

BYLAWS  
OF  
THE GABLES AT BRIGHTON POINT HOMEOWNERS' ASSOCIATION, INC.  
AN INDIANA NONPROFIT CORPORATION

ARTICLE ONE

Identification and Applicability

**Section 1.1 Identification and Adoption.** The Declaration of Covenants, Conditions and Restrictions for The Gables at Brighton Point (hereinafter referred to as the "Declaration"), is incorporated herein by reference and all of the covenants, conditions, rights, restrictions, and liabilities therein contained shall apply to and govern the interpretation of these Bylaws. The definitions and terms as defined and used in the Declaration shall have the same meanings in these Bylaws and reference is hereby made to the definitions in Section 1 of the Declaration. The provisions of these Bylaws shall apply to the Property and to the administration and conduct of the affairs of the Association. All capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Declaration.

**Section 1.2 Individual Application.** All of the Owners, tenants, their guests and invitees, or any other person who might now or hereafter use or occupy any Lot or any part of the Real Estate, including any Additional Real Estate hereafter made subject to the Declaration as provided therein, shall be subject to the rules, restrictions, terms and conditions set forth in the Declaration and these Bylaws, as the same may be amended from time to time.

ARTICLE TWO

Meetings of Association

**Section 2.1 Purpose of Meetings.** After the application date, at least annually and at such other times as may be necessary or appropriate, a meeting of the Owners shall be held for the purpose of electing the Board of Directors, approving the annual budget, providing for the collection of Common Expenses and Assessments, and for such other purposes as may be required by the Declaration and these Bylaws.

**Section 2.2 Annual Meetings.** After the Application Date, annual meetings shall be held during the month of November in each calendar year. At each annual meeting, the Owners shall elect the Board of Directors of the Association in accordance with the provisions of these Bylaws and transact such other business as may properly come before the meeting.

**Section 2.3 Special Meetings.** A special meeting of the Members may be called by resolution of the Board of Directors or upon a written petition of the Owners who have not less than twenty-five percent (25%) of the Class A and Class B membership votes. Any resolution or petition shall be presented to the President or Secretary of the Association and shall state the

purpose for which the meeting is to be called. No business shall be transacted at a special meeting except as stated in the petition or resolution.

**Section 2.4 Notice and Place of Meetings.** A meeting of the Members of the Association shall be held at any suitable place in Monroe County, Indiana, as may be designated by the Board of Directors. Written notice stating the date, time, place of any meeting, and in the case of a special meeting the purpose(s) for which the meeting is called, shall be delivered or mailed by the Secretary of the Association to each Member and, if applicable, to any Mortgagee, not less than fourteen (14) days prior to the date of such meeting. The notice shall be mailed or delivered to the Owners at their address as it appears upon the records of the Association. Attendance at any meeting in person or by proxy shall constitute a waiver of notice of such meeting.

**Section 2.5 Substitute Annual Meeting.** If the annual meeting shall not be held on the day designated by the Bylaws, a substitute annual meeting may be called in accordance with the provisions of Section 2.4 of this Article. A meeting so called shall be designated and treated for all purposes as the annual meeting.

#### **Section 2.6 Voting.**

For the purposes of the conducting of meetings and voting at meetings, the Declarant shall be considered included within the term "Owner" for the purposes of these Bylaws. Voting rights shall be determined in accordance with the Declaration as follows:

Class A. Class "A" Members shall be Owners except Declarant and shall be entitled to one vote for each Lot owned. All persons holding an interest in any Lot shall be members provided, however, each Lot represented shall have only one vote as the Owners of such Lot may determine.

Class B. The Class "B" member shall be Declarant and Declarant shall be entitled to ten (10) votes for each Lot owned. The Class B membership shall cease and terminate upon the Applicable Date.

2.6.1. Multiple Owner. Where the Owner of a Lot constitutes more than one person, or is a partnership, there shall be only one voting representative entitled to the vote allocable to that Lot. At the time of acquisition of title to be a Lot by a multiple Owner or a partnership, those persons constituting such Owner or the partners shall file with the Secretary of the Association a proxy appointing one of such persons or partners as the voting representative for such Lot which shall remain in effect until such appointed representative relinquishes such appointment in writing, becomes incompetent, dies, or such appointment is otherwise rescinded by order of a court of competent jurisdiction, or the subject Lot which forms the basis of the vote is conveyed. Such appointed voting representative may grant a proxy to another to vote in his place at a particular meeting(s) pursuant to paragraph 2.6.3 of this Section 2.6, which shall constitute relinquishment of his right to act as voting representative for the Lot.

2.6.2 Voting by Corporation or Trust. Where a corporation or trust is an Owner or otherwise entitled to vote, the trustees may cast the vote on behalf of the trust, and the agent or other representative of the corporation duly empowered by the board of directors of such corporation shall cast the vote to which the corporation is entitled.

2.6.3 Proxy. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon adjournment of the meeting for which such proxy was granted. A form of proxy or written ballot may provide an opportunity to specify approval or disapproval with respect to any proposal.

2.6.4 Quorum. Except where otherwise expressly provided in the Declaration or these Bylaws, the Owners representing fifty percent (50%) of each class of membership, taken together, shall constitute a quorum at all meetings. The term majority of Owners or majority of vote, as used in these Bylaws, shall mean the Owners entitled to not less than fifty percent (50%) of the votes in accordance with the Declaration as such may be amended from time to time and shall not mean a majority of the persons or votes present or represented at such meeting.

2.6.5 Conduct of Meeting. The Chairman of the meeting shall be the President of the Association or his designee. The President shall call the meeting to order at the duly designated time, and business will be conducted in the following order:

Reading of Minutes. The Secretary shall distribute a copy of the minutes of the last annual meeting and the minutes of any special meeting held subsequent thereto.

Treasurer's Report. The Treasurer shall report to the Members concerning the financial condition of the Association and to answer relevant questions of the Members concerning the common expenses and financial report for the prior year and the proposed budget for the next calendar year.

Budget. The proposed budget for the next calendar year shall be presented to the Members for approval.

Election of Board of Directors. Nominations for the Board of Directors may be made by any Member from those persons who are eligible to serve. Such nominations must be in writing and presented to the Secretary of the Association at least ten (10) days prior to the annual meeting. Each Member may cast his vote for each of as many nominees as are to be elected; however, he shall not be entitled to accumulate his votes. Those persons receiving the highest number of votes shall be elected.

Other Business. Other business may be brought before the meeting only upon a written request submitted to the Secretary of

the Association at least ten (10) days prior to the date of the meeting; provided, however, that such written requests may be waived at the meeting if all Members present at the meeting consent.

Adjournment. Upon completion of all business before the Association, the President, upon the motion of any Member, may adjourn the meeting; provided, however, that no annual meeting shall be adjourned until a budget is approved by the Members for the upcoming year.

### ARTICLE THREE

#### Board of Directors

##### **Section 3.1 Board of Directors.**

3.1.1. The affairs of the Association shall be governed and managed by the Board of Directors. The initial Board of Directors shall be composed of three (3) persons.

3.1.2 The initial Board of three (3) Directors shall be selected by the Declarant and shall serve as the Board of Directors from the date upon which this Declaration is recorded in the Monroe County, Indiana, public records until the Applicable Date and the qualification of successor directors elected at a meeting of voting members.

3.1.3 This paragraph governs directors elected after the term of the initial Board of Directors has expired pursuant to 3.1.2. Directors shall be elected at the annual meeting of the Association and those persons who receive the highest number of votes shall be deemed to have been elected. After the Applicable Date, the Board of Directors shall be comprised of five (5) persons and each Director shall hold office for a period of two (2) years or until his death, resignation, retirement, removal, disqualification or his successor is elected and qualified; provided, however, that in order to stagger the terms of the initial Board, two (2) Directors shall be elected for a one (1) year term, and three (3) Directors shall be elected for a two (2) year term, so that the terms of at least two (2) of the Directors shall expire annually. Each Director shall be one of the Owners and must be in compliance at the time of his election with all covenants, terms, conditions and obligations of these Bylaws and the Declaration. In the event an Owner is a corporation, partnership, trust or other legal entity, other than a natural person, or persons, then an officer or director of such corporation, partner of such partnership, beneficiary of such trust or manager of such other legal entity, shall be eligible to serve as a member of the Board of Directors. Nothing herein contained shall be construed to prevent the election of a Director to succeed himself.

3.1.4 Vacancies in the Board, including vacancies due to any increase in the number of persons on the Board shall be filled by majority vote of the remaining Members thereof, except that a vacant position of the Board last filled by a person

appointed by the Declarant shall be filled by a person appointed by the Declarant. Any director so elected or appointed to fill a vacancy shall hold office for a term equal to the unexpired term of the director he succeeds. Except as otherwise provided in this Declaration, the Easement Area shall be managed by the Board and the Board shall act by majority vote of those present at its meetings when a quorum exists. Meetings of the Board may be called, held and conducted in accordance with such regulations as the Board may adopt. A majority of the total number of Members of the Board shall constitute a quorum.

3.1.5 All meetings of the Board shall be open to attendance by any Lot Owner, except that the President may call the Board into executive session on matters of personnel, infractions of the rules and regulations of the Association, and matters of similar sensitivity. Any action taken by the Board in executive session shall be recorded in the minutes.

3.1.6 Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting, if a written consent to such action is signed by all Directors and such consent is filed with the minutes of proceedings of the Board.

**Section 3.2 Powers of the Board of Directors.** The Board of Directors shall have such powers as are reasonably necessary or appropriate to accomplish the performance of their duties. These powers include, but are not limited to, the power:

3.2.1 To employ a professional managing agent or real estate management company (either being hereinafter referred to a "Managing Agent") to assist the Board of Directors in performing its duties;

3.2.2 To purchase for the benefit of the Owners such equipment, materials, labor, and services as may be necessary in the judgment of the Board of Directors;

3.2.3 To procure for the benefit of the Owners fire and extended coverage insurance covering all Buildings, to the full replacement value thereof and to procure public liability and property damage insurance, directors and officers liability insurance, worker's compensation insurance, and such other insurance as the Board of Directors may determine is necessary for the benefit of the Owners and the Association;

3.2.4 To employ legal counsel, architects, contractors, and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Association;

3.2.5 To include the costs of all of the above and foregoing as Common Expenses and assessments and to pay all of such costs therefrom;

3.2.6 To consent to amendment of the Declaration as therein provided;

3.2.7 To adopt, revise, amend and alter from time to time rules and regulations with respect to use, occupancy, operation and enjoyment of the Real Estate or the Easement Areas;

3.2.8 To open and maintain a bank account or accounts in the name of the Association.

**Section 3.3 Limitations on Board Action.** The authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than Ten Thousand Dollars (\$10,000.00) without obtaining the prior approval of a majority of Owners, except in the following cases:

3.3.1 Contracts for replacing or restoring portions of the Easement Area damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;

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

3.3.3 Expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.

**Section 3.4 Compensation.** No Directors shall receive any compensation for any service to the Association, except to such extent as a Director may be reimbursed for actual expenses incurred in the performance of the Director's duties.

**Section 3.5 Meetings.** Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of Directors. The Secretary shall give notice of regular meeting of the Board to each Director personally or by United States mail at least five (5) days prior to the date of such meeting.

