

**DECLARATION OF EASEMENTS, COVENANTS AND
PROTECTIVE RESTRICTIONS
For KILSOQUAH PRESERVE
An Addition in Jackson Township
Huntington County, Indiana**

Kilsoquah Preserve, LLC an Indiana Limited Liability Partnership, by Kevan B. Biggs, Ralph E. Biggs, Heather O. Biggs and Arete Development Corporation, LLC, its Partners, declares that it is the owner of the real estate shown, and legally described in this plat (“Real Estate”) in accordance with the information shown on the certified plat attached to and incorporated by reference in the document. The platted Addition shall be known and designated as Kilsoquah Preserve, an Addition in Jackson Township, Huntington County, Indiana.

All of the Lots (numbered 1 through 16) in the plat of Kilsoquah Preserve shall be subject to and impressed with the easements and protective covenants, restrictions and limitations hereinafter set forth, which shall be considered a part of every conveyance of any Lot or portion thereof in the Addition without being written therein. The provisions herein contained are for the mutual benefit and protection of the Owners and occupiers, present and future, of any and all Lots in said Addition and they shall run with and bind the land and shall inure to the benefit of and be enforceable by the Owners and occupiers of any Lot or Lots in the Addition and shall be entitled to injunctive relief against any violation or attempted violation of the provisions hereof and also to damages for any injury resulting from any violation thereof; but there shall be no right of reversion, re-entry or forfeiture of title resulting from any violation.

The street defined as Kilsoquah Court shall be a public street and dedicated to the town of Roanoke. The street defined as Miami Lane shall be a private street and maintained by the Kilsoquah Preserve Homeowners Association.

1. Definitions. The following terms, as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

“Architectural Control Assessment” shall mean the assessment levied by the Kilsoquah Preserve Homeowners Association, Inc. pursuant to Paragraph 6 (c).

“Architectural Control Committee” shall mean the entity established pursuant to Paragraph 4(a) of this Declaration for the purposes therein stated.

“Articles” shall mean the Articles of Incorporation of the Kilsoquah Preserve Homeowners Association, Inc., as amended from time to time.

“Assessments” shall mean all sums lawfully assessed against the Members of the Association or as declared by this Declaration, the Articles or the By-laws.

“Association” shall mean the Kilsquah Preserve Homeowners Association, Inc., an Indiana nonprofit corporation, its successors and assigns.

“Board of Directors” shall mean the governing body of the Kilsquah Preserve Homeowners Association, Inc. elected in accordance with the By-Laws.

“By-Laws” shall mean the Code of By-Laws of the Kilsquah Preserve Homeowners Association, Inc., as amended from time to time.

“Common Area” shall mean areas on the Plat pursuant to Paragraph 7 of this Declaration for the purposes therein stated.

“Common Use Easement” shall mean areas on the Plat pursuant to Paragraph 8 (b) of this Declaration for the purposes therein stated.

“Construction Period” shall mean the time frame from beginning to end of the initial construction of the Residence and any remodel, additions or demolition thereafter.

“Developer” shall mean Kilsquah Preserve, LLC, an Indiana Limited Liability Partnership.

“Entry Way” shall mean the signage constructed as an entrance to Kilsquah Preserve and the common area surrounding such signage.

“Kilsquah Preserve” shall mean the name by which the Addition shall be known.

“Lot” shall mean either any of said lots as platted or any tract or tracts of land as conveyed originally or by subsequent owners, which may consist of one or more lots or parts of one or more lots as platted upon which a Residence or other structure may be erected in accordance with the restrictions hereinafter set forth.

“Lot Development Plan” shall mean (i) all data or information that the Architectural Control Committee may request with respect to the improvement or alteration of a Lot (including but not limited to the landscaping thereof) or the construction or alteration of a Residence or other structure or improvement thereon, which may include (ii) a site plan prepared by a licensed engineer or architect, (iii) foundation plan and proposed finished floor elevations, (iv) building plans, including elevation and floor plans, (v) material plans and specifications, and (vi) landscaping plan.

“Maintenance Costs” shall mean all the costs necessary to keep the facilities to which the term applies operational and in good condition, including but not limited to the cost of all upkeep, maintenance, repair, replacement or all or any part of any such facility, payment of all insurance with respect thereto, all taxes imposed on the facility and on the underlying land, leasehold, easement or right-of-way, and any other expense related to the continuous maintenance, operation or improvement of the facility.

“Member” shall mean a member of the Kilsquah Preserve Homeowners Association, Inc.

“Owner” shall mean a Person, who at the time, is the fee simple owner of a Lot or is acquiring such an interest in a Lot. If no such Person exists, the term shall refer to the Owner of record in the Huntington County Assessor’s office.

“Plat” shall mean the final secondary plats of the sections of the Kilsquah Preserve recorded in the Office of the Recorder of Huntington County, Indiana.

