

# **BROOKSIDE**

HOMEOWNERS ASSOCIATION, INC.

## **COVENANTS AND RESTRICTIONS DISCLAIMER FOR DIGITAL REPRODUCTION**

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The original Covenants and Restrictions were developed for Brookside, Section One. This includes lots 1 through 49. Additional amendments have been made to the Covenants and Restrictions since the original document was produced. The amendments, although not available specifically in digital format, are as follows:

FIRST AMENDMENT: Provisions to include Brookside, Section Two; Lots 50 through 62

SECOND AMENDMENT: Provisions to include Brookside, Section Three; Lots 63 through 97

THIRD AMENDMENT: Provisions to include Brookside, Section Four; Lots 98 through 128

FOURTH AMENDMENT: Provisions to include Brookside, Section Five; Lots 129 through 179

FIFTH AMENDMENT: Provisions to include Brookside, Section Six; Lots 180 through 208

All homeowners within these jurisdictions, Brookside lots 1 through 208, are bound by these Covenants and Restrictions regardless of when or whether they received the document(s). Any homeowners within the "Brookside Community" that are not included in these lots are governed by similar documents under the Reserve of Brookside Homeowner's Association and the second Brookside Homeowner's Association for newer developments west of these properties. Residents governed by these or other homeowner's associations should contact their representatives for information on their policies.

Questions regarding any issues in this document, the original document, or any supporting materials should be directed to the Association Board of Trustees or, where applicable, the Architectural Control Committee.

THIS ELECTRONIC DOCUMENT REMAINS THE PROPERTY OF THE BROOKSIDE HOMEOWNER'S ASSOCIATION, INC. USE OF THIS DOCUMENT IS RESTRICTED TO MEMBERS OF THE BROOKSIDE HOMEOWNER'S ASSOCIATION, THE BOARD OF TRUSTEES, AND ANY PARTIES DESIGNATED BY THE BOARD OF TRUSTEES.

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
BROOKSIDE, SECTION ONE  
A SINGLE FAMILY RESIDENTIAL DEVELOPMENT  
IN THE CITY OF SPRINGBORO, COUNTY OF WARREN, OHIO**

The undersigned BROOKSIDE JOINT VENTURE, an Ohio partnership (hereinafter referred to as "Developer") as owner and developer of real property described in Exhibit "A" attached hereto and known as Brookside, Section One (including lots 1 to 49 and referred to herein as the "Subdivision"), imposes the following plat restrictions and covenants on the Subdivision for the benefit of all present and future owners of any lot in the Subdivision.

**DECLARATIONS**

All lots within the Subdivision shall be subject to the following development standards, restrictions, covenants, conditions and assessments, which are for the benefit of all lot owners and occupants within the Subdivision and which shall run with the property and shall be binding on all owners and all persons claiming under them until December 31, 2001, at which time said covenants, conditions, restrictions and assessments shall be automatically extended for successive periods of ten (10) years, unless by a majority vote of the then owners of the lots in the subdivision it is agreed to change said covenants, conditions, restrictions and assessments in whole or in part:

Article 1. Use Restrictions

1.01 Each lot within the Subdivision (except lots 48 and 49, which are also known as Reserve Areas A and B) the "Building Lots", shall be used for single-family residential purposes only. However, the Developer, its agents or assigns may use the Building Lots for construction and sales purposes during any building and sales period. No lot within the Subdivision shall hereafter be subdivided into separate parcels to create additional residential lots.

1.02 No residence, building, shed, fence, mailbox, light pole, swimming pool, tennis court, pavement, driveway, wall or structure of any kind, shall be erected, placed or altered on any Building Lot without first obtaining the written consent of the Architectural Control Committee subsequently described herein. All requests for written approvals from the Architectural Control Committee shall be accompanied by detailed plans and specifications for the proposed improvements showing, where applicable, the size, location, type, architectural design, spacing, quality, use, construction materials, color scheme, grading plan and finish grade elevation.

