minutes 25 seconds West 446.03 feet; thence South 25 degrees 42 minutes 07 seconds West 93.19 feet; thence South 21 degrees 41 minutes 10 seconds West 108.83 feet; thence South 05 degrees 14 minutes 19 seconds West 108.03 feet; thence South 11 degrees 38 minutes 17 seconds East 24.19 feet; thence South 00 degrees 17 minutes 35 seconds West 335.00 feet; thence South 56 degrees 57 minutes 07 seconds East 234.55 feet; thence South 43 degrees 01 minutes 53 seconds East 186.08 feet; thence South 59 degrees 00 minutes 11 seconds West 141.47 feet to the POINT OF BEGINNING and the beginning of a non tangent curve to the left having a radius of 426.00 feet; thence westerly along said curve an arc length of 1,008.35 feet (said curve being subtended by a chord of South 81 degrees 11 minutes 36 seconds West 788.90 feet); thence North 76 degrees 36 minutes 59 seconds West 134.00 feet; thence South 80 degrees 29 minutes 16 seconds West 300.23 feet; thence North 88 degrees 52 minutes 01 seconds West 132.00 feet to a non tangent curve to the right having a radius of 176.00 feet; thence southwesterly along said curve an arc length of 243.91 feet (said curve being subtended by a chord of South 51 degrees

25 minutes 37 seconds West 224.85 feet); thence North 88 degrees 52 minutes 18 seconds West 5.01 feet to the west line of the southwest quarter of the northeast quarter; thence South 01 degrees 07 minutes 59 seconds West along said west line 199.07 feet to the northeast corner of the northeast quarter of the southwest quarter; thence North 89 degrees 46 minutes 02 seconds West along the north line thereof 1,333.90 feet to the northwest corner thereof; thence South 01 degrees 07 minutes 35 seconds West along the west line thereof 1,313.18 feet to the southwest corner thereof; thence South 89 degrees 50 minutes 16 seconds East along the south line thereof 1,333.78 feet to the southeast corner thereof and the southwest corner of the northwest quarter of the southeast quarter; thence South 89 degrees 44 minutes 54 seconds East along the south line thereof 1,110.76 feet to a non tangent curve to the left having a radius of 426.00 feet; thence northerly along said curve an arc length of 330.69 feet (said curve being subtended by a chord of North 03 degrees 16 minutes 06 seconds West 322.45 feet); thence North 25 degrees 30 minutes 25 seconds West 385.55 feet to a curve to the right having a radius of 374.00 feet; thence northerly along said curve an arc length of 122.80 feet (said curve being subtended by a chord of North 16 degrees 06 minutes 02 seconds West 122.25 feet); thence South 89 degrees 50 minutes 39 seconds East 10.07 feet to a non tangent curve to the right having a radius of 364.00 feet; thence northerly along said curve an arc length of 210.44 feet (said curve being subtended by a chord of North 09 degrees 40 minutes 42 seconds East 207.52 feet); thence North 26 degrees 14 minutes 25 seconds East 183.78 feet to a curve to the right having a radius of 24.00 feet; thence northeasterly along said curve an arc length of 34.49 feet (said curve being subtended by a chord of North 67 degrees 24 minutes 33 seconds East 31.60 feet) to a point of reverse curve to the left having a radius of 426.00 feet; thence northeasterly along said curve an arc length of 929.28 feet (said curve being subtended by a chord of North 46 degrees 05 minutes 06 seconds East 755.69 feet); thence South 68 degrees 44 minutes 40 seconds West 26.10 feet to a non tangent curve to the left having a radius of 400.00 feet; thence northwesterly along said curve an arc length of 104.05 feet (said curve being subtended by a chord of North 23 degrees 32 minutes 41 seconds West 103.76 feet); thence North 59 degrees 00 minutes 11 seconds East 26.00 feet to the POINT OF BEGINNING, containing 88.576 acres, more or less.

EXHIBIT B

Sherwood Owned Property

Exhibit B -1

Parcel B West

Part of Section 23, Township 17 North, Range 05 East of the Second Principal Meridian, Town of McCordsville, Vernon Township, Hancock County, Indiana, described as follows:

Commencing at a Harrison Monument found at the southeast corner of the northeast quarter of Section 23; thence North 01 degree 09 minutes 35 seconds East along the east line thereof 1545.04 feet; thence North 89 degrees 43 minutes 21 seconds West 70.01 feet to the west right of way line of Mount Comfort Road (County Road 600 West) per plat of Villages at Brookside Section 1 as recorded in Instrument 090006706 in the Office of the Recorder of Hancock County; thence North 89 degrees 43 minutes 21 seconds West 781.85 feet; thence South 00 degrees 17 minutes 35 seconds West 76.22 feet; thence North 89 degrees 42 minutes 25 seconds West 446.03 feet; thence South 25 degrees 42 minutes 07 seconds West 93.19 feet; thence South 21 degrees 41 minutes 10 seconds West 108.83 feet; thence South 05 degrees 14 minutes 19 seconds West 108.03 feet; thence South 11 degrees 38 minutes 17 seconds East 18.29 feet to the POINT OF BEGINNING; thence South 11 degrees 38 minutes 17 seconds East 5.90 feet; thence South 00 degrees 17 minutes 35 seconds West 335.00 feet; thence South 56 degrees 57 minutes 07 seconds East 234.55 feet; thence South 43 degrees 01 minutes 53 seconds East 186.08 feet; thence South 59 degrees 00 minutes 11 seconds West 141.47 feet to a non tangent curve to the left having a radius of 426.00 feet; thence westerly along said curve an arc length of 1,008.35 feet (said curve being subtended by a chord of South 81 degrees 11 minutes 36 seconds West 788.90 feet); thence North 76 degrees 36 minutes 59 seconds West 134.00 feet; thence South 80 degrees 29 minutes 16 seconds West 300.23 feet; thence North 88 degrees 52 minutes 01 seconds West 132.00 feet to a non tangent curve to the right having a radius of 176.00 feet; thence southwesterly along said curve an arc length of 243.91 feet (said curve being subtended by a chord of South 51 degrees 25 minutes 37 seconds West 224.85 feet); thence North 88 degrees 52 minutes 18 seconds West 5.01 feet to the west line of the southwest quarter of the northeast quarter; thence North 01 degrees 07 minutes 59 seconds East along said west line 1,115.59 feet to the northwest corner of the southwest quarter of the northeast quarter; thence South 89 degrees 44 minutes 13 seconds East along the north line thereof 576.95 feet; thence continue easterly along said line, a distance of 245.05 feet; thence South 00 degrees 17 minutes 35 seconds West 155.00 feet; thence South 89 degrees 44 minutes 13 seconds East 315.00 feet; thence continue easterly along said line, a distance of 158.78 feet to the POINT OF BEGINNING, containing 24.966 acres, more or less.

Exhibit B – 2

Parcel E

Part of the southwest quarter of the southeast quarter of Section 23, Township 17 North, Range 05 East of the Second Principal Meridian, Town of McCordsville, Vernon Township, Hancock County, Indiana, described as follows:

BEGINNING at a Harrison Monument found at the southwest corner of the southeast quarter; thence North 01 degree 07 minutes 59 seconds East along the west line thereof 802.06 feet to the POINT OF BEGINNING; thence South 89 degrees 50 minutes 16 seconds East 730.45 feet to the west line of the 14.89 acres land described in a Special Warranty Deed to the Town of McCordsville recorded as Instrument 08-0007492 (the next four (4) courses are along the westerly lines & curves thereof); thence North 00 degrees 09 minutes 45 seconds East 18.07 feet to a curve to the right having a radius of 214.00 feet; thence northeasterly along said curve an arc length of 212.67 feet (said curve being subtended by a chord of North 28 degrees 37 minutes 58 seconds East 204.03 feet); thence North 57 degrees 06 minutes 12 seconds East 150.64 feet to a curve to the left having a radius of 436.00 feet; thence northeasterly along said curve an arc length of 293.56 feet (said curve being subtended by a chord of North 37 degrees 48 minutes 52 seconds East 288.05 feet) to the north line of the southwest quarter of the southeast quarter; thence North 89 degrees 44 minutes 54 seconds West along said north line 1,121.30 feet to the northwest corner thereof; thence South 01 degrees 07 minutes 59 seconds West along the west line thereof 509.48 feet to the POINT OF BEGINNING. containing 10.648 acres, more or less.