“Residence” shall mean any structure intended exclusively for occupancy by a single family together with all appurtenances thereto, including a private garage and outbuildings and recreational facilities usual and incidental to the use of a single family residential lot.

“Restrictions” shall mean the covenants, conditions, easements, charges, liens, restrictions, rules and regulations and all other provisions set forth in this Declaration and the Register of Regulations, as the same may be amended from time to time.

“Tract” shall mean the land as described in Exhibit A.

2. **Construction of Residences.**

- (a) **Land Use.** Lots may be used for single-family residential purposes only. The Owner and his/her family shall be the sole occupants of the Residence located on the Lot, but this restriction shall not prevent any Residence from being occupied by a person occupying the Residence for the purpose of security or maintenance of the Residence during the temporary absence of the Owner. Domestic employees employed by an Owner may also reside in the Residence. No Lot may be subdivided, nor may there be more than one Residence on a Lot; with the exception of Lot 5, which may only be subdivided into two parcels with a residence on each parcel. One Residence may be constructed on contiguous Lots if such construction is feasible without interfering with utility easements and the like. No home occupation shall be conducted or maintained on any Lot which draws members of the public to the Lot. No signs of any nature, kind or description shall be erected, placed or permitted to remain on any Lot advertising a permitted home occupation.
- (b) **Building Lines.** No building shall be located on any Lot nearer the front, side or rear Lot line than the building lines shown on the plat. If side and rear building lines are not defined on the plat they shall be 25 feet.
- (c) **Lot Development Plans.** Prior to commencement of any construction or improvements on or to a Lot, a Lot Development Plan shall be submitted to the Architectural Control Committee in accordance with the requirements of Paragraph 4. Each Owner shall comply with the terms and provisions of Paragraph 4 and the requirements of the Architectural Control Committee established pursuant to the authority granted by this Declaration.

(d) **Size of Residence.** Except as otherwise provided herein, no Residence may be constructed on any Lot unless such Residence, exclusive of open porches, attached garages and basements, shall be not less than the following minimum square footages:

(i) **Lots 1 to 11, Inclusive**

<u>Type</u>	<u>Minimum Size of Residence</u>
One Story	2800 square feet
Two Story	3200 square feet total, 2200 square feet on the first floor

(ii) **Lots 12 to 16, Inclusive**

<u>Type</u>	<u>Minimum Size of Residence</u>
One Story	2300 square feet
Two Story	2900 square feet total, 1900 square feet on the first floor

(e) **Garages.** No front loading attached garages shall be permitted on any Lot. Garages must accommodate at least two cars.

(f) **Unattached Buildings.** All building improvements which are unattached from the residential dwelling improvement shall be built in a manner consistent with the architectural design and building materials used for the residential dwelling improvement.

(g) **Driveways.** All driveways must be paved from their point of connection with the abutting street or road to a point of connection with the garage apron. All driveways shall be paved with concrete, asphalt or brick and shall be dust-proof.

(h) **Storage Tanks.** All fuel and other storage tanks shall be installed underground or concealed within the dwelling or garage in accordance with federal, state, city and county laws, ordinances, statutes, regulations, and orders applicable thereto, and other applicable rules and regulations of other governmental bodies having any jurisdiction thereof.

(i) **Septic Systems.** No septic tank, absorption field or any other on-site sewage disposal system (other than a lateral main connected to a sanitary sewer collection system operated by Kilsquah Preserve or a successor public agency or public utility) shall be installed or maintained on any Lot.

(j) **Wells.** No wells for drinking water or other uses shall be installed or maintained on any Lot.

- (k) **Construction Miscellaneous.** No construction vehicles, shacks or outhouses shall be erected or situated on any Lot herein, except for use by a Builder during the construction of a Residence. During any construction period, all vehicles shall park on said Lot if possible. If construction vehicles are unable to park on said Lot, then the vehicles will only be permitted to park on one side of the street. At no time shall construction vehicles be double parked, or parked on both sides of the road.

During any construction period, the Lot shall be maintained in a clean and orderly manner. Loose shingles, lumber, bricks, block, drywall, insulation or other building materials shall not be left scattered about or around the Residence. Materials which can blow onto adjacent lots shall not be left lying around. Construction trash shall be removed from the Lot once per week by either removing the trash from the lot or disposing the trash into a dumpster provided by a trash disposal service.

During any construction period, the Owner of said Lot will be responsible for using erosion control fencing to prevent dirt, mud or debris from collecting on the street. The Owner shall be responsible for removal of dirt, mud, debris or other foreign material of any kind which may be deposited upon the street or adjacent property from construction on the Lot. If such deposits occur, the Owner shall make provisions to remove such deposits within five (5) days or the Association may remove such deposits at the Owner's expense.

A temporary stone drive shall be constructed prior to beginning construction of any improvement to the Lot. The drive shall be suitable for delivery of construction materials without transferring dirt, mud or other debris onto the street(s).