1.03 Each two story single family dwelling constructed on any Building Lot shall have a minimum of 1,500 square feet of living area and each single story family dwelling shall have a minimum living area of 1,400 square feet of living area, exclusive of open porches, garages and other unheated areas. Each dwelling shall have an attached garage with space for not less than two automobiles.

1.04 A post light which is controlled by a photo electric cell is to be installed in the front yard of each Building Lot at the time of construction of a dwelling thereon. The location and style of the post and light fixture must be approved by the Architectural Control Committee under the terms of paragraph 1.02 above. The lot owner shall maintain the light in operating condition at all times.

1.05 No satellite dish, antennae, or radio, television or microwave towers shall be erected or maintained on any lot in the Subdivision without the written approval of the Architectural Control Committee.

1.06 No residence shall have a sump pump which discharges directly into the street through a curb-cut.

1.07 No building shall be located nearer to any street than the building setback line shown on the recorded plat of the Subdivision. The setback areas designated on the recorded plat shall be for lawn purposes only. This covenant shall not be construed to prevent the use of the setback areas for walks, drives, trees, shrubbery, flowers, or ornamental plants used for the purpose of beautification.

1.08 No structures, plantings or materials shall be placed or permitted to remain within the Utility or Drainage Easement areas or No Building Zones as designated on the recorded plat of the Subdivision if such structures, plantings or materials would damage or interfere with the installation and maintenance of utilities or would change or retard the flow of surface water from its proper course of flow.

1.09 No noxious, offensive or unreasonably disturbing trade or activity shall be carried on or permitted on any lot in the Subdivision, nor shall anything be done, placed or stored on any lot which may (a) become an annoyance or nuisance to the neighborhood, or (b) occasion any noise or offensive odor which might disturb the peace, comfort or serenity of the occupants of the neighboring lots.

1.10 No clotheslines shall be located on any Building Lot except one removable, folding, umbrella-like clotheslines. Folding umbrella-like clotheslines shall be permitted in the rear patio area only. No laundry articles shall be left outdoors overnight or any time on Saturdays or Sundays.

1.11 All trucks, motorcycles, boats, vans, buses, campers, motor homes, trailers, or other similar recreational vehicles stored on any lot in excess of one week shall be housed within a garage building. All automobiles shall be housed within a garage building. No inoperable vehicles shall be stored on any lot. No exterior portion of any lot shall be used as a dumping ground or storage area for rubbish, machinery, scrap, paper, glass or other such materials. Garbage or other waste shall be kept in trash containers. All containers used for the storage or disposal of such materials shall be kept in clean and sanitary condition and screened from public view. This covenant shall not be deemed to prohibit the storage of building materials to be used in the construction of approved structures on any lot, provided such building materials are incorporated into the approved improvement within ninety (90) days after its delivery to such lot. All improvements commenced by an owner of any lot within the Subdivision must be completed within one (1) year from the date of commencement.

1.12 No sod, dirt or gravel, other than incidental to the construction of an approved structure, shall be removed from any lot without the written approval of the Architectural Control Committee.

1.13 No weeds, underbrush or unsightly growths or objects of any kind shall be permitted to remain on any lot within the Subdivision. All lawn areas shall be maintained in a neat and orderly manner and shall be mowed on a regular basis.

1.14 No geothermal or solar heating system shall be installed without the prior approval of all applicable agencies and the Architectural Control Committee.

1.15 No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other usual household pets may

be kept on any lot, so long as such pets are not kept, bred or maintained for any commercial purpose. No animal shall be permitted to run loose or become a nuisance to any owner of any lot in the Subdivision. The Homeowner's Association, as described in Article 3, may regulate and control, by publishing rules and regulations, the maintenance of such household pets as it deems necessary from time to time.

1.16 No sign or billboard shall be erected or displayed on any lot except (a) one sign of no more than five (5) square feet advertising the property for sale; (b) signs approved by the Architectural Control Committee; and (c) signs used by Developer, its successors and/or assigns, to advertise lots or residences for sale during the construction and sales period.