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

**Section 3.6 Waiver of Notice.** Before any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. The presence of any Director at a meeting shall, as to such Director, constitute a waiver of notice of the time, place, and purpose thereof. If all Directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

**Section 3.7 Quorum.** At all meetings of the Board a majority of the Directors shall constitute a quorum for the transaction of business and the votes of the majority of the Directors present at a meeting at which a quorum is present shall be the decision of the Board.

**Section 3.8 Non-Liability of Directors.** The Directors shall not be liable to the Association for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Association shall indemnify and hold harmless each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board of Directors on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or Bylaws. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Association. Every contract made by the Board shall provide that the Board of Directors, in executing such contract, is acting as agent for the Association and shall have no personal liability thereunder.

**Section 3.9 Additional Indemnity of Directors.** The Association shall indemnify any person, his heirs, assigns, and legal representatives, made a part to any action, suit or proceeding by reason of the fact that the person is or was a Director of the Association, against the reasonable expenses, including attorney's fees, actually and necessarily incurred by the Director in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding, if it shall be found by a majority of the Owners that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where acting in good faith, such Director relied on the books and records of the Association or statements or advice made by or prepared by the Managing Agent of the Association or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that the Director failed or neglected to attend a meeting or meetings of the Board of Directors.

**Section 3.10 Bond.** The Board of Directors shall require any or all officers and employees of the Association handling or responsible for Association funds to be covered by an adequate bond. The premiums on such bonds shall constitute a Common Expense.

**Section 3.11 Informal Action of Directors.** Action taken by a majority of the Directors without a meeting is nevertheless Board action if written consent to the action in question is signed by all of the Directors and filed with the minutes of the proceedings of the Board, whether done before or after the action is taken.

## ARTICLE FOUR

### Officers

**Section 4.1 Officers of the Association.** The principal officers of the Association shall be the President, Vice President and Secretary/Treasurer, all of whom shall be elected by the Board of Directors. The Directors may appoint an Assistant Treasurer and an Assistant Secretary and such other officers as in their judgment may be necessary. Any two or more offices may be held by the same person, except that the duties of the President and Secretary shall not be performed by the same person. Every officer will serve for a term of one (1) year except an officer filling the vacancy created by resignation, death or removal of his successor in which case, the officer shall serve for the unexpired term of his successor.

**Section 4.2 Election of Officers.** The officers of the Association shall be elected annually by the Board at the initial meeting of each new Board. Upon an affirmation vote of a two-thirds (2/3) majority of all members of the Board, any officer may be removed either with or without cause and the officer's successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose.

**Section 4.3 The President.** The President shall be elected from among the Directors and shall be the chief executive officer of the Association. The President shall preside at all meetings of the Association and of the Board of Directors, shall have and discharge all the general powers and duties usually vested in the office of the President or chief executive officer of an association or a stock corporation organized under the laws of Indiana, including, but not limited to, the power to appoint committees from among the Owners as he may deem necessary to assist in the affairs of the Association and to perform such other duties as the Board of Directors may from time to time prescribe.

**Section 4.4 The Vice President.** The Vice President shall be elected from among the Directors and shall perform all duties incumbent upon the President during the absence or disability of the President. The Vice President shall also perform such other duties as these Bylaws may prescribe or as shall, from time to time, be imposed upon him by the Board or by the President.

**Section 4.5 The Secretary.** The Secretary shall be elected from among the Board of Directors. The Secretary shall attend all meetings of the Association and of the Board of Directors and shall keep or cause to be kept a true and complete record of proceedings of such meetings, shall perform all other duties incident to the office of the Secretary, and such other duties as from time to time may be prescribed by the Board. The Secretary shall specifically see that all notices of the Association or the Board are duly given, mailed or delivered, in accordance with the provision of these Bylaws.

**Section 4.6 The Treasurer.** The Board shall elect from among the Directors a Treasurer who shall maintain a correct and complete record of account showing accurately at all times the financial condition of the Association and such other duties incident to the office of Treasurer. The Treasurer shall be the legal custodian of all monies, notes, securities and other

valuables which may from time to time come into possession of the Association, and shall immediately deposit all funds of the Association in some reliable bank or other depository to be designated by the Board and shall keep such bank account in the name of the Association.

**Section 4.7 Assistant Officers.** The Board of Directors may from time to time designate and elect from among the Owners an Assistant Secretary and Assistant Treasurer, who shall have such powers and duties as the officers whom they are elected to assist shall delegate to them and such other powers and duties as these Bylaws or the Board of Directors may prescribe.

**Section 4.8 Compensation.** No officer shall receive compensation from the Association for acting as such.

## ARTICLE FIVE

### Control

In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

## ARTICLE SIX

### Rules and Regulations

The Board of Directors may promulgate such additional rules and regulations regarding the operation of the Real Estate, including but not limited to the use of the Easement Areas, as it may deem necessary from time to time. Such rules as are adopted may be amended by a vote of a majority of the Board, and the Board shall cause copies of such rules to be delivered or mailed promptly to all Owners. Any rule or regulation promulgated by the Board of Directors may be enforced by the Board of Directors; however, if there is any dispute regarding the interpretation or enforcement of any rule or regulation, the provisions of Article 9, Alternative Dispute Resolution, shall apply.

## ARTICLE SEVEN

### Amendment to Bylaws

Prior to the Applicable Date, these Bylaws may be amended by a majority vote or by written consent of all initial directors. After the Applicable Date, these Bylaws may be amended by a vote of not less than sixty-six and two-thirds percent (66 2/3%) of the vote of the Owners in a duly constituted meeting called for such purpose.

## ARTICLE EIGHT

### Notices and Mortgagees

**Section 8.1 Notice to Association.** Any Owner who places a first mortgage lien upon his Lot or the Mortgagee thereof shall notify the Secretary of the Association and provide the name and address of the Mortgagee. A record of such Mortgagee and such name and address shall be maintained by the Secretary.

**Section 8.2 Notice of Unpaid Assessments.** The Association shall, upon request of a Mortgagee, a proposed mortgagee or purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments against the Lot, which statement shall be binding upon the Association 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 in excess of the amount set forth in such statement.

**Section 8.3 Notice and Representative.** Any and all Mortgagees shall receive notice of meetings of the Association and shall receive specific notice from the Association of the intention of the Association to amend any provisions of the Declaration, Bylaws, or Articles of Incorporation of the Association; and any and all Mortgagees shall have the right to designate a representative to attend any meetings of the Association.

## ARTICLE NINE

### Alternative Dispute Resolution

**Section 9.1 Disputes Subject to this Article.** Owners' disputes shall be resolved in accordance with the provisions of this Article Nine if the dispute concerns any of the following (a) the interpretation of the Declaration, the Association's Articles of Incorporation or the Association's Bylaws; (b) the Developer's construction of the Property, the Developer's administration of the Association or the Developer's duties to the Owners; (c) the promulgation, application or enforcement of the Association's rules or regulations; (d) any dispute with an officer, director or Managing Agent of the Association regarding the performance of their respective duties; or, (e) any other matter with respect to the Property voluntarily submitted to the Association by all parties for resolution.

**Section 9.2. Binding Effect.** Each Owner, by accepting a deed a Lot, on behalf of the Owner and the Owner's family, invitees and contract purchasers agrees to be bound by the provisions of this Article.

**Section 9.3. Description of Alternative Dispute Resolution Procedures.** Any dispute that is subject to this Article must be submitted by the Owner to the Association in writing on a form provided by the Association.

9.3.1 Mediation. Mediation is a process by which a neutral third party, called a mediator, acts to encourage and assist in the resolution of a dispute between two (2) or more parties. Mediation is an informal and nonadversarial process and the objective is to help the disputing parties reach a mutually acceptable agreement between or among themselves on all or any part of the issues in dispute. Decision making authority rests with the parties, not the mediator. The mediator assists the parties in identifying issues, fostering joint problem-solving, exploring settlement alternatives, and in other ways consistent with these activities.

9.3.2 Arbitration. Arbitration is a process in which a neutral third person or a panel, called an arbitrator or an arbitration panel, considers the facts and arguments of the parties to the dispute and the arbitrator or arbitration panel renders a decision. Arbitration decisions rendered under this Article shall be binding on the Association, all Owners and all other parties.

#### **Section 9.4 Procedure for Invoking Alternative Dispute Resolution Procedure.**

Within thirty (30) days after the Board or Managing Agent's receipt of the disputing party's written request for Dispute Resolution, the Board or the Managing Agent, if one is acting, will provide the disputing parties with a list of mediators trained in civil mediation and certified as mediators by the Indiana Commission for Continuing Legal Education. In the event a mediator is not selected by agreement of the disputing parties, the disputant who filed the request will strike first and each other party to the dispute will then, in turn, strike a mediator from the list. The mediator remaining after the striking process will be deemed the selected mediator. A person selected to serve as mediator may decline or refuse to serve as mediator for any reason and no mediator can have an interest in the outcome of the mediation. If the selected mediator chooses not to serve or the disputants mutually agree to replace the mediator, the selection process will be repeated.

9.4.1 Mediation Procedure. The mediator selected as provided in this Article shall conduct the mediation in accordance with the Alternative Dispute Resolution Rule 2 of the Indiana Rules of Court, or any subsequent replacement or successor provisions. The Board or the Managing Agent will maintain copies of the applicable Rules at the Association's office and will supply copies of the Rules upon the written request of any disputant. Following the mediation session, the mediator must report to the Board or Managing Agent whether or not the mediation has been successful. If the dispute is resolved, written acknowledgment of resolution, signed by the parties, will serve as the mediator's report. If the mediation does not resolve the dispute, the mediator must report which issues are not resolved, in writing, and the mediator's report shall be submitted to an arbitrator for a decision. If any disputant refuses or fails to meet at the time set for the mediation, the mediation will be deemed to have failed and the dispute will be submitted for arbitration.

9.4.2 Binding Arbitration. If the mediation fails, the parties to the dispute shall promptly submit the dispute to an arbitrator or arbitration panel for resolution. The decision of the arbitrator or the arbitration panel shall be binding on all parties to the dispute.

An arbitrator or arbitration panel shall be selected and the arbitration proceedings shall be conducted in accordance with the Alternative Dispute Resolution Rule 3 of the Indiana Rules of Court, or any subsequent replacement or successor provisions. The mediator's report shall be submitted to the arbitrator or arbitration panel. The Managing Agent or Board will maintain copies of the applicable arbitration rules at the Association office and, upon written request, the Board or Managing Agent will provide the Owner with copies of the applicable Rules. The decision of the arbitrator or the arbitration panel, as the case may be, shall be binding on all parties and may be enforced by a court of competent jurisdiction.

**9.4.3 Costs and Expenses.** The costs and expenses of the mediator, the arbitrators, the prevailing party's reasonable attorney fees and the Managing Agent's costs and expenses shall all be borne by the non-prevailing party unless the mediator or the arbitrator determine that the costs and expenses should be borne equally by all of the parties. An Owner who initiates the dispute resolution procedure set forth in this Section 9.4, shall deposit with the Association the sum of One Thousand Dollars (\$1,000.00) as security for any obligation of the Owner to pay costs, expenses and/or attorney fees in accordance with this Section 9.4. An additional sum of One Thousand Dollars (\$1,000.00) shall be deposited by the Owner with the Association if the mediation fails and the dispute resolution proceeds to arbitration in accordance with Section 9.4.2.

