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Filed for Record in
BOONE COUNTY, INDIANA
MARY ALICE "SAM" BALDWIN
08-30-2006 At 02:36 p.m.
COVENANTS 60.00

**SUPPLEMENTAL DECLARATION OF
COVENANTS AND RESTRICTIONS
OF
THE MARKETPLACE AT ANSON**

This Supplemental Declaration, dated as of the ^{27th} day of August, 2006, DUKE REALTY LIMITED PARTNERSHIP, an Indiana limited partnership, ("Declarant")

WITNESSES THAT:

WHEREAS, the following facts are true:

- A. Declarant and/or Duke Construction Limited Partnership, an Indiana limited liability partnership, ("DCLP") is the owner of the fee simple title to the real estate located in Boone County, Indiana, more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Parcel").
- B. This is a Supplemental Declaration as that term is defined in the Master Declaration of Covenants and Restrictions of Anson recorded in the Office of the Recorder of Boone County, Indiana on January 11, 2006 as Instrument Number 200600000262, as amended from time to time (the "Master Declaration").
- C. Declarant, with the consent of DCLP, intends to convey portions of the Parcel as Lots upon each of which one or more Nonresidential Units may be constructed.

NOW, THEREFORE, Declarant hereby makes this Supplemental Declaration as follows:

1. Definitions. Words, phrases and terms that are defined in the Master Declaration have the same meaning in this Supplemental Declaration except as herein otherwise provided. The following words, phrases and terms, as used in this Supplemental Declaration, unless the context clearly requires otherwise, mean the following:

"Architectural Control Assessment" means an Assessment made pursuant to Paragraph 5(c) of this Supplemental Declaration.

"Articles" means the Articles of Incorporation of the Association, as amended from time to time.

"Association" means The Marketplace at Anson Owners Association, Inc., an Indiana nonprofit corporation.

CHICAGO TITLE

"Board of Directors", "Board" and "Directors" each means the Board of Directors of the Association.

"Building Activity" means any activity or undertaking on a Lot of a type described in the first sentence of Paragraph 6(c) of this Supplemental Declaration.

"By-Laws" means the Code of By-Laws of the Association, as amended from time to time.

"Building Guidelines" means architectural, landscaping, lighting, fencing, recreational facility and signage design guidelines, standards and requirements for Building Activity on the Parcel adopted by Declarant (including the Design Handbook) or the Design Review Board.

"Common Parking Lots" means only those Common Parking Lots located in the Parcel.

"Corporation" means Anson Governing Association, Inc., an Indiana nonprofit corporation.

"Design Review Board" means that entity established pursuant to Paragraph 6 of this Supplemental Declaration.

"Encroachment" means the encroachment upon a Lot, public right-of-way or Limited General Community Area by any Nonresidential Unit or any stoop, porch, steps, arcade, overhang or other structure or improvement constituting a part thereof or an appurtenance thereto as a result of the construction of a Nonresidential Unit substantially in accordance with a Lot Development Plan approved by the Design Review Board, or as a result of the settling or shifting thereof.

"Limited Common Facilities" means only those Limited Common Facilities Located in the Parcel or in public rights-of-way adjacent to the Parcel.

"Limited General Community Area" means only that Limited General Community Area (including any Limited Common Facilities, Common Parking Lots and Private Streets) located in the Parcel or in public rights-of-way adjacent to the Parcel.

"Lot" means a Lot located in the Parcel.

"Member" means a member of the Association.

"Owner" means any Person, including Declarant, who at any time owns the fee simple title to a Lot.

"Parcel Applicable Date" means earlier of (i) the date that Declarant has voluntarily relinquished its rights as the Declarant under this Supplement Declaration, as established in a written notice to the Association or (ii) the date that Declarant and/or DCLP no longer owns any portion of the Parcel that is not Limited General Community Area. The document by

which Declarant establishes the Parcel Applicable Date may allow Declarant to reserve the rights to require Declarant's prior written approval of certain actions by the Association.

"Private Street" means only those Private Streets located on the Parcel.

2. Declaration. Declarant, with the consent of DCLP, hereby declares that, in addition to the covenants, restrictions, easements, charges and liens imposed by the Master Declaration, the Parcel shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth. The provisions of Paragraph 2 of the Master Declaration shall apply to the relation of this Supplemental Declaration and the Association to the Master Declaration and the Corporation. Notwithstanding anything herein to the contrary, each Person subject to this Supplemental Declaration, by acquiring any right, title or interest in and to, or otherwise occupying, any portion of the Parcel shall be deemed to agree that DCLP shall have no rights, duties or obligations under this Supplemental Declaration, except as an Owner, unless expressly otherwise provided herein.

3. Common Parking Lots and Private Streets: Snow Removal.

(a) Ownership. The Common Parking Lots and Private Streets in the Parcel shall remain private, and neither Declarant's execution or recording of an instrument portraying such Common Parking Lots or Private Streets, nor the doing of any other act by Declarant is, or is intended to be, or shall be construed as, a dedication to the public of such Common Parking Lots and Private Streets.

(b) Use of Common Parking Lots. Each Owner of a Lot abutting a Common Parking Lot, its tenants, customers and invitees shall have a non-exclusive right to park in such abutting Common Parking Lot subject to such reasonable regulations as may be established from time to time by the Association. Such regulations may include, but need not be limited to, designation of employee parking spaces, assignment of reserved parking spaces, limitations on the types of vehicles which may park in the Common Parking Lot and the length of time a vehicle may remain parked therein, and periodic closure of the Common Parking Lot to avoid any claim that such facility has been dedicated to the public. The Common Parking Lots may also be used by Persons making use of any Anson Community Buildings located in the Parcel.

(c) Maintenance of Common Parking Lots. The Association shall maintain the Common Parking Lots located in the Parcel, including the exterior and interior landscaping required by the Zoning Ordinance, and the Maintenance Costs thereof shall be assessed as a Parcel Assessment against all Lots which derive a substantial benefit from the availability of parking in the Common Parking Lot. In determining substantial benefit, it shall be presumed that all Owners of abutting Lots derive substantial benefit from the Common Parking Lot unless parking areas located exclusively on an Owner's Lot meet the minimum on-site parking requirement specified in the Zoning Ordinance for the use then being made of such Lot. Where a Common Parking Lot serves an Anson Community Building, a proportionate share of the Maintenance Costs of the Common Parking Lot (determined on the basis of the number of parking spaces required by the Zoning Ordinance for the Anson Community Building in relation to all parking spaces in the Common Parking Lot) shall be allocated to the Corporation and included in the General Assessment against all Lots subject to Assessment.

(d) Maintenance of Private Streets. Each Private Street shall be maintained by the Association in good condition satisfactory for the purpose for which it was constructed. The Maintenance Costs incurred by the Association in maintaining a Private Street shall be assessed as a Parcel Assessment against all Lots whose means of vehicular access to a public right-of-way, as reasonably determined by the Association, is over and across such Private Street. Estimated Maintenance Costs, including a contribution to a reserve fund for future maintenance, repair and replacement of Private Streets, shall be included in each annual budget of the Association.

(e) Snow Removal. The Association may, but shall not be obligated to, remove snow and ice from any public right-of-way within the Parcel, and the costs thereof shall be Maintenance Costs and assessed as a Parcel Assessment against all Lots in the Parcel subject to such Assessment.

(f) Reserved Rights of Declarant. Declarant reserves the right for itself and the Association to reconfigure the Common Parking Lots from time to time, which reconfiguration may increase or decrease the number of parking spaces available, provided, however, that no such reconfiguration shall reduce the number of available parking spaces below the minimum number required by the Zoning Ordinance for the uses then being made of the Lots which depend on the Common Parking Lot to meet the off-street parking requirements of the Zoning Ordinance.

(g) Conveyance of Title. Declarant may retain the legal title to the Common Parking Lots and Private Streets until the Parcel Applicable Date, but notwithstanding any provision herein, the Declarant hereby covenants that it shall, not later than the Parcel Applicable Date, convey the Common Parking Lots and Private Streets to a Permitted Title Holder, free and clear of all liens and other financial encumbrances and the lien for taxes not yet due and payable, but subject to the Master Declaration and this Supplemental Declaration.

4. The Marketplace at Anson Owners Association, Inc.

(a) Membership. Each Owner shall automatically be a Member of the Association and shall enjoy the privileges and be bound by the obligations contained in the Articles and By-Laws. If a Person would realize upon his security and become an Owner, he shall then be subject to all the requirements and limitations imposed by this Supplemental Declaration on other Owners, including those provisions with respect to the payment of Assessments.

(b) Powers. The Association is a Supplemental Association under the Master Declaration and, subject to the Master Declaration, shall have such powers as are set forth in the Master Declaration, this Supplemental Declaration and in the Articles, together with all other powers that belong to it by law.

(c) Classes of Members. The Association shall have a single class of Members.

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

(c) Maintenance Standards. The Association shall maintain the Limited General Community Area in good condition, order and repair substantially comparable to its condition when originally constructed, installed or planted and compatible in appearance and utility with a first-class commercial center. Grass, trees, shrubs and other plantings located on the Limited General Community Area shall be kept properly irrigated and neatly cut, cultivated or trimmed as reasonably required and otherwise maintained at all times in good and slightly condition appropriate to a first-class commercial center

(f) Insurance, Taxes and Utilities. The Association shall maintain public liability and casualty insurance in prudent amounts insuring against risk of loss to the Association on account of injury to person or property and damage to property owned by the Association and shall pay all taxes assessed against such property and all utility charges incurred with respect to the Limited General Community Area.

