

## **RESTRICTIONS AND PROTECTIVE COVENANTS FOR BROOKSTONE SUBDIVISION, SECTION III**

Brookstone Georgetown, LLC, being the sole owner of all lots in Brookstone Subdivision, Section III (the "Subdivision"), as the same appears of record in the Office of the Recorder of Floyd County, Indiana, in Deed Drawer \_\_\_\_\_, Instrument No. \_\_\_\_\_, does hereby impose the following Restrictions and Protective Covenants (the "Restrictions") upon all persons, firms, and corporations who may now or hereafter have any vested interest, legal or equitable, in any lot within the development.

### **1. Primary Use Restrictions**

No lot shall be used except for private single-family residential purposes. No structure shall be erected placed or altered or permitted to remain on any lot except a single-family dwelling designed for the occupancy of one family (including any domestic servants living on the premises), not to exceed two and one-half (2½) stories in height and containing an attached or detached private garage for the sole use of the owner and occupants of the lot. Private professional business for in-home use is allowed subject to Georgetown zoning approval.

### **2. Approval of Construction**

No structure may be erected, placed, or altered on any lot until the following items are submitted to the Developer and the Developer has issued an approval of: (a) a site plan showing the location of improvements on the lot, including the location and size of the driveway; (b) the rear, front, and side views of the proposed plans; and (c) the type of exterior materials. All references to the "Developer" herein shall include any person, firm, corporation, or association to whom the Developer may assign the right of approval. All references to "structure" herein shall include any building (including garage), fence, and/or wall.

### **3. Building Materials, and Builder**

(a) The exterior building materials of all structures shall extend to a maximum of six inches (6") above ground level and shall be: brick, stone, brick veneer, or stone veneer, wood, masonite, concrete siding or vinyl siding or a combination of the same. Builder shall leave no exposed concrete on walkout basements or on any part of the structure other than the six inches (6") referenced above.

(b) The general contractor constructing the residential structure on any lot shall have been in the construction business for a period of one (1) year and must have supervised the construction of, or built a minimum of, six (6) homes. The Developer makes this requirement to maintain high quality of construction within the subdivision, but reserves the right to waive these standards of experience.

#### 4. Setbacks

(a) No structures shall be located on any lot nearest to the front lot line or side street line than the minimum building setback lines shown on the recorded plat. The Developer may vary the established building lines, in its sole discretion, when not in conflict with applicable zoning regulations during the development of the Subdivision. For purposes of this section, the development of the Subdivision shall be from the date that these restrictions and protective covenants are executed by the Developer to the date of the sale of the last remaining lot in Brookstone Subdivision to any person, firm, or corporation other than the Developer.

(b) For the purposes of these Restrictions and Protective Covenants, all adjoining lots or portions thereof used as a site for the construction of a single dwelling structure shall be considered one (1) lot so that these Restrictions and Protective Covenants relative to side lot lines, shall mean the side line of any one (1) or more lots or portion or portions of any lot or lots used as a single dwelling building site.

(c) For purposes of these Restrictions and Protective Covenants, eaves, steps, and open porches shall not be considered as part of the building; provided, however, that this exception shall not be construed to permit any portion of a structure or any other building to encroach upon another lot. In no event shall any dwelling, structure, or any other building be erected in violation of side yard requirements of any applicable zoning ordinance in effect at the time of construction thereof.

#### 5. Minimum Floor Areas

(a) The ground floor living area of a **one (1) story** house shall be a minimum of one thousand four hundred (1,350) square feet, exclusive of porches and garages.

(b) The total living area of a **one and one-half (1½) story** house shall be a minimum of one thousand five hundred (1,500) square feet, exclusive of porches and garages.

(c) The total living area of a **two (2) story or bi-level** house shall be a minimum of one thousand six hundred (1,600) square feet, exclusive of porches and garages.

(d) Finished basement areas, garages, and open porches shall not be included in computing the total living area of any residential structures, except that finished areas on the lower level of a bi-level will be considered in computing total living area.

**6. Completion Time Requirements for Construction**

(a) No portion of a structure shall be allowed to remain upon any lot within the Subdivision in a partial state of completion for a substantially greater length of time than would normally be required for the completion of such a structure, having regard only for general circumstances and conditions in the vicinity and not circumstances and conditions peculiar to the owner or other persons responsible for such construction, and in no event in excess of one (1) year from the date of first construction.

(b) After occupancy of a residence, the lot owner shall grade and seed or sod the lot within thirty (30) days. All front yards (area between the dwelling and the street) shall be sodded.

(c) All driveways shall be paved solidly of concrete or asphalt within six (6) months of completion of a single-family dwelling.