EXHIBIT
C

BASE COMMON AREA MAP

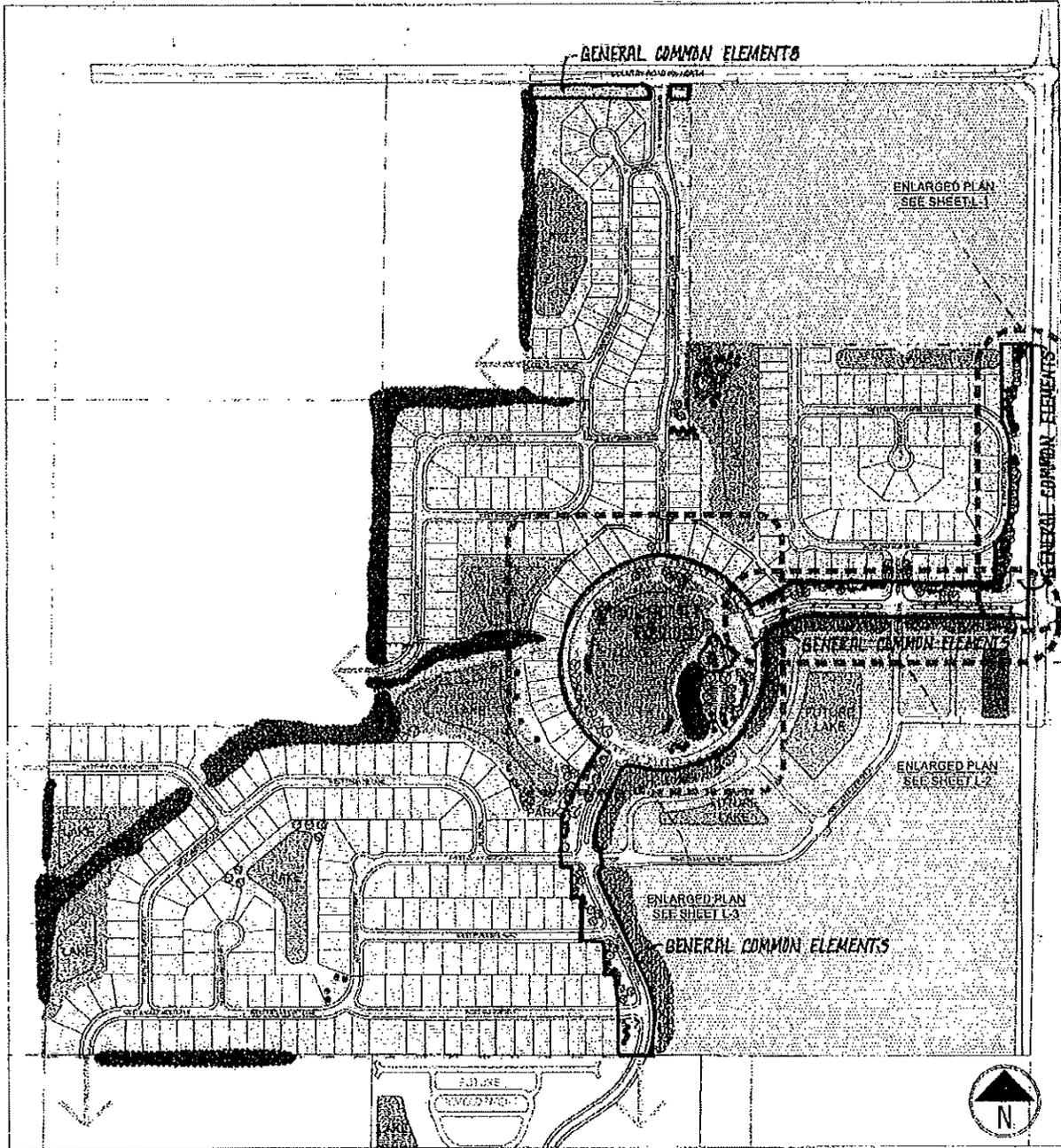


EXHIBIT "D"

EXHIBIT D

Loan Agreement(s) and Promissory Note(s) to fund Operating Deficit(s) pursuant to Section 4.9 of Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Villages of Brookside shall conform with the following provisions which shall govern the terms and conditions of said Agreement(s) and Notes(s):

1. Type of Note

The Note(s) may be issued in any of the following forms:

- (a) Demand Note
This type of Note shall be payable on the date of demand by Lender; or
- (b) Open-end Note
This type of Note shall permit additional borrowing and prepayment of principal, without penalty; or
- (c) Closed-end Note
This type of Note shall not permit additional borrowing against this note; but prepayment of principal, without penalty, shall be permitted.

2. Method of Payment

Repayment of the loan(s) may be by any of the following methods:

- (a) Installment Plan
This method of payment shall require payments, of both principal and interest, at regular intervals over the term of the loan; or
- (b) Lump Sum Payment
This method of payment shall require Periodic payments, of both principal and interest, for a specified time and a lump sum payment at maturity to discharge the outstanding balance of the loan; or
- (c) Balloon Payment
This method of payment shall require periodic interest payments for a specified time and a lump sum payment at maturity to discharge the outstanding balance of the loan.

3. Interest

The Interest Rate established by Lender shall be reasonable, but no greater than two (2) percentages points over the "prime rate" as published in the Wall Street Journal and shall be designated by lender to be either:

- (d) Fixed
The Lender shall establish a rate of interest at the time of the making of the Note and this rate of interest shall remain constant over the term of the Note; or
- (e) Variable
The Lender can periodically adjust the interest rate in accordance with fluctuations in the "prime rate" as published in the Wall Street Journal.

Furthermore, Interest shall be designated by Lender to be either:

- (f) Compound
Interest shall be paid on both the principal and the previously accumulated interest; or
- (g) Simple
Interest shall be paid on the principal only and not on accumulated interest.

4. Limit on Term

The Note(s) may be issued for a term up to, but not to exceed, ten (10) years.

5. Waiver of Defenses

Borrower shall waive presentment, demand, protest, and notice of demand, protest, non-payment and dishonor. Borrower shall also waive all defenses based on surety ship or impairment of collateral.

6. Agreement(s) and Note(s) shall contain clauses addressing the following issues:

- (h) Order of payment
- (i) Default
- (j) Expenses
- (k) Omission or waiver by Lender
- (l) Severability
- (m) Choice of law

CONSENT AND AGREEMENT

Fifth Third Bank, the holder of that certain Real Estate Mortgage from Sherwood dated as of September 14, 2005 and recorded on September 22, 2005 as Instrument Number 050013139, as amended by Amendment to Security Documents recorded November 21, 2005 as Instrument No. 050016291 and as modified by Modification of Loan Documents recorded December 20, 2005 as Instrument No. 050017570 and further amended by Second Amendment to Security Documents recorded July 18, 2006 as Instrument No. 060008369 in the Office of the Recorder of Hancock County, Indiana and as further renewed, modified or amended from time to time (the "Mortgage"), hereby acknowledges, consents, and agrees to the aforementioned Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for The Villages at Brookside (the "Declaration") including, without limitation, Section 4.17 thereof. Upon any foreclosure or other action under the above-referenced Mortgage, such foreclosure or other action will be taken subject to the terms and condition of the Declaration, as if such Declaration were of record prior to the recordation of the Mortgage. Upon any failure of Sherwood or any other Owner of the Sherwood Property to reimburse Declarant and/or the Association (as such terms are defined in the Declaration) for the costs and assessments set forth in Section 4.7 of the Declaration, the lien in favor of Declarant and/or the Association shall have a priority as if such lien were of recorded prior to the recordation of the Mortgage and Fifth Third Bank hereby subordinates its Mortgage lien thereto.

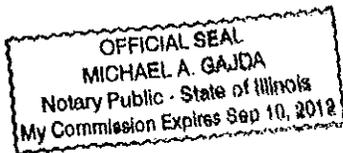
FIFTH THIRD BANK

By: [Signature]
Printed Name: JASON MAUSKIE
Title: VICE PRESIDENT

STATE OF Illinois)
)SS:
COUNTY OF COOK)

Before me, a Notary Public in and for said County and State, personally appeared Jason Mauskie, the Vice President, of Fifth Third Bank, and acknowledged the execution of the foregoing instrument as such officer acting for and on behalf of said entity.

