

PROPOSED AMENDED AND RESTATED

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR CLEARBROOK PARK

The following Amended and Restated involves covenants located in the Declaration of Covenants, Conditions and Restrictions for Clearbrook Park as recorded in the Johnson County Recorder's Office on October 22, 1996, as **Instrument #96-023860**, as may have been amended from time to time.

According to Section 10 of the Declaration, "This Declaration may be amended at any time by an instrument signed by the appropriate officers of the Corporation acting pursuant to the authority granted by not less than seventy-five percent (75%) of all members at a meeting duly called for the purpose of amending this Declaration.

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1. Definitions. The following terms as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:
- (a) "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Corporation, as hereinafter defined,, The Articles of Incorporation are incorporated herein by reference.
 - (b) "Association" or "Corporation" means the Clearbrook Park Homeowners Association, Inc., an Indiana nonprofit corporation formed under the Indiana Nonprofit Corporation Act of 1991, as amended.
 - (c) "Board of Directors" means the governing body of the Corporation elected by the Members in accordance with the Bylaws of the Corporation.
 - (d) "Bylaws" shall mean the Bylaws of the Corporation and shall provide for the election of directors and officers and other governing officials of the Corporation.
 - (e) "Common Area" means those areas and all improvements located thereon set aside for the recreation areas, pond, and any other so designated as such upon any recorded Plat of Clearbrook Park.
 - (f) "Common Expense" means expenses for administration of the Corporation, expenses for the upkeep, maintenance, repair and replacement of the Common Area and Landscape Improvements and all sums lawfully assessed against the Members of the Corporation.
 - (g) "Dwelling Unit" means one of the living units located upon a Lot.
 - (h) "Landscape Maintenance Access Easement" shall mean and refer to those areas identified in any recorded Plat to be burdened by such easement. The landscaping located within the Landscape Maintenance Access Easement shall be maintained by the Corporation and the Corporation shall have an easement of ingress and egress on and over the areas adjacent thereto for the purpose of this maintenance obligation. The landscaping and other improvements planted or installed by the Declarant and/or the Corporation within the Landscape Maintenance Access Easement may not be removed by any Owner, no may any Owner add any landscaping or improvements to such easement area without the prior approval of the Architectural Review Board.
 - (i) "Lot" means any parcel(s) of real estate, whether residential or otherwise, described by one of the Plats.
 - (j) "Member" means a member of the Corporation.
 - (k) "Mortgagee" means the holder of a first mortgage lien on a Lot,

- (l) "Non-Access Easement" means those areas identified In any recorded Plat to be burdened by such easement Neither Declarant nor any Owner shall be allowed to use any Non-Access Easement for vehicular access to and from any Lot.
- (m) "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns the fee simple title to a Lot.
- (n) "Sign Landscape Easement" means those areas identified in any recorded Plat as Sign Landscape Easement or Sign, Landscape, Maintenance Access Easement. Each such area shall contain signage for Clearbrook Park together with any landscaping associated with such signage in such area and any entrance walls or improvements constructed in such easement The signage, entrance walls and improvements and landscaping located within the easement shall be maintained by the Corporation and the Corporation shall have an easement of ingress and egress on and over the areas adjacent thereto for the purpose of this maintenance obligation The signage, entrance walls, improvements and landscaping installed by the Declarant and/or the Corporation within the Sign Landscape Easement may not be removed by any Owner, nor may any Owner add any improvements to such area without the prior written approval of the Architectural Review Board.
- (o) "Utility, Drainage and Sewer Easements" means the areas of ground on the Plat marked Drainage, Utility and Sanitary Sewer Easement; Drainage, Utility and Sewer Easement; Drainage and utility Easement; Perpetual Non-Building Drainage and Utility Easement and Perpetual Non-Building Drainage, Utility and Sewer Easement. The Utility, Drainage and Sewer Easements are hereby created and reserved for the use of all public utility companies (not including transportation companies), governmental agencies and the Corporation for access to and installation, maintenance, repair or removal of poles, mains, ducts, drains, lines, wires, cables and other equipment and facilities for the furnishing of utility services, including cable television services. The Utility, Drainage and Sewer Easements are hereby created and reserved for the use of the Corporation and the City of Greenwood for access to and maintenance, repair and replacement of such drainage system. The Owner of any Lot subject to a Utility, Drainage and Sewer Easement shall be required to keep the Easement area on his Lot free from obstructions so that the storm water drainage will be unimpeded and will not be changed or altered without all necessary permits (whether local, state or federal) and written consent of the Corporation. The utility, Drainage, Sewage Easements are hereby created and reserved for the Corporation, the City of Greenwood and such other municipal bodies, agencies and entities as necessary. The delineation of the Utility, Drainage and Sewer Easement areas on the Plat shall not be deemed a limitation on the rights of any entity for whose use any such easement is created and reserved to go on any portion of any Lot subject to such easement temporarily to the extent reasonably necessary for the exercise of the rights granted to it by this Paragraph except as installed by Declarant or by the third parties provided above, no structures or improvements, including without