- (l) **Completion of Construction.** The construction of a Residence shall be completed within eighteen (18) months from the start of construction. No improvement which has partially or totally been destroyed by fire or otherwise shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage. If any improvement has been destroyed by fire or otherwise, a written intent of repair and/or demolition shall be submitted to the Association within thirty (30) days.
- (m) **Occupancy.** No Residence constructed on a Lot shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed and inspected by the Huntington County Building Department, or its successive agency. The Residence shall be deemed substantially completed when an occupancy permit has been granted by the Huntington County Building Department, or its successive agency.

3. **Maintenance of Lots.**

- (a) **Maintenance of Lot.** The Owner of any Lot shall at all times maintain the lot and any improvements situated thereon in such a manner as to prevent the lot or improvements from becoming unsightly and, specifically, such owner shall:

- (i) Mow the Lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds
 - (ii) Remove all debris or rubbish
 - (iii) Cut down and remove unsightly dead trees, pursuant to Paragraph 3 (o)
 - (iv) Where applicable, prevent debris and foreign material from entering drainage areas
 - (v) Keeping the exterior of all improvements in such a state of repair or maintenance as to avoid becoming unsightly
 - (vi) Within sixty (60) days following completion of a house on a lot, the owner shall landscape the lot, weather permitting.
- (b) **Temporary Dwelling.** No structure of a temporary character, trailer, motor home, basement, tent, garage, barn, shack, tool shed or other outbuilding shall be either used, located or maintained on any lot or used as a Residence, whether temporarily or permanently.
- (c) **Signs.** No sign of any kind, billboards, unsightly objects or nuisances shall be displayed to the public view on any Lot except that one sign of not more than six (6) square feet may be displayed for the purpose of advertising the property for sale, or may be displayed by a builder to advertise the property during the construction and sale. One similar sign may be displayed at the Entry Way. This restriction shall not preclude the Developer from constructing informational signage for the purpose of advertising the subdivision to the public. Notwithstanding the foregoing, political election signs shall be allowed thirty (30) days prior to an election, and shall be removed immediately following election (voting) day. All signs shall conform to the standards specified in the Huntington County Ordinances.
- (d) **Nuisances.** No noxious, unlawful, or otherwise offensive activity by reason of odor, fumes, dust, smoke, noise or pollution or which is hazardous by reason of fire, explosion or in violation of the laws of the State of Indiana shall be carried on upon any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the subdivision.
- (e) **Garbage and Refuse Disposal.** No Lot shall be used or maintained as a dumping ground for trash. Trash or other waste shall be kept in sanitary containers out of public view. All equipment for storage or disposal of such materials shall be kept clean and sanitary. No owner of a Lot shall burn or permit the burning of garbage or other unnatural refuse on said Lot.
- (f) **Animals, Livestock and Poultry.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be

kept provided that they are not kept, bred or maintained for any commercial purpose. The owners of such permitted pets shall confine them to their respective Lots such that they will not be a nuisance. Pets shall be on a leash when not on the Owner's Lot. Owners shall remove any fecal deposits made by their animal in any Common Area or Common Use Easement. In no case shall there be allowed more than five (5) ordinary household pets. A maximum of four (4) horses may be kept on a non-commercial basis when adequately housed and fenced. Approval from the Architectural Control Committee shall be required for all housing structures and fencing of all animals.

- (g) **Antennas and Receivers.** No satellite receiver, down-link or antenna of any kind, for the transmission of television, radio or other signals shall be permitted except a satellite dish that is less than twenty-four (24) inches in diameter. The location of all satellite dishes shall be approved by the Association. It is the intent to keep all satellite dishes out of site from adjacent lots and streets as much as possible.
- (h) **Motorized Vehicles.** All motorized vehicles belonging to members of a household shall have permanent off-street parking spaces in garages and no disabled vehicle shall be openly stored on any Lot. No boat, trailer, camper, all-terrain vehicle, motorcycle, snowmobile, or motor home of any kind (including but not limited to house trailers, camper trailers or boat trailers) shall be kept or parked upon said Lot for more than seven (7) days, unless kept from view of neighboring Residences and streets in a garage. No go-carts, motor scooters, snowmobiles or other motorized vehicles (except property maintenance equipment) of any sort shall be operated within the subdivision, but such vehicles may enter and exit the subdivision as necessary for an Owner to operate such vehicles outside the subdivision.
- (i) **Street Parking.** For the purpose of assuring adequate ingress and egress for residents and emergency vehicles such as fire trucks, ambulances and police vehicles, there shall be no parking on any street in the subdivision except when an Owner has a social function where invited guests will not be able to park on the Owner's Lot, and then parking will be confined to only one side of the street. Overnight parking is not allowed on any street.
- (j) **Exterior Lights.** No outdoor light source shall be located more than twelve (12) feet above ground level except attached to the eaves of a residence. All outdoor light sources in excess of 1,500 lumens shall be installed so the direct rays there from are confined to the Lot upon which the source is located. A light source shall be deemed to be outdoor unless it is located within a completely enclosed building. In no event shall any outdoor light sources be of the mercury vapor or sodium type, unless first specifically approved in writing by the Architectural Control Committee. All outdoor and unattached light sources and improvements shall be approved by the Architectural Control Committee. The provisions of this paragraph shall not apply to any street lighting installed by the Developer or the Association.