WITNESS my hand and Notarial Seal this 22nd day of December, 2010.



Michael A. Gajda
Signature
Michael A. Gajda
(Printed)

My Commission Expires:
9-10-12

My County of Residence:
DuPage

COPY

Cross-Reference to Instrument No. 110000685

**FIRST AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS, AND RESERVATION OF
EASEMENTS FOR THE VILLAGES AT BROOKSIDE**

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, AND RESERVATION OF EASEMENTS FOR THE VILLAGES AT BROOKSIDE (this "Amendment") is made this 7th day of December, 2011, by GRAND COMMUNITIES, LTD., a Kentucky limited partnership (the "Declarant").

RECITALS

A. Declarant and Sherwood Hills South, Inc., an Indiana corporation, entered into that certain Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for the Villages at Brookside dated December 29, 2010, and recorded on January 18, 2011, as Instrument Number 110000685 in the Office of the Recorder of Hancock County, Indiana (collectively, the "Declaration").

B. Article 15, Section 15.2 of the Declaration provides that during the Development Period (as defined in the Declaration), any provision of the Declaration may be amended in whole or in part or terminated by a recorded instrument executed by Declarant and approved by the Owners of at least sixty-seven percent (67%) of all Lots (as defined in the Declaration) located on the Declarant Property (as defined in the Declaration).

C. The Development Period has not expired or terminated.

D. Declarant owns greater than sixty-seven percent (67%) of all Lots located on the Declarant Property.

E. Declarant desires to modify and amend the Declaration as provided herein.

AGREEMENTS

NOW, THEREFORE, the Declarant, in accordance with the provisions of the Declaration, makes this Amendment and hereby amends the Declaration in the manner hereinafter provided:

1. Definitions. All terms used in this Amendment with initial capital letters (and not otherwise defined in this Amendment) shall have the same meanings herein as in the Declaration (as the same may be amended, limited or supplemented from time to time as therein provided).

2. Amendment to Article 7 of the Declaration. Article 7 of the Declaration is hereby amended to add the following Section 7.7:

"7.7. Responsible Parties. Channels, tile drains 8-inch or larger, inlets and outlets of detention and retention ponds, and appurtenances thereto within designated drain easements on the Declarant Property are extensions of the Town of McCordsville's stormwater drainage system and are the responsibility of the Town of McCordsville Drainage Board and/or the McCordsville Public Works Commissioner. Drainage swales and tile drains on the Declarant Property that are less than 8-inch in inside diameter shall be the responsibility of the Owner or the Association."

3. Amendment to Article 10 of the Declaration. Article 10 of the Declaration is hereby amended to add the following Section 10.4:

"10.4. Notice of Association Maintenance Responsibility and Reserve Account. Town of McCordsville Ordinance Number 041211 requires that the Association for the Declarant Property shall be responsible for the maintenance and repair of all internal street lighting and signage within the Declarant Property and the Association shall maintain a reserve account for the replacement of street signs and light fixtures in anticipation that the same will require replacement on or before 25 years after the date of the Declaration. This requirement may be modified only by the Town Council's approval of an amendment to Ordinance Number 041211."

4. Effect of Covenants. All provisions of this Amendment and the Declaration, as the same may be amended, limited or supplemented from time to time as therein provided, shall be covenants running with the land and shall be binding on all persons and entities from time to time having any right, title or interest in the Declarant Property or in any respective part thereof and on all persons claiming under them, as more particularly provided in the Declaration.

5. Declaration Continuous. Except as expressly supplemented and/or amended by this Amendment, the Declaration (as the same has been amended, limited or supplemented) shall continue in full force and effect.

[Signature page(s) to follow.]

IN WITNESS WHEREOF, Declarant has duly executed and delivered this Amendment on the date first written above.

DECLARANT: GRAND COMMUNITIES, LTD., a Kentucky limited partnership

By: Fischer Development Company, its General Partner

By: Todd E. Huss, President

STATE OF Kentucky)
) SS:
COUNTY OF Keaton)

Before me, a Notary Public in and for the County and State referenced above, personally appeared Todd E. Huss, the President of Fischer Development Company, the General Partner of **GRAND COMMUNITIES, LTD.**, who, having been first duly sworn, acknowledged the execution of the foregoing First Amendment of Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for the Villages at Brookside on behalf of such limited liability partnership and stated that the representations contained therein are true.

Witness my hand and notarial seal this 7th day of December, 2011.

[Notary Seal] LAUREN C. FELDMAN
Notary Public - State at Large, Kentucky
My Commission Expires April 7, 2015
Notary ID # 440039
Lauren C. Feldman
Notary Public
LAUREN C. FELDMAN
Printed Name Notary Public

I am a resident of Keaton County, Kentucky.

My commission expires: 4/7/15.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law: Marc D. Pfleging.

This instrument was prepared by Marc D. Pfleging, Attorney at Law, Baker & Daniels LLP, 600 E. 96th Street, Suite 600, Indianapolis, Indiana 46240

2/25
+1 Kret
26

201602325 AMNCOV \$26.00
03/14/2016 12:32:43P 8 PGS
Debra Carnes
Hancock County Recorder IN
Recorded as Presented

Cross Reference: Instrument No. 110000685 in the Office of the Recorder of Hancock County, Indiana.

**FIRST AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, AND
RESERVATION OF EASEMENTS FOR THE VILLAGES AT BROOKSIDE**

This First Amendment to the Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for The Villages at Brookside ("First Amendment") is made as of the 04th day of March, 2016, by **GRAND COMMUNITIES, LTD.**, a Kentucky limited partnership ("Declarant"):

WHEREAS, Declarant executed a Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for The Villages at Brookside which was recorded on January 18, 2011, as Instrument No. 110000685 in the Office of the Recorder of Hancock County, Indiana (the "Declaration"); and

WHEREAS, Declarant desires to provide for the preservation of values and amenities in The Villages at Brookside ("Subdivision") and for the maintenance of the Common Elements, including the Recreational Facilities within the Subdivision;

WHEREAS, Sherwood Hills South, Inc. ("Sherwood") is named in the Declaration as an owner of real property adjacent to the Subdivision defined in the Declaration as the Sherwood Owned Property; and

WHEREAS, Sherwood no longer owns the Sherwood Owned Property; and

WHEREAS, pursuant to Section 15.2 of the Declaration, Declarant can amend the Declaration at any time during the Development Period without the vote of any Owners by a written instrument executed by Declarant for the purpose of making changes which Declarant deems necessary to market homes for sale in the current local or national economic market; and

WHEREAS, pursuant to Section 1.28, the Development Period remains in effect and therefore Declarant has authority to enter into this First Amendment and does hereby amend the Declaration as set forth below; and

WHEREAS, all terms used in this First Amendment and not otherwise defined in this First Amendment shall have the same meaning as in the Declaration.

Tischer Group

NOW, THEREFORE, the Developer hereby amends the Declaration as follows:

1. All references to Sherwood as a party to the Declaration are hereby deleted in their entirety including references to Neighborhood "E."

2. The following definition shall be added to the Declaration:

"1.68 "Patio Home Lot" shall mean and refer to a Lot on which a patio home shall be constructed and in which the Association, as opposed to the Owner of such Lot, shall be responsible for maintaining the lawn area and landscaping (except for flower beds or gardens installed by the Lot Owner) situated on such Lot. Such parcel or land may be designated as a "Patio Home Lot" upon any recorded Subdivision plat."

3. Declarant hereby designates the following Lots in the Subdivision as Patio Home Lots:

Villages at Brookside, Section 9, numbered Lots 21 through 23 and 36 through 55, as shown on the plat recorded at Instrument Number 201601703, Plat Cabinet C, Plat Slides 364 and 365, of the Hancock County, Indiana Recorder's Office.

4. Declarant does hereby establish the following additional covenants, conditions, restrictions, easements and liens (the "Supplemental Restrictions") for all Patio Home Lots designated by this First Amendment and all subsequent Amendments thereto as Patio Home Lots. The Supplemental Restrictions are meant to supplement and complement the covenants, conditions, restrictions, easements and liens set forth in the Declaration. In the event of conflict between the covenants, restrictions, easements and liens in the Declaration and those provided for in the Supplemental Restrictions, the Supplemental Restrictions shall prevail. The Supplemental Restrictions for the Patio Home Lots are attached hereto as Exhibit A. The Supplemental Restrictions shall hereinafter burden and benefit all Lots designated as "Patio Home Lots" in this First Amendment and all subsequent Amendments, shall run with the land and be binding on current and successor Patio Home Lot Owners.