(g) Limitations on Action by the Association. Unless at least two-thirds (2/3) of the Members have given their prior written approval, a Permitted Title Holder, the Board of Directors and the Owners may not: (i) except as authorized by Paragraph 18(a) of the Master Declaration (but subject to the limitations of Paragraph 14 of the Master Declaration), by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Limited General Community Area (but the granting of easements for public utilities or other public purposes consistent with the intended use of the Limited General Community Area shall not be deemed a transfer for the purposes of this clause); (ii) fail to maintain fire and extended coverage insurance on insurable Limited General Community Area and Limited Common Facilities on a current replacement cost basis in the amount of one hundred percent (100%) of the insurable value (based on current replacement cost); (iii) use hazard insurance proceeds for losses to any Limited General Community Area or Limited Common Facilities for other than the repair, replacement or reconstruction of the Limited General Community Area or Limited Common Facilities; or (iv) by act or omission change, waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Units, or the maintenance and upkeep of the Limited General Community Area.

(h) Mergers. Upon a merger or consolidation of another corporation with the Association, its properties, rights and obligations may, as provided in its articles of incorporation, by operation of law be transferred to another surviving or consolidated corporation or, alternatively, the properties, rights and obligations of another corporation may by operation of law be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established by this Supplemental Declaration within the Parcel together with the covenants and restrictions established upon any other properties as one scheme. No merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Supplemental Declaration within the Parcel except as hereinafter provided.

CHICAGO TITLE

5. Assessments.

(a) Creation of the Lien and Personal Obligation of Assessments. Declarant hereby covenants, and 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 the following: (1) Parcel Assessments, (2) Architectural Control Assessments (to the extent levied) and (3) Special Assessments, such Assessments to be established and collected as hereinafter provided. The Assessments described in the preceding sentence are in addition to Assessments imposed under the Master Declaration.

If two (2) or more Lots originally shown on a Plat are consolidated as a single Lot by virtue of partial vacation of a Plat, or if a Lot is divided by conveyance of portions thereof to owners of adjacent Lots, then, in either such event, so long as the consolidated or divided Lot is used in its entirety by one or more Owners of contiguous Lots, the vacated or divided Lot(s) shall cease to be Lot(s) for purposes of Assessments under this Paragraph 5.

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 Person who was the Owner of the Lot at the time when the Assessment became due.

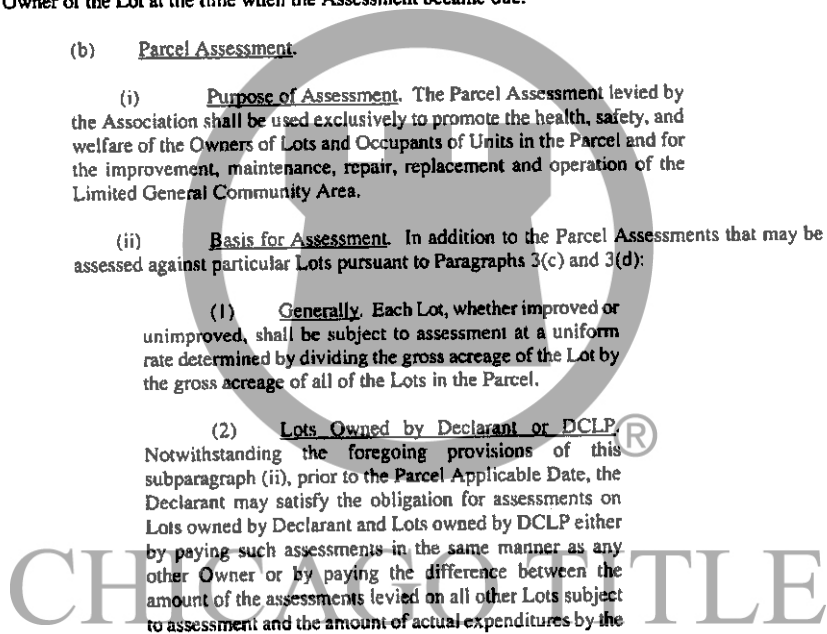
(b) Parcel Assessment.

(i) Purpose of Assessment. The Parcel Assessment levied by the Association shall be used exclusively to promote the health, safety, and welfare of the Owners of Lots and Occupants of Units in the Parcel and for the improvement, maintenance, repair, replacement and operation of the Limited General Community Area.

(ii) Basis for Assessment. In addition to the Parcel Assessments that may be assessed against particular Lots pursuant to Paragraphs 3(c) and 3(d):

(1) Generally. Each Lot, whether improved or unimproved, shall be subject to assessment at a uniform rate determined by dividing the gross acreage of the Lot by the gross acreage of all of the Lots in the Parcel.

(2) Lots Owned by Declarant or DCLP. Notwithstanding the foregoing provisions of this subparagraph (ii), prior to the Parcel Applicable Date, the Declarant may satisfy the obligation for assessments on Lots owned by Declarant and Lots owned by DCLP either by paying such assessments in the same manner as any other Owner or by paying the difference between the amount of the assessments levied on all other Lots subject to assessment and the amount of actual expenditures by the Association during the fiscal year. Unless Declarant



otherwise notifies the Board of Directors in writing at least thirty (30) days before the beginning of each fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. Regardless of Declarant's election, Declarant's obligations hereunder may be satisfied by cash or by "in kind" contributions of services or materials, or by a combination thereof. After the Parcel Applicable Date, Declarant and DCLP shall pay assessments on Lots owned by them in the same manner as any other Owner.

(3) Change in Basis. Except as limited by paragraph 5(b)(ii)(2), the basis for assessment may be changed upon recommendation of the Board of Directors if such change is approved by (i) two-thirds (2/3) of the Members who are voting in person or by proxy at a meeting of Members duly called for this purpose.

(iii) Method of Assessment. By a vote of a majority of the Directors, the Board of Directors shall, on the basis specified in subparagraph (ii), fix the Parcel Assessment for each assessment year of the Association at an amount sufficient to meet the obligations imposed by the Master Declaration and this Supplemental Declaration upon the Association. The Board of Directors shall establish the date(s) the Parcel Assessment shall become due, and the manner in which it shall be paid.

(c) Architectural Control Assessment. If any Owner or Person acting for and on behalf of, or pursuant to the authorization or acquiescence of, an Owner fails to comply with the Building Guidelines or other requirements for construction of improvements, landscaping, lighting, signage and other Building Activities or maintenance of a Lot (including but not limited to the filing of a Lot Development Plan) or any other Restriction set forth in this Supplemental Declaration, then the Association may, upon not less than thirty (30) days prior written notice to the Owner of such Lot at the address for mailing of real property tax statements, levy against the Lot owned by such Owner an Architectural Control Assessment in an amount determined by the Board of Directors which does not exceed One Thousand Dollars (\$1,000.00) for each day that such failure continues after written notice thereof is given by Declarant or the Association to such Owner. Such Architectural Control Assessment shall constitute a lien upon the Lot of such Owner and may be enforced in the manner provided in subparagraph (f) below. The levy of an Architectural Control Assessment shall be in addition to, and not in lieu of, any other remedies available to Declarant, the Corporation and/or the Association provided in the Master Declaration or this Supplemental Declaration, at law or in equity in the case of the failure of an Owner to comply with the provisions of the Master Declaration, a Supplemental Declaration, or the Building Guidelines.

(d) Special Assessment. The Board of Directors may annually prepare a capital reserve budget, which shall take into account the number and nature of the Limited General Community Area, including fixtures and personal property relating thereto or any Limited Common Facilities located on the Parcel, the expected life of each asset, and the expected

repair or replacement cost. In addition to such other Special Assessments as may be authorized herein, the Association may levy in any fiscal year a capital reserve Special Assessment in an amount sufficient to meet the projected capital needs of the Association, as shown on the capital reserve budget. Any Special Assessment pursuant to this subparagraph (d) shall be allocated equally among all Lots in the Parcel.

(e) Date of Commencement of Assessments. The Parcel Assessment shall commence with respect to assessable Lots within the Parcel on the first day of the month following conveyance of the first Lot in the Parcel to an Owner who is not Declarant or DCLP. The initial Parcel Assessment on any assessable Lot shall be adjusted according to the days remaining in the month in which the Lot became subject to assessment.

(f) Effect of Nonpayment of Assessments; Remedies of the Association. Any Assessment not paid within thirty (30) days after the due date may upon resolution of the Board of Directors bear interest from the due date at a percentage rate no greater than the current statutory maximum annual interest rate, to be set by the Board of Directors for each assessment year. 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 such 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 nonuse of the Limited General Community Area or by abandonment of its Lot.

(g) Subordination of the Lien to Mortgages. To the extent specified herein, 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 and to any valid tax or special assessment lien on such Lot in favor of any governmental taxing or assessing authority. Sale or transfer of any Lot shall not affect the lien of any Assessment. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall, however, extinguish the lien of such Assessments as to payments which became due more than six (6) months prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

(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 by the Association on a Lot have been paid or that certain of such 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 on the Association by the Master Declaration and this Supplemental Declaration will be met.