1.17 All tanks for the storage of propane gas or fuel or oil shall be located beneath ground level, except that propane tanks for service to the entire Subdivision or for construction operations may be located above ground.

1.18 No well for the production of gas, water, oil or otherwise, whether intended for temporary or permanent purposes, shall be drilled or maintained on any lot without the written consent of the Architectural Control Committee.

1.19 No chain link fence will be permitted on any Building Lot in the Subdivision.

1.20 No above-ground swimming pools will be permitted on any lot in the Subdivision.

1.21 No private water supply systems or private sewage disposal systems shall be permitted on any lot in the Subdivision.

1.22 The owner of each Building Lot within the Subdivision, upon acquisition of title to such lot, shall automatically become a member of the any homeowner's association created in accordance with paragraph 3.01 hereof. Such membership shall be an appurtenance to and shall not be separated from ownership of the Building Lot and such membership shall terminate upon the sale or other disposition by such member of such lot ownership.

1.23 Invalidation of any of these covenants and restrictions by judgment or court order shall in no way affect any other provision hereof all of which shall remain in full force and effect.

It shall be lawful for the Developer, the City of Springboro, the Homeowner's Association or any person or persons owning any real property within the Subdivision to prosecute any proceedings at law or in equity against a person or persons violating or attempting to violate any covenant or restriction contained herein. The proceeding may seek to prevent such person or persons from violating or continuing to violate the restrictions or to recover damages for such violation together with the costs incurred in enforcement of the restrictions.

## Article 2. Additional Reserve Area Restrictions

Lots 48 and 49, also labeled Reserve Areas A and B on the recorded plat of the Subdivision (the "Reserve Areas") may include storm water detention or retention areas designed to detain or retain water. The following covenants and restrictions are for the benefit of all of the lot owners in the Subdivision and are to run with the land and shall be binding on all parties, on-all owners, and all persons claiming under them forever, as follows:

2.01 No owner of any lot in the Subdivision shall do or permit to be

done any action or activity which would result in (a) the pollution of any retained water, (b) diversion of water, (c) change in elevation of water level, (d) silting or (e) an adverse effect on water quality, drainage or proper water management or which would otherwise impair or interfere with the use of such retention areas for drainage and related purposes for the benefit of all lot owners.

2.02 No boating, fishing, swimming, ice skating or other recreational activity shall be conducted in, on or above said Reserve Areas.

2.03 The Homeowner's Association, defined in Article 3, shall have the right to establish rules regarding the use of any Reserve Areas and related drainage and utility easement areas in the Subdivision, provided such rules are not in conflict with any other provision contained herein, and are reasonably established to protect the safety and welfare of the residents of said Subdivision and their guests, or are established to assure the continued service of the area for the purposes for which it was designed.

2.04 The Developer, the City of Springboro, the Homeowner's Association or any person or persons owning any lot within the Subdivision may prosecute proceedings at law or in equity against any person or persons violating or attempting to violate any of the above covenants and restrictions or seek restraining orders or other mandatory relief for the correction of any interference with or damage to the drainage and retention system, and to recover compensation for any damages incurred by the complaining party together with the costs incurred in enforcement of the restrictions.

### Article 3. Homeowner's Association

3.01 After the recording of this Declaration, Developer shall form and incorporate a Homeowner's Association, (the "Association"), to promote the common interest of all lot owners, to maintain the Reserve Areas and to ensure compliance with the use restrictions. The Association shall be comprised of the owners of all the lots in the Subdivision. Developer reserves the right to expand the membership and duties of the Association to include other sections of Brookside to be developed in the future. Attached hereto as Exhibit "B" is a description of the real property which may be developed by Developer, the lot owners of which may, at the option of Developer, be required to become members of the Association (the "Expansion Property"). If the Developer elects to develop all or a portion of the Expansion Property and elects to include the owners of lots in such portion of the expansion area as members in the Association and to expand the Association's responsibilities to include similar duties for such portion of the Expansion Area, Developer may do so by filing a Declaration of Covenants, Conditions and Restrictions for such portion of the Expansion Property within ten years from the date hereof, explicitly setting forth that the lot owners within such portion of the Expansion Area shall become members of the Association and detailing the additional rights and obligations of the Association.