**Section 9.5 Amendment or Repeal of Alternative Dispute Resolution Procedure.**

The provisions of this Article 9 may only be amended or repealed: (1) at a special meeting of the Owners called for that purpose; and, (2) by the affirmative vote of seventy-five percent (75%) of all of the Class A Owners and seventy-five percent (75%) of all of the Class B Owners (if any are then existing) entitled to vote.

Certified to be the Bylaws adopted by consent of the Directors of The Gables at Brighton Point Homeowners' Association, Inc., dated this 14th day of October, 2002.

  
Eric C. Stolberg, Secretary

Amendment to The Gables at Brighton Point By-Laws:

- a. The following restriction shall apply from the date of adoption to all units in the Gables at Brighton Point. Units presently rented may continue to be rented, but provisions d through n shall be applicable to all leases or renewal of leases, beginning the 13<sup>th</sup> day of November, 2006.
- b. The number of rental units will be restricted to no more than three (3) at any one time.
- c. Rented units will be allowed on a first-come, first-serve basis, up to the maximum number of three. Additional 'hardship' rented units maybe allowed at the discretion of the board of directors if the owner presents compelling evidence for their need to rent, and their intent is to return to their home after the rental period has passed.
- d. Rental period shall not be for less than six (6) months.
- e. Each owner will provide the lease for board approval in advance of renter occupancy, and the board reserves the right to require changes to the lease in matters potentially affecting common properties and/or issues potentially affecting other resident homeowners.
- f. Except for units presently leased, owners must have physically lived in (not simply owned) their condominium for at least one year before they will be eligible to rent their unit.
- g. Rental units will be to families, or single residents (no more than 3 unrelated adults) as prescribed by the rental provisions of the applicable city ordinances of Bloomington, Indiana.
- h. Leases must be to individuals. No lease will be approved by the Board wherein the Lessee is a Corporation, Partnership, L.L.P., or L.L.C.
- i. All owners intending to rent their unit must, in advance, provide a valid City of Bloomington rental occupancy permit.
- j. Renters will be subject to the same restrictions and rules as all homeowners and the renting owners will be responsible for informing their renters of such rules. (Here we will need to come up with a list.)
- k. Renting owners will provide the board with a 24-hour contact number in the event of emergencies relative to their rented unit.
- l. Renting owners will provide a security deposit of \$1,000 to the homeowner association to cover the potential of repairs to damage to the common properties caused by their renters. The security fee, less appropriate deductions, will be returned to the homeowner upon termination of the lease.
- m. The board reserves the right to bill the homeowner, or seek legal redress, for damage to the common properties done by their renter in excess of the mandatory \$1,000 security deposit.
- n. If renters disturb the peace and tranquility of the Gables at Brighton Point, and a 'police call' is made to the residence, the homeowner/landlord is to personally address the issue with the renters. This will not be done through a rental management company, rather the owner himself (herself) must personally contact the renters and address the issue. If such disturbance occurs a second time, the board reserves the right to compel the homeowner/landlord to evict the tenants,

and all expenses related to any legal action and/or fees or penalties incurred because of early termination of the lease, will be borne by the homeowner. If the homeowner/landlord fails to evict the tenant, the Homeowners Association, after giving the homeowner/landlord a ten (10) day notice, may bring an eviction action. The homeowner/landlord acknowledges that any lease of their condominium involves a lease of common area facilities and improvements, and that the Homeowners Association is a proper party to an eviction and damage action.

12/5/06  
Date

Mark Braun  
Mark Braun, President

Amended by the members at the Annual Meeting of The Gables at Brighton Point Homeowners Association, on November 13, 2006.

12-8-06  
Date

Maria McKinley  
Maria McKinley, Secretary

State of Indiana )  
                          ) SS:  
County of Monroe)

Subscribed and sworn to before me, a Notary Public, in and for said County and State, this 8<sup>th</sup> day of DECEMBER 2006, at which time Mark Braun and Maria McKinley, to me known to be President and Secretary of The Gables at Brighton Point Homeowners Association, Inc. and on behalf of said Homeowner's Association executed the foregoing Addition to The Gables of Brighton Point Homeowners Association By-Laws, this 8<sup>th</sup> day of DECEMBER 2006.

Brenda R. Lewis  
Notary Public

BRENDA R. LEWIS  
Printed Name

MURROE  
County of Residence

My Commission Expires:  
6/1/08

**Shared Maintenance Area Agreement**  
**The Villa's at Brighton Point, The Villa Glen, The Gables at Brighton Point**

1. The Homeowners' Associations of The Villas, Villa Glen, and The Gables agree to enter into an arrangement that equally apportions the responsibility for decision-making, care, maintenance, and associated expense of the areas that are considered to be shared in our neighborhoods.
  
2. Specifically, the shared maintenance areas include:
  - a. The Brighton Point signage, plantings and irrigation, at the corner of Smith Rd and Brighton Ave – shared by Villa Glen, The Gables, and The Villas. Indicated as (a) on attached scanned aerial photo.
  - b. The chicanes at the intersection of Brighton Ave and S Baldwin Dr – shared by Villa Glen, The Gables, and The Villas. Indicated as (b) on the attached aerial photo.
  - c. The waterfall at the intersection of E Villa Glen Ct and S Baldwin Dr – shared by Villa Glen and The Gables. Indicated as (c) on the attached aerial photo.
  - d. The pond next to S Baldwin Dr – shared by Villa Glen and The Gables. Indicated as (d) on the attached aerial photo.
  - e. The asphalt walkway connecting Villa Glen Ct and Fieldcrest Ct – shared by Villa Glen and The Villas. Indicated as (e) on the attached aerial photo.

With the exception of the chicanes, these areas were originally deeded to and filed with the Monroe County Assessor as belonging to specific property owners in Villa Glen, The Villas, and The Gables. This agreement of the Homeowners' Association presidents to maintain these shared areas does not supersede the ownership rights and obligations of the deeded owners.

3. Shared maintenance includes upkeep of lawn & shrubs, payment for any utilities used and replacement of planting, components or parts in these shared areas to maintain the high quality image of the Brighton Point condominium neighborhoods.
  
4. Annually, a budget for these common maintenance areas will be prepared and agreed upon by the associations which share maintenance responsibilities. It is agreed that three bids will be obtained for any contract work which exceeds the budgeted amount and which exceeds \$1,000.00. It is further agreed that any capital expenditures and any expenditures which exceed the budget will be approved by all responsible parties unanimously. The management company will facilitate all correspondence.

**Shared Maintenance Area Agreement**  
**The Villa's at Brighton Point, The Villa Glen, The Gables at Brighton Point**

5. Payment of expenses for each common maintenance area will be shared as follows. When there are two associations involved, the split will be 50/50. When there are three associations involved, the split will be 33/33/33.

Randall Marks, Villa Glen HOA president *Randall C. Marks*

Date: 25 June 2010

Lee McKinley, The Gables HOA president *Lee McKinley*

Date: 6/22/10

Don Merk, The Villas HOA president *Don Merk*

Date: 6/29/10

STATE OF INDIANA            )  
  )  
COUNTY OF MONROE        )        SS:

Randall C. Marks personally appeared before me, a Notary Public, in and for said County and State on the 25<sup>th</sup> day of June, 2010, and acknowledged the execution of the foregoing Shared Maintenance Area Agreement Contract between The Gables at Brighton Point, The Villa Glen at Brighton Point and The Villas at Brighton Point.

Lee McKinley personally appeared before me, a Notary Public, in and for said County and State on the 22<sup>nd</sup> day of June, 2010, and acknowledged the execution of the foregoing Shared Maintenance Area Agreement Contract between The Gables at Brighton Point, The Villa Glen at Brighton Point and The Villas at Brighton Point.

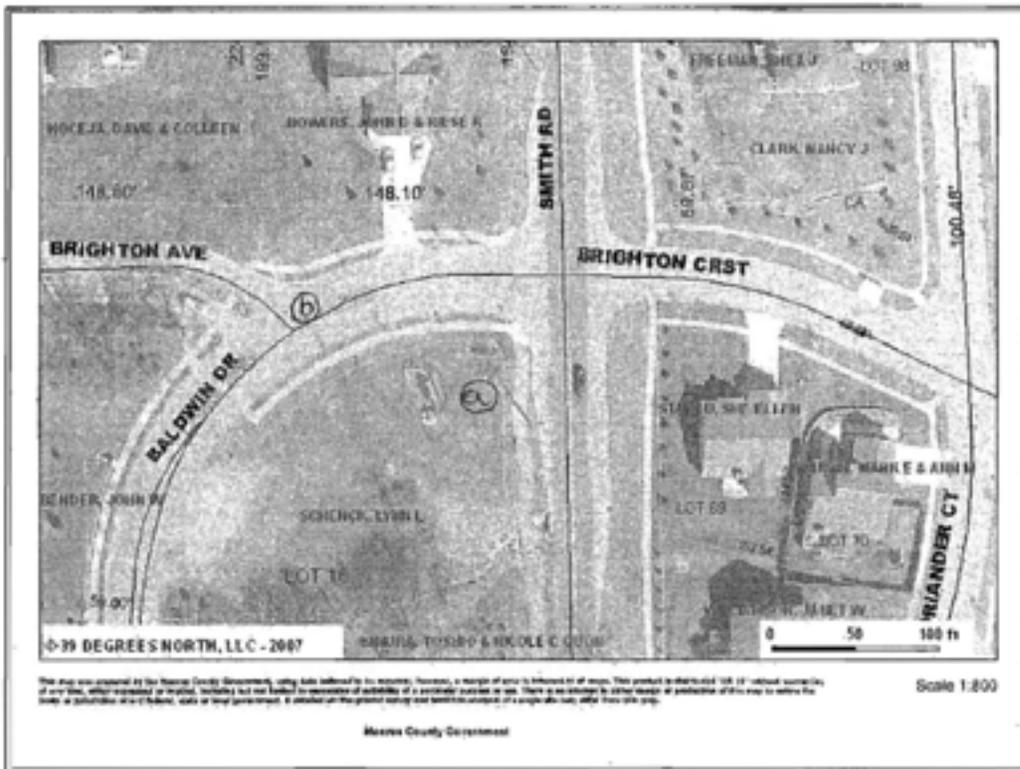
Don Merk personally appeared before me, a Notary Public, in and for said County and State on the 29<sup>th</sup> day of June, 2010, and acknowledged the execution of the foregoing Shared Maintenance Area Agreement Contract between The Gables at Brighton Point, The Villa Glen at Brighton Point and The Villas at Brighton Point.