(j) Initial Assessment. In addition to the Assessments under this Supplemental Declaration, each Owner other than Declarant or DCLP shall be required to pay to the Corporation the Initial Assessment in the amount and at the time provided in the Master Declaration.

6. Architectural Control and Construction of Nonresidential Units.

(a) The Design Review Board. A Design Review Board consisting of at least three (3) members shall be established by the Board of Directors of the Association. Prior to the Parcel Applicable Date, the members of the Design Review Board shall be appointed by Declarant. Thereafter, a majority of the members of the Design Review Board shall be appointed by the Board of Directors of the Corporation and the other member(s) shall be appointed by the Board of Directors of the Association.

(b) Purpose. The Design Review Board shall regulate the external design, appearance, use, location and maintenance of the Parcel and of all improvements thereon in such manner as to preserve and enhance values, to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography consistent with the design theme of the Parcel established by Declarant, to implement the development standards and guidelines set forth in the Zoning Ordinance and to assure compliance with the Design Handbook and the Building Guidelines established by Declarant for the Parcel.

(c) Building Activity. Except as otherwise expressly provided in this Supplemental Declaration, no improvements, alterations, repairs, change of colors, excavations, changes in grade, planting, installation or modification of signage, advertising or other work that in any way alters any Lot or the exterior of the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by Declarant to another Owner (including, but not limited to, (i) construction, erection or alteration of any Unit, other building, fixture, equipment, fence, wall, parking area, or other structure on a Lot, or (ii) any plantings, other landscaping or exterior lighting on a Lot, or (iii) the installation or alteration of any signage on any Lot or Unit, shall be made or done without the prior approval of the Design Review Board of a Lot Development Plan therefor. Prior to commencement by any Owner other than Declarant of any Building Activity, a Lot Development Plan with respect thereto shall be submitted to the Design Review Board, and no Building Activity shall be commenced or continued by any Person other than Declarant without the prior written approval of the Design Review Board of a Lot Development Plan relating to such Building Activity. Such approval shall be in addition to, and not in lieu of, all approvals, consents, permits and/or variances required by law from governmental authorities having jurisdiction over the Parcel, and no Owner shall undertake any Building Activity within the Parcel unless all legal requirements have been satisfied. Approval by the Design Review Board of a Lot Development Plan shall not be deemed to imply compliance with approvals, consents, permits and/or variances required by law from governmental authorities having jurisdiction over the Parcel. Each Owner shall complete all improvements to a Lot strictly in accordance with the Lot Development Plan approved by the Design Review Board. As used in this subparagraph (c), "plantings" does not include flowers, bushes, shrubs or other plants having a height of less than eighteen (18) inches.

(d) Procedures. In the event the Design Review Board fails to approve, modify or disapprove in writing a Lot Development Plan within sixty (60) days after notice of such plan has been duly filed with the Design Review Board in accordance with procedures established by Declarant or, subsequent to the Parcel Applicable Date, the Board of Directors, approval will be deemed denied. A decision of the Design Review Board (including a denial

resulting from the failure of such Board to act on the plan within the specified period) may be appealed to the Board of Directors which may reverse or modify such decision (including approving a Lot Development Plan deemed denied by the failure of the Design Review Board to act on such plan within the specified period) by a two-thirds (2/3) vote of the Directors then serving.

(e) **Building Requirements and Guidelines.** The Owners of Lots in the Parcel shall at all times comply with the Building Guidelines adopted by Declarant or the Design Review Board. The Design Review Board shall have the power to establish and modify from time to time such Building Guidelines written architectural, landscaping, lighting, fencing, recreational facility and signage design guidelines and 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 the Master Declaration, this Supplemental Declaration, the Zoning Ordinance or, prior to the Parcel Applicable Date, the Building Guidelines established by Declarant. Any such guideline or standard may be appealed to the Board of Directors which may terminate or modify such guideline or standard by a two-thirds (2/3) vote of the Directors then serving. The Building Guidelines may establish different standards and requirements for various Lots in the Parcel based on the size, location and use of such Lots and the improvements to be located thereon.

(f) **Application of Guidelines and Standards.** The Design Review Board shall apply the Building Guidelines in a fair, uniform and reasonable manner consistent with the discretion inherent in the design review process. In disapproving any Lot Development Plan, the Design Review Board 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 Design Review Board if resubmitted. Notwithstanding the foregoing, the Design Review Board shall have the right to disapprove any signage which in its absolute unfettered discretion it deems inappropriate and such disapproval may be based solely on aesthetic considerations.

(g) **Design Consultants.** The Design Review Board may utilize the services of architects, engineers and other Persons possessing design expertise and experience in evaluating Lot Development Plans. No presumption of any conflict of interest or impropriety shall be drawn or assumed by virtue of the fact that any of such consultants are affiliated with Declarant or a Designated Builder or may, from time to time, represent Persons filing Lot Development Plans with the Design Review Board.

(h) **Existing Violations of Supplemental Declaration.** The Design Review Board shall not be required to consider any Lot Development Plan submitted by an Owner who is, at the time of submission of such Lot Development Plan, in violation of the requirements of the Master Declaration, this Supplemental Declaration and/or the provisions of the Zoning Ordinance, unless such Owner submits to the Design Review Board with such Lot Development Plan an irrevocable agreement and undertaking (with such surety as the Board may reasonably require) to remove from the Owner's Lot any improvements, landscaping, exterior lighting or signage constructed and/or installed prior to the submission of a Lot Development Plan (or constructed and/or installed in violation of a previously approved Lot Development Plan) to the extent any such previously constructed and/or installed improvement, landscaping, exterior lighting or signage is not subsequently approved by the

Design Review Board. The Design Review Board shall have the power to recommend to the Board of Directors that the Association assess an Architectural Control Assessment against any Owner who fails to comply with the requirements of this Supplemental Declaration or the provisions of the Zoning Ordinance. Under no circumstances shall any action or inaction of the Design Review Board be deemed to be unreasonable, arbitrary or capricious if, at the time of such decision, the Person having submitted a Lot Development Plan for approval by the Design Review Board has violated this Supplemental Declaration or the provisions of the Zoning Ordinance and such violation remains uncured.

(i) Exercise of Discretion. Declarant intends that the members of the Design Review Board 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 Design Review Board and in any action initiated to enforce this Supplemental Declaration in which an abuse of discretion by the Design Review Board is raised as a defense, abuse of discretion may be established only if a reasonable Person, weighing the evidence and drawing all inferences in favor of the Board, could only conclude that such determination constituted an abuse of discretion.

(j) Liability of Board. Neither the Design Review Board, or any member or agent thereof, nor Declarant or DCLP shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Board does not make, and shall not be deemed by virtue of any action of approval or disapproval taken by it to have made, any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.

(k) Construction. All Building Activity shall be undertaken and completed strictly in accordance with the Building Guidelines and the Lot Development Plan approved by the Design Review Board. Unless a delay is caused by strikes, war, court injunction or acts of God, the Owner of any Lot which on the date of purchase from Declarant is not improved with a Nonresidential Unit shall commence construction of a Nonresidential Unit upon the Lot within one (1) year from the date the Owner acquired title thereto and shall complete construction of such Nonresidential Unit within two (2) years after the date of commencement of the building process. Without limiting the foregoing, once commenced, all construction of a Nonresidential Unit shall be diligently pursued to completion. If the Owner fails to commence or complete construction of a Nonresidential Unit within the time periods specified herein, or if the Owner should, without Declarant's written approval, sell, contract to sell, convey, or otherwise dispose of, or attempt to sell, convey or otherwise dispose of, the Lot before completion of construction of a Nonresidential Unit on the Lot, then, in any of such events, Declarant may:

(i) re-enter the Lot and divest the Owner of title thereto by tendering to the Owner or to the Clerk of the Circuit Court of Boone County the lesser of (a) the same net dollar amount as was received by Declarant from such Owner as consideration for the conveyance by Declarant of the Lot, together with such actual costs, if any, as the Owner may prove to have incurred in connection with the commencement of construction of a Nonresidential Unit on the Lot and (b) the then fair market value of the Lot, as determined by

averaging two (2) appraisals made by qualified appraisers appointed by the Judge of the Circuit or Superior Court of Boone County;

(ii) obtain injunctive relief to force the Owner to proceed with construction of any Nonresidential Unit, a Lot Development Plan for which has been approved by the Design Review Board upon application by such Owner; or

(iii) pursue such other remedies at law or in equity as may be available to Declarant.

The failure of the Owner of a Lot to apply for approval of, or receive approval from, the Design Review Board of a Lot Development Plan shall not relieve such Owner from his obligation to complete construction of a Nonresidential Unit upon the Lot within the time period specified herein. For the purposes of this subparagraph (d), construction of a Nonresidential Unit will be deemed "completed" when the exterior of the Nonresidential Unit (including but not limited to the foundation, walls, roof, windows, entry doors, gutters, downspouts, exterior trim, paved driveway, landscaping and yard light) has been completed in conformity with the Lot Development Plan.

(l) Inspection. Members of the Design Review Board may inspect work being performed to assure compliance with these Restrictions and applicable regulations.

7. Minimum Hours of Operation. Prior to the Parcel Applicable Date, Declarant may, from time to time, by recorded instrument, establish minimum hours of operation by Owners or Occupants of Retail Facilities located in the Parcel. Following the Parcel Applicable Date, the Board of Directors of the Association may, from time to time, by recorded instrument, establish such hours unless a deed to a Lot contains a covenant on the part of Declarant not to establish such hours with respect to operations by the grantee designated in such deed, or its successors.