3.02 The management and control of the affairs of the Association shall be vested in its board of directors. The board of directors shall be composed of three (3) members. The three (3) initial members of the board of directors shall be selected by Developer. The three (3) initial members of the board of directors shall serve until (a) 100% of all lots within the Subdivision and 100% of all lots within the Expansion Property which have been developed and made a part of Brookside as set forth above in 3.01, have been sold, or (b) Developer elects to turn over control of the Association to the lot owners, which ever shall first occur. Upon the incapacity, resignation or death of any initial director, a successor, who shall serve the remaining term of the departed director, shall be appointed by the remaining members of the board of directors within three (3) months of the incapacity, resignation or death of

the departed director. Subsequent board members shall be elected by a majority of the lot owners as more fully set forth in the Articles of Incorporation and By-laws for the Association.

3.03 The Reserve Areas on the plat of the Subdivision, shall be conveyed to and maintained by the Association. However, in the event the City of Springboro agrees to maintain such Reserve Areas, the Association may convey the Reserve Areas to the City of Springboro in exchange for its agreement to properly maintain said areas. In such event, the Association shall be empowered to make such arrangements as reasonably required by the City of Springboro to cover the cost of maintenance of the Reserve Areas, including, but not limited to, assigning its right to collect up to 85% of the assessments under the terms hereof to the City.

3.04 The Association may elect, pursuant to a vote of a majority of its Board of Directors, to undertake the maintenance of the Reserve Areas or a portion of the Reserve Areas at any time after the City of Springboro has agreed to maintain the Reserve Areas. If such an election is made, then the Association shall notify the City of Springboro and shall enter into an agreement with the City of Springboro regarding the transfer of all maintenance obligations and assessments. If a transfer of maintenance obligations is made, then the City of Springboro shall reconvey the Reserve Areas to the Association and be released from the maintenance obligations transferred back to the Association.

3.05 If at any time the City of Springboro ceases to undertake the maintenance of the Reserved Areas for any reason, the Association shall assume the responsibility for maintaining the Reserve Areas. The party responsible for the maintenance of the Reserve Areas shall be referred to as the "Managing Entity" for the remainder of this Section.

3.06 The Managing Entity shall have the right to enter onto any Reserve Areas, open space, public rights-of-way and easement areas as it from time to time deems necessary for purposes of maintaining same and may participate in the reasonable and proper maintenance of all other reserve areas, open spaces, public rights-of-way and easement areas located in said Subdivision. Such maintenance may include, but shall not be limited to:

- (a) regular mowing, trimming and fertilizing of grassy areas;
- (b) yearly mulching of flower beds at the entrances to the Subdivision;
- (c) bi-monthly weeding of flower beds;
- (d) flower planting at the entrances of the Subdivision;
- (e) maintenance of street lighting, if any, and associated electric service billings;
- (f) repair of any permanent signs;
- (g) repair of any stone wall, wing wall or fencing;
- (h) treatment of water in any detention or retention areas to limit algae and grassy growth; and
- (i) trimming, pruning, removal and replacement of trees and bushes, as necessary.

