

## Declaration of Covenants, Conditions and Restrictions of Briar Gate Homeowners Association, Inc.

This RESTATED and AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF BRIAR GATE (the "Amended Declaration") is made this 5<sup>th</sup> day of November 5, 2012, by the Briar Gate Owners.

### RECITALS

(A) The Briar Gate Owners are the owners of the fee simple title to the Paired Patio Homes in the Autumn Hills Subdivision; and

(B) The Briar Gate Real Estate was previously platted and subjected to the terms and conditions of the Declaration of Covenants, Conditions and Restrictions of Briar Gate Condominiums Horizontal Property Regime and Covenants and Restrictions as previously recorded on December, 20, 1990, in Miscellaneous Record 205, pgs. 21-32, in the Office of the Recorder of Monroe County, Indiana (the "Original Declaration") and revoked, repealed and amended and recorded on March 22, 1991, in Miscellaneous Record 206, pgs. 427-442, in the Office of the Recorder of Monroe County, Indiana (the "Amended Original Declaration").

(C) The Amended Original Declaration provided that the Briar Gate Owners could amend the Amended Original Declaration during the first twenty (20) year period by an instrument signed by not less than (90%) of the Unit-Lot Owners, and thereafter by an instrument signed by not less than Seventy-Five (75%) of the Unit-Lot Owners.

(D) On ~~October~~, 31, 2012 more than seventy-five percent (75%) of the Briar Gate Owners approved the Amended Declaration at a meeting of the Briar Gate Owners duly called and held.

(E) The Briar Gate Owners wish to record the Amended Declaration pursuant to the provisions of Article 11 Section 3 of the Amended Original Declaration and upon recording; the Amended Declaration shall become effective and shall supersede the Amended Original Declaration and apply to all Briar Gate Real Estate and to each Briar Gate Owner.

NOW, THEREFORE, the undersigned officers of the Briar Gate Homeowners Association, Inc., acting on behalf of the Briar Gate Owners declare that the Briar Gate Real Estate subjected to the terms of this Amended 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 Briar Gate Real Estate and of each and every person or entity who now or in the future owns any Unit-Lot within the Briar Gate Real Estate, a neighborhood developed within Autumn Hills Subdivision.

SECTION 1 DEFINITIONS. The following terms used in this Amended Declaration shall have the following meanings:

Section 1.1 Amended Declaration. "Amended Declaration" means this Restated and Amended Declaration of Covenants, Conditions and Restrictions of the Association.

Section 1.2 Assessments. "Assessments" means fees imposed on each member of the Association to pay for the Association's operations and maintenance expenses. Assessments can be Regular or Special depending on the purpose for which they are made.

Section 1.3 Association. "Association" means The Briar Gate Homeowners Association, Inc., its successors and assigns, an Indiana not-for-profit corporation, which is the incorporated association of Owners, more particularly described in SECTION 8. A copy of the *Articles of Incorporation* for the Association is attached as Exhibit "A".

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

Section 1.5 Briar Gate Real Estate. "Briar Gate Real Estate" means the Real Estate described in Exhibit "C", consisting of Lot A, phases I, II and III on 3.3 acres more or less, within the Autumn Hills Subdivision.

Section 1.6 Building. "Building" means all structures erected within the Association including Paired Patio Homes, garages, decks or enclosed structures of any kind.

Section 1.7 Bylaws. "Bylaws" mean the Bylaws of the Association, providing for the administration and management of the Association, as amended, a true copy of which is attached to this Amended Declaration as Exhibit "B" and incorporated herein by reference.

Section 1.8 Commercial Vehicle. "Commercial Vehicle" means a truck, car, van, trailer or other wheeled object or conveyance intended for use on or off the roadways which (i) has commercial advertising affixed to it (excluding a license plate bracket or similar minor identifying mark of where the vehicle was purchased); (ii) is designed by the manufacturer or has been specially modified to be used for business purposes; (iii) is used by its owner for commercial or business purposes; (iv) exceeds two and one-half tons in gross weight irrespective of use; or, (v) exceeds twenty (20) feet in length irrespective of use.

Section 1.9 Common Area. The Common Area is all area within the Association except for Briar Gate Court as depicted on the Plat, and it specifically includes the Limited Common Areas unless the Amended Declaration clearly indicates otherwise.

Section 1.10 Common Area Expenses. "Common Area Expenses" means the expenses of administration of the Association, expenses for the upkeep, maintenance and repair of the Paired Patio Homes, Common Area and Limited Common Area as defined in SECTION 6 of this Amended Declaration and other costs and expenses incurred by the Association for the common benefit of all Owners.