limitation decks, patios, fences, walkways or landscaping, shall be erected or maintained upon said Utility, Drainage and Sewer Easements. Drainage swales (ditches) along dedicated roadways and within the right of way or easement are not to be altered, dug out, filled in, tiled or otherwise changed without the written consent of the City of Greenwood, Corporation and/or an Owner, as appropriate, shall maintain these swales as sodded grass ways or other non-eroding surfaces and otherwise in accordance with the Plat.

2. Declaration. The Declaration shall mean the Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Clearbrook Park.
3. Description. The legal description of the Association is attached hereto as "Exhibit A."
4. Lot Boundaries and Access. The boundaries of each Lot in Clearbrook Park shall be as shown on the Plats for the Association. All Lots shall be accessed only from the interior streets of the Tract.
6. Common Area. Common Area includes all the area designated as such on any recorded Plat of Clearbrook Park.
7. Ownership of Common Area. The Common Area shall be conveyed to or owned by the Corporation, and shall be held for the use and enjoyment of the Members, all of whom shall have the right and easement of enjoyment in and to the Common Area which right shall pass with title to every Lot, subject to the provisions of this Declaration, including but not limited to, the following:
 - (a) The right of the Corporation, upon approval by a written instrument signed by two-thirds of all Class A Members, two-thirds of all Class B Members and by two-thirds of all first mortgagees, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such Common Area purposes and subject to such conditions as may be agreed by the Corporation..
 - (b) The Board of Directors shall have the right to promulgate rules regarding the use and enjoyment of the Common Areas.
8. Delegation of Use of the Common Area. Any Member may delegate, in accordance with provisions of this Declaration and the rules or regulations promulgated by the Corporation, his right of enjoyment and use of the Common Area and facilities to members of his family, his tenants or contract purchasers who reside on any Lot,
9. An easement is also granted to the Corporation, its officers, agents, and employees and to any management company selected by the Corporation to enter in or to cross over the Common Area, Easements and Lots to perform its duties; provided, however, except in the case of an emergency, reasonable notice shall be given the Lot Owner.
10. Corporation Membership Voting Functions:
 - (a) Membership in Corporation. Each Owner of a Lot which is subject to assessment shall, automatically upon becoming an Owner, be and become a Member of the

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

(b) Voting Rights. The Corporation consists of one (1) class of membership with the following voting rights:

(i) Class A. Class A Members shall be all Owners. Each Class A Member shall be entitled to one (1) vote for the Lot of which such Member is the Owner with respect to each matter submitted to a vote of Members upon which the Class A Members are entitled to vote. When more than one (1) person constitutes the Owner of a particular Lot, all such persons shall be Members of the Corporation, but all of such persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

(ii) Proxies. Every member entitled to vote or execute statements of consent shall have the right to do so either in person or by an agent or agents authorized by a written proxy executed, and dated by such person or his duly authorized agent; provided, however, that the form of any proxy must be reviewed and approved by the Board prior to the meeting for which the proxy is being submitted; a proxy is void if it is not dated or purports to be revocable without notice.

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

11. Real Estate Taxes. Real estate taxes are to be separately assessed and taxed to each Lot in the event that for any year the real estate taxes are not separately assessed and taxed to each Lot but are assessed and taxed on the Real Estate or part thereof as a whole, without a breakdown for each Lot, then each Owner shall pay his proportionate share of the real estate taxes assessed to the land comprising the Real Estate or that part thereof that is assessed as a whole, which shall be the ratio that the square footage in his Lot bears to the total square footage of all the land comprising the Real Estate or part thereof assessed as a whole. Real estate taxes assessed on the improvements on the Real Estate shall be paid by the Owner of such improvements. Any real estate taxes or other assessments which are chargeable against the Common Area shall be paid by the Corporation and treated as a Common Expense.