(d) Upon an owner's failure to comply with the provisions of this paragraph 6, the developer, or any person or association to whom it may assign the right, may take action as necessary to comply herewith and the owner shall immediately, upon demand, reimburse the Developer or other performing party for all expenses incurred in so doing.

**7. Garages and Driveways**

(a) All lots shall have at least a one and one-half (1½) car garage, a minimum of fourteen feet (14' feet in width. All two (2) car garages shall be a minimum of nineteen feet (19') in width.

(b) No carports shall be constructed on any lot.

(c) Prior to the start of construction of any dwelling, the contractor shall install and gravel the driveway so that it can be used during construction of the dwelling.

**8. Use of Other Structures and Vehicles**

(a) No structure of a temporary character shall be permitted on any lot except temporary tool sheds or field offices used by a Builder or the Developer, which shall be removed when construction and/or development is completed.

(b) No outbuilding, trailer, basement, tent, shack, garage, barn, or structure other than the main residence erected on a lot shall at any time be used as a residence, regardless of whether temporarily or permanently.

(c) No trailer, trucks with the exception of pick-up trucks , motorcycle, , trailer, camping vehicle, or boat shall be parked or kept on any lot at any time unless housed in a garage or basement or parked to the rear of the improvements located on any lot so that same shall not be visible to the public from any street located in the Subdivision, or additions thereto. No automobile which is inoperable shall be habitually or repeatedly parked or kept on any lot (except in the garage) or on any street. No trailer, boat, truck, or other vehicle, except an automobile, shall be parked on any street or public right-of-way for a period in excess of six (24) hours in any one calendar year. It is the intent of the Developer that residents park their automobiles in their driveways and/or garages.

## **9. Underground Utility Service and Fuel Tanks**

(a) Utility service lines serving each lot shall be underground and shall be located only in those areas reserved on the plat for utility easements. The utility easements shown on the plat shall be maintained and preserved in their present condition and no encroachments therein, and no change in the grade or elevation thereof, shall be made by any person, firm, or corporation owning any legal or equitable interest in any lot in the Subdivision without the express consent in writing of the utility service companies providing utility service to the Subdivision.

(b) All tanks used for any purpose shall be screened from street view. Pool pumps and filtering systems shall not be visible from any roadway nor from the window or porches of adjacent properties.

(c) No solar unit may be visible from any street of the said subdivision.

## **10. Animals**

No animals, including reptiles, livestock, and/or poultry of any kind shall be raised, bred, or kept on any lot, except that dogs, cats, and/or other household pets in the general geographic area may be kept provided they are not kept, bred or maintained for any commercial or breeding purposes. All household pets, including dogs and cats, shall at all times be confined to the lot occupied by the owner of such pets.

## **11. Duty to Maintain Lot**

Before the date of construction of a single-family residence is started, it shall be the duty of each lot owner to keep and maintain the grass at a level not to exceed twelve inches (12") in height. From and after the date construction of a single-family residence is started, it shall be the duty of each lot owner to keep and maintain grass on the lot properly cut, to keep the lot free and clear from all weeds and trash (other than normal building materials used during construction), and to keep it otherwise neat and attractive in appearance. Should any owner fail to do so, the Developer may take such action as it deems appropriate, including mowing, in order to make the lot neat and attractive and the owner shall, immediately upon demand, reimburse the Developer for all costs incurred in taking such action.

**12. Erosion Control**

Prior to the construction of a single-family residence on each individual lot, it shall be the responsibility of the Developer or his assigns to maintain erosion control on each lot to prevent erosion into any road or curb. After the transfer of ownership from the Developer or a resident, it shall be the duty of each individual lot owner to prevent any erosion of earth onto said improvements. Should any owner fail to do so, the Developer (or any person, firm, corporation, or association to which it may assign the right) may take such action, as it deems appropriate, and immediately upon demand, such lot owner shall reimburse the Developer or other performing parties for all expenses incurred in so doing.

**13. Signs, Fences, House Numbers, and Mail Boxes**

(a) No sign for advertising or any other purpose shall be displayed on any lot, or on a building or a structure on any lot, except for a sign for advertising the sale or rent thereof, which shall not be greater in area than nine (9) square feet; provided, however, the Developer (1) shall have the right to erect larger signs when advertising the subdivision, (2) to place signs on a lot designating the lot number of the lot, and (3) following the sale of a lot, to place signs on such lot indicating the name of the purchaser of that lot. This prohibition shall not restrict placement of occupant name signs and lot numbers as allowed by applicable zoning regulations.