- (k) **Exterior Building Materials.** All front elevations shall be constructed using wood, brick or stone materials, or a combination thereof. Exterior building materials and colors shall be approved by the Architectural Control Committee.
- (l) **Fencing.** No fence or part thereof shall be constructed between the front property line and the rear elevation of the Residence. No fences may be erected on any Lot without the prior written approval of the Architectural Control Committee. No wire or chain-link fences will be permitted on any Lot.
- (m) **Mailboxes.** The size, location, height and composition of any mailbox must be approved by the Association. The Association reserves the right to design and cluster mailboxes and/or standardize the design for mailboxes. The Lot Owner shall be responsible for the purchase of the box, the post and the cost of installation.
- (n) **Water Disposal.** The disposal of water from sump pumps, geothermal water systems, swimming pools or other forced water discharges shall be approved by the Association. Under no circumstances shall the above mentioned water sources be allowed to discharge into the street or adjacent lots except through established drainage easements. Approval by the Association shall be granted only when adequate measures are submitted to protect the drainage way from erosion or other damaging effects.
- (o) **Natural Areas and Vegetation.** No live, healthy trees or bushes shall be cut down on any Lot or in the Common Area, except for those reasonably required to be removed for the construction of the Residence to be located thereon, and the yard surrounding the Residence, pursuant to an approved Lot Development Plan. On any Lot, as little disturbance of the natural area as needed shall be permitted inside the area to be improved and as little disturbance of the natural area outside of the area to be improved shall be permitted. The purpose of this provision is to preserve the wooded and natural character of the land, to allow natural reforestation and to preserve wildlife habitat. An Owner shall remove any dead standing tree on Owner's Lot if such tree presents a danger to other Owners or their property or becomes unsightly. An Owner shall be responsible for upkeep on developed and undeveloped Lots. If an Owner fails to comply with this Restriction, the Board of Directors shall notify the Owner with two (2) written notices of the infraction prior to pursuing Architectural Control Assessment(s).
- (p) **Swimming Pools.** No swimming pool shall be permitted above ground level on any Lot. Pools shall be installed in accordance with the Indiana Swimming Pool Code.
- (q) **No Hunting, Shooting, Trapping.** No hunting, shooting or trapping shall be allowed in the Addition except for live traps used for the purpose of relocating non-domesticated animals causing damage or imposing a nuisance to the Residence or Lot Owner. However, the Developer may trap to prevent damage to the Common Area and this right may be transferred to the Association.
- (r) **Burning of Materials.** The burning of papers, grass, leaves and other natural materials shall not be allowed except in receptacles approved by the Association. All receptacles

shall be kept in a clean and sanitary condition and shall either be located within the Residence, garage or shall be fully screened from public view by an appropriate fence or screen. Bon fires shall be permitted only in outdoor fireplaces, fire-rings made of non flammable material, or other vessels made for containing recreational burning. Either the Developer or the Association may order discontinuance of all burning during the times it reasonably believes that such burning would be hazardous because of weather conditions.

4. **Architectural Control.**

(a) **The Architectural Control Committee.**

i. So long as the Developer owns any of the Lots, the Developer and one (1) other Lot Owner designated by the Developer shall comprise the Committee unless the developer chooses to form a committee as described in section ii below.

ii. In the absence of the Developers owning any Lots, or by the developer's choice, a majority of the Lot Owners shall select the members of the Committee, not to exceed three (3) members. A majority of the Committee may designate a representative to act for it. Neither the members of the Committee nor its representative shall be entitled to any compensation for services performed pursuant thereto. The Developer may, by an instrument recorded in the Huntington County Recorder's Office, transfer the function of the Committee to the Kilsquah Preserve Homeowners Association whereupon the function of the Committee shall be performed by three (3) or more Members of the Association, each of whom shall be Lot Owners. An Owner of more than one Lot shall be entitled to one vote for each Lot for purposes of this subparagraph. Election of members to the Committee shall occur no less than annually.

(b) **Purpose.** The Committee shall regulate the external design, appearance, use, location and maintenance of the Lot and of improvements thereon in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.