12. Utilities. Each Owner shall pay for his own utilities which are separately metered. Utilities which are not separately metered, if any, shall be treated as and paid as part of the Common Expense unless otherwise determined by the Corporation.
13. Maintenance Repairs and Replacements. Maintenance, repairs, replacements and upkeep of the Common Area and Landscape Improvements (except as such is the obligation of the individual Owners) shall be furnished by the Corporation, as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses.
- (a) Each Owner shall be responsible for maintaining and keeping his Lot, Dwelling unit, and all other structural improvements located on his Lot in a good, clean, neat, sanitary and well maintained condition and shall do such work thereon as is required to cause such Lot and structural improvements to be so maintained. The obligation to maintain a Lot shall exist, whether or not a Dwelling Unit exists on such Lot and the Owner of such Lot shall keep such Lot maintained in the same manner as such Lot would be maintained if a Dwelling Unit existed thereon.
 - (b) Each Owner shall also maintain and repair:
 - (i) Exterior of structure including siding, roofing, gutters, mildew, algae growth, driveway, sidewalk and other improvements comprising the Lot and Dwelling in a manner consistent with all applicable covenants and local ordinance.
 - (ii) Any exterior lights installed on his Lot in good working condition, Including but not limited to, replacement of photo cells;
 - (iii) Screens shall be intact, or removed, there shall be no boarded-up windows. Doors and garage doors shall be in good condition and working.
 - (iv) The mailbox and post installed by Declarant on such Lot in good working condition; and shall replace same as necessary with a mailbox and structure which is substantially the same in appearance as that which was originally provided to the dwelling unit. The Board shall have the discretion to require the replacement of any mailbox within the Tract at the expense of the Owner of the Lot served thereby.
 - (v) In the event any Street Tree dies, the Owner of such Lot shall be responsible for replacing, or removing, at Owners expense, the Street Tree with a substantially similar tree. Each Owner shall be responsible for the maintenance of the Street Trees located on his Lot
 - (c) Notwithstanding any obligation or duty of the Corporation to repair or maintain the Common Area or Landscape Improvements, if, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused, or if maintenance, repairs or replacements shall be

required thereby, which would otherwise be a Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Corporation, unless such loss is covered by the Corporation's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Corporation, the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's Lot is subject

- (d) If any Owner shall fail to:
 - (i) maintain and keep his Lot, Dwelling Unit and other structural improvements located on his Lot in a good, clean and sanitary condition as determined by the Board of Directors;
 - (ii) comply with the terms of this Paragraph; or
 - (iii) comply with the terms regarding drainage swales, the Corporation [or the City of Greenwood] may perform any work necessary to do so and charge the Owner thereof for such cost, which cost shall be added to and become a part of the Owners assessment, and such cost shall be immediately due, and shall be secured by the Corporation's lien on the Owner's Lot.
- (e) Each Owner, by his acceptance of a deed to any Lot, irrevocably grants to the Corporation, its agents and employees, and with respect to (d) above, the City of Greenwood, the right, in the form of a permanent easement, to enter upon, across and over the Lot owned by such Owner under such conditions as are reasonably necessary to effect the maintenance, cleaning, repair, landscaping or other work contemplated herein.

14. Architectural Control.

- (a) The Architectural Review Board. As a standing committee of the Corporation, there shall be, and hereby is, established an Architectural Review Board consisting of up to three (3) persons. Architectural Review Board shall be appointed by the Board of Directors and may be different than or the same as the Board of Directors. All requests for architectural review shall be submitted to the board, or its designee.
- (b) Purposes. The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the Tract (Including the Common Area, Easements, Landscape Improvements and Lots) and of improvements thereon in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures and improvements.
- (c) Conditions. No improvements, alterations, excavation or changes in grade or other work which in any way alters any Lot or the exterior of any Dwelling

Unit or other improvement thereon shall be made or done without the prior written approval of the Architectural Review Board, except as otherwise expressly provided in this Declaration. No building, fence, wall, Dwelling Unit, or other structure shall be commenced, erected, maintained, improved, altered, made or done on any Lot without the prior written approval of the plans by the Architectural Review Board other than the initial construction of a Dwelling Unit.

- (d) Procedures. In the event the Architectural Review Board fails to approve, modify or disapprove in writing an application within thirty (30) days after such application (and all plans, drawings, specifications and other items required to be submitted to it In accordance with such rules as it may adopt) have been given to it, the request shall be denied by the Architectural Review Board. A decision of the Architectural Review Board may be appealed to the Board of Directors which may reverse or modify such decision by a majority vote.

15. Assessments.

- (a) Annual Accounting. Annually, after the close of each fiscal year of the Corporation, the Board shall cause to be prepared and furnished to each Owner a financial statement prepared by an accounting group approved by the Board, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.
- (b) Proposed Annual Budget.
 - (i) Annually, before the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared a proposed annual budget for the next fiscal year estimating the total amount of the Common Expenses for the next fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is placed online, mailed or delivered, to such Owners. The annual budget shall be submitted to the Owners at the annual meeting of the Corporation for adoption and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the next fiscal year At the annual meeting of the Owners, notwithstanding any other provision in this Declaration, the Articles or the Bylaws, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of those Owners present either in person or by proxy; provided, however, that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended.. The annual budget, the Regular Assessments and all sums assessed by the Corporation shall be established by using generally accepted accounting principles applied on a consistent basis.
 - (ii) The annual budget and the Regular Assessments shall, in addition, be established to include the establishment and maintenance of a replacement