(b) No fence or wall of any nature may be extended toward the front or street side property lines beyond the front or side walls of the residence. Fences shall not exceed six feet (6) in height without the approval of the Developer. All fences shall be of an appropriate material so as not to detract from any dwelling, and shall be properly maintained.

(c) All homes shall display a house number in an appropriately placed position, and all mailboxes and posts to be same style to be determined by developer.

**14. Drainage**

Drainage of each lot shall conform to the general drainage plans of the Developer for the subdivision.

**15. Disposal of Trash**

No lot shall be used or maintained as a dumping ground for rubbish, trash, or garbage. Trash or garbage or other waste shall not be kept except in sanitary containers.

**16. Restrictions Run With Land**

Unless altered or amended under the provisions of this paragraph, these Restrictions shall run with the land and shall be binding on all parties claiming under them for a period of twenty-five (25) years from the date this document is recorded, after which time such covenants shall automatically be extended for successive periods of ten (10) years, unless an agreement in writing changing or releasing said Restrictions, in whole or in part, and signed by the then owners of not less than fifty-one percent (51%) of the Subdivision by area, exclusive of dedicated roadways, has been recorded in the Recorder's Office of Floyd County, Indiana. The failure of any owner to demand or insist upon observance of any of these Restrictions, or to proceed for restraint of violation of any of these Restrictions, shall not be deemed a waiver of the violation, or the right to seek enforcement of these Restrictions.

**17. Homeowner's Association**

(a) Membership and Voting Rights:

(i) Every owner of a lot in the Subdivision shall be a member of the existing Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

(ii) The Association shall have two (2) classes of voting memberships: Class A and Class B.

**Class A:** Class A members shall all be owners, with the exception of the Developer and Builder, and shall be entitled to one (1) vote for each lot owned. When more than one (1) person owns an interest in any lot, all such persons shall be members. The vote for such lots shall be exercised as they among themselves agree, but in no event shall such vote be split into fractional votes and no more than one (1) vote shall be cast with respect to any lot. Each vote cast for a lot shall be presumptively valid, but if such vote is requested by any member holding any interest in such lot, if any such members are not in agreement, the vote of such lot which is questioned shall not be counted.

**Class B:** The Class B member shall be the Developer and the Class B member shall be entitled to three (3) votes for each lot owned. A Class B membership shall cease and be converted to a Class A membership when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership.

(b) Creation of Lien and Personal Obligation of the Assessments:

(i) The owner of any lot within the Subdivision, except the Developer and/or Builder, by acceptance of a deed to any such lot, whether or not it shall be expressed in such Deed, is deemed to covenant to agree to pay to the Association an assessment fee in the initial sum of One Hundred and 00/100 Dollars (\$100.00) per lot beginning in the year of the first conveyance by the Developer and/or Builder to any person, firm, or corporation. Thereafter, the annual assessment shall be due on the 1<sup>st</sup> day of January of each year after such initial conveyance is made. The annual assessment, together with interest, costs, and reasonable attorneys' fees, shall be a charge on, and a continuing lien upon, the property against which such assessment is made. Each assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of such property at the time the assessment was due. The personal obligation for delinquent assessment shall not pass to his successor-in-title unless expressly assumed by such successor in the deed to such lot.

(ii) The purpose of the assessments levied by the Association shall be exclusively to promote the recreation, health, safety, and welfare of the residents of the Subdivision and for the improvements and maintenance of the Common Areas, including the Subdivision entrances and landscaping islands in the roadway at the entrance(s) and cul-de-sacs. The Association shall also be responsible for any taxes or assessments imposed upon the Common Areas. In addition, the Association shall also be required to carry liability insurance on the Common Areas and to indemnify individual lot owners.

(iii) The Association, by a vote of the majority of the members, may increase or decrease the annual assessment.

(iv) Effect of Nonpayment of Assessments; Remedies of the Association: Any assessments not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of fifteen percent (15%) per annum. The Association may bring an action at law against the owner to pay the same and may foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area or any abandonment such lot.

(v) Subordination of Assessment Lien: The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage in existence at the time the assessment becomes a lien. No sale or transfer of any lot shall affect any assessment lien. However, the sale or transfer of any lot pursuant to any mortgage foreclosure, or any proceedings in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No such sale or transfer shall relieve such lot from liability for the assessment thereafter becoming due or from the lien thereof.

(vi) Exempt property: All properties dedicated to and accepted by a local public authority. The common areas, and all properties owned by the developer shall be exempt from the assessment created herein, except no land improvements devoted to dwelling use shall be exempt from said assessments.