Section 1.11 Delinquency Date. "Delinquency Date" means the date which is ten (10) days after the due date of any Regular or Special Assessment.

Section 1.12 Drainage and Utility Easement. "Drainage and Utility Easement" means the easements shown and described on the Plat as "Drainage Easements", "Utility Easements" or "Drainage and Utility Easements" and labeled "U.E.", "D.E.", or "D.U.E.", or a similar designation on the Plat or in the Amended Declaration. The easements have been created for the installation, maintenance and repair of electric, telephone, cable television, water, gas, sanitary sewer and other public utilities to provide paths and courses for area and local utilities to serve the needs of the Owners, the needs of the Briar Gate Real Estate, the Association and the public sanitary sewer and utility system. No Building shall be erected within any designated Utility Easement and no material may be placed or permitted to remain which may damage or interfere with the maintenance of the public drainage system, public sewer system or any of the other public utilities constructed or installed within any utility easement.

Section 1.13 Limited Common Area. "Limited Common Area" means those parts of the Common Areas reserved for the use of a certain Unit-Lot to the exclusion of all other Briar Gate Owners and which has been designated as L.C.A. or a similar designation on the Plat.

Section 1.14 Managing Agent. "Managing Agent" means the person, firm or entity engaged by the Association to manage the Briar Gate Real Estate and assist the Board of Directors to discharge their duties in accordance with the Amended Declaration and the Bylaws of the Association.

Section 1.15 Mortgagee. "Mortgagee" means the holder, insurer or guarantor of any first mortgage on any Paired Patio Home and other improvements constructed on a Unit-Lot.

Section 1.16 Paired Patio Home. "Paired Patio Home" means the Building constructed upon a Unit-Lot and which is designed and intended for use and occupancy as a dwelling.

Section 1.17 Party Wall. "Party Wall" means the wall which is built as part of the original construction of the Paired Patio Homes upon the Unit-Lot and placed on the dividing lines between the Unit-Lots.

Section 1.18 Patio. "Patio" means the outdoor area adjoining a Paired Patio Home usually in the rear of the Paired Patio Home and made of concrete or landscape pavers, stone, tile, rock, pebbles or pea gravel, flagstone or numerous other materials.

Section 1.19 Plat. "Plat" means the plat of Briar Gate Homeowners Association, Inc., an addition in the town of Ellettsville, Indiana as recorded in the Office of the Monroe County Recorder, Bloomington, Indiana, as it is supplemented or amended.

Section 1.20 Regular Assessment. A monthly assessment, also known as dues, based on the approved Association budget for the day-to-day operations and maintenance as required by the Amended Declaration of the Association. Additionally, a regular and the annual insurance assessment as required by the Amended Declaration of the Association.

Section 1.21 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 Unit-Lot; provided, that persons or entities owning a single Unit-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 Amended Declaration and provided further that any person holding record fee simple title for purposes of security only shall be excluded.

Section 1.22 Special Assessment. "Special Assessments" are fees levied by the Association for a major common area repair, new construction, or for an unanticipated expense which cannot be covered by the Regular Assessments.

Section 1.23 Unit-Lot. "Unit-Lot" means any piece of ground, designated as such upon the recorded Plat of the Briar Gate Homeowners Association and any part upon which one (1) Paired Patio Home is constructed or has existed. Whenever used in the Amended Declaration, "Unit-Lot" will be deemed to include the Paired Patio Home, located thereon.

Section 1.24 Vehicle. "Vehicle" means motor homes, boats, trailers, campers, motorcycles, scooters, trucks, vans, tractors, tractor trailers, buses, automobiles, golf carts and any other motorized wheeled object or conveyance which is customarily used for transportation (but excluding battery operated toys built and designed for children). Vehicles include all Commercial Vehicles as that term is defined in this Amended Declaration.

## **SECTION 2 IN GENERAL.**

Section 2.1 Residential Development. Briar Gate is a single-family residential development and each Paired Patio Home constructed within the Autumn Hills Subdivision shall be used by the Briar Gate Owners and occupants exclusively for residential purposes. Briar Gate consists of Common Area and Fourteen (14) Unit-Lots on which Fourteen (14) Paired Patio Homes are constructed. No commercial Building shall be permitted on any portion of the Unit-Lots. No business activity or business shall be carried on or conducted from any Paired Patio Home. Leasing of a Paired Patio Home for residential purposes shall not be considered a business or business activity.