reserve fund for capital expenditures and replacement and repair of the Common Area and Landscape Improvements that must be repaired and replaced on a periodic basis, which replacement reserve fund shall be used for those purposes and not for usual and ordinary maintenance expenses, By way of example only, the replacement reserve fund will be used for repairing and replacing items such as pumps, filters, landscaping (other than annual plantings and mulch), equipment, playground facilities and clubhouse furnishings and equipment. Usual and ordinary expenses which will not be paid out of the replacement reserve fund include but are not limited to, snow removal, fertilization, annual plantings, mulch, and preventive maintenance contracts. Such replacement reserve fund shall be maintained by the Corporation in a separate interest-bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Johnson County, Indiana selected from time to time by the Board.

- (iii) The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined. Whenever, whether before or after the annual meeting of the Corporation, there is no annual budget approved by the Owners as herein provided for such current fiscal year, the Owners shall continue to pay Regular Assessments and Additional Assessments for Duplex Units based upon the last approved budget or, at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.
- (c) Regular Assessments. The annual budget, as adopted by the Owners, shall, based on the estimated cash requirement for the Common Expenses in the current fiscal year as set forth in said budget, contain a proposed assessment, against each Lot equal to the Common Expenses multiplied by a percentage equal to one divided by the total number of Lots in the Tract, Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his respective Lot (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Lot based upon such annual budget as finally adopted by the Owners, The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as herein provided. The Regular Assessment against each Lot shall be paid annually, in advance. In the event the Regular Assessment for a particular fiscal year of the Corporation was initially based upon a temporary budget:
 - (i) If the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be credited against the next payment or

payments of the Regular Assessment coming due, until the entire amount of such excess has been so credited.

- (ii) provided, however, that if an Owner had paid his Regular Assessment annually in advance, then the adjustments set forth under (i) shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Johnson County, Indiana selected from time to time by the Board.
- (iii) The Regular Assessment for the current fiscal year of the Corporation shall become a lien on each separate Lot as of the first day of each fiscal year of the Corporation, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfers his Lot or any interest therein, shall not relieve or release such Owner or his successor as Owner of such Lot from payment of the Regular Assessment for such Lot as finally determined, and such Owner and his successor as Owner of such Lot shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Corporation pursuant to Paragraph 19 hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year in which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may relay thereon shall be bound by such final determinations.
- (d) Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise, At such time and without the approval of the Owners, unless otherwise provided in this Declaration, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Lot, prorated in equal shares (herein called "Special Assessment") Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in this Declaration
- (e) Additional Assessments. In the event that Declarant constructs any recreational or similar facilities which recreational or similar facilities are for the sole benefit and use of the Owners of Lots in a particular section of Clearbrook Park, the expenses associated therewith shall be an Additional Assessment. Any Additional Assessment will be assessed against each Lot in that section in an

amount equal to the expenses multiplied by a percentage equal to one (1) divided by the total number of Lots in the affected section. Such Additional Assessment shall be included in the annual budget and shall be due at the same time as the Regular Assessment. In the event the Additional Assessment for a particular fiscal year of the Corporation was based upon a temporary budget, any adjustment shall be done in the manner provided for Regular Assessments under Paragraph 17 (c).

- (f) Failure of Owner to Pay Assessments. If any assessment is not paid on the date when due, then such Assessment shall be deemed delinquent and shall, together with any interest and any cost of collection thereof, including attorneys' fees, become a continuing lien on the Lot against which the Assessment was made, and such lien shall be binding upon and enforceable as a personal liability of the Owner of such Lot as the of the date of levy of such Assessment, and shall be enforceable against the interest of such Owner and all future successors and assignees of such Owner in such Lot, and shall be collected in the same manner as the Assessments described in Para (i) hereof, provided, however, that such lien shall be subordinate to any mortgage on such Lot recorded prior to the date on which such Assessment becomes due
- (i) If any Assessment upon any Lot is not paid within thirty (30) days after the due date, the Owner shall pay the late charge in amount of Twenty-five dollars (\$25) for the first thirty (30) day period and an additional Twenty-five Dollars (\$25) for any subsequent thirty (30) day period, up to a maximum of One Hundred Dollars (\$100). The association may bring an action in any court having jurisdiction against the delinquent Owner to enforce payment of the same and/or to foreclose the lien against said Owner's Lot, and there shall be added to the amount of such Assessment all costs of such action, including the Association's Attorneys' fees, and in the event a judgement is obtained, such judgment shall include such interest, costs, and attorneys' fees.
- (g) Subordination of Assessment Lien to Mortgage. Notwithstanding anything contained in this Declaration, the Articles or the Bylaws, any sale or transfer of a Lot to a Mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in a manner provided by law with respect to mortgage foreclosures shall extinguish the lien of any unpaid Installment of any Regular Assessment, Additional Assessment or Special Assessment as to such installment which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien cannot relieve the prior owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot and Dwelling unit or the purchaser at such foreclosure sale or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments, Additional Assessments or Special Assessments thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments, Additional Assessments or Special Assessments, the lien for which has been divested as aforesaid shall be deemed to be a Common Expense collectible from all Owners (including the party acquiring the subject Lot from

which it arose). Default. Subject to the provisions of the mortgage documents, a failure to an Owner to pay any Regular Assessment, Additional Assessment or Special Assessment as provided herein shall not constitute a default under such mortgage documents.