5. Except as set forth above, the Declaration remains in full force and effect. The definitions of capitalized terms, not specifically set forth herein, shall be the same as those provided for in the Declaration.

The balance of this page is intentionally left blank. Signature page to follow.

EXHIBIT A

**Patio Home Lots
Additional Covenants, Conditions, Restrictions, Easements and Liens
("Supplemental Restrictions")**

1. **ARCHITECTURAL APPROVAL REQUIRED.** Except for initial construction of Dwelling Units, accessory structures and Common Elements by Declarant and Builder, no building, landscaping, fence, wall or other structure, improvement or device, or replacement or alteration or repair thereof, shall be commenced, repaired, replaced, erected or maintained upon any Patio Home Lot, nor shall any exterior addition to or change or painting or other alteration in a Dwelling Unit and/or Structure be made until such plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to compatibility with the surrounding built and natural environment, harmony of external design, color and location in relation to surrounding structures and topography by the Board of Directors.

Requests for approval shall be made as set forth in Article 5 of the Declaration.

2. **ADDITIONAL COVENANTS AND RESTRICTIONS OF USE AND OCCUPANCY.** These following covenants and restrictions are in addition and shall complement the covenants and restrictions set forth in Article 6 of the Declaration. In the event of a conflict between covenants and restrictions listed in Article 6 of the Declaration and the following covenants and restrictions, the following covenants and restrictions shall prevail.

- (a) **BUILDING TYPE:** No building or structure shall be erected, placed or permitted to remain upon any Patio Home Lot except one single-family Dwelling Unit which may include an attached garage. No other structure shall be erected, placed or permitted to remain on any Patio Home Lot, except as provided herein. Without limiting the generality thereof, the word "structure" as used herein means anything or any object, the placement of which upon any building Patio Home Lot may affect the appearance of such Patio Home Lot, including any building, garage, shed, barn, greenhouse, coop, cage, shack, trailer, swimming pool, outbuilding, basketball backboard, play apparatuses and equipment, play houses, or any other temporary or permanent improvement on such Patio Home Lot. It is further provided, however, that the word "structure" does not include uncovered patios or decks.
- (b) **LANDSCAPING:** Every Dwelling Unit constructed on any Patio Home Lot shall be landscaped at the time of construction of the Dwelling Unit. The landscaping shall be completed in accordance with the landscaping requirements of the Builder, as approved by the Declarant or Declarant's designee. In the event the construction of the Dwelling Unit is completed between the first day of March and the thirtieth day of September, this landscaping shall be installed no later than ninety (90) days after the completion of the Dwelling Unit. In the event the construction of the Dwelling Unit is completed between the first day of October and the last day of February, this landscaping shall be installed no later than the first day of the following June. No additional landscaping shall be installed by any Patio Home Lot Owner, except annual flowers that may be planted in any existing landscape bed on the Owner's Patio Home Lot without written consent as required under Paragraph 1 herein.

- (c) FENCES: No fences shall be erected or built on any part of a Patio Home Lot except that an invisible fence shall be permitted. In no case shall the installation of an invisible fence destroy or otherwise disturb any landscaping area on any Patio Home Lot.
- (d) BASKETBALL BACKBOARDS: No basketball backboards shall be erected, constructed or permitted to remain on any Patio Home Lot.
- (e) PLAY APPARATUSES AND EQUIPMENT: Play apparatuses and equipment including swing sets, or similar physical equipment, playground toys and trampolines and playhouses are prohibited on any building Patio Home Lot.
- (f) IRRIGATION SYSTEMS: Irrigation systems may be installed with the approval of the Board, the Declarant, or Declarant's designee.
- (g) SWIMMING POOLS: No in-ground swimming pools or above-ground swimming pools shall be erected, constructed or permitted to remain on any Patio Home Lot.
- (h) HOT TUBS/SPAS: No hot tubs or spas of any kind shall be erected, constructed or permitted to remain on any Patio Home Lot, except hot tubs or spas shall be permitted on the covered deck or covered patio areas of the Dwelling Unit only. The Board may require additional landscaping or screening of any such hot tub/spa. An improvement application is required to be submitted for approval pursuant to Article 5 of the Declaration.
- (i) MAILBOX/POST-LAMPS: Approved mailboxes and post-lamps installed by the Builder for each Dwelling Unit shall be individually maintained and replaced as necessary by the Dwelling Unit for whom they serve. Costs for such maintenance and/or replacement shall be paid by the Dwelling Unit Owners that the mailboxes serve. Costs for such maintenance and/or replacement of post-lamps, including replacement bulbs, shall be paid by the Dwelling Unit Owner of the Patio Home Lot the post-lamp is located on. The cost of the electricity for the post-lamp shall be the sole responsibility of the Dwelling Unit Owner whose electric meter registers the post-lamp's electrical usage. Mailboxes or post-lamps may not be altered or replaced without written consent as required under Paragraph 1 herein.
- (j) UTILITY-DRAINAGE EASEMENTS: Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the record plat(s) for the Patio Home Lots. Within these easements, no structure, planting or other material, other than driveways or sidewalks, shall be placed or permitted to remain upon any Patio Home Lot which may damage or interfere with any easement or the installation or maintenance of utilities, or which may change, obstruct or retard the direction or flow of any drainage channels in the easement area. The easement area of each Patio Home Lot and all improvements in the easement area shall be maintained by the Owner of the Patio Home Lot except as otherwise provided in the Declaration or supplements thereto and except for those improvements for which a public authority, utility company or the Association is responsible.

3. MAINTENANCE SERVICES. It is the intention of the Declarant and Builder that the Patio Home Lots be provided with higher levels of Association provided services than are provided to other Lots within the Subdivision.

- (a) **REQUIRED LAWN AND LANDSCAPING MAINTENANCE SERVICES:** The Association shall manage and provide lawn and landscaping maintenance services for each Patio Home Lot. Such services may include but shall not be limited to: lawn mowing, fertilizing and lawn treatments, shrub treatments, weeding, trimming and edging of front yard landscape beds, annual mulching of such landscape beds and leaf removal. The Patio Home Lot Owner shall remain responsible for maintenance of all rear yard landscaping, including establishment of the lawn, the irrigation or watering of the lawn and landscaping, and the weeding of landscaping beds. The delineation of areas to be mowed and otherwise maintained and areas to be left if a natural state shall be at the discretion of the Board.
- (b) **REQUIRED SNOW PUSHING SERVICES:** The Association shall manage and provide snow pushing services for driveways and sidewalks for Patio Home Lots. Such snow pushing services for sidewalks shall be limited to the sidewalk leading from the driveway to the front door of the Dwelling Unit and shall not include sidewalks along streets. Snow pushing shall be provided in accordance with requirements and rules established by the Board of Directors. Deicers and deicing service is not part of this service. Patio Home Lot Owners bear all risks and are responsible for any damage to pavement surfaces caused by their use of deicers on their own driveways and sidewalks.
- (c) **SPECIAL SERVICES:** The Association on its own initiative or at the request of Patio Home Lot Owners may, upon Board approval, provide special services to Patio Home Lot Owners. Such services may include, but are not limited to: exterior painting, concrete cleaning and sealing, deck cleaning and sealing, exterior building maintenance, gutter cleaning or similar services. These services would not be required or provided to all Patio Home Lot Owners, but would only be provided to such Patio Home Lot Owners who desire to participate in such special services. These services would be provided at an additional cost to the participating Patio Home Lot Owners. Any expenses incurred by the Association for the provision of special services shall be billed to the participating Patio Home Lot Owner as an Individual Assessment and shall be paid by said Owner within thirty (30) days thereafter.
- (d) **DISCONTINUANCE OF REQUIRED SERVICES:** During the Development Period the required services set forth in Paragraphs 3(a) and 3(b) shall be mandatory and shall be provided by the Association unless the Declarant consents to the discontinuance of any such service and seventy-five percent (75%) of the Patio Home Lot Owners vote to discontinue any such service. After the termination of the Development Period, the aforesaid required services may be discontinued as set forth above, but without requiring the consent of the Declarant. Furthermore, after termination of the Development Period, additional services may be added if seventy-five percent (75%) of the Patio Home Lot Owners vote to add such services.