(c) **Conditions.** Prior to the commencement by any Owner of construction, erection or alteration of any Residence, building, fence, wall, swimming pool, tennis court, play equipment, patio or other structure on a Lot, a Lot Development Plan with respect thereto shall be submitted to the Architectural Control Committee, and no Residence, building, fence, wall, swimming pool, tennis court, play equipment, patio or other structure shall be commenced, erected, maintained, improved, altered, made or done, by any Person without prior written approval of the Architectural Control Committee of a Lot Development Plan relating to such construction, erection or alteration. Such approval shall be in addition, and not in lieu of, all approvals, consents, permits, and/or variances required by law from governmental authorities having jurisdiction over Kilsquah Preserve, and no Owner shall undertake any construction activity within Kilsquah Preserve unless all legal requirements have been satisfied. Each Owner shall complete all improvements to a Lot strictly in accordance with the Lot Development Plan approved by the Architectural Control Committee.

- (d) **Procedures.** The Architectural Control Committee shall approve, modify or disapprove in writing a Lot Development Plan within thirty (30) days after notice of such plan was duly filed with the Committee. If the Committee, or its designated representative, fails to approve, modify or disapprove the Lot Development Plan, as required by these provisions, within thirty (30) days after submission, approval will not be required and the applicable provisions hereof shall be deemed satisfied. A decision of the Architectural Control Committee may be appealed to the Board of Directors which may reverse or modify such decision by a two-thirds (2/3) vote of the Directors then serving.
- (e) **Guidelines and Standards.** The Board of Directors shall establish and modify from time to time such written architectural and landscaping design standards as it may deem appropriate to achieve the purpose set forth in subparagraph (b) to the extent that such design guidelines and standards are not in conflict with the specific provisions of this Declaration. Upon recommendation of the Board of Directors, these standards shall be effective only after approval at a meeting of the Members through a two-thirds (2/3) vote of the Members who are voting in person or by proxy at a meeting of such Members duly called for this purpose. These standards shall be mandatory with the same force and effect as these restrictions until modified.
- (f) **Application of Standards.** The Architectural Control Committee shall apply the standards established pursuant to subparagraph (e) in a fair, uniform and reasonable manner consistent with the discretion inherent in the design review process. In disapproving any Lot Development Plan, the Architectural Control Committee shall furnish the applicant with specific reasons for such disapproval and may suggest modifications in such plan which would render the plan acceptable to the Board if resubmitted.
- (g) **Exercise of Discretion.** Owners intend that the members of the Architectural Control Committee exercise discretion in the performance of their duties consistent with the provisions of subparagraph (f), and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members. In any judicial proceeding challenging a determination by the Architectural Control Committee and in any action initiated to enforce this Declaration in which an abuse of discretion by the Architectural Control Committee is raised as a defense, abuse of discretion may be established only if reasonable Person, weighing the evidence and drawing all inferences in favor of the Architectural Control Committee, could only conclude that such determination constituted an abuse of discretion.
- (h) **Limitation of Liability.** Any individual serving upon the Architectural Control Committee, together with their respective heirs, personal representatives, successors and assigns, shall not be liable to anyone by reason of any mistake in judgment, negligence or nonfeasance arising out of or relating to the approval or disapproval or failure to approve any design or plans submitted pursuant to Paragraph 4 above, nor shall they, or any of them, be responsible or liable for any structural defects in any improvement or structure erected according to such design or plans or any drainage problems resulting there from.

Every person who submits the design and plans required pursuant to subparagraph 4 (c) above, agrees, by submission of such design and plans, that he will not bring any action or suit against any member of the Architectural Control Committee to recover any damages. Neither the submission of any complete set of plans to the Architectural Control Committee for review by them, nor the approval thereof by them, shall be deemed to guarantee or require the actual construction of any improvement therein described, and no Owner of any Lot may claim any reliance upon any improvements described in such plans.

- (i) **Inspection.** Members of the Architectural Control Committee may inspect work being performed to assure compliance with these Restrictions and applicable provisions.
- (j) **Dispute Resolution.** Any disputes regarding interpretation, implementation or enforcement of these covenants and protective restrictions shall be submitted to the Architectural Control Committee established above. The Committee's determination of any such dispute shall be binding on the parties involved in the dispute.

5. Kilsquah Preserve Homeowners Association, Inc.

- (a) **Membership.** The Developer shall cause an Indiana not-for-profit corporation to be formed with the name Kilsquah Preserve Homeowners Association, Inc. ("Association"). The Owners of each Lot of the Addition shall be deemed to be a member of the Association and all Owners of each Lot shall be entitled to one vote for each Lot owned by them.
- (b) **Powers.** Except as otherwise limited and provided for, the Association shall have responsibility and authority for proper maintenance and repair of the Common Areas and Common Use Easements in the Addition, including walking and emergency easements, pond areas, dams, culverts and any area in the Addition to which it may have title. Such responsibility shall include the cutting of grass and weeds, the maintenance of any Common Area landscaping, the removal of snow and ice, and the installation, maintenance and operation of street lights, if such installation is approved by the Owners of a majority of the Lots in the Addition; and the Association obtains any necessary easements for purposes of installing, operating and maintaining said street lights within the Addition.