- (h) The Corporation shall promptly furnish to any Owner or any mortgagee of any Owner upon request of a certificate in writing, setting forth the extent to which Assessments have been levied and paid with respect to such requesting Owner's or mortgagee's Lot. As to any person relying thereon, such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. The Controller or Manger, may assess a separate administrative fee for such certificate, not to exceed the sum of Fifty (\$50).

18 Mortgages and Unpaid Assessments.

- (a) Notice to Corporation. Any Owner who places a first mortgage lien upon his Lot, or such Mortgagee, shall notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagee. A record of such Mortgagee and name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the Bylaws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record at the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee, as may be otherwise required by this Declaration, the Bylaws or otherwise, shall be required and no Mortgagee shall be entitled to vote on any matter to which it otherwise may be entitled by virtue of this Declaration, the Bylaws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise. The Corporation shall, upon request of a Mortgagee who has furnished the Corporation with its name and address as hereinabove provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under this Declaration or the Bylaws which is not cured within sixty (60) days.
- (b) Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments, Additional Assessments or Special Assessments or other charges against the Lot, which statement shall be binding upon the Corporation and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Paragraph 18 hereof.
- (c) Right of Mortgagee to Pay Real Estate Taxes or Insurance Premiums. Mortgagees shall have the right, but not the obligation, (1) to pay any taxes or

other charges against the Common Area which are in default and (2) to pay any overdue premiums on hazard insurance for the Common Area or to secure new hazard insurance for the Common Area on the lapse of a policy. Any mortgagee making such payment shall be owed immediate reimbursement by the Corporation.

19. Insurance.

- (a) Casualty Insurance. The Corporation shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring all of the Common Area in an amount equal to the full replacement value of the improvements which in whole or in part, comprise the Common Area and Landscape Improvements, unless the Board determines that a lesser amount of insurance is appropriate. If the Board of Directors can obtain such coverage for reasonable amounts they shall also obtain "all risk" coverage, The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above, All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Corporation as hereinabove set forth shall be paid to it or to the Board of Directors. The proceeds shall be used or disbursed by the Corporation or Board of Directors, as appropriation Such master casualty insurance policy, and "all risk" coverage, if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Corporation, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) contains an endorsement that such policy shall not be terminated for nonpayment of premiums without at least thirty (30) days prior written notice to Mortgagees.
 - (i) Each Owner shall be solely responsible for loss or damage to his Dwelling Unit and the contents thereof, however caused, and his personal property stored elsewhere on the Tract and the Corporation shall have no liability to the Owner for such loss or damages Each Owner shall be solely responsible for obtaining his own insurance to cover any such loss and risk.
- (b) Public Liability Insurance. The Corporation shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover the Corporation, the Board of Directors, any committee or organ of the Corporation or Board, any Managing Agent appointed or employed by the Corporation, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Tract, Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Corporation or other Owners.
- (c) Other Insurance. The Corporation shall also obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including, but

not limited to, liability insurance on vehicles owned or leased by the Corporation and officers' and directors' liability policies. Such insurance shall inure to the benefit of each Owner, the Corporation, the Board of Directors and any Managing Agent acting on behalf of the Corporation. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Corporation.

- (d) General Provisions. The premiums for all insurance hereinabove described shall be paid by the Corporation as part of the Common Expenses.
- (e) Owners to Maintain Insurance. Each Owner of a Dwelling Unit shall at all times maintain fire and extended coverage insurance in an amount equal to the full insurable replacement cost of such Dwelling Unit. The Board may require all Owners to furnish copies or certificates thereof to the Corporation. Each owner further agrees that in the event of a partial loss or damage resulting in less than total destruction of the structures comprising his Lot, the Owner shall proceed promptly to repair or reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with the Corporation and Architectural Review board, and all applicable zoning, building and other governmental regulations. The Owner shall pay any costs of repair or reconstruction not covered by insurance proceeds. In the event that the structure is totally destroyed, the Owner may decide not to rebuild or reconstruct, in which case the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of the construction and thereafter the Owner shall continue to maintain the Lot in a neat, safe, and attractive condition.