8. Master Marketing. The Association may establish a master marketing budget and include the amount thereof in the annual budget and the Parcel Assessment; provided, however, that (a) any such Assessment shall be levied only against Lots on which a Retail Facility is located and (b) the amount of such master marketing budget must be approved by not less than a majority of the Owners of Lots which would be subject to assessment for such purpose.

9. Restrictions on Use.

(a) Exclusive Uses. Declarant by deed, lease or other instrument may grant to any Owner or Occupant the exclusive right to the use in the Parcel of a Retail Facility for one or more specified retail purposes (an "exclusive use"), and no other Owner or Occupant shall use any Retail Facility for a use that constitutes an exclusive use if notice of the exclusive use is contained in an instrument of record; provided, however, that no Owner or Occupant shall be restricted in its use of a Retail Facility for a retail purpose (the "conflicting use") as a consequence of an exclusive use, notice of which was first placed of record subsequent to the commencement of such conflicting use by the Owner or Occupant.

(b) Prohibited Uses. No Lot, Unit or other structure shall be used for any of the following uses or purposes:

(i) a Living Unit;

(ii) junk or salvage yards; unscreened outside storage of materials or supplies; trailer carts; labor camps; distillation of bones; dumping, disposal, incineration or reduction of garbage; dead animals or refuse; fat rendering; stockyard or slaughter of animals; smelting of iron, tin, zinc or other ores; refining of petroleum or of its products; cemeteries or mausoleums; jail, penal, detention or correction farms; gasoline service stations; temporary or portable sawmill; community fair; noncommercial club or lodge; privately operated sanitary landfill, sewage or treatment plant; boarding and breeding kennels; temporary religious meetings; construction contractor; funeral home; sanatorium, convalescent, rest or retirement home; adult bookstore or other establishment engaged in the business of selling, exhibiting or delivering pornographic or obscene materials; a so-called "head shop"; game room or arcade; off-track betting parlor; pawn shop; flea market; recycling facility; auditorium; sports or other entertainment viewing facility; dance hall or night club; billiard parlor; or bars and lounges;

(iii) unless approved in advance by the Design Review Board, commercial or other advertising, or television or other transmission tower;

(iv) any use which, in the ordinary course of business, creates an actionable nuisance to, or trespass against, any adjoining Lot, its owners, lessees or sublessees;

(v) any use which would create a substantial likelihood of waste to any Lot or Limited General Community Area;

(vi) any dangerous or unsafe use such as, for illustration purposes only, the use or storage of explosives;

(vii) any use which involves the generation, treatment, storage or disposal of Hazardous Substances in violation of Environmental Laws, or which poses a substantial risk of release of any Hazardous Substances into the ground, air, surface water, ground water or any other medium;

(viii) any other use prohibited by the Zoning Ordinance; or

(ix) parking or use of a vehicle in such a way as to function as a sign, including the parking of any vehicle, trailer or similar movable structure containing or supporting any signage between the right-of-way line and any public street and forward of the front building line of any unit, with the exception of (w) vehicles actively involved in construction on or serving of the site; (x) vehicles delivering products to the site in designated loading areas; (y) vehicles parked in designated truck parking areas of a development that have been screened from or are not generally visible from the public right-of-way; or (z) passenger vehicles, pick-up trucks, and vans of a size that can fully fit within a standard parking space, containing signs painted on or permanently affixed on the doors or integral body panels that do not exceed sixteen (16) square feet in area.

(c) Change of Use. Without the prior approval of the Design Review Board, which approval shall not be unreasonably withheld, no previously approved Nonresidential Unit shall be used for any purpose other than that for which it was originally approved.

(d) Change of Zoning. No Owner shall seek to rezone its Lot or seek to modify or amend in any respect the zoning applicable to its Lot without the prior written approval of the Design Review Board. Declarant reserves the right to rezone the portion of the Parcel then owned by Declarant or have the existing zoning applicable to the portion of the Parcel then owned by the Developer modified or amended without the consent of the other Owners but subject to the other terms, conditions and restrictions of the Master Declaration and this Supplemental Declaration.

(e) Temporary Structures. No temporary building, trailer, garage, or building under construction, or other temporary improvements shall be occupied or located, for any purpose, on any Lot; provided, however, with the prior written consent of the Design Review Board, which consent shall not be unreasonably withheld, a temporary "construction trailer" shall be allowed on a Lot and occupied during a period of construction upon said Lot, provided that signs painted on or permanently affixed thereto do not exceed sixteen (16) square feet in area.

10. Compliance by Occupants. Each Owner shall undertake in good faith and with due diligence to cause Occupants of Units on its Lot to comply with the Zoning Ordinance, the Master Declaration, this Supplemental Declaration and all rules and regulations duly adopted by the Corporation, the Association or the Design Review Board.

11. Encroachments. A perpetual easement is hereby created on each Lot or other parcel of land in the Parcel upon which an Encroachment exists for the benefit of the Owner of the Lot containing the improvement which constitutes the Encroachment. In the event an encroaching Nonresidential Unit shall be partially or totally destroyed as a result of fire or other casualty or as a result of the exercise of the power of eminent domain or a conveyance in anticipation thereof, and then rebuilt in its original configuration or substantially in accordance with a Lot Development Plan approved by the Design Review Board, any resulting Encroachment shall be permitted and a perpetual easement therefor is hereby created for the benefit of the Owner of the encroaching structure.

12. Party Walls.

(a) General Rules of Law to Apply. Each wall that is built as a part of the original construction of a Nonresidential Unit and placed on the dividing line between Lots shall constitute a party wall and, to the extent not inconsistent with the provisions of this Paragraph 12, another Supplemental Declaration or a recorded agreement between Owners of adjoining Lots who share a party wall, the general rules of Indiana law regarding party walls shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of routine repair and maintenance of a party wall shall be shared equally by the Owners who make use of the wall unless other provision for such routine repair and maintenance is made in another Supplemental Declaration or a recorded agreement between Owners of adjoining Lots who share a party wall.

(c) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other cause, then, unless other provision for restoration is made in another Supplemental Declaration or in a recorded agreement between Owners of adjoining Lots who share a party wall, either Owner who has used the wall may restore it, and if the other Owner

thereafter makes use of the wall, it shall contribute equally to the cost of restoration thereof unless the restoring Owner has the right to call for a larger contribution from the subsequent user under a rule of law regarding liability for negligent or willful acts or omissions, in which event the subsequent user shall make such larger contribution as may be lawfully determined.

(d) Weatherproofing. An Owner who by its negligent or willful act or omission causes the party wall to be exposed to the elements shall furnish the necessary protection against such elements and shall bear the entire cost thereof.

(e) Rights and Duties Run with Land. The rights and duties of an Owner with respect to a party wall under this Paragraph 12 shall be appurtenant to such Owner's Lot and shall pass to the successor in title of such Owner.

13. Insurance. Each Owner shall obtain and maintain with respect to all Nonresidential Units owned by it in the Parcel insurance with respect to such Nonresidential Units and related building equipment insuring against any peril included within the classification "All Risks of Physical Loss" in amounts at all times sufficient to prevent the Owner from becoming a co-insurer within the terms of the applicable policies and under applicable law, but in any event such insurance shall be maintained in an amount equal to the full insurable value of the Nonresidential Units and building equipment, the term "full insurable value" to mean the actual replacement cost of the Nonresidential Units and building equipment (without taking into account any depreciation, and exclusive of excavations, footings and foundations) determined annually by an insurer, a recognized independent insurance broker or an independent appraiser selected by the Owner. The insurance required by this Paragraph 13 shall be issued by a financially responsible insurer authorized to issue casualty insurance in the State of Indiana. Each Owner shall deliver annually to the Association evidence of the maintenance of the insurance herein required. Each Owner and Occupant shall comply with all insurance requirements and shall not bring, keep or permit any condition to exist on the Lot or in the Nonresidential Unit which would be prohibited by an insurance requirement or would invalidate the insurance coverage required hereunder. The insurance coverage required under this Paragraph 13 may be effected under a blanket policy or policies covering the Nonresidential Unit and other properties and assets not constituting a part of the Nonresidential Unit; provided that any such blanket policy shall specify the portion of the total coverage of such policy that is allocated to the Nonresidential Unit and any sub-limit in such blanket policy applicable to the Nonresidential Unit and shall, in any case, comply in all other respects with this Paragraph 13.

14. Maintenance, Repairs and Replacements.

(a) Buildings. Each Owner shall, at his own expense, be responsible for the maintenance, repair, decoration and replacement of the Nonresidential Units and other structures and improvements owned by it, and each Owner shall promptly perform all maintenance and repair which, if neglected, might adversely affect the structural integrity or the exterior appearance thereof, including but not limited to painting of exterior wood surfaces and repainting on a regular basis of all other exterior painted surfaces. In the event that the maintenance or repair of any Nonresidential Unit or other structure or improvement is reasonably necessary in the discretion of the Board of Directors to preserve the structural integrity or sightliness thereof, or is otherwise necessary for the health and safety, or in the interest of the general welfare, of the Owners of Lots in the Parcel, the Board of Directors shall have the power to seek injunctive relief to compel compliance with this Restriction or the Board may undertake such maintenance or repair; provided that no such maintenance or repair shall be undertaken without a resolution of the Board of Directors and reasonable

written notice to the Owner and, provided further, that the cost thereof shall be assessed against the Lot on which such maintenance or repair is performed and, when so assessed, a statement for the amount thereof shall be rendered promptly to the then Owner of said Lot at which time the Assessment shall become due and payable and a continuing lien and obligation of said Owner in all respects as provided in Paragraph 18(i) of the Master Declaration.