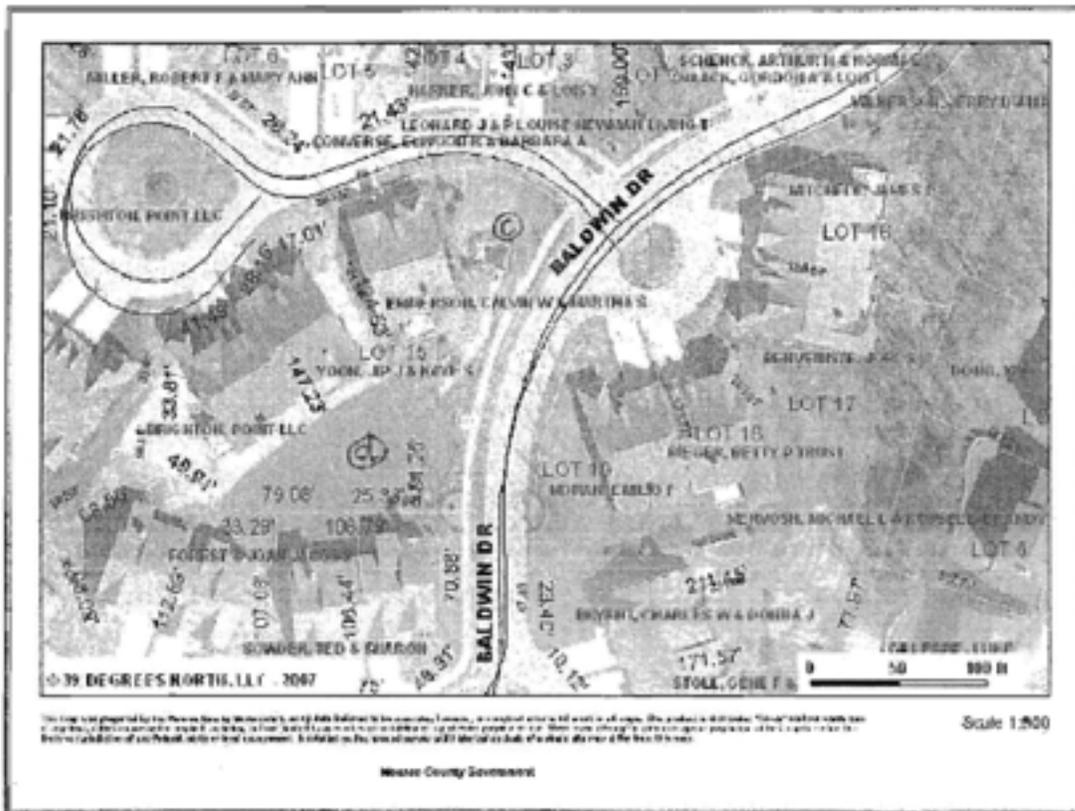
My Commission Expires:  
Feb 1, 2016

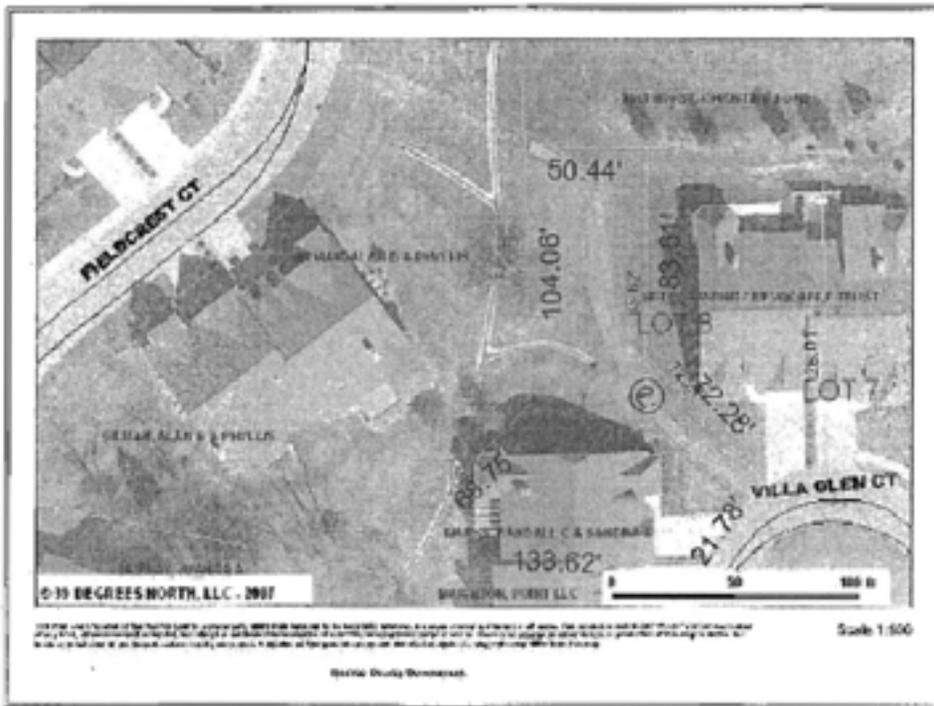
*Pamela L. Crandall*  
Notary Public

County of Residence:  
Monroe

Pamela L. Crandall  
Name Printed







**Declaration of Covenants, Conditions and Restrictions  
of  
The Gables at Brighton Point**

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made this 30th day of OCTOBER, 2002, by Brighton Point LLC, an Indiana limited liability company.

RECITALS

- (A) Declarant is the sole owner of the fee simple title to the Real Estate; and
- (B) Declarant plans to improve the Real Estate by constructing Villas upon the Real Estate.
- (C) Declarant intends to sell the individual Lots and Villas together with the right to use the Easement Areas.

NOW, THEREFORE, Declarant declares that The Gables at Brighton Point and any Additional Property which is hereafter made subject to this Declaration is and shall be subjected to the terms of this Declaration shall be held, transferred, encumbered, used, sold, conveyed, leased and occupied subject to the covenants and restrictions hereinafter set forth expressly and exclusively for the use and benefit of the Real Estate and of each and every person or entity who now or in the future owns any Villa within The Gables at Brighton Point or any portion of any Additional Property which is hereafter made subject to this Declaration.

**Section 1. Definitions.** The following terms used in this Declaration shall have the following meanings:

1.1. **Additional Property.** "Additional Property" refers to the real estate, or any part thereof, described in Section 21 of this Declaration and legally described in its entirety as Exhibit "B" attached hereto and made a part hereof less the Exhibit "A" Real Estate.

1.2. **Applicable Date.** "Applicable Date" means the first to occur of the following events: (i) the date the Class "B" member voluntarily resigns by tendering a written resignation to the resident agent of the Association; or, (ii) the date when Declarant sells all Lots included in The Gables at Brighton Point and the Additional Property; or, (iii) March 1, 2017.

1.3. **Association.** "Association" means The Gables at Brighton Point Homeowners' Association, Inc., its successors and assigns, an Indiana not-for-profit corporation which Declarant has caused, or will cause, to be incorporated under said name, its successors and assigns.

1.4. **Board of Directors.** "Board of Directors" means the governing body of the Association elected by the Owners in accordance with the Bylaws.

1.5. Bylaws. "Bylaws" means the Bylaws of the Association, providing for the administration and management of the Association, as may be amended from time to time.

1.6. Declarant. "Declarant" means Brighton Point LLC, and any successor or assignee of its interest in all or part of The Gables at Brighton Point or in this Declaration under an instrument or instruments which expressly state that the successor or assignee thereunder shall become the Declarant for purposes of this Declaration.

1.7. Delinquency Date. "Delinquency Date" means the date which is thirty (30) days after the due date of any Regular or Special Assessment.

1.8. Easement Area. "Easement Area" means all the area in the Real Estate outside the boundaries of any Lot, including without limitation the Landscape, Signage & Utility Easement and the Access, Utility, Drainage & Landscape Easements, and the Tree Preservation Easement.

1.9. Easement Expenses. "Easement Expenses" means the expenses of administration of the Association, expenses for the upkeep, maintenance, repair and replacement of the Easement Area and other costs and expenses incurred by the Association for the common benefit of all Owners or in fulfillment of the Association's responsibilities for maintaining any Villa(s), as specifically set forth herein; provided, however, that Easement Expenses shall not include any costs of initial construction of any Villa.

1.10. Lot. "Lot" means any plot of ground designated as such upon the recorded Plat of The Gables at Brighton Point or any plat of the Annexed Real Estate upon which one (1) Villa is constructed, is to be constructed or has existed. Whenever used in the Declaration, "Lot" will be deemed to include the Villa, if any, located thereon.

1.11. Mortgagee. "Mortgagee" means the holder of any recorded first mortgage lien on any Lot.

1.12. Owner. "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity or any combination thereof, which owns the record fee simple title to a Lot; provided that persons or entities owning a single Lot as tenants in common, joint tenants, tenants by the entireties or any form of joint or divided ownership, shall be deemed one Owner for purposes of this Declaration.

1.13. Plat. "Plat" means the Plat prepared by Smith-Neubecker and Associates of The Gables, Phase I, at Brighton Point, Phase II, Parcel C, being on record in the Office of the Recorder of Monroe County, Indiana, as instrument number 2002012576 in Plat Cabinet C, Envelope 309, together with any subsequent plat recorded in the Office of the Recorder of Monroe County, Indiana subjecting all or a portion of the Additional Property (as defined above) to this Declaration in accordance with Section 21 of this Declaration.

1.14. Property. "Property" means the Easement Area, Villas and all other improvements of every kind and nature whatsoever, now or hereafter located upon the Real Estate and used in connection with the operation, use and enjoyment of the Real Estate.

1.15. Real Estate. "Real Estate" means the real property described on Exhibit "A", which has been subjected to this Declaration, and all of the Property located upon the Real Estate, as well as any portion of the Additional Property described on Exhibit "B" which has been subjected to this Declaration in accordance with the provisions of Section 21 hereof.

1.16. The Gables at Brighton Point. "The Gables at Brighton Point" means the single-family development known as The Gables at Brighton Point.

1.17. Villa. "Villa" means one of the attached single-family residential living units constructed upon a Lot.

**Section 2. Declaration.** Declarant hereby expressly declares that the Real Estate shall be held, conveyed and transferred in accordance with the provisions of this Declaration.

**Section 3. Description of The Gables at Brighton Point.** The Gables at Brighton Point shall consist of thirty (30) Lots numbered 20 through 49, inclusive, together with the Easement Area shown on the Plat. The size of the Lots are as designated on the Plat. The legal description for each Lot in The Gables at Brighton Point shall be as follows:

Lot \_\_\_\_\_ in The Gables, Phase \_\_\_\_\_, at Brighton Point, Phase II, Parcel C, a subdivision in Monroe County, Indiana, as per Plat thereof recorded \_\_\_\_\_ in Plat Cabinet \_\_\_\_\_, Envelope \_\_\_\_\_ in the Office of the Recorder of Monroe County, Indiana.

**Section 4. Lots and Easements.** The boundaries of each Lot in The Gables at Brighton Point shall be as shown on the Plat; provided, however, in the event any vertical boundary line of any Villa does not coincide with the actual Lot line because of inexactness of initial construction, settling after construction or for any other reason, the boundary lines shall be deemed to be treated for purposes of occupancy, possession, maintenance, use and enjoyment, as in accordance with the actual existing construction. In such case, permanent easements for exclusive use shall exist in favor of the Owner of each Lot in and to such base line outside the actual boundary line of the Lot.