20. Casual and Restoration of Common Area. In the event of damage to or destruction of any of the Common Area or Landscape Improvements due to fire or any other casualty or disaster, the Corporation shall promptly cause the same to be repaired and reconstructed- The proceeds of insurance carried by the Corporation, if any, shall be applied to the cost of such repair and reconstruction.

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

For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the Common Area or Landscape Improvements to as near as possible the same condition as it existed immediately prior to the damage or destruction,

21. Restrictions. The following restrictions on the use and enjoyment of the Lots, Dwelling Units, Common Area shall be in addition to any other covenants or restrictions contained

herein and in the Plats, and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or by the Corporation. Present or future Owners or the Corporation shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. The Corporation shall be entitled to any attorneys' fees and costs in enforcing any provision within this Declaration. These restrictions are as follows:

- (a) All Lots and Dwelling Units shall be used exclusively for residential purposes and for occupancy by a single family. No Lot shall be subdivided to form lots of less area.
- (b) Nothing shall be done or kept in any Dwelling Unit, or on any Lot, or on the Common Area which will cause an increase in the rate of insurance on any Common Area. No Owner shall permit anything to be done or kept in his Dwelling unit or on his Lot or on any of the Common Area which will result in a cancellation of insurance on any Dwelling Unit or any part of the Common Area, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.
- (c) No nuisance shall be permitted on any Lot.
 - (j) No portion of the Tract shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition.
 - (ii) No noxious or illegal activity shall be carried on upon any portion of the Tract.
 - (iii) No outside burning of wood leaves, trash, garbage, or household refuse shall be permitted within the Tract, except in accordance with local ordinance for an open burn.
 - (iv) Excessive noise shall be regulated in accordance with current city ordinance.
- (d) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows of his Dwelling unit or placed on the outside walls of any Dwelling Unit or building. No sign, awning, canopy, shutter or radio or television antenna or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of any Dwelling Unit without the prior written consent of the Architectural Review Board. No sign of any kind shall be displayed to the public view on any Lot, except that one sign of not more than six (6) square feet may be displayed at any time solely for the purpose of advertising a property for sale, or for political advertisement during an election cycle or for occasional, or otherwise approved by the Architectural Review Board.

- (e) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Dwelling Unit or on any Lot or any of the Common Area or any of the Easements, except that pet dogs, cats or customary household pets may be kept in a Dwelling unit, provided that such pet is not kept, bred or maintained for any commercial purpose, and does not create a nuisance.
- (f) No storage tanks of any kind shall be allowed upon a Lot. All rubbish, trash or garbage shall be stored in closed sanitary containers, stored within the building or behind the front line of the home, shall be regularly removed from the premises, and shall not be allowed to accumulate.
- (g) No industry, trade, or other commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted on the Tract; provided, however, that notwithstanding the foregoing, lawful home offices and home business activities conducted by the Owner of such Dwelling Unit are permissible provided all of the following conditions are met:
 - (i) there is not significant increased traffic in and around the Tract as a result of such use or activity;
 - (ii) no signs, billboards, or other advertising materials are displayed or posted on the exterior of any Dwelling Unit or anywhere else on the Tract;
 - (iii) the use or activity does not violate existing zoning laws;
 - (iv) the use or activity does not violate any of the other provisions of this Declaration, including, but not limited to, this Paragraph;
 - (v) the Owner of the Dwelling unit shall maintain all necessary casualty and public liability insurance; and
 - (vi) such use or activity is conducted during reasonable hours.
- (h) No structure of a temporary character, trailer, boat, camper, bus or tent shall be maintained on any Lot, nor shall any garage or other building, except a permanent residence, be used on any Lot at any time as a residence or sleeping quarters either temporarily or permanently.
- (i) All Owners and members of their families, their guests, or invitees, and all occupants of any Dwelling unit or other persons entitled to use the same and to use and enjoy the Common Area or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Common Area.
- (j) No boat docks, decks, rafts or similar structures or improvements shall be permitted on or near the lakes No Owner of any Lot shall do or permit to be done any action or activity which could result in the pollution of the lakes, diversion of water, change in elevation of the water level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality,

drainage or proper lake management or otherwise impair or interfere with the use of the lake for drainage and related purposes for the benefit of Clearbrook Park. No Owner, members of their families, guests or invitees or occupants of any Dwelling Unit or other persons entitled to use the same, may swim, boat, ice skate or engage in similar activities on the lake.