4. **ASSESSMENTS.** The Declarant hereby establishes two (2) additional assessment categories for Patio Home Lots, the Patio Home Lot Exclusive Services Assessment and the Patio Home Lot Working Capital Contribution Assessment, as follows:

- (a) **PATIO HOME LOT EXCLUSIVE SERVICES ASSESSMENT:** The Patio Home Lot Exclusive Services Assessment is established to cover the costs of the provision of the required services provided in Paragraphs 3(a) and 3(b) ("Required Services") and for expenses entirely exclusive to Patio Home Lots. It shall be the duty of the Board, prior to the beginning of each fiscal year, to prepare a separate budget covering the expenses to be

incurred by the Association for the provision of services resulting in expenses entirely exclusive to Patio Home Lot Owners. Such expenses shall be allocated equally among all Patio Home Lots and levied as Patio Home Lot Exclusive Services Assessment. The Board shall cause a copy of such budget and notice of the Assessment amount for the coming year to be distributed as provided in Section 4.4 of the Declaration.

Unless otherwise established by the Board, the Patio Home Lot Exclusive Services Assessment shall be paid in advance, in quarterly payments, not more than ten (10) days after the due dates established by the Board. The Board shall have the power at any time to adopt such billing, collection and payment procedures and payment time schedules, as it shall deem appropriate. Notwithstanding the foregoing, the Patio Home Lot Exclusive Services Assessment to be paid by Builder for completed unsettled Dwelling Units shall be paid by Builder commencing with the first month following issuance of a certificate of occupancy for such Dwelling Unit. Billing and payment procedures for such Builder payment of Patio Home Lot Exclusive Services Assessment shall be established by the Board.

The Declarant and Builder shall be exempt from paying the Patio Home Lot Exclusive Services Assessment except as provided above.

- (b) PATIO HOME LOT WORKING CAPITAL CONTRIBUTION ASSESSMENT: The Patio Home Lot Working Capital Contribution Assessment is established to cover the operational expenses of the Association attributed to provision of Required Services and for any services entirely exclusive to Patio Home Lots. This Assessment shall be known as "Patio Home Lot Working Capital Contribution Assessment."

At the time of closing on the sale of each Patio Home Lot from Declarant or Builder to a third party purchaser, the purchaser shall be required to pay an amount established by the Board as such purchaser's initial working capital contribution to the working capital of the Association ("Patio Home Lot Working Capital Contribution Assessment"). At the time of closing on the resale of a Patio Home Lot to a subsequent purchaser, said subsequent purchaser shall be required to pay the Patio Home Lot Working Capital Contribution Assessment as such subsequent purchaser's capital contribution to the working capital of the Association. This Patio Home Lot Working Capital Contribution Assessment shall be used by the Association for its operating expenses. Such Patio Home Lot Working Capital Contribution Assessment is not an advance payment of the Base Assessment or any other Assessment established in the Declaration or herein, and it will not be held in any sort of trust or reserve account. The Declarant and Builder shall be exempt from paying the Patio Home Lot Working Capital Contribution Assessment.

Notwithstanding the foregoing, Patio Home Lot Owners shall remain responsible under the provisions of Article 4 of the Declaration for the Base Assessment, Special Assessments, Individual Assessments, and Working Capital Assessment as required for all Owners in the Subdivision. The Patio Home Lot Working Capital Contribution Assessment shall be due at closing on the sale of each Patio Home Lot from the Declarant or Builder to a third party purchaser as well as at the time of closing on the resale of a Patio Home Lot to a subsequent purchaser. Additionally, at the time of such closing, each purchaser of a Patio Home Lot shall be required to pay a prorata share of the Base Assessment and the Patio Home Lot Exclusive Services Assessment to the extent that such Assessments have not otherwise been collected by the Association.

END OF DOCUMENT

5. EASEMENTS: There is hereby established and reserved by the Declarant a blanket easement over all of each and every Patio Home Lot for the benefit of the Association for express purpose of providing landscaping maintenance services, snow pushing services, and any other services or special services established by the Board or set forth in the Declaration as amended. The Declarant reserves the right within said easement to establish common landscape areas or common streetscape areas for the benefit of Patio Home Lot Owners. The Association shall be responsible for the maintenance of any such common landscape areas or common streetscape areas so established.

5

201805290 AMNCOV \$25.00
05/29/2018 02:47:58P 5 PGS
Debra Carnes
Hancock County Recorder IN
Recorded as Presented

(ABOVE LINE FOR RECORDER'S OFFICE ONLY)

Cross Reference: Instrument No. 110000685 and 110011324 and 201602325

**THIRD AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS, AND RESERVATION OF
EASEMENTS FOR THE VILLAGES AT BROOKSIDE**

This Third Amendment to the Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for the Villages at Brookside is made as of this 23 day of May, 2018 by Grand Communities, LLC (f/k/a Grand Communities, Ltd.) a Kentucky limited liability company ("Declarant"):

WHEREAS, Declarant executed a Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for the Villages at Brookside which was recorded on January 18, 2011 as Instrument No. 110000685 in the Office of the Recorder of Hancock County, Indiana (the "Declaration"); and

WHEREAS, Declarant executed a First Amendment to Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for the Villages at Brookside which was recorded on December 9, 2011 as Instrument No. 110011324 in the Office of the Recorder of Hancock County, Indiana ("Instrument No. 110011324"); and

WHEREAS, Declarant executed a First Amendment to Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for the Villages at Brookside which was recorded on March 14, 2016 as Instrument No. 201602325 in the Office of the Recorder of Hancock County, Indiana ("Instrument No. 201602325"); and

WHEREAS, pursuant to Section 15.2 of the Declaration, Declarant can amend the Declaration at any time during the Development Period without the vote of any owners by written instrument executed by Declarant for the purpose of making changes which Declarant deems necessary to market homes for sale in the current local or national economic market; and

WHEREAS, pursuant to Section 1.28 of the Declaration, the Development Period remains in effect and therefore Declarant has authority to enter into this Third Amendment and does hereby amend the Declaration as set forth below.

NOW, THEREFORE, Declarant states that:

FL 5/29/18

1. Instrument No. 201602325, under itemized paragraph number 4, established additional; covenants, conditions, restrictions, easements and liens which were defined in Exhibit "A" attached thereto ("the Supplemental Restrictions").

2. Paragraph 2(b) of the Supplemental Restrictions defined "LANDSCAPING". Said paragraph is hereby deleted in its entirety and in its place and stead the following language is inserted:

2. (b)LAWN AND LANDSCAPING: Every Dwelling Unit constructed on any Patio Home Lot shall have a lawn installed and be landscaped at the time of construction of the Dwelling Unit. The lawn and landscaping shall be installed in accordance with the lawn and landscaping requirements of the Builder, as approved by the Declarant or Declarant's designee. In the event the construction of the Dwelling Unit is completed between the first day of March and the thirtieth day of September, the lawn and landscaping shall be installed no later than ninety (90) days after the completion of the Dwelling Unit. In the event the construction of the Dwelling Unit is completed between the first day of October and the last day of February, the lawn and landscaping shall be installed no later than the first day of the following June. Once the lawn and landscaping has been installed the establishment and maintenance responsibility shall be as set forth in Paragraph 3(a) below. No alternation of landscaping or additional landscaping shall be installed by any owner of a Patio Home Lot, except annual flowers that may be planted in any existing landscape bed, on the Patio Home Lot without written consent as required under Paragraph 1 herein.

3. Paragraph 2(h) of the Supplemental Restrictions defined "HOT TUBS/SPAS". Said paragraph is hereby deleted in its entirety and in its place and stead the following language is inserted:

2. (h)HOT TUBS/SPAS: Hot tubs or spas may be permitted for the Dwelling Unit, if properly enclosed and not visible from the street. The Board may require additional landscaping or screening of any such hot tub or spa. An improvement application is required to be submitted for approval as required under Paragraph 1 herein.

4. Paragraph 3(a) of the Supplemental Restrictions defined "REQUIRED LAWN AND LANDSCAPING MAINTENANCE SERVICES". Said paragraph is hereby deleted in its entirety and in its place and stead the following language is inserted:

3(a) REQUIRED LAWN AND LANDSCAPING MAINTENANCE SERVICES: The Association shall manage and provide lawn and landscaping maintenance services for each Patio Home Lot. Such services may include but shall not be limited to: mowing, fertilizing and treatments of all established turf areas; pruning and treatment of shrubs and trees originally installed by the Builder and located in the front and side yards; weeding, trimming, edging, and annual mulching of landscape beds originally installed by the Builder and/or Developer and located in the front and side yards; and leaf removal within the front and side yards. Any additional landscaping, that may be installed by the Builder and/or Developer outside the front and side yard perimeter, shall also be the responsibility of the Association.