Section 2.2 Community Restrictions. The Briar Gate Real Estate and all Unit-Lots and Paired Patio Homes constructed upon Lot A are part of the Association and shall be expressly subject to each of the covenants, conditions and restrictions contained in the Amended Declaration which is hereby incorporated by this reference.

Section 2.3 Effect on Briar Gate Owners. A Briar Gate Owner of a Unit-Lot subject to this Amended Declaration, by acceptance of a deed conveying title thereto, or in the execution of a contract for the purchase thereof, shall accept such deed and execute such contract subject to each and every restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the Owner acknowledges the rights and powers of the Association with respect to these restrictions, and also, for themselves, their heirs, personal representatives, successors and assigns, such Owners, covenant and agree and consent to and with the other Owners and subsequent Owners of each of the Unit-Lots affected by these restrictions to keep, observe, comply with and perform such restrictions and agreements.

### SECTION 3. PHYSICAL CHARACTERISTICS OF BRIAR GATE.

Section 3.1 Number of Unit-Lots in Briar Gate. Briar Gate contains One (1) Lot which consists of Fourteen (14) Unit-Lots. Each Unit-Lot shall consist of all space within the boundaries as depicted on the Plat and shall be subject to the easements depicted on the Plat and the easements described in Amended Declaration.

Section 3.2 Briar Gate Common Area. The Briar Gate Real Estate contains Common Areas shown on the Plat including all Limited Common Areas. The Briar Gate Common Areas do not include the street identified on the Plat as Briar Gate Court.

Section 3.3 Limited Common Areas. The Limited Common Areas are reserved for use by a certain Owner to the exclusion of all other Owners. Each Owner is granted an exclusive and irrevocable license to use and occupy the Limited Common Area associated with the Owner's Unit-Lot; however, the Association has a license to enter the Limited Common Area to maintain it as required by the provisions of this Amended Declaration.

Section 3.4 Easements. Perpetual and non-exclusive Drainage and Utility Easements for the purpose of the installation, maintenance, repair and replacement of all sewer lines, pipes, and mains are reserved as shown on the Plat. It shall be the responsibility of each Owner to familiarize him or herself with the easements that are on the Owner's Unit-Lot.

Section 3.5 Street. Briar Gate Court that services the Paired Patio Homes in the Briar Gate Real Estate as shown on the Plat is not a private road. The maintenance, repair and replacement of Briar Gate Court is the responsibility of the Town of Ellettsville to maintain.

Section 3.6 Underground Utilities. All utilities, including but not limited to water, gas, electric, sewer and cable television, telephone, installed within the Briar Gate Real Estate shall be installed underground.

Section 3.7 Submission of Documents Prior to Construction or Alteration. No Paired Patio Home, Building or other permanent structure shall be erected, placed or altered on any Unit-Lot until the construction plans and specifications and plans have been approved by the Board of Directors as to quality of workmanship and materials showing the location of the structure, harmony of external design with existing structures, and as to location with respect to topography and finished grade elevation. Alterations include, but are not limited to, the

installation of lighting (including exterior yard or decorative lighting), window boxes, shutters, awnings, landscape ornamentation, , trees or shrubs and any other additions, alterations or modifications of any kind to the exterior appearance of the Paired Patio Home or the surrounding landscaping or any other areas. Approval or disapproval as required in these covenants by the Board of Directors shall be in writing. The Board of Directors will act on a completed application in a reasonable period of time following submission. Each Owner shall ensure that all plans and specifications for any new construction, alteration or modification shall comply with the covenants, conditions and restrictions of the Association.

#### SECTION 4. PARTY WALLS.

Section 4.1 General Rules of Law to Apply. Each wall which is built as part of the original construction of the homes upon the Properties and placed on the dividing lines between the Unit-Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of Law regarding party walls and liability of property damage due to negligence or willful acts or omissions shall apply thereto.

Section 4.2 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 4.3 Destruction by Fire or other Casualty. If a party wall is destroyed or damaged by fire or other casualty, an Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, whoever, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4.4 Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 4.5 Right to Contribution Runs with Land. The right of any Owner to Contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

#### SECTION 5. PROPERTY RIGHTS.

Section 5.1 Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment of the Common Area, which shall be appurtenant to and shall pass with the title to every Unit-Lot subject to the following provisions:

5.1.1 The right of the Association to charge reasonable fees for the use and maintenance of the Common areas and improvements situated within the Briar Gate Real Estate in accordance with the provisions of this Amended Declaration.

5.1.2 The right of the Association to suspend the voting rights of an Owner for any period during which any assessment against his or her Unit-Lot remains unpaid.