The Association may make and enter into contracts to carry out its responsibilities and shall have the power to pay taxes and other charges on land and other property owned by it from time to time.

- (c) **Classes of Members.** The Association shall have 2 classes of members. The Lot owners shall have 1 vote per lot. The developer shall have 5 votes per lot that have not been sold.

- (d) **Voting and Other Rights of Members.** The voting and other rights of Members shall be specified in the Articles and By-Laws.

6. Assessments.

- (a) **Creation of the Lien and Personal Obligation of Assessments.** Each Owner of any Lot, by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association General Assessments and Architectural Control Assessments (to the extent levied), such Assessments to be established and collected as hereinafter provided.

All Assessments, together with interest thereon and costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which each Assessment is made until paid in full. Each Assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the Owner of the Lot at the time when the Assessment became due.

- (b) **General Assessment.**

- (i) **Purpose of Assessment.** The General Assessment levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners of the Lots and for the improvement, maintenance, repair and operation of the Common Area , Common Use Easements, and Pedestrian Easements. A portion of the General Assessment shall also be applied toward a reserve account for the future maintenance of the private street.

The Drainage System has been constructed for the purpose of controlling drainage within and adjacent to the Real Estate and the occasional discharge thereof as reasonably required from time to time. The Association shall maintain the drainage system to the extent not maintained by any governmental agency, and the Maintenance Cost shall be a General Assessment.

The Association shall maintain the Entry Way and Common Area and all improvements and plantings thereon, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to the assessment. Grass, trees, shrubs and other plantings shall be kept neatly cut, cultivated or trimmed as reasonably required to maintain an attractive entrance to Kilsquah Preserve and other parts thereof.

- (ii) **Basis and Method of Assessment.** Each Lot shall be assessed at a uniform rate beginning with the date of purchase of said Lot. The General Assessment shall be

prorated from the purchase date through December 31st of the year of purchase, and is due to the Association on the date of purchase of said Lot. The General Assessment shall become due on January 1st of every year thereafter. The Board of Directors of the Association shall review the expenses annually and fix the General Assessment for each assessment year at an amount sufficient to meet the obligations imposed by this Declaration upon the Association. The initial general assessment shall be set at \$750.00 annually.

- (c) **Architectural Control Assessment.** If any Owner fails to comply with the requirements of the provisions of this Declaration, then the Association may levy against the Lot owned by such Owner an Assessment in an amount determined by the Board of Directors which does not exceed the greater of (i) One Hundred Dollars (\$100.00) for each day that such failure continues after two (2) written notices thereof is given by the Association to such Owner or (ii) Ten Thousand Dollars (\$10,000.00). Such Assessment may constitute a lien upon the Lot of such Owner and may be enforced in the manner provided in subparagraph (d) below. The levy of an Architectural Control Assessment shall be in addition to, and not in lieu of, any other remedies available to the Association provided in this Declaration, at law or in equity in the case of the failure of an Owner to comply with the provisions of this Declaration. An incident relating to the Architectural Control Assessment shall be enforced only after the recommendation of the Board of Directors and approval by two-thirds (2/3) of the Members who are voting in person or by proxy at a meeting of such Members duly called for this purpose.
- (d) **Special Assessments.** In addition to other assessments provided for herein, the Association may levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Real Estate provided that such special assessment shall have the assent of a majority of the Owners of the Lots who vote in person or by proxy at a meeting of such Owners duly called for the purpose of discussing the capital improvement.
- (e) **Effect of Nonpayment of Assessments: Remedies of the Association.** Any Assessment not paid within sixty (60) days after the due date shall, upon resolution of the Board of Directors, bear interest from the due date at the rate of 1 ½ % per month. The Association shall be entitled to institute in any court of competent jurisdiction any lawful action to collect a delinquent Assessment plus any expenses or costs, including attorneys' fees, incurred by the Association in collecting the Assessment. If the Association has provided for collection of any Assessment in installments, upon default in the payment of any one or more installments, the Association may accelerate payment and declare the entire balance of said Assessment due and payable in full. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area(s) or abandonment of his/her Lot.
- (f) **Assessment Disputes.** Any disputes concerning allocation of expenses hereunder which are not resolved by the Association within three (3) months after the dispute arises shall

be resolved by the Developer, or if the Developer is not in existence, then by an arbitrator chosen by the Board of Directors of the Association, which determination shall be conclusively binding upon all persons.