(b) Grounds. The Owner of each Lot shall at his expense properly irrigate and keep the grass, trees, shrubs and other plantings located thereon or in a tree lawn adjacent thereto nourished and neatly cut (at least once a week during growing season), cultivated or trimmed as reasonably necessary to maintain the same at all times in a good and slightly condition appropriate to a first-class commercial center, including, without limitation, removing any deadwood from trees and shrubs and immediately replacing any dead tree, shrub, plant or ground cover. If such Owner fails to perform such maintenance, the Association may undertake such maintenance and assess the Maintenance Costs thereof as a Special Assessment against the Lot, or the Association may seek injunctive relief to compel compliance with this Restriction.

(c) Parking Areas. Each Owner shall at his expense cause all driveways and parking areas on a Lot (other than Common Parking Areas) to be striped and kept in good repair and swept to the extent necessary to keep such areas clean of debris.

(d) Damage or Destruction. If a Nonresidential Unit located on a Lot is damaged or destroyed as a consequence of fire, storm or other event ("Casualty") to the extent that the cost of restoration or replacement thereof is less than the replacement value of such Nonresidential Unit prior to the Casualty, then the Owner therefor shall promptly restore, repair, replace and rebuild the portion of the Nonresidential Unit so damaged or destroyed as nearly as possible to its quality, utility, value, condition and character immediately prior to such Casualty. Such restoration shall conform to the Lot Development Plan originally approved for such Nonresidential Unit except to the extent that deviations therefrom have been approved in writing by the Design Review Board. If the cost of restoration or replacement exceeds the replacement value of the Nonresidential Unit prior to the Casualty, then the Owner shall not be required to repair or restore (but if it elects to so repair or restore, it shall do so in accordance with this Paragraph 14(d)), and in the event the Owner elects not to repair or restore the Nonresidential Unit, it shall, as soon as practical after such Casualty, remove all debris from the Lot and take such actions as are necessary to make the undamaged portion of the Nonresidential Unit into a functional economic unit insofar as it is possible under the circumstances. Areas of the Lot previously occupied by a Nonresidential Unit damaged by Casualty and not restored shall be promptly landscaped in accordance with a landscaping plan approved by the Design Review Board.

15. Parking. No recreational vehicle, motor home, truck which exceeds $\frac{3}{4}$ ton in weight, trailer, boat or disabled vehicle shall be parked or stored overnight or longer on a Lot in open view from a public street.

16. Recreational Facilities. No swimming pool, basketball goal, tennis court or other outdoor recreational equipment or facility shall be located on a Lot without the prior written approval of the Design Review Board, which approval may be conditioned or denied in the unfettered discretion of the Board.

17. Garbage and Refuse Disposal. All facilities and equipment for the storage and disposal of rubbish, garbage or other waste shall be confined to a completely enclosed and gated structure out of public view and shall be maintained in a clean and sanitary manner. All rubbish, trash and other waste shall be removed promptly from the Lot prior to its accumulation.

18. Antennas and Receivers. No satellite receiver, down-link or antenna which is visible from a public way or from any other Lot, and no satellite dish greater than eighteen (18) inches in diameter shall be located on any Lot without the prior written consent of the Design Review Board. To the extent not prohibited by regulations of the Federal Communications Commission, the Design Review Board may refuse to approve any satellite dish which is visible from a public way. The Design Review Board may establish Restrictions relating to the screening of satellite receivers, down-links and dishes and antennas.

19. Utilities. All utilities serving the Nonresidential Units and other improvements located on the Parcel shall be underground; provided that the foregoing shall not prohibit underground utilities to be connected with utility tie-in locations above ground on exterior walls of the Nonresidential Units to be constructed on the Parcel immediately adjacent to the locations where such underground utilities penetrate the ground.

20. General Community Rules.

(a) Binding Nature. Each Lot shall be subject to the guidelines, rules, regulations and procedures adopted by the Corporation, the Association or any instrumentality thereof in accordance with the authority granted by the Master Declaration and this Supplemental Declaration.

(b) Rule-Making Authority. The Design Review Board may adopt general rules and regulations relating to the use and enjoyment of the Parcel appropriate to the maintenance of the Parcel as a first-class retail development. Such general rules may be amended by a two-thirds (2/3) vote of the Design Review Board. Subsequent to the Parcel Applicable Date, any such amendment may be made only after a meeting of the Board of Directors for which due notice to all affected Owners has been provided, and if such amendments are approved by a two-thirds (2/3) vote of the Board of Directors. All general rules and any subsequent amendments thereto shall constitute Restrictions.

21. Outside Activities. No sidewalk, patio, arcade, parking area or other exterior space shall be used for any commercial or recreational purpose except in conformity with guidelines and regulations adopted by the Design Review Board.

22. Taxes. Each Owner shall pay (or cause to be paid) before delinquency all real estate taxes and assessments (herein collectively "Taxes") levied on its Lot and the improvements situated thereon. Each Owner may, at its own cost and expense by appropriate proceeding, contest the validity, applicability and/or the amount of any Taxes. Nothing in this Paragraph 22 shall require an Owner to pay any Taxes so long as it contests the validity, applicability or the amount thereof in good faith and so long as it does not allow the affected Lot to be forfeited to the imposer of such Taxes as a result of its nonpayment. If an Owner fails to comply with this Paragraph 22, the Declarant or the Association may pay the Taxes in question and, if it does, shall be entitled to prompt reimbursement from the defaulting Owner for the sums so expended with interest thereon at the rate of ten percent (10%) per annum.

23. Nuisances. Each Owner and Occupant shall operate its business or conduct its operations on the Parcel so that no nuisance will occur on its Lot or any area adjacent thereto which may be subject to the control of such Owner or Occupant and so that no other Owner or Occupant of a Lot in the Parcel will be unreasonably annoyed, disturbed or interfered with.

24. Security Operations. Each Owner and/or Occupant shall, at its sole expense, provide the security personnel and equipment it deems to be required for the protection of persons who, and property which, shall from time to time come or be upon the Lot or Nonresidential Unit owned by such Owner or occupied by such Occupant. None of Declarant, DCLP, the Corporation or the Association assumes any responsibility for, nor shall have any liability with respect to or as a consequence of, unlawful acts committed by Persons in, on or about the Parcel or the Limited General Community Area.

25. Environmental Matters.

(a) Compliance. Each Owner and Occupant, at its sole cost and expense, shall promptly comply with all Environmental Laws which impose any duty upon either of them with respect to the use, occupancy, maintenance or alteration of the Lot and/or the Nonresidential Units thereon. Each Owner and Occupant shall promptly comply with any notice from any source issued pursuant to Environmental Laws or with any notice from any insurance company pertaining to use, occupancy, maintenance or alteration of a Lot or Nonresidential Unit thereon.

(b) Restrictions. No Owner or Occupant shall cause or permit to occur:

(i) Any violation of Environmental Laws related to environmental conditions on, under, or about the Lot or a Nonresidential Unit, or arising from use or occupancy of the Lot or a Nonresidential Unit thereon, including, but not limited to, soil and ground water conditions.

(ii) The use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substances on, under, or about the Lot or a Nonresidential Unit thereon, or the transportation to or from the Lot or any such Nonresidential Unit of any Hazardous Substances, except as necessary and appropriate for retail use in which case the use, storage or disposal of such Hazardous Substances shall be performed in compliance with Environmental Laws and the highest standards prevailing in the industry.

(iii) The installation of any underground storage tank or piping used for the storage or transport of any Hazardous Substance.

(c) Notices, Affidavits, Etc. An Owner shall immediately notify Declarant and the Association of (i) any violation by Owner or an Occupant, or their respective employees, agents, representatives, customers, invitees or contractors of Environmental Laws on, under or about the Lot, or (ii) the presence or suspected presence of any Hazardous Substances on,

under or about the Lot and shall immediately deliver to Declarant and the Association any notice received from any source by any of them relating to (i) and (ii) above.

(d) Rights of Declarant, DCLP and the Association.

(i) Declarant, DCLP, the Association and their respective agents shall have the right, but not the duty, upon advance notice (except in the case of emergency when no notice shall be required) to inspect a Lot and all Nonresidential Units thereon and conduct tests thereon at any time to determine whether or the extent to which there has been a violation of Environmental Laws or whether there are Hazardous Substances on, under or about the Lot or any Nonresidential Unit thereon. In exercising their rights herein, Declarant and the Association shall use reasonable efforts to minimize interference with the business being conducted on the Lot but neither Declarant or the Association (or their respective agents) shall be liable for any interference, loss, or damage to any property or business caused thereby.

(ii) If Declarant, DCLP, the Association or any governmental agency shall ever require testing to ascertain whether there has been a release of Hazardous Substances on, under or about a Lot or any Nonresidential Unit thereon or a violation of Environmental Laws, and such requirement arose in whole or in part because of an act or omission on the part of the Owner or Occupant of such Lot or Nonresidential Unit, then the reasonable costs thereof may be assessed by the Association against the Lot as a Special Assessment.