Section 5.2 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his or her right of enjoyment to the Common Area and facilities to the members of his or her family, tenants, or contract purchasers who reside on the property.

Section 5.3 Association's Easement for Maintenance and Repair. The Association and any Owner thereof whose enjoyment of the use and occupancy of his or her Unit-Lot is affected thereby, shall have an easement to go upon any other Unit-Lot for the purpose of maintaining or causing to be maintained or repaired any party walls, utility lines, sewer or other facilities which serve more than one Unit-Lot. No owner shall in any way take any action to interfere with or prevent the reasonable and necessary acts of the Association, its employees or contractors from performing such maintenance for which the Association is responsible. In the case of emergency, all Owners shall, if necessary, permit said work to be performed at any time required and shall, if necessary, permit the Association, its employees, or contractors to enter upon the premises of any Owner's Paired Patio Home to effectuate such maintenance.

Section 5.4 Utilities, Public officials, Association Officials. There is hereby created a blanket easement upon, across, over and under all of said Paired Patio Homes and Unit-Lots for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewers, gas, telephones, electricity, and cable or satellite television. An easement is further granted to all police, fire protection, ambulance and all similar persons to enter upon the streets and Common Area in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents and employees selected by the Association to enter in or to cross over the Common Area and any Unit-Lot to perform the duties of maintenance and repair of the Unit-Lot, Paired Patio Home or Common Area

Section 5.5 Easements for Encroachment. If any part of the Common Area encroaches upon a Unit-Lot or Paired Patio Home, a valid easement for such encroachment and the maintenance therefore, so long as it continues, shall and does exist. If any part of any Unit-Lot or Paired Patio Home encroaches upon the Common Area, Unit-Lot, a valid easement for such encroachment shall and does exist. In the event that any building upon a Unit-Lot in the Briar Gate Real Estate shall be partially or totally destroyed and then rebuilt with minor encroachments of the building upon the Common Area, Unit-Lot, including, but not limited to eaves and roof over-hang, then valid easements for such encroachments and the maintenance therefore shall exist.

## SECTION 6. RESTRICTIONS ON THE USE OF THE BRIAR GATE REAL ESTATE.

In order to preserve the character of residential development and to protect the property values within the Briar Gate Real Estate, and without intending to limit the generality of the foregoing provisions, the following protective covenants and restrictions are imposed as a common scheme upon the Briar Gate Real Estate and shall be applicable to each Unit-Lot and to

each Paired Patio Home, Building or other structure constructed upon a Unit-Lot within the Briar Gate Real Estate:

Section 6.1 Maintenance of Unit-Lots and Improvements. Each Owner of a Unit-Lot shall at all times maintain the Unit-Lot and any Paired Patio Home, or other structure situated thereon in such a manner as to prevent the Unit-Lot, Paired Patio Home, or other structure from becoming unsightly and, specifically, such Owner shall:

6.1.1 Maintain the landscaped beds located along the foundation, front walkway and driveway in the front, side and back of the Paired Patio Home. This does not include the small stone stacked walls or large retaining wall installed by the Association behind the Unit-Lots. Each Owner shall assume responsibility for weeding and keeping all landscaped areas described above, neatly trimmed, maintained and free of pests so as to prevent the unsightly growth of vegetation and weeds and exercise good land management with respect to all landscaping located thereon. Each Owner shall maintain any trees and shrubs in the landscaped beds, which also includes removal or replacement, if necessary and in accordance with good gardening practices. An Owner may plant annuals and perennials in the landscaped beds located upon the Owner's Unit-Lot provided the Owner, at the Owner's expense, maintains such annuals and perennials throughout the growing season in accordance with good gardening practices.

6.1.2 Each Owner shall be responsible for all maintenance of any decks, enclosed decks, screened-in decks or patios, sunrooms or patios of their Paired Patio Home, regardless of being identified as Limited Common Area or not on the Plat Map. Each Owner is also responsible the maintenance for all supporting structures, stairways and retaining walls as well as any open or earthen area located immediately beneath said porch or deck structure which may or may not have a base of cement, wood, brick pavers or similar material, or any application of crushed rock/gravel as well as any organic or inorganic substance.

6.1.3 Each Owner shall be responsible for all maintenance, repair or replacement of their Paired Patio Home's windows, screens, window hardware, screen doors, exterior doors (excluding exterior door paint) and exterior door hardware, garage door (excluding exterior garage door paint) and garage door hardware, including but not limited to the garage door openers.