- (k) No boats, campers, trailers of any kind, busses, mobile homes, recreational vehicles, trucks (larger than 1.5 ton), motorcycles, minibikes or mopeds shall be permitted, parked or stored anywhere within the Tract, unless stored completely enclosed within a garage or IAW local ordinance.
- (l) No repair work shall be done on the Tract on any vehicles, including passenger automobiles unless completely enclosed within a garage other than general maintenance of the owner's vehicle such as light bulb replacement, oil change, etc. Owners shall be responsible for the removal of any fluids/debris from driveway or street.
- (m) No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Area or Easements, except with express prior permission from the Board.
- (n) The Common Area shall be used and enjoyed only for the purposes for which it is designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board.
- (o) No Owner may rent or lease his Dwelling Unit for transient or hotel purposes.
- (p) Any Owner who leases a Dwelling Unit shall lease the entire Dwelling Unit and shall have a written lease which shall provide that the lease is subject to the provisions of the Declaration and any failure of the lessee to comply with the terms of the Declaration, shall be a default under the lease.
- (q) There are designated on the Plats building lines except as required for utilities to serve the Tract or a Lot, no building or structure will be permitted within this no-build area.
- (r) Each Owner by acceptance of a deed to a Lot shall be deemed to have waived such Owners right to remonstrate against annexation of all or any portion of the Plats.
- (s) No detached structure shall be maintained on any Lot except with the express prior permission from the Architectural Review Board and IAW local ordinance.
- (t) Any fences to be constructed on a Lot must be constructed in accordance with the provisions hereof and must be approved by the Architectural Review Board prior to the installation of any fence, The Architectural Review Board will not approve any fence unless it complies with the following requirements:

- (i) The fence is located in the rear yard of the Lot (the fence may adjoin the rear side of the Dwelling unit); there shall be no fences whatsoever constructed in the front yard of any Lot; or within ten (10) feet of the front corner of the residence.
- (ii) The fence shall be either a four (4) foot or (5) foot black vinyl fence; six (6) to eight (8) foot wood, shadowbox, dog-eared, or vinyl fence; or a wood fence constructed with cedar treated gothic top spaced picket panels, or similar, (42"x8" panels with 3-3/8" pickets and no more than 2-1/2" between pickets),
- (iii) There shall be no fences or any other permanent improvements constructed in any part of any Lot which is part of the Common Area or is within a Utility, Drainage and Sewer Easement.
- (iv) All fences must be located within or on the property line and may adjoin any existing fence(s) on adjacent Lot(s).
- (u) In order to comply with the Federal Telecommunications Act of 1996, and the Federal Communications Commission rules governing Over-the-Air Reception Devices (OTARD), Owners may only install satellite dishes that are one meter or less in diameter. One meter is equal to 39.37 inches, and "diameter" is the distance measured across the widest part of the dish. Only one (1) dish may be installed on each lot, unless additional dishes are required to receive additional or unique transmissions that cannot be received by a previously installed dish. The Committee reserves the right to require written verification for the installation of additional dishes upon a Lot. The OTARD Rule allows Associations to designate a preferential order of placement for dishes in their community. To that end, the Committee desires that satellite dishes be permanently mounted in a location on the Lot that is the least visible from the street directly in front of the Lot, but which will not result in a substantial degradation of reception. This specific order of location priority is:
 - (i) in the rear of the Lot;
 - (ii) on the side of the Lot; and
 - (iii) the front of the home.

Therefore, an Owner must install a satellite dish in the rear portion of the Lot if acceptable reception can be received from that location. If acceptable reception cannot be obtained in the rear portion of the Lot, then the dish may be located along the side of the home if adequate reception can be received from that location. If adequate reception cannot be received from a location along the side of the home, then a dish may be located in the front of a home. However, if a dish is located in the front of a home, the Committee has the right to ask the Owner to provide written proof from a reputable dish installation company or expert that the Owner's dish had to be placed in front of the home to prevent a substantial degradation of reception.

The Owner must follow this preferential placement guideline when he installs a satellite dish on his property. If the Committee determines that the Owner did not properly follow the preferred placement order when installing his satellite dish, the Committee has the right to require the Owner to move his dish to another location that is less visible from the street, so long as the relocation of the dish does not substantially impact or degrade the reception of the device. For example, if an Owner locates a dish on the front of his home, and the Committee determines that the Owner could have installed his dish in a location on the rear or side of the home that would have still allowed adequate reception, then the Committee may require the Owner to move the dish, at the Owner's expense, to a less visible location.

In addition, the Committee has the right to require the Owner to install landscaping, fencing or other screening around his dish to help hide it from direct view of the street, or to cover or paint the dish to make it blend in with its surroundings, so long as none of these changes or screenings impair the reception of the device.

Other antennae, aerials or devices, towers or radio antennae that are not covered by the OTARD rule, such as dishes larger than one (1) meter in diameter and ham or amateur radio antennas are prohibited on any Lot in Mayfair Village without prior written approval of the Committee. The Committee reserves the right to adopt rules or make changes to the requirements of this provision as allowed by or required by any changes or amendments to the Federal Telecommunications Act of 1996.