**Section 5. Easement Area.** Easement Area includes all area within the Real Estate, except the Lots, including but not limited to the interior roads, sidewalks, parking areas, entrance and signage. Declarant warrants and guarantees to the Association, for one year from the date Declarant executes the Quitclaim Deed to the Association transferring the Easement Area, that all materials and workmanship are free from material defects and that all improvements in the Easement Area have been constructed in substantial compliance with the requirements of applicable government ordinances. This warranty specifically excludes any claims for defects in landscaping materials or paving surfaces. Upon receipt from any Owner of a written notice specifically identifying the defective condition, Declarant shall, within sixty (60) days thereof,

inspect the Easement Area and if such inspection discloses material defects in material or workmanship, Declarant will, without cost to the Association, remedy such defects within a reasonable time. Declarant shall not be responsible for any conditions, defects or damage which are the result of ordinary expansion and contraction or caused by acts of God. If no written claim is made as provided herein within one (1) year after the deed is executed by Declarant, all claims against Declarant are expressly waived by the Association and all Owners with respect to the Easement Area.

**Section 6. Ownership of Easement Area.** The Easement Area shall be conveyed to or owned by the Association, and shall be held for the use and enjoyment of the Owners, all of whom shall have the right and easement of enjoyment in and to the Easement 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 Association, upon approval by a written instrument signed by two-thirds (2/3) of all Class A and B Owners and by two-thirds (2/3) of all first Mortgagees, to dedicate or transfer all or any part of the Easement Area to any public agency, authority or utility for such Easement Area purposes and subject to such conditions as may be agreed by the Association.

(b) The right of the Association to adopt such rules and regulations regarding the Easement Area as it deems necessary as provided in Section 11.

(c) The Easement Area shall be conveyed to or owned by the Association on or before the Applicable Date; provided, however, that expenses relating to the maintenance of the Easement Area are to be included within the Association budget from the time of conveyance of the first Lot.

**Section 7. Delegation of Use of the Easement Area.** Any Owner may delegate, in accordance with provisions of this Declaration and the rules or regulations promulgated by the Association, his right of enjoyment, and the use of the Easement Area and facilities to members of his family, his tenants or contract purchasers who reside in any Villa.

**Section 8. Encroachments and Easements in Easement Area.** If by reason of inexactness of construction, settling after construction or for any other reasons, any Easement Area encroaches upon any Lot, an easement shall be deemed to exist and run to the Association for the maintenance, use and enjoyment of such Easement Area.

Each Owner shall have an easement in common with all Owners to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities, if any, located in any other Villas or in the Easement Area and serving his Villa.

**Section 9. Easement for Utilities and Public and Quasi-Public Vehicles.** All public and quasi-public vehicles including but not limited to police, fire and other emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery vehicles shall have the right to enter upon the Easement Area in the performance of their duties. An

easement is also granted to all utilities and their agents for ingress, egress, installation, replacement, repairing and maintaining of such utilities, including but not limited to water, sewer, gas, telephone and electricity on the Property, provided, however, nothing herein shall permit the installation of sewers, electric lines, water lines or other utilities, except as initially designed and approved by Declarant on the Plat or as thereafter may be approved by Declarant or by the Board of Directors. By virtue of this easement, the electrical and telephone utilities are expressly permitted to erect and maintain the necessary equipment on the Property and to affix and maintain electrical and telephone wires, circuits and conduits. All utility pipes, conduits, wires or circuits will be installed underground. In the event any utility furnishing service should request a specific easement by a separate recordable document, Declarant shall have the right to grant such easement on such Property, without conflicting with the terms of this Declaration. The easements granted herein shall in no way affect any other recorded easement on the Property. In addition, the Declarant or the Board of Directors may approve from time to time easements on the Property for purposes of storm water drainage and/or detention.

**Section 10. Association.** In order to provide for the maintenance and repair, replacement, administration, operation and ownership of the Easement Area, and to perform such other function as may be designated to it, a not-for-profit corporation which known as The Gables at Brighton Point Homeowners' Association, Inc. has been or will be incorporated. Each Owner shall automatically be a Member of the Association, but membership shall terminate when such person ceases to be an Owner, and will be transferred to the new Owner; provided, however, 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 Association. The Association shall have two classes of Members:

(a) Class A. Class A Members shall be all Owners except Declarant and shall be entitled to one vote for each Lot owned. All persons holding an interest in any Lot shall be Members provided, however, each Lot represented shall have only one vote as the Owners of such Lot may determine.

(b) Class B. The Class B Member shall be Declarant and Declarant shall be entitled to ten (10) votes for each Lot of which Declarant is the Owner on the recorded Plat of the Real Estate. The Class B Membership shall cease and terminate upon the Applicable Date.

The initial Board of Directors shall be as designated in the Articles of Incorporation, and such Directors, notwithstanding any provision in this Declaration or the Articles or the Bylaws to the contrary, shall be Directors until the Applicable Date. If there is a vacancy in the initial Board for any reason prior to the Applicable Date, every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the initial Board. After the Applicable Date, the Association shall elect a Board of Directors annually in accordance with and as prescribed by the Bylaws. The Members shall be entitled to vote for the election of the Board of Directors in accordance with the procedure outlined in the Bylaws. The Board of Directors shall be the governing body of the Association representing all of the Members and being responsible for the functions and duties of the Association including but not limited to the

management, maintenance, repair, replacement and upkeep of the Easement Area. The Easement Area shall be owned, operated and managed by the Association.

**Section 11. Right of Board of Directors to Adopt Rules and Regulations.** The Board of Directors may promulgate such additional rules and regulations regarding the operation of the Property, including but not limited to the use of the Easement Area, as it may deem necessary from time to time. Such rules as are adopted may be amended by vote of a majority of the Board, and the Board shall cause copies of such rules to be delivered and mailed promptly to all Owners.

**Section 12. 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 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 assessed as a whole, which shall be equal to the number one (1) divided by the total number of Lots which have been subjected to this Declaration; and shall pay his proportionate share of the real estate taxes assessed on any improvements constructed on his Lot. Any real estate taxes or other assessments which are chargeable against the Easement Area shall be paid by the Association and treated as a Easement Expense.

**Section 13. Utilities.** Each Owner shall pay for his own utilities which are separately metered. Utilities which are not separately metered shall be treated as and paid as part of the Easement Expense, unless otherwise determined by the Association.

**Section 14. Maintenance, Repairs and Replacements.** Each Owner shall at his expense be responsible for the maintenance, repairs, decoration and replacement within his own Villa except as may otherwise be provided herein. All fixtures and equipment installed within the Villa commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of a Villa shall be maintained and kept in repair by the Owner thereof. Each Owner shall promptly perform all maintenance and repair in his Villa, which if neglected, might adversely affect any Villa, Easement Area or the value of the Property. Such maintenance and repairs include but are not limited to internal water lines, plumbing, electric lines, gas lines, appliances, doors, windows, lamps, and all other accessories belonging to the Owner and appurtenant to the Villa. Maintenance, repairs, replacements and upkeep of the Easement Area shall be furnished by the Association, as a part of the Easement Expense.

In addition to the maintenance of the Easement Area, the Association shall provide exterior maintenance upon each Lot and Villa for the following: exterior paint, repair, replacement and care of all exterior doors (including garage doors, but excluding door openers and hardware), roofs, gutters, downspouts, patios, decks, exterior building surfaces, and other exterior improvements. "Other exterior improvement" shall not include the interior or exterior glass surfaces, screens, window fixtures, or other hardware; such maintenance shall be the sole responsibility of the Owner.

The cost of maintaining, servicing and operating a sewer lateral that serves a Villa from the point where the sewer line exits a Villa to the point where the sewer lateral connects to the City of Bloomington sewer main shall be borne by the Owner of each Villa. The Owners shall indemnify and hold the City of Bloomington, Indiana harmless from any claim for injury or damage arising as a result of the Owner's failure to properly maintain, service or operate any single sewer lateral.

The Association shall also maintain in accordance with good horticultural practices the shrubs and trees which the Declarant or the Association planted in the area of each Lot. If, in the judgment of the Association, any shrub or tree needs replacement, the Association shall, at its sole expense, replace the shrub or tree.

The Association shall also maintain any trees, shrubs, grass or walks which the Association or Declarant originally planted or installed upon any Lot. Any trees, shrubs, or other landscaping planted or installed by an Owner upon the Owner's Lot shall be maintained by the Owner. Any annual flowers, perennial flowers, ground cover or plants shall be maintained by the Owner, regardless of whether the same were planted or installed by the Owner, the Association, or the Declarant.

The Owner shall be responsible for watering the grass, planting beds and other landscaping located on Owner's Lot.

If the need for maintenance and repair results from the willful or negligent act of the Owner, his family, guests or invitees, and is not covered or paid for by insurance on such Lot, the cost of such maintenance or repair shall be borne by the Owner, and shall be added to and become a part of the assessment to which his Lot is subject and be subject to the same method of collection as the Regular Assessment.

Each Owner grants the Association, its representatives, agents and employees an irrevocable right to enter the Owner's Lot for the purpose of discharging the Association's maintenance and repair responsibilities described in this Section 14.

The Board of Directors, or their designated agents, shall have the right at reasonable times, and upon reasonable prior notice (except in cases of emergency in which case no notice will be required) to enter into each individual Villa for purposes of inspection of the Easement Area appurtenant thereto, and replacement, repair and maintenance of the same.

**Section 15. Alterations, Additions and Improvements.** Without the prior written approval of the Board of Directors, no Owner may make any alterations, additions, improvements, repairs, change of colors, excavation, changes in grade or other work which in any way alters the exterior of any Lot or Villa located thereon from its natural or improved state existing on the date such Lot was first conveyed by Declarant to the Owner except as otherwise expressly provided in this Declaration.

**Section 16. Assessments.** Regular and Special Assessments shall be determined and collected as follows:

(a) Annual Accounting. Once annually, on or before April 1 of each calendar year, the Board of Directors shall cause to be prepared and furnished each Owner a financial statement, which statement shall show all receipts and expenses received, incurred or paid during the preceding calendar year.

(b) Proposed Annual Budget. Annually on or before the date for notice of the annual meeting of the Association, the Board of Directors shall cause to be prepared a proposed annual budget for the ensuing calendar year estimating the total amount of the Easement Expenses for the ensuing year and furnish a copy of such proposed budget to each Owner prior to the annual meeting. The proposed annual budget shall be submitted to the Owners at the annual meeting of the Association for adoption, and if so adopted shall be the basis for the Regular Assessments for the ensuing calendar year. At the annual meeting of the Owners, the proposed budget may be approved in whole or in part, or may be amended in whole or in part by a majority of the Owners present or represented at the meeting (provided a quorum is present); provided, however, in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved.

The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owner shall not constitute a waiver or release of the Owner to pay the Easement Expenses.

(c) Regular Assessments. The annual budget as adopted shall, based on the estimated cash requirement for the Easement Expenses in the ensuing year as set forth in said budget, contain a proposed assessment against each Lot based on the total amount of said budget divided by the total number of Lots, except Lots owned by Declarant (herein called the "Regular Assessment"). The Regular Assessment against each Villa shall be paid in twelve (12) monthly installments on the first day of each month beginning in January following adoption of the budget. Payment of the monthly installments of the Regular Assessment shall be made to the Board of Directors as directed by the Board of Directors; provided, however, that any Owner may elect to pay Regular Assessments in advance. The Regular Assessment for each year shall become a lien on each separate Lot and Villa except Lots owned by Declarant as of the date of the adoption of the annual budget.