(vii) Notice of Quorum for Any Action: Written notice of all meetings called for the purpose of taking any action shall be sent to all members not less than thirty (30) or more than sixty (60) days in advance of the meeting. At the first meeting called, the presence of the members or proxies entitled to cast sixty percent (60%) of all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement. A required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. A majority vote of the quorum shall be required to take any action.

(viii) Directors and Incorporation: The Association is an unincorporated entity and has not been incorporated. The Association, pursuant to the provisions set forth herein may take, by proper vote, the proper action to incorporate the Association or it may decide to stay as an unincorporated entity. It may also take the action of appointing a Board of Directors to act on behalf of the Association, and set forth by-laws to guide the Association and/or its Directors.

(ix) Owner's Easements and Rights of Enjoyment: Every owner shall have the right and easement of enjoyment in and to the Common Areas, which right and easement shall be appurtenant to and shall pass with the title to every lot, subject to the following provision: the right of the Association to dedicate or transfer shall be effective unless an instrument of non-agreement to such dedication or transfer is signed by two-thirds (2/3) of the members and has been recorded.

## **18. Enforcement**

Enforcement of these Restrictions shall be by proceeding at law or in equity, brought by any owner of real property in the Subdivision or by the Developer against any party violating or attempting to violate any of these Restrictions, either to restrain violation, to direct restoration, or to recover damages. In the event that any building construction is done in violation of the plans, specification, and/or materials approved by the Developer or its assigns, then the building contractor and lot owner(s) shall be jointly and severally liable to the Developer, or its assigns, for an enforcement fee of Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) in addition to injunctive relief, damages, and/or other expenses of litigation, including reasonable attorneys' fees. Such fee is payable within thirty (30) days of written notice thereof.



**19. Invalidation**

Invalidation of any provision of these Restrictions by court order shall in no way affect any of the other provisions, all of which shall remain in full force and effect.

**20. Obligation to Construct and/or Recover**

Each lot owner shall, within three (3) years after the date of conveyance of a lot without a dwelling thereon, commence in good faith the construction of a single-family dwelling approved according to paragraph 2 hereof upon each lot conveyed; provided, however, that should said construction not commence within the specified period of time, if the lot owner has not complied with all of the provisions herein, or from that time forward does not comply with such provisions, then the Developer may elect to repurchase any and all lots on which construction has not commenced for eighty percent (80%) of the original purchase price of said lot or lots hereunder, in which event the lot owner shall immediately reconvey and deliver possession of said lot or lots to the Developer by warranty deed. Failure of the Developer to elect to repurchase any lot on which construction has not commenced under the terms of this paragraph shall not be deemed a waiver of the Developer's right to elect to repurchase in the future any or all of such lots on which construction has not commenced.

**21. Nuisances, Disposal of Trash**

(a) No noxious or offensive trade or activity shall be conducted on any lot and nothing shall be done which may be or become an annoyance or nuisance to the Subdivision.

(b) No trash, garbage, or other waste or refuse shall be kept within the Subdivision except in neat and sanitary containers. Any incinerator or other equipment for the storage or disposal of such materials shall be kept in a clean, neat, and sanitary condition and maintained and/or used in accordance with all federal, state, and local laws and/or ordinances.

**22. Reservation by Developer to Alter or Amend Restrictions and Protective Covenants.**

The Developer, and its successors and assigns, reserve the right to alter or amend these Restrictions during the development period of the Subdivision. For purposes of this paragraph, the development period shall be from the date that these Restrictions are executed by the Developer to the date that all sections of the Subdivision have been fully developed.

IN WITNESS WHEREOF, BROOKSTONE GEORGETOWN, LLC, by its members, David J. Stinson, Duard Avery, Jeffery A. Corbett and David R. Blankenbeker, have executed these Restrictions on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

BROOKSTONE GEORGETOWN, LLC  
an Indiana limited liability company

By: \_\_\_\_\_  
David J. Stinson, Member

By: \_\_\_\_\_  
David R. Blankenbeker, Member

By: \_\_\_\_\_  
Duard Avery, Member

By: \_\_\_\_\_  
Jeffery A. Corbett, Member

STATE OF INDIANA            )  
  ) SS:  
COUNTY OF CLARK         )

BEFORE ME, the undersigned, a Notary Public, in and for the above named County and State, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, personally appeared David J. Stinson, Duard Avery, Jeffery A. Corbett and David R. Blankenbeker as members of Brookstone Georgetown, LLC, an Indiana limited liability company, and acknowledged the execution of the foregoing Restrictions and Protective Covenants, individually, and for and on behalf of said company.

WITNESS my hand and notarial seal.

\_\_\_\_\_  
Notary Signature

My commission expires: \_\_\_\_\_

Resident of \_\_\_\_\_ County