(e) Indemnification. Each Owner shall indemnify and hold harmless Declarant, DCLP, the Association and their respective agents or employees from any and all claims, loss, liability, costs, expenses or damage, including attorneys' fees and costs of remediation, incurred by any of them in connection with any breach by an Owner or Occupant of its obligations under this Paragraph 25.

26. Amendments.

(a) Generally. This Supplemental Declaration may be amended at any time by an instrument signed by (i) the appropriate officers of the Association acting pursuant to authority granted by (A) not less than two-thirds (2/3) of the votes of the Members cast at a meeting duly called for the purpose of amending this Supplemental Declaration and (B) a majority of the Directors of the Association and (ii) to the extent required by Paragraph 24 of the Master Declaration, Declarant.

(b) By Declarant. This Supplemental Declaration may be amended at any time prior to the Parcel Applicable Date by Declarant in the same manner provided in Paragraph 26 of the Master Declaration.

(c) Limitations on Amendments. The right to amend this Supplemental Declaration is subject to the same limitations as are specified in subparagraphs (c) and (d) of Paragraph 26 of the Master Declaration.

27. Enforcement. The right to enforce each of the foregoing Restrictions by injunction or other lawful means, together with the right to cause the removal by due process of law of improvements erected or maintained in violation thereof is reserved to Declarant, the Association, the Design Review Board, the Owners of the Lots in the Parcel, their heirs and assigns, and to the Zoning Authority, their successors and assigns, who are entitled to such relief without being required to show any damage of any kind to Declarant, the Association, the Design Review Board, any Owner or Owners, or such Zoning Authority by or through any such violation or attempted violation. Under no circumstances shall Declarant, DCLP, the Association or the Design Review Board be liable for damages of any kind to any Person for failure to abide by, enforce or carry out any provision or provisions of this Supplemental Declaration. Except as expressly provided in Paragraph 6(k) of this Supplemental Declaration, there shall be no rights of reversion or forfeiture of title resulting from any violations.

28. Severability. Invalidation of any of these covenants and restrictions or any part thereof by judgment or court order shall not affect or render the remainder of said covenants and restrictions invalid or inoperative.

29. Non-Liability of Declarant and DCLP. Neither Declarant or DCLP shall have any duties, obligations or liabilities hereunder except such as are expressly assumed by Declarant and/or DCLP, as the case may be, and no duty of, or warranty by, Declarant or DCLP shall be implied by or inferred from any term or provision of this Supplemental Declaration. In addition, notice is hereby given that radio and/or other communications transmission facilities (the "Transmission Facilities") are located near the Property. The Transmission Facilities produce radio and/or other communications transmissions that may interfere with and degrade the performance of electronic devices, including, without limitation, television and radio equipment. Each Owner, Occupant and Mortgagee by virtue of accepting an interest in or otherwise occupying a Unit shall be deemed to consent to the Transmission Facilities, shall not object to or remonstrate against the Transmission Facilities or operations related thereto conducted in conformity with applicable law, and shall be deemed to release Declarant, DCLP, the owners and operators of the Transmission Facilities and their respective successors and assigns from any and all claims, liabilities or obligations with respect to the Transmission Facilities and operations therefrom.

30. General Provisions. Except as the same may be amended from time to time, the foregoing restrictions will be in full force and effect until January 1, 2050, at which time they will be automatically extended for successive periods of ten (10) years, unless by a vote of the majority of the then Owners of Lots in the Parcel it is agreed that these Restrictions shall terminate in whole or in part.

31. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Supplemental Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of George Herbert Walker Bush, former President of the United States of America.

IN WITNESS WHEREOF, this Supplemental Declaration has been executed as of the date first above written.

DUKE REALTY LIMITED PARTNERSHIP,
an Indiana limited partnership

By: Duke Realty Corporation,
its general partner

By: *Thomas A. Dickey*

Printed: Thomas A. Dickey

Title: Vice President & General Manager,
Anson



CHICAGO TITLE

STATE OF INDIANA)

) SS:

COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared Thomas A. Dickey, by me known and by me known to be the VP + Gen Mgr - Anson of Duke Realty Corporation, an Indiana corporation, the general partner of Duke Realty Limited Partnership, an Indiana limited partnership, who acknowledged the execution of the foregoing "Supplemental Declaration of Covenants and Restrictions of The Marketplace at Anson" on behalf of said partnership.

WITNESS my hand and Notarial Seal this 24th day of August, 2006.

Myra Louise Dworski
Notary Public

MYRA LOUISE DWORSKI
(Printed Signature)

My Commission Expires: July 30 2010

My County of Residence: Marion

Myra Louise Dworski, Notary Public
State of Indiana
My Commission Expires: July 30, 2010
My County of Residence: Marion



This instrument prepared by David R. Warshauer, Attorney at Law, 11 South Meridian Street, Indianapolis, Indiana 46204.

“I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.”

China Lougere
CHICAGO TITLE

CONSENT TO SUPPLEMENTAL DECLARATION OF COVENANTS AND RESTRICTIONS OF THE MARKETPLACE AT ANSON

Duke Construction Limited Partnership, an Indiana limited partnership, ("DCLP") is owner of all or a portion of the Parcel described in the foregoing Supplemental Declaration of Covenants and Restrictions (such of the Parcel being owned by the undersigned being hereafter referred to as the "DCLP Property"), and does hereby consent on behalf of itself, its successors and assigns, to the submission of the DCLP Property to the foregoing Supplemental Declaration of Covenants and Restrictions. DCLP further agrees that from and after the date of this Consent, the DCLP Property shall be owned, held, transferred, sold, conveyed, used, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, covenants and restrictions contained in the Supplemental Declaration of Covenants and Restrictions, as the same may be amended from time to time, all of which shall run with the title to the DCLP Property and shall be binding upon all persons having any rights, title or interest in the DCLP Property, their respective heirs, legal representatives, successors, successors-in-title and assigns.

DUKE CONSTRUCTION LIMITED PARTNERSHIP

By: Duke Business Centers Corporation, its sole general partner

By: *Thomas A. Dickey*
(Signature)
THOMAS A. Dickey
(Printed Name)
its: Vice President & General Manager, Anson
(Title)

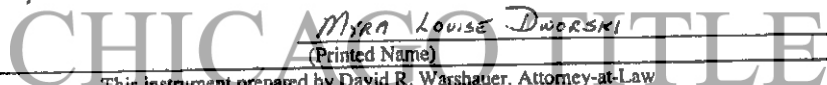
STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared Thomas A. Dickey the Vice President of Duke Business Centers Corporation, an Indiana corporation, the general partner of Duke Construction Limited Partnership, an Indiana limited partnership, who acknowledged the execution of the foregoing Consent to Supplemental Declaration of Covenants and Restrictions of The Marketplace at Anson for and on behalf of said partnership.

Witness my hand and Notarial Seal this 24th day of August, 2006.

My Commission Expires:
July 31, 2010

Myra Louise Dworski
(Signature)
Notary Public Residing in Hamilton County, Indiana
MYRA LOUISE DWORSKI
(Printed Name)



This instrument prepared by David R. Warshauer, Attorney-at-Law
Barnes & Thornburg, 11 South Meridian Street, Indianapolis, Indiana 46204.

EXHIBIT A

Real Estate Description

Block J in Anson Development - Phase I South as per plat thereof recorded in Plat Book 16, pages 63 through 70 on March 1, 2006 as Instrument No. 200600001996 in the Office of the Recorder of Boone County, Indiana.



CHICAGO TITLE

⑧
①
26.00 Non
+2.00 Conway
Leigh Ann Conway
Duke Realty

**FIRST AMENDMENT
TO
SUPPLEMENTAL DECLARATION OF
COVENANTS AND RESTRICTIONS
OF
THE MARKETPLACE AT ANSON**

200600013388
Filed for Record in
BOONE COUNTY, INDIANA
MARY ALICE "SAM" BALDWIN
12-14-2006 At 08:27 am.
COVENANTS 27.00

THIS FIRST AMENDMENT to that certain Supplemental Declaration of Covenants and Restrictions of The Marketplace at Anson (the "Declaration"), is executed as of the 14th day of November, 2006, by DUKE REALTY LIMITED PARTNERSHIP, an Indiana limited partnership, ("Declarant"), who by the execution hereof, hereby declares that:

1. **Recitals.** The following facts are true:

(a) The Declaration was recorded in the Office of the Recorder of Boone County, Indiana on August 30, 2006 as Instrument Number 200600009529.

(b) The Parcel Applicable Date has not yet occurred, and, therefore, Declarant has the right unilaterally to amend and revise the Declaration pursuant to the provisions of Paragraph 26(b) thereof.

(c) Capitalized terms used, but not defined, herein shall have the meaning given such terms in the Declaration.

2. **Amendments.**

(a) Paragraph 3(d) of the Declaration is hereby amended by adding, after the last sentence, the following new language: "The Parcel Assessment for such Maintenance Costs shall be allocated to the affected Lots proportionally, based on the percentage by which the land area of each such Lot bears to the aggregate land area of all Lots affected."