(d) Special Assessments. In addition to the Regular Assessments authorized above, the Board of Directors may levy such Special Assessments as may be necessary for the purpose of defraying, in whole or in part: (1) the cost of any construction, reconstruction, repair or replacement of a capital improvement, including fixtures and personal property related thereto; and, (2) the expense of any other contingencies or events not provided for in the annual budget or the reserves and working capital of the Association. Each Owner, except Declarant, shall pay the Association a Special Assessment based on the total sum approved to meet the costs and expenses as heretofore provided divided by the total number of Lots, except Lots owned by Declarant shall not be included. The Board of Directors may, in connection with the levy of any Special

Assessment, specify that the same shall be payable in installments and specify the due dates thereof.

(e) Adjustments. In the event that the approved budget and Regular Assessments, plus the reserves and working capital of the Association, provide insufficient to meet the Association's actual expenses in any year, such deficiencies may be corrected through one or more Special Assessments. In the event the approved and Regular Assessments exceed actual expenses in any year, such surplus shall be retained and used to offset expenses in the next year(s) or deposited in the reserve fund.

(f) Temporary Budget and Assessments. If for any reason an annual budget and the Regular Assessments for any year have not been determined as of January 1 of any such year, the budget and Regular Assessments in effect during the preceding year shall continue in effect until such time as the annual budget and Regular Assessments are determined in accordance with the Declaration and the By-Laws; provided, however, that said preceding budget and Regular Assessments may be increased by up to fifteen percent (15%) as the Board of Directors, by majority vote, may deem necessary in said temporary budget and Regular Assessments.

(g) Reserve Funds. The Association shall be obligated to establish a reserve fund for the repair of the Easement Area and for the Association's maintenance responsibilities for the Villas as set forth in Section 14, based upon good faith estimates of the useful life and replacement cost made or obtained by the Association. The reserve fund shall be funded through the payments by the Owners of Regular Assessments and not by an extraordinary or Special Assessment. All amounts held by the Association pursuant to this Section 16(g) shall be maintained in a federally-insured, interest-bearing account and any interest thereon shall be added to and deemed a part of such fund. The reserve fund shall be used for capital expenditures and replacement and repair of the Easement Area and of Villas (to the extent such capital expenditures, repair and replacement are the obligation of the Association), and not for usual and ordinary repair expenses of the Easement Area or the Villas.

(h) Status of Funds Collected by Association. All funds collected pursuant to this Section 16 shall be held and expended by the Association solely for the purposes designated herein, and, except for such adjustments as may be required to reflect delinquent or prepaid Regular or Special Assessments, shall be deemed to be held for the use, benefit and account of the Owners for the payment of Easement Expenses.

(i) Accounting Practices of the Association. The annual budget, the Regular Assessment and all sums assessed by the Association shall be established by using generally accepted accounting principles.

(j) Collection of Assessments. Each Assessment shall be due and payable on the due date thereof as specified in this Declaration or in the Bylaws, or if not so specified, then on any due date(s) determined by the Board of Directors. Any Regular or Special Assessment which is not paid in full by the Delinquency Date shall be deemed

delinquent without further notice or demand to the defaulting Owner, and a late fee equal to ten percent (10%) of the amount due (or the maximum amount allowed under applicable law) shall be assessed for each thirty (30) day period in which such amount due remains unpaid. In the event that any costs or expenses, including attorney's fees, are incurred by or on behalf of the Association with respect to the recovery or collection of any delinquent Assessment, all such costs and fees shall be due and payable immediately by such delinquent Owner and shall bear interest from the date incurred until paid in full, at a rate of interest equal to eighteen percent (18%) per annum. All interest and all costs and expenses payable hereunder with respect to a delinquent Assessment shall be added to and deemed a part of such delinquent Assessment and shall constitute a lien on the delinquent Owner's Lot and Villa as of the date on which such delinquent Assessment first became a lien. In the event that any Assessment is not fully paid on or before the Delinquency Date, the Association shall be entitled to accelerate and declare due and payable in full all installments of Assessments due for the calendar year in which such delinquency occurs, and to enforce payment of the same by foreclosure of said lien and/or other appropriate legal proceedings in accordance with the laws of the State of Indiana. The Owner and any occupant of the Villa shall be jointly and severally liable for the payment to the Association of reasonable rental for such Villa and the Board of Directors shall be entitled to the appointment of a receiver for the purpose of preserving the Villa and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid Regular Assessments or Special Assessments. The Board of Directors may at its option, bring suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same.

(k) Subordination of Assessment Lien to Mortgage. Notwithstanding anything contained in this Declaration, the Articles of Incorporation of the Association or the Bylaws, any sale or transfer of a Lot or Villas 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 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.

#### **Section 17. Insurance.**

(a) Minimum Requirement for Association Insurance. The Association shall as a minimum obtain and carry a master policy of property insurance in an amount equal to the full replacement value (i.e. 100% of current "replacement cost" exclusive of land, excavation and other items normally excluded from coverage, but including footings and foundations) of each Villa (excluding interior finishes and personal property located in the Villas) and the common facilities owned by the Association (including all building service equipment and the like). Such insurance coverage for each Villa shall include, without limitation, all mechanical components, framing, exterior wall board, siding, soffit, fascia, roof deck, roof shingles, decks, exterior lights and guttering. Such

policy shall include an "Agreed Amount Endorsement" or its equivalent, a "Demolition Endorsement" or its equivalent, and, if necessary, an "Increased Cost of Construction Endorsement" or "Contingent Liability from Operation of Building Laws Endorsement" or the equivalent, and shall afford protection against at least the following:

(i) loss or damage by fire and other hazards covered by the standard extended, coverage endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage; and

(ii) such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

(b) Public Liability Insurance. The Association shall as a minimum carry and maintain in force a master comprehensive policy of public liability insurance covering all of the Easement Area located in the Real Estate, insuring the Association with limits in such amounts as the Board of Directors shall deem appropriate from time to time, but in any event with a limit not less than \$1,000,000.00, covering all claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobile, liability for property of others, and, if applicable, garage-keeper's liability, host liquor liability, and such other risks as shall customarily be covered with respect to projects similar in construction, location and use. Such comprehensive public liability insurance policy shall cover all of the Easement Areas and shall insure the Association, the Board of Directors, Officers, any committee or organ of the Association or Board, any Managing Agent appointed or employed by the Association, the Declarant and all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Real Estate, all Owners and all other persons entitled to occupy any Lot or Villa. 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 Association or other Owners.

(c) Minimum Bonding Requirement. The Association shall be required to maintain adequate fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees, managing agent and employees of such Association and all others who handle, or are responsible for handling funds of the Association. Such fidelity bonds shall meet the following requirements:

(i) All such fidelity bonds shall name the Association as an obligee; and

(ii) Such fidelity bonds shall be written in an amount equal to at least 150% of the estimated annual operating expenses of the Association, including reserves, unless a greater amount is required by FNMA; and

(iii) Such fidelity bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression; and

(iv) Such bonds shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days prior written notice.

(d) Director and Officers Insurance. The Association shall carry Director and Officers liability insurance in order to protect it from causes of action resulting from the actions or inactions of the Board or of the Officers.

(e) Workmen's Compensation Insurance. The Association shall carry Workmen's Compensation insurance if and to the extent necessary to meet the requirements of law.

(f) Additional Insurance. The Association shall carry any additional insurance as the Board of Directors may deem necessary, advisable or appropriate.

(g) General Provisions. The premiums for all insurance hereinabove described shall be paid by the Association as part of the Easement Expenses. At the discretion of the Board of Directors, the premiums for any policy or policies of insurance may be included in the Regular Assessment or billed directly to each Owner, based on the amount of such premium(s) divided by the total number of Lots, in which case such premium(s) shall be immediately due and payable and shall constitute an "Assessment" for purposes of Section 16 hereof. Upon request of any Owner or Mortgagee whose interest may be affected thereby, the Association shall provide such Owner or mortgagee with a description of the insurance coverage maintained by the Association.

In no event shall any distribution of insurance proceeds be made by the Board of Directors directly to an Owner where there is a mortgage endorsement on the certificate of insurance or insurance policy as it applies to such Owner's share of such proceeds. In such event any remittances shall be to the Owner and his Mortgagee jointly. The same method of distribution shall also apply to the distribution of any condemnation awards in connection with any taking of any of the Easement Areas. Notwithstanding the foregoing, under no circumstances shall any distribution of insurance proceeds or condemnation awards be made by the Association to any Owners or Mortgagees if to do so would be in violation of the Act or if the same would constitute a distribution of earnings, profits or pecuniary gain to the Members of the Association; in any such event, any such insurance proceeds or condemnation awards shall be retained by the Association for use in the payment of its expenses of operation.

(h) Insurance by Owners. Each Owner shall be solely responsible for and shall obtain insurance, at his own expense, affording coverage upon his personal property, the interior improvements, finishes, betterments, and permanent additions of his Villa (including without limitation drywall, wall boards, ceilings, fixtures, countertops,

cabinets, fixtures, carpeting, and other floor coverings), the contents of his Villa, his personal property stored anywhere on the Real Estate, and for his personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions of the master casualty insurance policy to be obtained by the Association. All such insurance shall: (i) be provided by an insurance company approved by the Board; (ii) include a waiver of subrogation against the Association and its agents; and (iii) name the Association as an additional insured loss payee. Each Owner shall provide the Association with a Certificate of Insurance evidencing such coverage. All such policies shall include the agreement of the insurer to give not less than thirty (30) days' prior written notice to the Association in the event of cancellation or other material change in coverage. If an Owner fails to obtain or maintain the insurance required by this Section 17(h), then the Association may, at the discretion of the Board of Directors, secure such coverage on behalf of such Owner and/or pay the premiums for such coverage, and the cost of such payments shall be assessed to such Owner, and when so assessed, a statement thereof shall be rendered to the Owner, at which time such amount shall constitute an Assessment and become immediately due and payable and constitute a continuing lien and obligation of the Owner in all respects as provided in Section 16 hereof.

**Section 18. Casualty and Restoration.** In the event of damage or destruction of any Villa by fire or other casualty, the Owner thereof shall cause such Villa to be promptly repaired and restored. The proceeds of insurance carried for the benefit of the Owner and Mortgagee for such purpose shall be applied to the cost of such restoration. If the insurance proceeds are inadequate to cover the costs of reconstruction or if there are no proceeds, the Owners of the Villas directly affected by the damage shall pay the cost for restoring the Villa. A Villa shall be deemed directly affected if and only if a part of such Villa, including but not limited to, any party wall of such Villa, is damaged or destroyed. If any Owner fails or refuses to reconstruct his Villa when required, the Association may pursue whatever legal means are available to cause such restoration, including but not limited to the Association completing the restoration and paying the cost thereof, with the cost attributable to the Owner or Owners who refuse or fail to make the restoration when required becoming a lien on such defaulting Owner's Lot and subject to foreclosure in the same manner as provided for Regular Assessments.

The restoration referred to in this Section 18 shall include the construction costs rebuilding the Villas in the same condition as they existed immediately prior to the destruction or damage and with the same type of architecture. Notwithstanding any other provisions in this Declaration, all Villas which are destroyed or damaged shall be restored pursuant to the provisions of this Section 18 of this Declaration, unless a majority vote of the Members of the Association decide that such restoration is not necessary, and all improvements in the Easement Area which are damaged or destroyed shall be restored by the Association unless two-thirds of the Class A and B Members of the Association and two-thirds of all first Mortgagees decide not to make such restoration or to make such restoration in a different manner.