- (g) **Subordination of the Lien to Mortgages.** The lien of the Assessments provided for herein against a Lot shall be subordinate to the lien of any recorded first mortgage covering such Lot.
- (h) **Certificates.** The Association shall, upon demand by an Owner, at any time, furnish a certificate in writing signed by an officer of the Association that the Assessments on a Lot have been paid or that certain Assessments remain unpaid, as the case may be.
- (i) **Annual Budget.** By a majority vote of the Directors, the Board of Directors shall adopt an annual budget for the subsequent fiscal year, which shall provide for allocation of expenses in such a manner that the obligations imposed by this Declaration will be met. Upon the recommendation of the Board of Directors, such annual budget shall be approved at the annual meeting of the Members, by a majority of the Members who are voting in person or by proxy at that meeting.

7. **Common Area.**

- (a) **Ownership.** The Common Area shall remain private. The Association, through the Board of Directors, may dedicate or transfer all or any part of the Common Area to any entity, including but not limited to, any public agency, authority or utility for use as roads, utilities, parks or other public purposes if such transfer is approved by two-thirds (2/3) of the Members who are voting in person or by proxy at a meeting of such Members duly called for this purpose.
- (b) **Obligations of the Association.** The Association shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including furnishings and equipment related thereto) and shall keep the Common Area in good, clean, attractive and sanitary condition, order and repair.
- (c) **Damage or Destruction by Owner.** In the event the Common Area is damaged or destroyed by an Owner or any of its guests, tenants, licensees, agents or member of his/her family, such Owner authorizes the Association to repair said damaged area in a good workmanlike manner. An amount equal to the costs incurred to effect such repairs shall be assessed against such Owner as a special assessment and shall constitute a lien upon the Lot of said Owner.

8. **Easements.**

- (a) **Plat Easements.** In addition to such easements as may be created pursuant to the written instruments recorded in the Office of the Recorder of Huntington County, Indiana, Lots are subject to drainage easements, sewer easements and utility easements as shown on the

Plat, which are reserved for the use of Owners, the Association, the Architectural Control Committee, public utility companies and governmental agencies as follows:

- (i) **Drainage Easements** (DE) are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the need of Kilsquah Preserve and adjoining ground and/or public drainage systems. It shall be the individual responsibility of each Owner to maintain the drainage across his/her own Lot. Under no circumstances shall said easement be blocked in any manner by the construction or reconstruction of any improvement, nor shall any grading restrict, in any manner, the water flow. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage and by any governmental authority having jurisdiction over drainage and by the Architectural Control Committee. Said easements are for the mutual use and benefit of the Owners.
- (ii) **Sewer Easements** (SE) are created for the use of the utility, public or private, having jurisdiction over the sanitary waste disposal system designated to serve Kilsquah Preserve. Sewer easements shall be used for construction, extension, operation, inspection, maintenance, reconstruction and removal of sanitary sewer facilities including but not limited to mains, ducts, or other related utility structures of sanitary sewers that are part of said system
- (iii) **Utility Easements** (UE) are created for the use of the Association and public and private utility companies for the installation and maintenance of mains, ducts, poles, lines and wires, as well as for all uses specified in the case of sewer easements.
- (iv) **Landscape Easements** (LE) as designated on the Plat are created over and across lots, are hereby created and reserved for the use of the Developer or the Association, for access to and installation, maintenance, repair and replacement of walls, earth mounds, screening material, fencing, neighborhood and community identification signs, directories, lighting, irrigation systems and other improvements. Except as installed by the Developer or the Association, no improvements or permanent structures, including without limitation, fences, shall be erected or maintained in or upon said Landscape Easements without the written consent of the Developer or the Association.
- (v) **Pedestrian Easements** (PE) are created for the use of members, owners, owner's guests and family members to access common area, common use easements or streets. Motorized vehicles are prohibited on all pedestrian easements except those used for the maintenance of common area, easements, and owner's property.

Any municipal, public or quasi-public utility engaged in supplying one or more of the above utility services shall have the right to enter upon the strips of land subject to said easements for any purpose for which said easements may be used. No structure,

including fences, shrubbery, trees and other installations shall be built on any drainage, sewer or utility easement if such structure would interfere with the utilization of such easement for the purpose intended or violate any applicable legal requirement or the terms and conditions of any easement specifically granted to a Person who is not an Owner by an instrument recorded in the Office of the Recorder of Huntington County. All structures, shrubbery, trees and other installations located within said easements shall be subject to the paramount right of each such utility to use said easements as provided herein and the removal of any obstruction by any utility shall in no way obligate the utility in damages or to restore the obstruction.