6.1.4 Each Owner shall be responsible for watering their landscaping and the lawn in accordance with good gardening practices.

6.1.5 Each Owner shall be responsible for cleaning and removing snow under two (2) inches and ice, debris and any other obstruction from the driveways and sidewalks within each owner's respective Limited Common Area, to the extent the Association does not clean and remove such items. The Association will remove snow that accumulates over two (2) inches.



6.1.6 Each Owner shall remove all debris or rubbish from the Owner's Unit-Lot in a timely manner. All trash and trash containers must be stored inside the Paired Patio Home, so that they are not visible from any roadway or neighboring property. Trash receptacles shall be placed at the end of the Owner's drive no sooner than the evening before scheduled trash or recycling pickup and shall be returned to its stored location inside the Paired Patio Home, which is out of view from the street and any neighboring properties, not later than the evening of the day of trash or recycling collection or pickup.

6.1.7 Each Owner shall take all other measures to prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Owner's Paired Patio Home. If the Owner fails to adequately maintain the aesthetic appearance of their Unit-Lot or Paired Patio Home, the Association will take the necessary steps to repair or replace such items as necessary to preserve the character of residential development and to protect the property values within the Briar Gate Real Estate. The Owner will be responsible for all costs associated with the repair and replacement.

6.1.8 Each Owner shall maintain the water lines, gas lines, plumbing, sewer laterals servicing the Owner's Paired Patio Home and electrical fixtures which are located within the Owner's Paired Patio Home, including, but not limited to, all wall finishes, ceiling finishes, floor finishes, appliances, to include garbage disposals, dishwashers, stove, ranges, refrigerators, air conditioning and heating equipment, interior and exterior light fixtures, interior caulking and all other accessories appurtenant to the Unit-Lot or belonging to the Owner thereof.

Section 6.2 Briar Gate Association Responsibility. In addition to the maintenance of the Easements and Common Area, the Briar Gate Association shall provide exterior maintenance upon each Unit-Lot for the following: Briar Gate entrance signage, sidewalks, driveways, walkways, steps to front porch and the front porch of the Paired Patio Home, mailboxes, Common Area stone/brick walls, Association trees and shrubs located on the front, back or side lawns of the Paired Patio Home; excluding, landscaped beds located along the foundation, front walkway and driveway in the front, side and back of the Paired Patio Home. Additionally, the Briar Gate Association is responsible for cleaning the gutters as determined by the Board of Directors of the Association.

6.2.1 In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Unit-Lot, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces. Additionally, the Association shall provide exterior painting to the exterior doors and the garage door.

6.2.2 In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests, tenants, or invitees, as determined by the Board of Directors of the Association, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to

which such Unit-Lot is subject and be subject to the same method of collection as the Regular Assessment.

Section 6.3 Parking. No Commercial Vehicle or inoperable Vehicle of any kind nor any Vehicle which is not currently registered for operation and displaying a current license plate shall be parked for storage overnight or longer in such a manner as to be visible to any person who resides in a Paired Patio Home within the Briar Gate Real Estate. No Commercial Vehicle will be parked on any street within Briar Gate except for a temporary period of less than twelve (12) hours while performing services on a Unit-Lot or in a Paired Patio Home. In addition, no maintenance or repair on any type of motor vehicle shall be permitted unless said work can be done totally within the confines of the Owner's garage and in a manner not offensive to any adjacent Paired Patio Home

Section 6.4 Animals and Pets. No animals, livestock or poultry of any kind may be raised, bred, kept, or permitted on any Unit-Lot with the exception of dogs, cats or other usual and common household pets in reasonable number. No pets shall be kept, bred or maintained for any commercial purpose. Dogs which are household pets shall be confined on a leash at all times whenever they are outside a Paired Patio Home. Pet waste must be promptly collected by the pet owner and promptly disposed of by the person responsible for the pet. No pet enclosures or pet shelters shall be erected in the Common Areas or Limited Common Areas. All pets must be housed indoors. All pet owners and their guests shall comply with the Town of Ellettsville and Monroe County ordinances relating to pets or the provisions of this Amended Declaration, whichever is more restrictive. For purposes of this Amended Declaration, a pet enclosure includes an invisible fence or similar electronic restraint system.

Section 6.5 Restrictions on Rentals. Owners shall not lease their homes. The Association mandates all homes to be owner occupied. In the case of hardship, the Owner shall submit a written request to the Board of Directors to request an exception to this restriction. The Board of Directors has the authority to enter into an agreement with the Owner regarding the basis for and length of a lease, not to exceed one year.