- (iv) No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Lot without board approval and IAW current local ordinance.
- (v) No above ground swimming pools or trampolines shall be erected in a front yard, temporary pools up to 12', may be installed in back yard with a locked fence and gate. IAW Current City of Greenwood Ordinance. The construction of any permanent in ground pool, hot tub or spa requires the prior written approval of the Architectural Review Board.
- (w) Traffic regulation and sight distance at intersections.
 - (i) All Lots located at street intersections or curves shall be landscaped so as to permit safe sight across the street corners or around curve.
 - (ii) No fence, wall, hedge, tree, or shrub planting shall be placed or permitted to remain wherein it would create a traffic or sight problem.
 - (iii) All vehicular traffic within the Tract shall be subject to the provisions of the laws of the state of Indiana and any other applicable governmental agency, concerning the operation or parking of motor vehicles, trailers, boats, RV's etc., on public streets, or across sidewalks. The Board is hereby authorized to promulgate, administer, and enforce reasonable rules and

regulation governing vehicular and pedestrian traffic including modification of those in force on public street within the Tract. The Board shall be entitled to enforce same by establishing such enforcement procedures as it deems necessary, including levying fines for the violation thereof.

- (x) Driveways. All driveways will be constructed by the builder of the dwelling which it serves. Owners shall maintain and replace the driveway of their Lot thereafter so as to maintain similar appearance as provided at the time of construction, ordinary wear and tear accepted.

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

- (a) Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.
- (b) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the votes of all Owners.
- (c) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the Bylaws..
- (d) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than seventy-five percent (75%) in the aggregate of the votes of all Owners; provided however, that prior to the Applicable Date all proposed amendments shall require the written consent of the Declarant In the event any Lot or Dwelling Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.
- (e) Special Amendment. No amendment to this Declaration shall be adopted which changes (1) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same, or (2) the provisions of this Declaration of Paragraph 19 with respect to casualty insurance to be maintained by the Corporation, or (3) the provisions of Paragraph 20 of this Declaration with respect to reconstruction or repair of the Common Area in the event of fire or any other casualty or disaster, or (4) the provisions of Paragraph 15 of this Declaration establishing the Architectural Review Board and providing for its functions, or (5) the provisions of Paragraph 18 of this Declaration with respect to the commencement of assessments on any Lot, or (6) the provisions of Paragraph 22(b) of this Declaration with respect to amendments solely by Declarant without, in each and any of such circumstances, the unanimous approval of all Owners, and of all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of this Declaration.

- (f) **Recording.** Each amendment to the Declaration shall be executed by the President and Secretary of the Corporation and shall be recorded in the Office of the Recorder of Johnson County, Indiana, and such amendment shall not become effective until so recorded.
23. **Acceptance and Ratification.** All present and future Owners, Mortgagees, tenants and occupants of the Lots shall be subject to and shall comply with the provisions of this Declaration, the Articles, and the Bylaws incorporated herein by reference, and the rules and regulations as adopted by the Board of Directors as each may be amended from time to time, The acceptance of a deed of conveyance or the act of occupancy of any Lot shall constitute an agreement that the provisions of this Declaration, the Articles, the Bylaws, and rules and regulations, as each may be amended or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall be binding on any person having at any time any interest or estate in a Lot or the Tract as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof, All persons, corporations, partnerships, trusts, associations, or other legal entities who may occupy, use, enjoy or control a Lot or Lots or any part of the Tract in any manner shall be subject to the Declaration, the Articles of Incorporation, the Bylaws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time
24. **Negligence.** Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees to the extent that such expense is not covered by the proceeds of insurance carried by the Corporation.
25. **Cost and Attorney Fees.** In any proceeding arising because of failure of an Owner to make any payments required or to comply with any provision of this Declaration, the Articles of Incorporation, the Bylaws, or the rules and regulations adopted pursuant thereto as each may be amended from time to time, the Corporation shall be entitled to recover its reasonable attorneys' fees incurred in connection with such default or failure.
26. **Waiver.** No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Area or Limited Common Area or by abandonment of his Lot.
27. **Severability Clause.** The Invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles or the Bylaws, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles, or the Bylaws, and each shall be enforced to the greatest extent permitted by law.
28. **Pronouns.** Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires to the contrary, be deemed to refer to and include all genders, And the singular shall include and refer to the plural and vice versa as appropriate.
29. **Interpretation.** The captions and titles of the various articles, sections, subsections, paragraphs and sub-paragraphs of this Declaration are inserted herein for ease and

convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

30. The Plat. The Plat of Clearbrook Park, all sections, is incorporated into this Declaration by reference and has been filed in the office of the Recorder of Johnson County, Indiana, of even date herewith.

[END OF DECLARATION]