In the event the Association has insurance proceeds which are to be used for the benefit of the Owners, no distribution of such insurance proceeds shall be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of

insurance or insurance policy as it applies to such Owner's share of such proceeds. In such event, any remittances shall be to the Owner and his Mortgagee jointly. The same method of distribution shall also apply to the distribution of any condemnation awards in connection with any taking of any of the Easement Area.

In the event of damage to or destruction of any of the Easement Area due to fire or other casualty or disaster and the insurance proceeds, if any, received by the Association as a result of such fire or other casualty or disaster are not adequate to cover the cost of repair and reconstruction of the Easement Area, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Easement Area so damaged and destroyed (or the cost thereof in excess of insurance proceeds received, if any) shall be paid by the Association through a Special Assessment of the Owners with each Owner being assessed an equal amount.

**Section 19. Covenants and Restrictions.** The following covenants and restrictions on the use and enjoyment of the Lots, Villas, Easement Area and Property 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, by the Association, its successors or assigns. Owners and the Association shall be entitled to injunctive relief against any violation or attempted violation of these provisions and shall be entitled to damages for any injuries resulting from any violations thereof, but there shall be no right of reversion or forfeiture of title resulting from such violation:

(a) Except for the initial construction of Villas, no additional buildings shall be erected or located on the Real Estate other than on the Lots or as otherwise shown on the Plat except as originally constructed by Declarant or as approved in writing by the Board of Directors.

(b) Nothing shall be done or kept in any Villa or in the Easement Area which will cause an increase in the rate of insurance on any other Villa or the contents thereof. No Owner shall permit anything to be done or kept in his Villa or in the Easement Area which will result in the cancellation of insurance on any other Villa or contents thereof, or which would be in violation of any law or ordinance.

(c) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows, or placed on the outside walls of his Villa and no sign, awning, canopy, shutter or radio or television antennae, or other attachment or things shall be affixed to or placed upon the exterior walls or roofs, or on any parts of any Villa without the prior written consent of the Board of Directors.

(d) All Lots and the Easement Area shall be kept free and clear of rubbish, debris, and other unsightly materials, except in those areas designated for the temporary storage thereof.

(e) All Owners and members of their families, guests or invitees, and all occupants of any Villa or any other persons entitled to use the same and to use and enjoy

the Easement 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 of Directors governing the operation, use and enjoyment of the Easement Area.

(f) No Owner shall be allowed to plant trees or landscape in the Easement Area, in the Lots, or otherwise on the Property except with express written permission from the Board of Directors.

(g) No Owner shall erect or permit the erection of any outdoor basketball goal, recreational equipment or other structure, whether permanently installed or on a portable base, anywhere in the Easement Area or on Owner's Lot.

(h) No outdoor satellite dishes, radio or television antennas or other electronic receivers shall be installed or allowed to remain anywhere on any Lot or in any Easement Area. RCA DSS 19" systems and similarly sized electronic receivers are allowed in the Project if all the system's components are properly located, screened and landscaped in order to conceal them from public view in a manner determined acceptable by Declarant, in Declarant's sole discretion. Following the Applicable Date, the determination as to the location, screening and landscaping for such components shall be determined by the Board of Directors, in the Board of Directors' sole discretion.

(i) No advertising signs (except one "for sale" or one "for rent" sign per Lot of not more than five square feet), unsightly objects or nuisances shall be erected, placed or permitted to remain on any Lot, or Easement Area, nor shall any Lot or Easement Area be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any other Villa or any resident thereof, including, without limiting the generality of the foregoing noise by the use of any musical instruments, radio, television, loudspeakers, electrical equipment, amplifiers or other equipment or machines. Notwithstanding any provision in this Section or elsewhere in this Declaration or the Bylaws, Declarant may maintain on the Property during the period of construction and sale of the Villas on the Real Estate such facilities as Declarant in its sole discretion deems necessary for the construction and sale of the Lots and Villas, including but not limited to a business office, storage area, construction yards, signs, model units, construction office, sales office, management offices, and business offices. At no time shall facilities so used and maintained by Declarant be or become part of the Easement Area unless so designated by Declarant and Declarant shall have the right to remove the same from the Property at any time.

(j) No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed from any Villa or any Lot where they are visible to other Owners or the public, nor shall any such items be hung out or exposed on any part of the Easement Area. All Lots and the Easement Area shall be kept free and clear of rubbish, debris, and other unsightly materials, except in those areas designated for the temporary storage thereof.

(k) All Villas shall be used exclusively for residential purposes. No industry, trade or any commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted on the Property; provided, however, that this prohibition shall not apply to the business activities, if any, of Declarant, his agents or assigns during the construction and sale period, or of the Association, its successors and assigns, acting in furtherance of its powers and purposes. Notwithstanding the foregoing, home occupations permissible under applicable zoning regulations shall be permitted so long as parking for all vehicles related to such home occupation are confined to the driveway for such Villa.

(l) No boats, campers, trailers of any kind, buses, mobile homes, motor homes, trucks (except pick-up trucks) or any other unconventional vehicles of any description shall be permitted, parked, or stored anywhere within the Property except as expressly designated by the Board of Directors in each instance.

(m) No animals of any kind shall be raised, bred, or kept in any Villa or any portion of the Easement Area except that pet dogs, cats, or customary household pets may be kept in a Villa, provided that such pet is not kept, bred or maintained for a commercial purpose, and does not create a nuisance. Pets shall be permitted outdoors only under leash and accompanied by an Owner or other person and an Owner shall be fully liable for any injury or damage to any person caused by the Owner's pet, and shall be responsible for removing from such areas the pet's waste materials. The Board of Directors may adopt such other rules and regulations regarding pets as it may deem appropriate and in the event that in the judgment of the Board of Directors any pet is causing or creating a nuisance or unreasonable disturbance or noise, such pet shall permanently be removed from the Property upon written notice of such determination by a majority of the Board of Directors.

**Section 20. Notice to Association.** Any Owner who places a first mortgage lien upon his Lot or the Mortgagee shall notify the secretary of the Association 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 the 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 he 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 Association shall, upon request of the Mortgagee who has furnished the Association 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.

**Section 21. Annexation of Additional Property.** Declarant hereby reserves the right, from time to time, to annex any portion of the "Additional Property" into the Real Estate. As of the date on which Declarant annexes any portion of the Additional Property into the Real Estate (the "Annexed Real Estate"), the Annexed Real Estate shall be deemed to be (for all purposes) included within the Real Estate; all references in the Declaration to "The Gables at Brighton Point" shall be deemed to include the Annexed Real Estate; all references in this Declaration to the "Real Estate" shall be deemed to include all parcels of land within the Annexed Real Estate; all references in this Declaration to "Lot(s)" shall be deemed to include all lots (as so designated upon the recorded plat of the Annexed Real Estate) within the Annexed Real Estate; and all easements crated by this Declaration shall bind, benefit, burden, and run, with the Annexed Real Estate. As of the date on which Declaration annexes any portion of the "Additional Property" into the subdivision, the owners of the Annexed Real Estate shall be deemed to be (for all purposes) Owners as defined herein; all references in this Declaration to "Owner(s)" shall be deemed to include all owners of Lots within the annexed Real Estate; and all easements created herein shall bind, benefit and burden the owners of Lots within the Annexed Real Estate. The annexation described in this Section 21 shall be accomplished by filing a recorded plat labeled "The Gables, Phase \_\_\_\_\_, at Brighton Point, Phase II, Parcel C" with the Office of the Recorder of Monroe County, Indiana, which makes reference to this Declaration and legally describes the portion of the Additional Property being subjected to the terms, obligations, and conditions of this Declaration. No annexation of Additional Property may be made after the expiration of fifteen (15) years from the date of recording of this Declaration. Any portion of the Additional Property not so platted will not be subject to this Declaration.

**Section 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 the proposed amendment shall be included in the notice of any meeting at which the proposed amendment is considered.

(b) **Resolution.** A resolution to adopt a proposed amendment may be proposed by the Board of Directors or by a majority of the votes cast by the Owners.

(c) **Meeting.** The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly held in accordance with the provisions of the By-Laws.

(d) **Adoption.** Any proposed amendment to this Declaration must be approved by not less than seventy-five percent (75%) of the Class A and Class B votes cast. In the event any Lot 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 its mortgage interest to the Board of Directors in accordance with the provisions of the Declaration.

(e) **Special Amendment.** No amendment to this Declaration shall be adopted which changes: (1) the applicable share of an Owner's liability for the Easement

Expenses or the method of determining the same; or (2) the provisions of Section 17 of this Declaration with respect to casualty insurance to be maintained by the Association; or (3) provisions of Section 18 of this Declaration with respect to reconstruction or repair in the event of fire or casualty, or (4) changes any of the provisions of Section 16 of this Declaration with respect to the assessments on any Lot, without in each and any of such circumstances, the unanimous approval of all Owners, all Mortgagees and Declarant.

(f) Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Association and shall be recorded in the Office of the Recorder of Monroe County, Indiana, and such amendment shall not become effective until so recorded.

(g) Amendments by Declarant Only. Notwithstanding the foregoing or anything elsewhere contained herein or in the Articles or in the Bylaws, until the Applicable Date, Declarant shall have the right acting alone and without the consent or approval of the Owners, the Association, the Board of Directors, any Mortgagees or any other person, to amend or supplement this Declaration from time to time; provided, Declarant shall not have the right to adopt a Special Amendment except in accordance with Section 22(e).

**Section 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 this Declaration, the Articles of Incorporation, 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 of Incorporation, the Bylaws, and rules and regulations, as each may be amended from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any person having at any time any interest or estate in a Lot or the Property as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All persons, corporations, partnerships, trust, associations, or other legal entities who may occupy, use, enjoy or control a Lot or Lots or any part of the Property in any manner shall be subject to this Declaration, the Articles of Incorporation, the Bylaws, and the rules and regulations applicable thereto as each may be amended from time to time.

**Section 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 the insurance carried by the Association. An Owner shall pay the amount of any increase in insurance premiums occasioned by his use, misuse, occupancy or abandonment of his Lot or its appurtenances or of the Easement Area.

**Section 25. Waiver.** No Owner may exempt himself from liability for his contribution toward the Easement Expenses by waiver of the use or enjoyment of any of the Easement Area or by abandonment of his Lot.

**Section 26. 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.

**Section 27. 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 an include all genders. The singular shall include and refer to the plural and vice versa as appropriate.

**Section 28. Interpretation.** The captions and titles of the various articles, sections, sub-sections, paragraphs and sub-paragraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

**Section 29. The Plat.** The plat of The Gables, Phase I, at Brighton Point, Phase II, Parcel C is incorporated into this Declaration by reference and has been filed in the Office of the Recorder of Monroe County, Indiana, as of the 5th day of June, 2002, as instrument number 2002012576 in Plat Cabinet C, Envelope 309.