Section 6.6 Nuisance. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition of his or her Paired Patio Home. No Paired Patio Home shall be used, in whole or in part, for the storage of any property or thing that will cause such Paired Patio Home to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept upon any Paired Patio Home that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding Paired Patio Homes. No noxious or offensive activity shall be carried on upon any Paired Patio Home, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any property adjacent to the Paired Patio Home. No plants, animals, device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Briar Gate Real Estate shall be maintained on any Unit-Lot.

Section 6.7 Antennas. No exterior antennas or satellite dishes of any kind shall be placed, allowed, or maintained upon any portion of any Unit-Lot including any Paired Patio Home except:

6.7.1 An Owner may install a Direct Satellite System (DSS) dish or a similar system on a Unit-Lot or Paired Patio Home so long as the Owner receives prior written authorization from the Board of Directors, who shall determine the location, screening and landscaping required.

Section 6.8 Signs. No signs, shall be maintained or permitted in any part of a Lot Unit, except for the following: one security sign placed in the common area landscaping adjacent to the Unit-Lot and one For Sale sign or For Rent sign may be placed in the Common Area landscaping in front of a Unit-Lot and one sign in the back of the Unit-Lot's Common Area, if applicable.

Section 6.9 Window Air-Conditioning. No window air-conditioning shall be installed in any manner to the Paired Patio Home.

Section 6.10 Clotheslines and Garage Doors. Clotheslines and outdoor clothes drying are prohibited. Garage doors shall be closed at all times, unless in use.

SECTION 7. ENFORCEMENT. The provisions of SECTION 6 and SECTION 7 hereof shall be liberally construed to affect the purpose of creating a uniform plan for the operation of the Briar Gate Real Estate. In the event that any Owner fails to fully observe and perform the obligations set forth in this Amended Declaration, and in the further event that such failure is not cured within thirty (30) days after written notice of the same is given by the Board of Directors, or any Owner of any Unit-Lot within the Briar Gate Real Estate, the Association may levy a fine as determined by the Board of Directors for each day that a violation persists after notice. The Association shall also have the right to commence judicial proceedings to abate or enjoin such failure and to take such further action as may be allowed at law or in equity to correct such failure after commencement of such proceedings. In the event that such failure causes or threatens to cause immediate and substantial harm to any property outside of such defaulting Owner or to any person, the Association shall have the right to enter upon such Unit-Lot for the purpose of correcting such failure and any harm or damage caused thereby, without any liability whatsoever on the part of the Association. The failure or forbearance by any Owner or the Association to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. There shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach or any attempted violation or breach of any of the covenants or restrictions contained in this Amended Declaration cannot be adequately remedied by an action at law and that injunctive relief is appropriate. All costs incurred by the Association in connection with any act or proceeding undertaken to abate, enjoin, or correct such failure, including attorney's fees and additional fees charged by the Managing Agent, shall be payable by the defaulting Owner upon demand, and shall immediately become a lien against the Owners' Unit-Lot. The rights of the Owners and the Association under this section shall be in addition to all other enforcement rights hereunder or at law or in equity.

SECTION 8. MEMBERSHIP.

Section 8.1 Membership. Each Owner will become a member of the Association as to the respective Unit-Lot acquired at the time of becoming an Owner within the meaning of this Amended Declaration. Each Owner will remain a member until ceasing to be an Owner, at which time the membership will terminate and be transferred automatically to the successor Owner. Any Person who holds an interest in a Unit-Lot merely as security for the performance of an obligation will not be a member unless and until the Person realizes upon such security, at which time the Person will become an Owner and a member of the Association automatically.

Section 8.2 Management. The business and affairs of the Association will be governed and managed by the Board of Directors. No person will be eligible to serve as a member of the Board of Directors unless that person is a Member in good standing, a Person within the meaning of the Amended Declaration and an Owner within the meaning of the Amended Declaration.

SECTION 9. ASSESSMENTS.

Regular and Special Assessments shall be determined and collected as follows:

Section 9.1 Regular Assessments. The annual budget as adopted shall, based on the estimated cash requirement for the Common Area Expenses in the ensuing year as set forth in said budget, contain a proposed assessment against each Unit-Lot based on the total amount of said budget divided by the total number of Unit-Lots. The Regular Assessment against each Lot shall be paid in twelve (12) equal monthly installments on the first day of each month beginning in January following adoption of the budget. In addition to the monthly Regular Assessment, there will be an annual Regular Assessment for insurance. Payment of the monthly installments of the Regular Assessment and the annual Regular Assessment for insurance shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors. Any Owner may elect to pay any Regular Assessment in advance. The Regular Assessment and annual Regular insurance Assessment for each year shall become a lien on each separate Paired Patio Home as of the date of the adoption of the annual budget.