3.07 The Association shall be empowered to levy assess and collect from each and every lot owner in said Subdivision up to One Hundred Fifty Dollars (\$150.00) per year. to promote the health, safety and welfare of the owner's of lots within the Subdivision and to maintain the Reserve Areas irrespective of whether the Subdivision has been completed. Provided, however that such limit of One Hundred Fifty Dollars (\$150.00) per year may be increased in proportion to annoy increase in the Consumer Price Index of the U.S. Bureau of Labor Statistics from the base period of May, 1991. Any fees assessed by the Association in excess of One Hundred Fifty Dollars t\$150.00) per year or its

adjusted equivalent must be approved by a majority of the lot owners in the Subdivision. Any amount so assessed or levied shall become a lien on each lot until paid and shall bear interest at the rate of ten percent (10%) per annum until paid, beginning thirty (30) days after the date of assessment. In the event any amount so assessed or levied is not paid when due and remains in arrears for more than sixty (60) days, the Association may file with the Warren County Recorder a Notice of Lien. The Notice of Lien shall contain a description of the lot against which the lien exists, the name or names of the record owner or owners thereof, and the amount of the unpaid portion of the assessment or assessments. The lien provided for herein shall remain valid for a period of five (5) years from the date a Notice of Lien is duly filed therefore, unless sooner released or satisfied in the same manner provided for by law in the State of Ohio for the release and satisfaction of mortgages on real property or until discharged by the final judgment or order of the Court in an action brought to discharge the lien. The lien shall secure not only the amount of the unpaid assessments, but also the costs incurred in collection, including, but not limited to attorney's fees and court costs. The lien of the assessment provided for herein shall be subject and subordinate to the lien of any duly executed mortgage on any lot recorded prior to the recording of the Notice of Lien. The holder of any such mortgage which comes into possession of a lot pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed or assignment in lieu of foreclosure, shall take the property free of claims for unpaid installments of assessments or charges against the lot which become due and payable prior to the time such holder or purchaser took title to the lot. The Association may delegate to the City of Springboro, so long as the City is the Managing Entity, the right to assess, levy and collect up to 85% of the then allowable assessments for the purpose of defraying the costs of fulfilling the functions required of the Managing Entity.

3.08 Any and all of the rights, power, duties and obligations which, in this instrument are assumed by, reserved to, created in or given to the Association may be exercised by Developer until such time as the Association is formed and may, at any time prior to, during or after, the formation of the Association, be assigned or transferred to the City of Springboro. In the event of such assignment or transfer, the Association shall thereupon be released from all the rights, powers, duties and obligations so assigned or transferred which are herein assumed by, reserved to, or given to the Association.

#### Article 4. Architectural Control Committee

An Architectural Control Committee is hereby established as a standing committee of the Association to carry out the functions set forth for it in this Declaration. The Architectural Control Committee's procedures and duties shall be as follows:

4.01 The Architectural Control Committee shall be composed of three (3) members. The Developer shall appoint each of the three (3) initial members of the Committee.

4.02 The three (3) originally-appointed members of the Architectural Control Committee shall serve until such time as the Developer turns over control of the Homeowners Association to the lot owners, as set forth in Article 3.02 hereof. Any subsequently elected member shall serve for terms of three (3) years, except that the initial elected members of the committee shall serve for staggered terms of one, two and three years. The persons receiving the highest number of votes shall serve for the longest terms. All members of said Architectural Control Committee shall serve until the expiration of their terms or until their incapacity, resignation or death. Upon the incapacity, resignation or death of a member of the Architectural

Control Committee, a successor, who shall serve the remaining term of the departed Committee Member, shall be appointed by the remaining members of the Committee within three (3) months of the incapacity, death or resignation of a member. In the event such successor is not appointed within three (3) months thereafter, the successor member shall be appointed by the owners of a majority of the lots in said Subdivision.

4.03 Prior to the expiration of the Committee Member's term of office, an election shall be held and a new Committee Member shall be selected by the then owners of the lots within the Subdivision. Each lot owner shall be entitled to one (1) vote, but there shall be only one vote cast for each lot within the Subdivision.

4.04 The Architectural Control Committee shall have the right to establish grades and slopes for all Building Lots in the Subdivision and to fix the grade at which any residence shall be constructed so that it conforms to the general plan of development. All grades and slopes shall be established on the engineering plans submitted to and approved by the Architectural Control Committee.