The Patio Home Lot Owner shall be responsible for the remaining lawn and/or landscaping services including the establishment of all turf areas and the irrigation or watering of all turf and landscaping areas located in the front, side and rear yards. With the approval of the Board, any landscaping installed by the Patio Home Lot Owner shall be the full responsibility of the Patio Home Lot Owner. The delineation of areas to be mowed and otherwise maintained and areas to be left in a natural state shall be at the discretion of the Board.

As determined by the Board, the Association will replace dead or dying landscaping and turf, which are under maintenance of the Association, unless the homeowner, through action or inaction, causes the death or damage of plant material and/or turf, e.g. does not adequately water the landscaping. Homeowner damaged landscaping and turf will be replaced at the expense of the Homeowner.

5. Paragraph 4(a) of the Supplemental Restrictions defined "PATIO HOME LOT EXCLUSIVE SERVICES ASSESSMENT". Said paragraph is hereby deleted in its entirety and in its place and stead the following language is inserted:

4(a) PATIO HOME LOT EXCLUSIVE SERVICES ASSESSMENT: The "Patio Home Lot Exclusive Services Assessment" is established to cover the costs of the provision of the required services provided in Paragraphs 3(a) and 3(b) above ("Required Services") and for expenses entirely exclusive to Patio Home Lots, including but not limited to additional management fees, insurance and other expenses related to the provision of exclusive, special or other services to Patio Home Lots. It shall be the duty of the Board, prior to the beginning of each fiscal year, to prepare a separate budget covering the expenses to be incurred by the Association for the provision of services resulting in expenses entirely exclusive

to Patio Home Lot Owners. Such expenses shall be allocated equally among all Patio Home Lots and levied as Patio Home Lot Exclusive Services Assessment. The Board shall cause a copy of such budget and notice of the Assessment amount for the coming year to be distributed as provided in Section 4.4 of the Declaration.

Unless otherwise established by the Board, the Patio Home Lot Exclusive Services Assessment shall be paid in advance, in quarterly payments, not more than ten (10) days after the due dates established by the Board. The Board shall have the power at any time to adopt such billing, collection and payment procedures and payment time schedules, as it shall deem appropriate. Notwithstanding the foregoing, the Patio Home Lot Exclusive Services Assessment to be paid by Builder for completed unsettled Dwelling Units shall be paid by Builder commencing with the first month following issuance of a certificate of occupancy for such Dwelling Unit. Billing and payment procedures for such Builder payment of Patio Home Lot Exclusive Services Assessment shall be established by the Board.

Any expenses incurred by the Association for the provision of special services as provided in Paragraph 3(c) above, shall be billed to the participating Patio Home Lot Owner as an Individual Assessment and shall be paid by said Owner within thirty (30) days thereafter.

The Declarant and Builder shall be exempt from paying the Patio Home Lot Exclusive Services Assessment except as provided above.

6. All terms used in this Third Amendment and not otherwise defined in this Third Amendment shall have the same meaning as in the Declaration.

7. Except as set forth above, the Declaration remains in full force and effect. The definitions of capitalized terms, not specifically set forth herein, shall be the same as those provided for in the Declaration.

IN WITNESS WHEREOF, Grand Communities, LLC, a Kentucky limited liability

5

201805290 AMNCOV \$25.00
05/29/2018 02:47:58P 5 PGS
Debra Carnes
Hancock County Recorder IN
Recorded as Presented

(ABOVE LINE FOR RECORDER'S OFFICE ONLY)

Cross Reference: Instrument No. 110000685 and 110011324 and 201602325

**THIRD AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS, AND RESERVATION OF
EASEMENTS FOR THE VILLAGES AT BROOKSIDE**

This Third Amendment to the Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for the Villages at Brookside is made as of this 23 day of May, 2018 by Grand Communities, LLC (f/k/a Grand Communities, Ltd.) a Kentucky limited liability company ("Declarant"):

WHEREAS, Declarant executed a Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for the Villages at Brookside which was recorded on January 18, 2011 as Instrument No. 110000685 in the Office of the Recorder of Hancock County, Indiana (the "Declaration"); and

WHEREAS, Declarant executed a First Amendment to Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for the Villages at Brookside which was recorded on December 9, 2011 as Instrument No. 110011324 in the Office of the Recorder of Hancock County, Indiana ("Instrument No. 110011324"); and

WHEREAS, Declarant executed a First Amendment to Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for the Villages at Brookside which was recorded on March 14, 2016 as Instrument No. 201602325 in the Office of the Recorder of Hancock County, Indiana ("Instrument No. 201602325"); and

WHEREAS, pursuant to Section 15.2 of the Declaration, Declarant can amend the Declaration at any time during the Development Period without the vote of any owners by written instrument executed by Declarant for the purpose of making changes which Declarant deems necessary to market homes for sale in the current local or national economic market; and

WHEREAS, pursuant to Section 1.28 of the Declaration, the Development Period remains in effect and therefore Declarant has authority to enter into this Third Amendment and does hereby amend the Declaration as set forth below.

NOW, THEREFORE, Declarant states that:

FL 5/29/18

1. Instrument No. 201602325, under itemized paragraph number 4, established additional; covenants, conditions, restrictions, easements and liens which were defined in Exhibit "A" attached thereto ("the Supplemental Restrictions").

2. Paragraph 2(b) of the Supplemental Restrictions defined "LANDSCAPING". Said paragraph is hereby deleted in its entirety and in its place and stead the following language is inserted:

2. (b)LAWN AND LANDSCAPING: Every Dwelling Unit constructed on any Patio Home Lot shall have a lawn installed and be landscaped at the time of construction of the Dwelling Unit. The lawn and landscaping shall be installed in accordance with the lawn and landscaping requirements of the Builder, as approved by the Declarant or Declarant's designee. In the event the construction of the Dwelling Unit is completed between the first day of March and the thirtieth day of September, the lawn and landscaping shall be installed no later than ninety (90) days after the completion of the Dwelling Unit. In the event the construction of the Dwelling Unit is completed between the first day of October and the last day of February, the lawn and landscaping shall be installed no later than the first day of the following June. Once the lawn and landscaping has been installed the establishment and maintenance responsibility shall be as set forth in Paragraph 3(a) below. No alternation of landscaping or additional landscaping shall be installed by any owner of a Patio Home Lot, except annual flowers that may be planted in any existing landscape bed, on the Patio Home Lot without written consent as required under Paragraph 1 herein.

3. Paragraph 2(h) of the Supplemental Restrictions defined "HOT TUBS/SPAS". Said paragraph is hereby deleted in its entirety and in its place and stead the following language is inserted:

2. (h)HOT TUBS/SPAS: Hot tubs or spas may be permitted for the Dwelling Unit, if properly enclosed and not visible from the street. The Board may require additional landscaping or screening of any such hot tub or spa. An improvement application is required to be submitted for approval as required under Paragraph 1 herein.

4. Paragraph 3(a) of the Supplemental Restrictions defined "REQUIRED LAWN AND LANDSCAPING MAINTENANCE SERVICES". Said paragraph is hereby deleted in its entirety and in its place and stead the following language is inserted:

3(a) REQUIRED LAWN AND LANDSCAPING MAINTENANCE SERVICES:

The Association shall manage and provide lawn and landscaping maintenance services for each Patio Home Lot. Such services may include but shall not be limited to: mowing, fertilizing and treatments of all established turf areas; pruning and treatment of shrubs and trees originally installed by the Builder and located in the front and side yards; weeding, trimming, edging, and annual mulching of landscape beds originally installed by the Builder and/or Developer and located in the front and side yards; and leaf removal within the front and side yards. Any additional landscaping, that may be installed by the Builder and/or Developer outside the front and side yard perimeter, shall also be the responsibility of the Association.