Section 9.2 Special Assessments. In addition to the Regular Assessments authorized above, the Association 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 the working capital of the Association; provided that no Special Assessments shall be levied without the assent of a two-thirds (2/3) of the Owners at a meeting duly called for this purpose, in which a quorum is present. Each Owner 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 Unit-Lots. The Association 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.

Section 9.3 Adjustments. In the event that the approved budget and Regular Assessments plus the reserves and working capital of the Association provide insufficient funds 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 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 Account as determined by the Board of Directors.

Section 9.4 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 year, the budget and Regular Assessments in effect during the preceding year shall continue in effect until such time as the annual budget and annual assessments are determined in accordance with the Amended Declaration and the Bylaws; 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.

Section 9.5 Reserve Funds. The Association shall be obligated to establish a reserve fund for the repair of the Common Area based upon good faith estimates of the useful life and replacement cost of such Common Area made or obtained by the Association. The reserve fund shall be funded through payments by the Owners as budgeted within their Regular Assessments and not by a Special Assessment. All amounts held by the Association pursuant to this Section shall be maintained in a separate federally insured 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 removal and replacement of the Common Area (to the extent such capital expenditures, repair and replacement are the obligation of the Association), and not for usual and ordinary repair and expenses of the Common Area.

Section 9.6 Status of Funds Collected by Association. All funds collected pursuant to this Section shall be held and expended by the Association solely for the purposes designed 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 Common Area Expenses.

Section 9.7 Accounting Practices of the Association. The annual budget, the Regular Assessment and all sums assessed by the Association shall be established by using a *modified cash basis system*, which recognizes revenues when collected and expenditures when paid. The annual budget and the Regular Assessment shall, in addition, include the establishment and maintenance of a Reserve Fund for capital expenditures.

Section 9.8 Collection of Assessments. Each Assessment shall be due and payable on the due date thereof as specified in the Amended Declaration or 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. A late fee shall be imposed on monthly assessments made thirty (30) days after the due date. The late fee shall be ten percent (10%) of the amount due and shall be assessed each month for which there is a delinquency on the full amount of the delinquency. In the event that any costs or expenses, including attorney's

fees and fees from the Managing Agent, 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 Unit-Lot and Paired Patio Home as of the date on which such delinquent Assessment first became a lien. 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 and the Association may foreclose its lien against the Unit-Lot and Paired Patio Home of any Owner who does not pay in a timely manner.

Section 9.9 Subordination of Assessment Lien to Mortgage. Notwithstanding anything contained in the Amended Declaration, the Articles of Incorporation of the Association or the Bylaws, any sale or transfer of a Unit-Lot or Paired Patio Home to a Mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu of, or a conveyance to any person at a public sale in a manner provided by law with respect to mortgage foreclosure 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.

#### SECTION 10. INSURANCE.

Section 10.1 Association Insurance. Each Paired Patio Home in Briar Gate will be insured with the same insurance company chosen by the Board of Directors of the Association. The limit of insurance for each Paired Patio Home will be equal to the full replacement cost thereof and each Owner will be responsible for the premium for their individual Paired Patio Home. Such insurance coverage shall be for the benefit of each Owner, the Association and the Owner's mortgagee, if applicable. In the event of damage or destruction of any Paired Patio Home, the Owner thereof shall cause such Paired Patio Home 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 Paired Patio Homes directly affected by the damage shall pay the cost for restoring the Paired Patio Home. A Unit shall be deemed directly affected if and only if a part of such Paired Patio Home, including but not limited to any party wall of such Paired Patio home is damaged or destroyed. If any Owner fails or refuses to reconstruct his Paired Patio Home 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 Paired Patio Home and subject to foreclosure in the same manner as provided for Regular Assessments.

The restoration referred to in this Section shall include the costs of construction incurred rebuilding the Paired Patio Home 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 Paired Patio Homes which are destroyed or damaged shall be restored pursuant to the provisions of this Section 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 Common Area which are damaged or destroyed shall be restored by the Association unless two thirds of the 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.

Section 10.2 Additional Insurance. The Association shall also obtain comprehensive public liability insurance in such limits as the Board of Directors shall deem appropriate together with workman's compensation and other liability insurance if deemed necessary and appropriate by the Board of Directors. Such insurance shall also cover any liability claims of any member of the Association. 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 Board of Directors, any Managing Agent appointed or employed by the Association, and all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Briar Gate Real Estate, all Owners and all other persons entitled to occupy any Unit-Lot. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of a Owner because of negligent acts of the Association or other Owners.