(b) Paragraph 3(e) of the Declaration is hereby deleted and the following inserted in lieu thereof:

"Snow Removal. The Association shall remove, as soon as practicable, accumulations of snow and ice from any Private Street and Common Parking Lot within the Parcel that would interfere with safe and convenient pedestrian and vehicular use thereof, and the costs of such removal shall be Maintenance Costs and assessed as a Parcel Assessment against all Lots in the Parcel subject to such Assessment. Each Owner shall have the right, but not the obligation, to remove accumulations of two (2) inches or more of snow and ice from any Private Street and Common Parking Lot serving such Owner's Lot if the Association fails to do so within twenty-four (24) hours of written notice either hand delivered or telecopied to Duke Realty Corporation, Retail Property Manager at 600 E. 96th Street, Suite 100, Indianapolis, IN 46240, for hand delivery, or (317) 808-6787 for telecopy (or such other entity or address as the Association may from time to time designate in writing to each Owner). Except in the case of an emergency (e.g., where the accumulation of snow and ice materially restricts access to such Owner's Lot), where an Owner may proceed with such removal if the Association fails to remove same within four (4) hours of oral or written notice from any such Owner. The Association shall reimburse such Owner for its direct, out-of-pocket costs thereof within thirty (30) days after receipt of an invoice for the same from such Owner showing, in reasonable detail, such costs

and the persons or entities performing the snow removal. The Association may also, but shall not be obligated to, remove snow and ice from any public right-of-way within the Parcel, and the costs thereof shall be Maintenance Costs and assessed as a Parcel Assessment against all Lots in the Parcel subject to such Assessment."

(c) Paragraph 3 of the Declaration is further hereby amended by adding, after subparagraph (g), the following new paragraph (h):

"(h) Use of Community Areas by Occupants. Pursuant to subparagraph 18(d)(ii) of the Master Declaration, it is hereby established that Occupants within the Parcel shall have the right to use and enjoy all Community Areas and Community Facilities within the Parcel in the same manner and to the same extent as Owners, and that, for purposes of subparagraph 18(f) of the Master Declaration, the rights to use and enjoyment of Community Areas and Community Facilities within the Parcel shall also extend to employees, customers, vendors, consultants, and contractors of every Person owning or leasing, or subleasing, a Nonresidential Lot."

(d) Paragraph 6 of the Declaration is hereby amended by adding, after subparagraph (l), the following new subparagraph (m):

"(m) Waiver/Modification. Nothing contained in this paragraph 6 shall prevent the Declarant or DCLP from entering into separate unrecorded agreements with individual Lot purchasers that waive, modify, or are otherwise at variance with the obligations and requirements set forth in this paragraph 6, and such individual unrecorded agreements shall control in the event of any conflict with this paragraph 6."

(e) Paragraph 9(b)(iii) is hereby amended by adding the following parenthetical after the word "tower": "(the terms "commercial or other advertising" shall not be construed to include signs or sign structures located on any Lot which exhibit or advertise the name, trademark, products or services of the Owner or Occupant of the Lot where such sign is exhibited, but shall apply to any signs advertising businesses not located on the Lot)".

(f) Paragraph 9 of the Declaration is hereby amended by adding, after subparagraph (e), the following new subparagraph (f):

(f) Exclusive Pharmacy and Related Use Restriction. The following operations (the "Prohibited Uses") shall be prohibited upon the Parcel, other than the 2.333 acres +/- Lot located at the corner of State Road 334 and County Road 650 East to be sold or conveyed to Hook-SupeRx, Inc., as more fully described on Exhibit A attached hereto and incorporated by reference herein (the "CVS Lot"): (a) a health and beauty aids store, (b) a vitamin store, (c) a pharmacy mail order facility, (d) a drug store, (e) a pharmacy prescription department, (f) a store providing expedited photo developing or processing services, (g) a greeting card store; and/or (h) a dollar store, including Dollar General, Dollar Tree, Family Dollar, etc. (the "Prohibited Uses"). As used in herein, the term "pharmacy prescription department" shall not include the dispensing of prescription drugs by physicians, dentists, other health care practitioners, or entities such as health maintenance organizations, where such dispensing is incidental to the operation of the business operated on the Parcel; and a "health and beauty aids store" as used in herein shall mean a store which devotes more than 10% of its retail selling space to the display and sale of health and beauty aids. Notwithstanding anything to the contrary contained herein, unless due to fire, casualty or other Force Majeure Event (defined below) resulting in the cessation of business operations (and providing that the owner of the CVS

Lot thereafter diligently pursues such repair or other action as is necessary to commence business operations again), if the occupant of the CVS Lot ceases to sell any of the products listed under the Prohibited Uses for a period of at least 180 consecutive days, then the restricted sale of such product pursuant to the Prohibited Uses shall be of no further force and effect. Provided, however, the prohibition against a dollar store shall remain in place so long as CVS Pharmacy, its successors or assigns operates on the CVS Lot.

Notwithstanding anything to the contrary contained herein, any of the following shall be permitted to operate in the Parcel and shall not be prohibited from operating any business that would otherwise be a Prohibited Use(s): any store containing 30,000 square feet or more of retail space; (t) a beauty salon which sells health and beauty aids only as an incidental part of its operations; (u) a store which devotes less than 10% of its retail selling space in the aggregate to the display and sale of health and beauty aids; (v) a store which devotes less than 10% of its retail selling space in the aggregate to the display and sale of vitamins, health foods and health supplements; (w) a store which devotes less than 10% of its retail selling space in the aggregate to the display and sale of greeting cards; (x) a retail establishment having as its primary use the sale of cameras and related equipment, which establishment provides photo processing and film developing services only as a complimentary part of its business; (y) a retail establishment that, as an ancillary part of its operations, offers the reprinting of photographs, but not the expedited processing or developing of film; and (z) a photography studio.

For purposes of this subparagraph (f), the term "Force Majeure Event" shall mean: "any act of God, fire, earthquake, flood, explosion, police action, invasion, insurrection, riot, mob violence, sabotage, strike, terrorism, lock-out or other industrial or labor disturbance, condemnation, any court order, judgment or decree or other judicial action, finding or adjudging the absence of the ability, right, power or authority of the Lot Owner or Occupant of the CVS Lot to carry out the terms of this Declaration, or otherwise preventing or enjoining the Lot Owner or Occupant of the CVS Lot from proceeding with its obligations under this Declaration, restraint by or of governmental, civil or military authorities, but specifically excluding from such definition of Force Majeure Event any delay caused by the action or omission of the Lot Owner or occupant of the CVS Lot (not acting in good faith) claiming the Force Majeure Event."

3. **Effective Date.** Except as expressly amended hereby, the Declaration shall remain in full force and effect without amendment. The foregoing amendments shall be effective as of the date this First Amendment is recorded in the Office of the Recorder of Boone County, Indiana.
4. **Agreement and Consent of SBL.** State Bank of Lizton, the Owner of the SBOL Lot, hereby joins in this First Amendment, and consents and agrees to the amendments, terms and provisions herein.

[Remainder of Page Intentionally Left Blank]

CHICAGO TITLE

IN WITNESS WHEREOF, this First Amendment has been executed as of the date first above written.

DUKE REALTY LIMITED PARTNERSHIP, an Indiana limited partnership

By: Duke Realty Corporation, its general partner

By: [Signature]
(Signature)
George H. Abel, III
(Printed Name)
Its: V.P. Legal Assistant
(Title)

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared George H. Abel, III, by me known and by me known to be the V.P. Legal Assistant of Duke Realty Corporation, an Indiana corporation, the general partner of Duke Realty Limited Partnership, an Indiana limited partnership, who acknowledged the execution of the foregoing "First Amendment to Supplement Declaration of Covenants and Restrictions of The Marketplace at Anson" on behalf of said partnership.

WITNESS my hand and Notarial Seal this 17 day of Nov, 2006.

My Commission Expires:

Notary Public Residing in Hamilton County, Indiana

(Printed Signature)

Leigh Ann Conway, Notary Public
State of Indiana
My Commission Expires: May 10, 2008
My County of Residence: Hamilton



CHICAGO TITLE

STATE BANK OF LIZTON, an Indiana state chartered bank

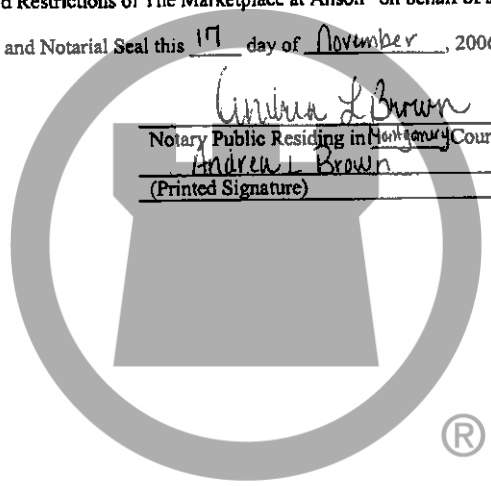
By: [Signature]
(Signature)
H. Matthew Ayers
(Printed Name)
Its: President
(Title)

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

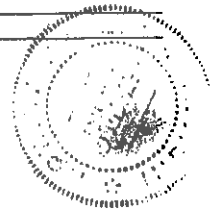
Before me, a Notary Public in and for said County and State, personally appeared H. Matthew Ayers, by me known and by me known to be the President of State Bank Of Lizton, an Indiana state chartered bank, who acknowledged the execution of the foregoing "First Amendment to Supplement Declaration of Covenants and Restrictions of The Marketplace at Anson" on behalf of said Bank.

WITNESS my hand and Notarial Seal this 17 day of November, 2006.