**[Remainder of this page intentionally left blank.]**

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

Brighton Point LLC,  
an Indiana limited liability company

By: H. Timothy Wininger Sr  
H. Timothy Wininger, Sr.  
Member

By: Timothy H. Wininger Jr  
Timothy H. Wininger, Jr.  
Member

By: Eric C. Stolberg  
Eric C. Stolberg  
Member

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF MONROE    )

H. Timothy Wininger, Sr., Timothy H. Wininger, Jr. and Eric C. Stolberg, members of Brighton Point LLC, personally appeared before me, a Notary Public, in and for said County and State on the 30<sup>th</sup> day of October, 2002, and who for and on behalf of Brighton Point LLC, acknowledged the execution of the foregoing *Declaration of Covenants, Conditions and Restrictions of The Gables at Brighton Point*, and after being duly sworn, stated that the statements contained therein are true.

My Commission Expires:

10-20-07

County of Residence

Laurence

Barbara A. Black  
Notary Public

Barbara A. Black  
(Name Printed)

This instrument prepared by April R. Schilling, Attorney at Law, LOCKE REYNOLDS LLP, 201 North Illinois Street, Suite 1000, P.O. Box 44961, Indianapolis, IN 46244-0961.

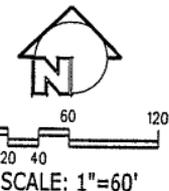
520219\_5

BRIGHTON POINT  
PHASE I  
PC C ENV 279

LOT 3

LOT 4

LOT 5



BRIGHTON POINT  
PARCEL B  
PC C, ENV 279

**EASEMENT LEGEND**

SIGN EASEMENT	SE
DRAINAGE EASEMENT	DE
UTILITY EASEMENT	UE

**NOTE:**  
All future maintenance of the private north/south roadway, including but not limited to: snow removal, trash removal, and general maintenance, is the responsibility of the Homeowner's Association.

**LEGAL DESCRIPTION:**

A part of Parcel C in Brighton Point Phase II (Plot Cabinet C, Envelope 304) and also a part of the Northeast Quarter of the Southeast Quarter of Section 2, Township 8 North, Range 1 West in Monroe County, Indiana, and being more particularly described as follows:

(LOTS 30 AND 31)

COMMENCING at the southeast corner of said Parcel C; thence on the east boundary thereof the following 2 (two) courses: 1) NORTH 17 degrees 26 minutes 39 seconds West 397.26 feet; 2) NORTH 20 degrees 09 minutes 23 seconds East 50.02 feet; thence leaving said west boundary NORTH 69 degrees 50 minutes 31 seconds West 89.95 feet to the POINT OF BEGINNING; thence NORTH 65 degrees 17 minutes 08 seconds West 57.44 feet; thence NORTH 86 degrees 39 minutes 31 seconds West 86.36 feet; thence SOUTH 03 degrees 20 minutes 29 seconds West 48.07 feet; thence SOUTH 08 degrees 35 minutes 41 seconds West 70.40 feet to a point on the eastern limits of an easement known as Baldwin Drive in said Parcel C; thence on said eastern boundary the following 3 (three) courses: 1) 18.17 feet on a 127.00 foot radius non-tangent curve to the right whose chord bears SOUTH 77 degrees 18 minutes 22 seconds East 18.16 feet; thence 23.81 feet on a 25.00 foot radius tangent curve to the left whose chord bears NORTH 79 degrees 30 minutes 16 seconds East 22.92 feet; thence 51.35 feet on a 40.00 foot radius tangent curve to the right whose chord bears NORTH 88 degrees 59 minutes 30 seconds East 47.89 feet leaving said eastern boundary; thence NORTH 35 degrees 46 minutes 02 seconds East 108.85 feet to the POINT OF BEGINNING, containing 0.30 acres, more or less.

And also: (LOTS 34 AND 35)

COMMENCING at the southeast corner of said Parcel C; thence on the south boundary thereof (also being the north right-of-way of Fenbrook Drive) SOUTH 77 degrees 46 minutes 47 seconds West 151.22 feet to the POINT OF BEGINNING; thence continuing on said south boundary (and north right-of-way) the following 2 (two) courses: 1) SOUTH 77 degrees 46 minutes 47 seconds West 97.14 feet; 2) 63.54 feet on a 535.55 foot radius tangent curve to the left whose chord bears SOUTH 74 degrees 22 minutes 50 seconds West 63.51 feet; thence leaving said boundary and right-of-way NORTH 02 degrees 25 minutes 05 seconds West 126.44 feet to a point on the eastern limits of an easement known as Baldwin Drive in said Parcel C; thence on said eastern limits the following 5 (five) courses: 1) 41.46 feet on a 40.00 foot radius non-tangent curve to the left whose chord bears NORTH 51 degrees 01 minute 29 seconds East 39.63 feet; 2) NORTH 90 degrees 00 minutes 00 seconds East 39.73 feet; 3) 126.23 feet on a 93.00 foot radius tangent curve to the right whose chord bears SOUTH 51 degrees 06 minutes 13 seconds East 116.76 feet; 4) SOUTH 12 degrees 13 minutes 13 seconds East 30.87 feet; 5) SOUTH 32 degrees 46 minutes 47 seconds West 12.02 feet to the POINT OF BEGINNING, containing 0.43 acres, more or less.

And also: (LOTS 42 AND 43)

COMMENCING at the southwest corner of said Parcel C; thence NORTH 01 degree 24 minutes 49 seconds West on the west boundary of said Parcel C 426.88 feet to the POINT OF BEGINNING; thence continuing on said west boundary NORTH 01 degree 24 minutes 49 seconds West 85.22 feet; thence leaving said west boundary SOUTH 71 degrees 19 minutes 42 seconds East 121.99 feet; thence SOUTH 88 degrees 48 minutes 36 seconds East 28.33 feet to a point on the western limits of an easement known as Baldwin Drive; thence on said western limits the following two (2) courses: 1) 21.60 feet on a 40.00 foot radius non-tangent curve to the left whose chord bears SOUTH 14 degrees 16 minutes 49 seconds East 21.34 feet; 2) SOUTH 00 degrees 24 minutes 40 seconds East 75.90 feet; thence leaving said western boundary NORTH 89 degrees 35 minutes 21 seconds West 146.32 feet to the POINT OF BEGINNING, containing 0.38 acres, more or less.

I hereby certify that the survey work performed on the project shown hereon was performed either by me or under my direct supervision and control and that all information shown is true and correct to the best of my knowledge and belief.  
Certified this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

Eric L. Beckard  
Registered Land Surveyor No. LS29900012  
State of Indiana

**MONUMENT LEGEND**

- STONE MONUMENT
- STONE WITH X
- CONCRETE MONUMENT
- 3/4" REBAR W/PLASTIC CAP SET
- REBAR FOUND
- RON PIPE FOUND
- FENCE POST FOUND
- RAILROAD SPIKE FOUND
- PK NAIL
- GPS MONUMENT
- SECTION CORNER

**GENERAL NOTES:**

- Original boundary survey titled "BOOZE PROPERTY ALTA/ACSM LAND TITLE SURVEY" by Smith Neubecker and Associates dated 7 February, 2000.
- All corners to be marked with 3/4" x 2" rebars with yellow SNA cap.

**EXHIBIT A INSTR. #2002012576  
P.C. "C", ENV. 309**

**THE GABLES, PHASE I AT BRIGHTON POINT, PHASE II, PARCEL C**

PREPARED BY: SMITH NEUBECKER & ASSOCIATES, INC. 453 S. CLARIZZ BOULEVARD, BLOOMINGTON, INDIANA 47408

JOB NO. 2912  
PAGE 1 OF 2



JAMES & MARY BETH BOOZE  
OB 175, PC 280

PARCEL C1  
BRIGHTON POINT, PHASE II  
(PC, "C", ENV. 304)

PARCEL D  
BRIGHTON POINT, PHASE II  
(PC, "C", ENV. 304)

PARCEL C  
BRIGHTON POINT, PHASE I  
(PC, "C", ENV. 304)

BALDWIN DRIVE

POINT OF BEGINNING  
LOTS 30 & 31

PARCEL D

POINT OF BEGINNING  
LOTS 34 & 35

PARCEL C1

**MONUMENT LEGEND**

- STONE MONUMENT
- STONE WITH X
- CONCRETE MONUMENT
- 3/4" REBAR W/PLASTIC CAP SET
- REBAR FOUND
- RON PIPE FOUND
- FENCE POST FOUND
- RAILROAD SPIKE FOUND
- PK NAIL
- GPS MONUMENT
- SECTION CORNER

**GENERAL NOTES:**

- Original boundary survey titled "BOOZE PROPERTY ALTA/ACSM LAND TITLE SURVEY" by Smith Neubecker and Associates dated 7 February, 2000.
- All corners to be marked with 3/4" x 2" rebars with yellow SNA cap.

**EXHIBIT A INSTR. #2002012576  
P.C. "C", ENV. 309**

**THE GABLES, PHASE I AT BRIGHTON POINT, PHASE II, PARCEL C**

PREPARED BY: SMITH NEUBECKER & ASSOCIATES, INC. 453 S. CLARIZZ BOULEVARD, BLOOMINGTON, INDIANA 47408

JOB NO. 2912  
PAGE 1 OF 2





**LEGAL DESCRIPTION FOR  
THE GABLES AT BRIGHTON POINT  
PHASE II, PARCEL C AND D  
JOB NUMBER 2912**

A part of Parcel C and D in Brighton Point, Phase II (Plat Cabinet C, Envelope 304) also being a part of the Northeast Quarter of the Southeast Quarter of Section 2, Township 8 North, Range 1 West in Monroe County, Indiana, and being more particularly described as follows:

BEGINNING at the southwest corner of said Parcel C; thence on the west boundary of said Parcel C the following two (2) courses: 1) NORTH 01 degree 24 minute 49 seconds West 612.15 feet; 2) NORTH 03 degrees 17 minutes 45 seconds West 53.04 feet; thence leaving said west boundary SOUTH 86 degrees 09 minutes 28 seconds East 153.30 feet; thence NORTH 58 degrees 55 minutes 37 seconds East 68.58 feet; thence SOUTH 54 degrees 06 minutes 05 seconds East 49.91 feet; thence SOUTH 89 degrees 57 minutes 10 seconds East 179.11 feet to a point on the east boundary of an easement known as Baldwin Drive; thence on said east boundary the following two (2) courses: 1) 7.13 feet on a 213.00 foot radius non-tangent curve to the left whose chord bears SOUTH 01 degree 20 minutes 49 seconds West 7.13 feet; 2) SOUTH 00 degrees 23 minutes 14 seconds West 47.89 feet; thence leaving said east boundary NORTH 75 degrees 43 minute 09 seconds East 211.45 feet to the boundary between Parcel C and D; thence on said boundary the following two (2) courses: 1) SOUTH 15 degrees 35 minutes 05 seconds West 78.22 feet; 2) SOUTH 20 degrees 09 minutes 23 seconds West 147.09 feet; thence leaving said boundary SOUTH 03 degrees 40 minutes 43 seconds East 256.91 feet to the north right of way of Fenbrook Drive; thence on said north boundary the following three (3) courses: 1) SOUTH 77 degrees 46 minutes 47 seconds West 322.62 feet; 2) 198.88 feet on a 535.55 foot radius tangent curve to the left whose chord bears SOUTH 67 degrees 08 minutes 28 seconds West 197.74 feet; 3) SOUTH 56 degrees 30 minutes 09 seconds West 77.68 feet to the POINT OF BEGINNING, containing 7.09 acres, more or less.