4.05 The use restrictions require the submission of detailed plans and specifications to the Architectural Control Committee prior to the erection of, placement on, or alteration of any structure or improvement on any lot. The intent is to achieve an architecturally harmonious, artistic and desirable residential subdivision. Therefore, while considering the approval or disapproval of any plans and specifications submitted, the Architectural Control Committee is directed to consider the appropriateness of the improvement contemplated in relation to the improvements on contiguous or adjacent lots, the artistic and architectural merits of the proposed improvement, the adaptability of the proposed improvement to the lot on which it is proposed to be made, and such other matters as may be deemed by the Architectural Control Committee members to be in the interest and benefit of the owners of the lots in the Subdivision as a whole.

4.06 To assist it in making its determinations, the Architectural Control Committee may require that any plans and specifications submitted to the Committee be prepared by a registered architect or civil engineer. The Architectural Control Committee shall also have the right to require any other reasonable data including, but not limited to, grading or elevation plans, materials lists, and color scheme designations.

4.07 The Architectural Control Committee's decisions shall be in writing and shall be binding upon all parties in interest. The Architectural Control Committee shall approve, disapprove or request additional information with respect to any request for approval within thirty (30) days after the request shall have been submitted to the Architectural Control Committee for approval. The failure of the Architectural Control Committee to approve, disapprove or request additional information within said time period shall be deemed an approval of any request.

4.08 If, in the opinion of the Architectural Control Committee, the enforcement of these restrictions would constitute a hardship due to the shape, dimensions or topography of a particular lot in the Subdivision, the Architectural Control Committee may permit a variation which will, in its judgment, be in keeping with the maintenance of the standards of the Subdivision.

#### Article 5. Other Conditions

5.01 All transfers and conveyances of each and every lot of the Subdivision shall be made subject to these covenants and restrictions.

5.02 Any failure to enforce these restrictions shall not be deemed a waiver thereof or any acquiescence in, or consent to, any continuing, further or succeeding violation hereof.

5.03 If any covenant or condition or restriction hereinabove contained, or any portion thereof, is invalid or void, such invalidity or voidness shall in no way affect any other covenant, condition or restriction.

5.04 All costs of litigation and attorney's fees resulting from violation of these Covenant shall be the financial responsibility of the lot owner or owners found to be in violation.

5.05 So long as Developer maintains control of the Association as set forth in Article 3 hereof, the Developer reserves the right to amend this Declaration to the extent necessary to conform to any requirements imposed or requested by any governmental agency, public authority or financial institution (including, but not limited to, the U.S. Department of Housing and Urban Development, the U.S. Veterans Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or similar entity) or to the extent necessary to enable the Developer to meet any other reasonable need or requirement in order to complete the Subdivision, all without the approval of the lot owners, and each lot owner, by the acceptance of a deed to a lot within the subdivision, consents to this reserved right.

5.06 Only the lots contained in said subdivision shall be subject to and bound by the restrictions, covenants and conditions set out in this instrument, and none of said provisions shall in any manner affect or be operative in respect to any other lands of the owner or its successors or assigns.

IN WITNESS WHEREOF, the said Brookside Joint Venture has caused this instrument to be executed by its duly authorized representative this 20th day of November , 1991.

Signed and acknowledge in the presence of:

BROOKSIDE JOINT VENTURE, an Ohio partnership  
BY: REPUBLIC DEVELOPMENT CORPORATION, an Ohio corporation, managing partner  
By: RICHARD L. ARNOS,  
Vice President

STATE OF OHIO  
COUNTY OF MONTGOMERY  
SS:

The foregoing instrument was acknowledged before me this day of November, 1991, by RICHARD L. ARNOS, Vice President of REPUBLIC DEVELOPMENT CORPORATION, an Ohio corporation, managing joint venture of BROOKSIDE JOINT VENTURE, an Ohio partnership, on behalf of the partnership.

THIS INSTRUMENT PREPARED BY:  
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