The Patio Home Lot Owner shall be responsible for the remaining lawn and/or landscaping services including the establishment of all turf areas and the irrigation or watering of all turf and landscaping areas located in the front, side and rear yards. With the approval of the Board, any landscaping installed by the Patio Home Lot Owner shall be the full responsibility of the Patio Home Lot Owner. The delineation of areas to be mowed and otherwise maintained and areas to be left in a natural state shall be at the discretion of the Board.

As determined by the Board, the Association will replace dead or dying landscaping and turf, which are under maintenance of the Association, unless the homeowner, through action or inaction, causes the death or damage of plant material and/or turf, e.g. does not adequately water the landscaping. Homeowner damaged landscaping and turf will be replaced at the expense of the Homeowner.

5. Paragraph 4(a) of the Supplemental Restrictions defined "PATIO HOME LOT EXCLUSIVE SERVICES ASSESSMENT". Said paragraph is hereby deleted in its entirety and in its place and stead the following language is inserted:

4(a) PATIO HOME LOT EXCLUSIVE SERVICES ASSESSMENT: The "Patio Home Lot Exclusive Services Assessment" is established to cover the costs of the provision of the required services provided in Paragraphs 3(a) and 3(b) above ("Required Services") and for expenses entirely exclusive to Patio Home Lots, including but not limited to additional management fees, insurance and other expenses related to the provision of exclusive, special or other services to Patio Home Lots. It shall be the duty of the Board, prior to the beginning of each fiscal year, to prepare a separate budget covering the expenses to be incurred by the Association for the provision of services resulting in expenses entirely exclusive

to Patio Home Lot Owners. Such expenses shall be allocated equally among all Patio Home Lots and levied as Patio Home Lot Exclusive Services Assessment. The Board shall cause a copy of such budget and notice of the Assessment amount for the coming year to be distributed as provided in Section 4.4 of the Declaration.

Unless otherwise established by the Board, the Patio Home Lot Exclusive Services Assessment shall be paid in advance, in quarterly payments, not more than ten (10) days after the due dates established by the Board. The Board shall have the power at any time to adopt such billing, collection and payment procedures and payment time schedules, as it shall deem appropriate. Notwithstanding the foregoing, the Patio Home Lot Exclusive Services Assessment to be paid by Builder for completed unsettled Dwelling Units shall be paid by Builder commencing with the first month following issuance of a certificate of occupancy for such Dwelling Unit. Billing and payment procedures for such Builder payment of Patio Home Lot Exclusive Services Assessment shall be established by the Board.

Any expenses incurred by the Association for the provision of special services as provided in Paragraph 3(c) above, shall be billed to the participating Patio Home Lot Owner as an Individual Assessment and shall be paid by said Owner within thirty (30) days thereafter.

The Declarant and Builder shall be exempt from paying the Patio Home Lot Exclusive Services Assessment except as provided above.

6. All terms used in this Third Amendment and not otherwise defined in this Third Amendment shall have the same meaning as in the Declaration.

7. Except as set forth above, the Declaration remains in full force and effect. The definitions of capitalized terms, not specifically set forth herein, shall be the same as those provided for in the Declaration.

IN WITNESS WHEREOF, Grand Communities, LLC, a Kentucky limited liability



Cross-Reference:

Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for the Villages at Brookside; Recorded in the Office of the Hancock County Recorder at Instrument No. 110000685

First Amendment to Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for the Villages at Brookside; Recorded in the Office of the Hancock County Recorder at Instrument No. 110011324

First Amendment to Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for the Villages at Brookside; Recorded in the Office of the Hancock County Recorder at Instrument No. 201602325

Third Amendment to Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for the Villages at Brookside; Recorded in the Office of the Hancock County Recorder at Instrument No. 201805290

FOURTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR THE VILLAGES AT BROOKSIDE

THIS FOURTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR THE VILLAGES AT BROOKSIDE ("Amendment") is made this 22nd day of August, 2022 by the Villages at Brookside Homeowners' Association, Inc., an Indiana not-for-profit corporation, witnesses as follows:

WHEREAS Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for the Villages at Brookside was recorded on January 18, 2011 in the Office of the Hancock County Recorder at Instrument No. 110000685 ("Declaration of the Villages at Brookside") and,

WHEREAS the First Amendment to Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for the Villages at Brookside was recorded in the Office of the Hancock County Recorder on December 9, 2011 at Instrument No. 110011324 ("First Amendment") and,

WHEREAS a subsequent second amendment, also named the First Amendment to Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for the

Villages at Brookside was recorded in the Office of the Hancock County Recorder on March 24, 2016 at Instrument No. 201602325 ("Second Amendment") and,

WHEREAS the Third Amendment to Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for the Villages at Brookside was recorded on May 29, 2018 in the Office of the Hancock County Recorder at Instrument No. 201805290;

WHEREAS the Declarations provide its terms may be changed in whole or in part by a vote of the Owners of Sixty-Seven percent (67%) Lots the Owners of the lots in the Villages at Brookside; and,

WHEREAS the Board of Directors of the Villages at Brookside Homeowners' Association, Inc., has reviewed and affirmed that the following Fourth Amendment to Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for The Villages at Brookside has been approved by a vote of the Owners of Sixty-Seven percent (67%) Lots within the Villages at Brookside; and,

NOW THEREFORE, pursuant to the foregoing, the Declarations are restated except as amended to either remove, replace or include the following paragraph(s) as follows and any items not specifically amended, deleted or modified from the original Declarations is considered restated and remains valid and enforceable:

ARTICLE 17

Leasing of Lots and Dwellings and Owner-Occupancy of Dwellings

17.1 **LEASING OF LOTS AND DWELLINGS:** In order to ensure that the residents within Villages at Brookside share the same proprietary interest in and respect for the Lots, Dwelling Units and the Common Areas, the following limitations are imposed on the leasing or rental of Lots and Dwellings. The occupation of any Dwelling Unit by any party other than the titled owner of the Lot and / or Dwelling Unit as recorded in the Office of the Recorder of Hancock County, Indiana, or their immediate family while the Owner(s) also resides there, whether for consideration under a Lease, as compensation for employment, for barter, as a gift, or any other arrangement is hereby is prohibited except as may be otherwise provided in this Amendment.

For the purposes of this Amendment the terms "Lot" and "Dwelling Unit" shall have the meaning ascribed to it in the Declarations. For the purposes of this Amendment, the prohibition against leasing shall also be construed to include partial leasing of a Lot or partial leasing of the Dwelling Unit. The prohibition against leasing / requirement of Owner occupancy shall also include prohibition of short-term leasing or hoteling of a Dwelling Unit and / or Lot regardless of if the Owner remains an occupant of the Dwelling Unit. The owner-occupancy requirement of this amendment shall also include each entire Lot and any accessory buildings other than the primary Dwelling, as well.

17.2 **EXCEPTIONS DURING PERIOD OF GOOD FAITH SALE OR SIGNIFICANT HARDSHIP.** The Board of Directors may, in its discretion, grant an exception, for not more than

one (1) year at a time, to the limits provided in this Amendment, to an Owner if the Board determines that the Owner is actively and in good faith trying to sell or otherwise dispose of his Lot / Dwelling Unit or if the Board, by majority vote of the entire Board, determines that the Owner has a Significant Hardship. For purposes of this Section, examples of a Significant Hardship may include, but are not limited to:

- (a) death of an Owner or death of an Owner's spouse who was a co-resident of a Lot / Dwelling Unit;
- (b) dissolution of marriage of an Owner(s) while Owners jointly resided in or co-own a Lot / Dwelling Unit;
- (c) temporary relocation of an Owner to a point outside of a fifty (50) mile radius of the perimeter of the Real Estate due to a change of employment, retirement, or other employment status;
- (d) temporary relocation of the residency of an Owner due to mental or physical infirmity or disability of at least one (1) of the Owners; or,
- (e) if in the discretion of the Board and upon proof and commitment of the Owner, the use and occupancy of the Lot by a non-owner occupant will be consistent with the use and operation of the other Lots in the Subdivision and will not harm the purposes of this amendment (i.e. use as a church parsonage or a home owned by a corporation for executive compensation, for instance); or,
- (f) issues complicating selling a home.

If in the event the Board determines that an exception should be granted, the Board may, in its discretion, require the Owner to provide a refundable, non-interest bearing, deposit, bond, or other surety as protection against risk from violation of the Declarations, By-Laws, or Articles of Incorporation.

Under no circumstance shall approval of any exception provided for under this Section alter the voting rights of any Owner. Voting rights may not be assigned to any tenant or non-owner occupant.