- (b) **Common Use Easement(s)**. An easement as designated on the Plat is created for use by all Owners of Kilsquah Preserve for the purpose of walking trails throughout the subdivision. The Association shall be responsible for the exclusive management and control of the Common Use Easement(s) and all improvements thereon (including furnishings and equipment related thereto) and shall keep the Common Use Easement(s) in good, clean, attractive and sanitary condition, order and repair. In the event the Common Use Easement(s) is/are damaged or destroyed by an Owner or any of its guests, tenants, licensees, agents or member of his/her family, such Owner authorizes the Association to repair said damaged area in a good workmanlike manner. An amount equal to the costs incurred to effect such repairs shall be assessed against such Owner as a special assessment and shall constitute a lien upon the Lot of said Owner.
- (c) **Public Health and Safety Easements**. An easement is hereby created for the benefit of, and granted to, all police, fire protection, ambulance, delivery vehicles and all similar Persons to enter upon the Common Area in the performance of their duties.

9. **Ponds**. No motorized watercraft or vehicles shall be permitted on the ponds.

10. **Prohibition of Overhead Utility Facilities**. All utility wires, cables, conduits, pipes and other facilities within the Real Estate shall be located underground within established utility easements, except that:

Poles and overhead facilities may be used to the extent reasonably necessary at those places where distribution facilities enter and leave the Real Estate, and

Housings and other facilities may be above the surface of the ground to the extent otherwise necessary for installation and operation of the utility service directly to the Residence, but shall be constructed and maintained at as low a height and in as inconspicuous a manner as is practicable.

11. **Utility Service Entrances**. All utility service entrances running from any utility plant within a platted easement or a street to any structure on a Lot shall be located underground, except for such housing, pedestals or other facilities as may be appropriate or necessary for connection, servicing and maintenance of such utility service entrance. Such housing, pedestals and other facilities shall be constructed and maintained at as low a height and in as inconspicuous a manner as is practical. Each Owner shall, at the time of the installation of any such service

entrance, furnish to the utility for its record a drawing or other description accurately showing the location underground of the service entrance from the easement or street to the Owner's structure. Each utility having a plant in any easement or street shall have control over the installation of all connections to its plant for service entrances serving Lots. Each such installation shall be left open for inspection and approval by the utility.

12. **Rotocraft**. Operations of rotocraft shall be permitted for private use only in Kilsnoquah Preserve.
13. **Interpretation**. The underlined titles preceding the various paragraphs and subparagraphs of this Declaration are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provision of this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.
14. **Duration**. The foregoing covenants and restrictions are for the mutual benefit and protection of the present and future Owners and the Association, and shall run with the land and shall be binding on all parties and all Persons claiming under them until January 1, 2020, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part by vote of those Persons who are then the Owners of a majority of the Lots in the subdivision, together with the consent of the Developers so long as the Developers own a Lot.
15. **Investigation and Compliance**. The Developer and the officers of the Association shall have the right of access to all Lots at all reasonable times and in a reasonable manner to investigate and determine compliance with the provisions of these covenants.
16. **Cost and Attorney's Fees**. In any proceeding brought by the Developer, any Owner of a Lot or the Huntington County Plan Commission to enforce the terms and provisions contained herein, as may be amended from time to time, said Developer, Owner or Huntington County Plan Commission shall be entitled to recover its costs, to include reasonable attorney fees.
17. **No Waiver**. The failure of any interested party to enforce the provisions of these restrictions and limitations shall not constitute a waiver of the right to enforce them on another occasion and no delay in enforcement shall constitute a waiver of the right of enforcement so long as a violation continues.
18. **Severability**. Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.
19. **Flood Protection Grades**. In order to minimize potential damages from surface water, flood protection grades have been established. All dwellings shall be constructed at or above the

minimum flood protection grades. Such grades shall be the minimum elevation of a first floor or the minimum sill elevation of any opening below the first floor. Flood Protection Grades have been established by a surveyor or engineer licensed by the State of Indiana and are indicated on the tract in exhibit A.

Kilsoquah Preserve, LLC, by signature hereon, notes its concurrence to the inclusion of the foregoing Easements, Covenants and Protective Restrictions for Kilsoquah Preserve at the time of plat of the noted Addition.

Dated this ____ day of _____, 2007.

KILSOQUAH PRESERVE, LLC

By _____

Kevan B. Biggs, Managing Partner

By _____

Kevin Stamm, Owner of property defined as lot #2

STATE OF INDIANA)
) ss:
COUNTY OF ADAMS)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Kevan B. Biggs, Managing Partner of Kilsoquah Preserve, LLC, and Indiana Limited Liability Partnership, and acknowledged his execution of the foregoing EASMENTS, COVENANTS AND PROTECTIVE RESTRICTIONS FOR KILSOQUAH PRESERVE to be his free and voluntary act and deed this _____ day of _____, 2007.

My Commission Expires: _____

STATE OF INDIANA)
) ss:
COUNTY OF ADAMS)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Kevin Stamm, Owner of property defined as lot #2 on Kilsoquah Preserve, and acknowledged his execution of the foregoing EASMENTS, COVENANTS AND PROTECTIVE RESTRICTIONS FOR KILSOQUAH PRESERVE to be his free and voluntary act and deed this _____ day of _____, 2007.

My Commission Expires: _____