Section 10.3 Insurance on Unit-Lots. Each Owner shall maintain personal property and liability insurance in the minimum amount of at least Five Hundred Thousand Dollars (\$500,000). Each Owner shall have the right to purchase at his own expense any additional insurance he/she may deem necessary. All insurance obtained, whether obtained by the Association or the Owners, including, but not limited to, insurance on the individual Paired Patio Homes, insurance on improvements in the Common Area and liability insurance, shall provide that the insurance company providing such insurance waives its right of subrogation, if any, against the Owners, the Association and their Agents.

Section 10.4 General Provisions. The premiums for all insurance the Association is responsible to obtain shall be paid by the Association as part of the Regular Assessment.

## SECTION 11. GENERAL PROVISIONS.

Section 11.1 Amendment of Declaration. Except as otherwise provided herein amendments to this Amended Declaration shall be proposed and adopted in the following manner:

11.2.1 Notice of the subject matter of the proposed amendment shall be given to each Owner. Any proposed amendment to this Amended Declaration must be approved by not less than seventy-five percent (75%) of the Owners. Each amendment to the Amended Declaration shall be executed by the Owners casting votes in favor of the amendment and shall be recorded in the office of the Recorder of Monroe County, Indiana, and such amendment shall not become effective until so recorded.

Section 11.2 Notice. Any notice required to be sent to any Owner under the provisions of this Amended Declaration and Bylaws shall be deemed to have been properly sent, and notice thereby given, when emailed or mailed to the Owner at the Owner's address as it appears in the records of the Association. Valid notice may also be given to an Owner by (i) personal delivery to any occupant of his Residence over fourteen (14) years of age; (ii) by affixing said notice to or sliding same under the front door of his Paired Patio Home. All notices to the Association or the Board of Directors shall be delivered to the office the Managing Agent, or, if there is no Managing Agent, to the office of the Association, or to such other address as the Board of Directors may designate. All notices shall be deemed to have been given when mailed, or emailed, except notices of changes of address, which shall be deemed to have been given when received.

Section 11.3 Venue and Jurisdiction. In case any legal action is brought, it is stipulated and agreed that the action is governed by the laws of the State of Indiana, with the courts of Monroe County having sole and exclusive jurisdiction.

Section 11.4 Severability. Should any covenant or restriction herein contained, or any article, section, subsection, sentence, clause, phrase or term of this Amended Declaration be declared to be void, invalid, illegal or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall not in any manner affect the other provisions hereof, which are hereby declared to be severable and which shall remain in full force and effect.

Section 11.5 Rule Against Perpetuities. If any provision of this Amended Declaration shall be interpreted to constitute a violation of the rule against perpetuities, then such provisions shall be deemed to remain in effect until the death of the last survivor of the now living descendants of the persons signing the Original Declaration plus twenty-one (21) years thereafter.

Section 11.6 Gender and Number. Whenever the context of this Amended Declaration so requires, the use of the masculine gender shall be deemed to refer to the feminine or neuter gender and the use of the singular shall be deemed to refer to the plural and vice versa. No pronoun usage shall be deemed to exclude a reference to an institutional, corporate, partnership, or any other type of business entity. The underlined titles are for convenience of reference only and shall not be used as an aid in construing the provisions hereof.

IN WITNESS WHEREOF, the Briar Gate Owners acting by and through the Briar Gate Homeowners Association, Inc., have executed this Restated and Amended Declaration of Covenants, Conditions and Restrictions of Briar Gate, on the date and year first above written.

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**BRIAR GATE HOMEOWNERS ASSOCIATION, INC.**

By: Joyce A. Shew  
Its: President

STATE OF INDIANA     )  
                                  ) SS:  
COUNTY OF MONROE    )

Joyce A. Shew known to me to be the President of the Briar Gate Homeowners Association, Inc. personally appeared before me, a Notary Public, in and for said County and State on the 5th day of NOVEMBER, 2012, and acknowledged the execution of the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions of Briar Gate Homeowners Association, Inc.

My Commission expires: 10/16/16  
Brenda R. Lewis  
Notary Public

County of Residence: Monroe  
BRENDA R. LEWIS  
Name Printed

This instrument prepared by: Megan Lewis, **Lewis Law LLC**, 1205 North Walnut Street, Bloomington, Indiana 47404-3565; (812) 336-6989.