The Board may grant approval of rentals or denial, in instances where the approval or denial would subject Villages at Brookside to lose or alter backing of lending approvals for Lots within the development from the Federal National Mortgage Association ("Fannie Mae").

17.3. GENERAL LEASE CONDITIONS. Any exceptions made pursuant to Section 2 shall be subject to the following terms and restrictions:

- (a.) All leases shall be in writing or other statement of terms ("Lease.")
- (b.) All leases, including renewals of any Lease in place prior to the approval of this Amendment, shall be in writing, and no lease shall be entered into for a term of less than one (1) year without the prior written approval of the Board.
- (c.) No portion of any Dwelling other than the entire Dwelling may be leased for any period, regardless of if the Owner remains an occupant of the Dwelling Unit at the time of the partial leasing.
- (d.) No subleasing is permitted without prior approval of the Board.
- (e.) No boarding houses or 'hoteling' will be permitted. A boarding house shall be understood as the common definition of "boarding house" in the applicable zoning

- jurisdiction or if not defined, as provided for by common definition.
- (f.) No Owner will be permitted to lease or rent his/her Dwelling Unit, if the Owner is delinquent in paying any assessments or other charges due to the Association at the time the lease is entered.
 - (g.) No Owner will be permitted to lease his /her Dwelling Unit if the Owner or his / her successor is in violation of the Declarations or the Lot is subject to a judicial lien, recorded lien, or judicial order for injunctive relief.
 - (h.) All leases shall be made expressly subject and subordinate in all respects to the terms of the Plats, Declaration, By-Laws and any rules and regulations promulgated by the Board, as amended, to the same extent as if the tenant were an Owner and a member of the Association.
 - (i.) Each lease shall provide for direct action by the Association and/or any Owner against the tenant with or without joinder of the Owner of such Lot. The Lease shall provide that a violation of the covenants and restrictions of the Declaration, the By-Laws, or the rules and regulations of the Association constitutes a breach of the lease, which may be directly enforced by the Association, of which the Association shall have the right to pursue all remedies provide for under the Plat, Declarations, this Amendment and at law, including eviction of any tenants or non-owner occupants in violation.
 - (j.) All Owners who do not reside in the Unit shall provide the Board of Directors with the name of the tenant(s) and any, other residents living in the Unit. The Owner shall supply copies of the Declaration, By-Laws and rules and regulations to the tenant prior to the effective date of the lease.
 - (k.) The Board shall have the power to promulgate such additional rules and regulations as, in its discretion, may be necessary or appropriate concerning leasing.

17.4. OWNER REMAINS LIABLE. No Lease shall provide, or be interpreted or construed to provide, for a release of the Owner from his/her responsibility to the Association and to the other Owners for compliance with the provisions of the Plat, Declaration, By-Laws and any rules and regulations promulgated by the Board, or from the Owner's liability to the Association for payments of assessments. Approval of a Lease by the Board does not waive or alter any of the obligations of the Owner under the Declaration or any amendments thereto.

17.5. APPROVAL OF EXCEPTION AND FORM OF LEASE. Any Owner desiring to lease his/her Dwelling shall petition the Board in writing with their proposal, basis for hardship, proposed tenant or occupant, rent or compensation exchanged, other extenuating circumstances and submit the form of the proposed Lease to the Board for review for compliance with the requirements of this Amendment. The Board may employ an attorney in connection with any such review, and a reasonable fee may be charged to the applicant to offset the expense so incurred.

17.6. VIOLATIONS. If any Owner leases or rents his/her Dwelling Unit or Lot in violation of the provisions of this Amendment, the Association may bring a legal action to enjoin the improper conduct and seek any other relief available according to the Declarations or at law. Violation of any Federal, State or Local law or ordinance by the Owner or his / her occupant / tenant shall be considered a violation of this Amendment and will be grounds for termination of the Lease by the Association. If legal action is taken to enforce this Amendment, the Association shall be entitled an award of its costs and fees incurred as provided for pursuant to the Declarations. Any violations

of the Plat, Declarations, or By-Laws of Villages at Brookside by a tenant / occupant shall be considered a violation of this Amendment and the Board shall be entitled to seek all injunctive relief available, including termination of any approved Leases then in force and recovery of any costs or fees incurred by the Association in enforcement, including its reasonable attorneys' fees.

17.7. EFFECTIVE DATE OF LEASE CONDITIONS. Notwithstanding the foregoing, the requirements described above shall not apply to any Dwelling Unit of an Owner in Villages at Brookside, who, as of the recording date of this restriction, is renting or leasing said Dwelling Unit and provides written proof thereof to the Association's Managing Agent or the Board within thirty (30) days after that recording date. The Owners of record of such currently-rented Dwelling Units shall not be subject to the limitation on rental units of this Section but shall be subject to the remaining provisions of this Amendment. However, when the Owners of record of any of the above-described Dwelling Units sell, transfer or convey such Dwelling Unit / Lot to a different Owner after the recording date of this restriction, such Dwelling Unit(s) shall immediately become subject to this Amendment in its entirety. Short-term leasing, use as a boarding-house or "hoteling" shall not be considered eligible for the exemption contained in this sub-section and is prohibited outright.

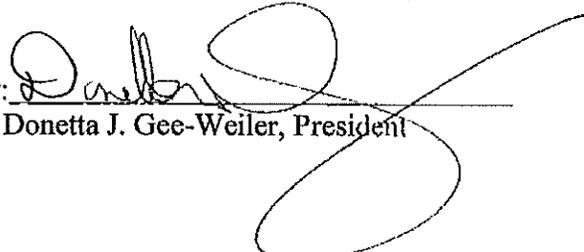
17.8. INSTITUTIONAL MORTGAGES. The provisions of this Article shall not apply to any institutional mortgage holder of any Lot which comes into possession of the mortgage holder by reason of any remedies provided by law or in equity or in such mortgage or as a result of a foreclosure sale or other judicial sale or as a result of any proceeding, arrangement or deed in lieu of foreclosure if such mortgage holder became the owner of record of the Dwelling Unit at the time this Amendment was approved. This exemption is non-transferable or assignable to a subsequent mortgage-holder if assigned after the date this Amendment is recorded. After the approval and recording of this Amendment, these limitations on leasing shall apply to all mortgage holders of any Lot acquiring its Lot after the date of recording of this Amendment.

Acknowledgment of Compliance

The undersigned officers of the Villages at Brookside Homeowners' Association, Inc hereby certify that the affirmative votes of the Owners of Sixty-Seven percent (67%) Lots in the Villages at Brookside subdivision have been obtained in support of this amendment and they further certify that all other conditions precedent to the Fourth Amendment to Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for The Villages at Brookside have been satisfied.

Executed this 22 day of August, 2022.

THE VILLAGES AT BROOKSIDE
HOMEOWNERS' ASSOCIATION, INC.

By: 
Donetta J. Gee-Weiler, President

Attest:

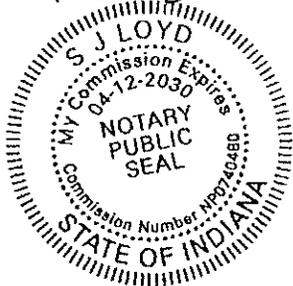
By: [Signature]
Daniel Jones, Secretary

STATE OF INDIANA)
) SS:
COUNTY OF HANCOCK)

Before me, a Notary Public in and for said County and State, personally appeared, Donetta J. Gee-Weiler, President of Villages at Brookside Residential Association, Inc. and Daniel Jones, Secretary Villages at Brookside Residential Association, Inc. who acknowledged the execution of the foregoing Fourth Amendment to Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for The Villages at Brookside.

WITNESS my hand and notarial seal this 22 day of August, 2022.

My Commission expires:
04/12/2030



[Signature]
Notary Public

S J Loyd
Printed

Residing in Madison County, Indiana

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

[Signature]
Jeffrey M. Bellamy

This Instrument Prepared By: Jeffrey M. Bellamy, Esq., THRASHER BUSCHMANN & VOELKEL, P.C., 8440 WOODFIELD CROSSING BLVD., SUITE 310, Indianapolis, IN 46240.

Return Document To: Jeffrey M. Bellamy, Esq., THRASHER BUSCHMANN & VOELKEL, P.C., 8440 WOODFIELD CROSSING BLVD., SUITE 310, Indianapolis, IN 46240.