My Commission Expires:
May 17, 2009



Andrew L. Brown
Notary Public Residing in Montgomery County, Indiana
Andrew L. Brown
(Printed Signature)



CHICAGO TITLE

**CONSENT TO FIRST AMENDMENT TO
SUPPLEMENTAL DECLARATION OF
COVENANTS AND RESTRICTIONS
OR
THE MARKETPLACE AT ANSON**

Duke Construction Limited Partnership, an Indiana limited partnership ("DCLP"), is the owner of all or a portion of the Parcel described in the foregoing First Amendment to Supplemental Declaration of Covenants and Restrictions of the Marketplace at Anson (such of the Parcel being owned by DCLP being hereafter referred to as the "DCLP Property"), and does hereby consent on behalf of itself, its successors and assigns, to the terms of the foregoing First Amendment to Supplemental Declaration of Covenants and Restrictions of the Marketplace at Anson.

DUKE CONSTRUCTION LIMITED PARTNERSHIP, an Indiana limited partnership

By: Duke Business Centers Corporation, its sole general partner

By: [Signature]
(Signature)
Gregory H. Arnold, II
(Printed Name)
Its: V.P. Legal & Trust Secretary
(Title)

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared Gregory H. Arnold, II, by me known and by me known to be the V.P. Legal & Trust Sec of Duke Business Centers Corporation, the sole general partner of Duke Construction Limited Partnership, an Indiana limited partnership, who acknowledged the execution of the foregoing "First Amendment to Supplement Declaration of Covenants and Restrictions of The Marketplace at Anson" on behalf of said partnership.

WITNESS my hand and Notarial Seal this 11 day of Nov, 2006.

My Commission Expires: _____
Notary Public Residing in _____ County, _____
(Printed Signature) Leigh Ann Conway
Leigh Ann Conway, Notary Public
State of Indiana
My Commission Expires: May 10, 2008
My County of Residence: Hamilton



I affirm, under the penalties of perjury that I have taken reasonable care to redact each Social Security Number in this document, unless required by law.

Angela E. Tempel

This instrument prepared by Angela E. Tempel, Bose McKinney & Evans LLP, 2700 First Indiana Plaza, 135 N. Pennsylvania, Indianapolis, Indiana 46204.



CHICAGO TITLE

EXHIBIT A

Legal Description of CVS Lot

Part of Block J, Anson Development Phase I South, recorded in Plat Book 16, pages 63-69, being located in the Northeast Quarter of Section 6, Township 17 North, Range 3 East, Eagle Township, Boone County, Indiana being bounded as follows:

Commencing at the Northeast Corner of Block J, Anson Development Phase I South, recorded in Plat Book 16, pages 63-69, in the Recorder's Office of Boone County, Indiana; thence South 87 degrees 18 minutes 52 seconds West 828.42 feet along the northern line of said Block J to the POINT OF BEGINNING of this description; thence South 00 degrees 07 minutes 06 seconds West 276.66 feet; thence North 89 degrees 52 minutes 54 seconds West 382.49 feet to the western boundary line of said Block J; the next four (4) courses are along the western and northern boundary lines of said Block J; (1) thence North 03 degrees 13 minutes 57 seconds East 62.70 feet; (2) thence North 01 degrees 20 minutes 52 seconds West 170.31 feet; (3) thence North 42 degrees 59 minutes 21 seconds East 35.77 feet; (4) thence North 87 degrees 18 minutes 52 seconds East 359.53 feet to the POINT OF BEGINNING, containing 2.333 acres, more or less.



CHICAGO TITLE

9
28.00
+ 2.00 Now
Chicago Title

SECOND AMENDMENT
TO
SUPPLEMENTAL DECLARATION OF
COVENANTS AND RESTRICTIONS
OF
THE MARKETPLACE AT ANSON

200700001462
Filed for Record in
BOONE COUNTY, INDIANA
MARY ALICE "SAM" BALDWIN
02-08-2007 At 01:24 PM.
COVENANTS 30.00

THIS SECOND AMENDMENT to that certain Supplemental Declaration of Covenants and Restrictions of The Marketplace at Anson (the "Declaration"), is executed as of the 27th day of December, 2006, by DUKE REALTY LIMITED PARTNERSHIP, an Indiana limited partnership, ("Declarant"), who by the execution hereof, hereby declares that:

1. Recitals. The following facts are true:

(a) The Declaration was recorded in the Office of the Recorder of Boone County, Indiana on August 30, 2006 as Instrument Number 200600009529, and amended by that certain First Amendment to Supplemental Declaration of Covenants and Restrictions of The Marketplace at Anson dated as of November 17, 2006 and recorded in the Office of the Recorder of Boone County, Indiana on December 14, 2006 as Instrument Number 200600013388.

(b) The Parcel Applicable Date has not yet occurred, and, therefore, Declarant has the right unilaterally to amend and revise the Declaration pursuant to the provisions of Paragraph 26(b) thereof.

(c) Capitalized terms used, but not defined, herein shall have the meaning given such terms in the Declaration.

2. Amendment.

Paragraph 9 of the Declaration is hereby amended by adding, after subparagraph (f), the following new subparagraph (g):

"(g) Financial Institution Restriction.

Notwithstanding anything to the contrary contained herein, that certain portion of Block J, Anson Development Phase I South, per plat thereof recorded in Plat Book 16, pages 63-69 in the Office of the Boone County Recorder consisting of the outlot areas more specifically described and depicted on Exhibit A attached hereto and incorporated by reference herein (the "Outlot Parcels"), excluding therefrom (i) Parcel 3 in said Block J, more particularly described on Exhibit B attached hereto and incorporated by reference herein (the "Bank Outlot") and (ii) Parcel 4 in said Block J, more particularly described on Exhibit C attached hereto and incorporated by reference herein (the "SBOL Outlot") (the Outlot Parcels minus the Bank Outlot and minus the SBOL Outlot shall be referred to herein as the "FI Restricted Property") shall not be used for the operation of a financial institution (including but not limited to banks, savings and loans, trust companies and ATMs, automated teller machines or other free standing cash dispensing or financial transaction machines (which shall not be deemed to include any point of sale systems utilized by retail establishments on the FI Restricted Property that permit their customers to use debit cards to access checking and savings accounts), stock brokerages, mortgage loan origination companies/brokerages, insurance services, credit unions) (the "Financial Institution Restriction"). The foregoing Financial Institution Restriction on uses of the FI Restricted Property shall commence on the date of this Declaration and shall expire on

the date which is fifteen (15) years after the date upon which Duke Construction Limited Partnership conveys fee simple title to the Bank Lot (the "Bank Lot Closing Date"). Notwithstanding the foregoing, an automatic teller machine (ATM) may be placed and operated on the CVS Lot provided that (x) such ATM is enclosed within the retail establishment located upon the CVS Lot, (y) such ATM would be restricted to a generic network ATM that is not dedicated to any specific bank, provided that an ATM dedicated to and operated by Fifth Third Bank would be permitted (a "Fifth Third ATM"), and (z) no ATM, other than a Fifth Third ATM, may be advertised on the exterior of the retail establishment located on the CVS Lot (e.g. "ATM Inside" sign)."

3. **Effective Date.** Except as expressly amended hereby, the Declaration shall remain in full force and effect without amendment. The foregoing amendments shall be effective as of the date this Second Amendment is recorded in the Office of the Recorder of Boone County, Indiana.

4. **Agreement and Consent of CVS.** Hook-SupeRx, Inc., a Delaware corporation, the Owner of the CVS Lot, hereby joins in this Second Amendment, and consents and agrees to the amendments, terms and provisions herein.

[Remainder of Page Intentionally Left Blank]



CHICAGO TITLE

IN WITNESS WHEREOF, this Second Amendment has been executed as of the date first above written.

DUKE REALTY LIMITED PARTNERSHIP, an Indiana limited partnership

By: Duke Realty Corporation, its general partner

By: Thomas A. Dickey
(Signature)
Thomas A Dickey
(Printed Name)
Its: V.P. General Partner
(Title)

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared Thomas A. Dickey, by me known and by me known to be the V.P. General Partner of Duke Realty Corporation, an Indiana corporation, the general partner of Duke Realty Limited Partnership, an Indiana limited partnership, who acknowledged the execution of the foregoing "Second Amendment to Supplement Declaration of Covenants and Restrictions of The Marketplace at Anson" on behalf of said partnership.

WITNESS my hand and Notarial Seal this 26 day of Dec, 2006.



Leigh Ann Conway
Notary Public Residing in _____ County, _____
(Printed Signature) Leigh Ann Conway, Notary Public
State of Indiana
My Commission Expires: May 10, 2008
My County of Residence: Hamilton

Hook-SupeRx, Inc., a Delaware corporation

By: Timothy E. Kramer
(Signature) [®]
TIMOTHY E. KRAMER
(Printed Name) ASST. SECY/SENIOR LEGAL COUNSEL
Its: _____
(Title)

CHICAGO TITLE

CVS Legal Approval:
Thomas Bhisitkul
Hinckley, Allen & Snyder LLP

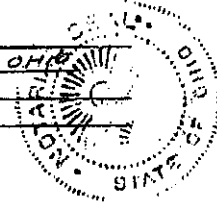
STATE OF OHIO)
) SS:
COUNTY OF SUMMIT)

Before me, a Notary Public in and for said County and State, personally appeared TIMOTHY E. KRAMER, by me known and by me known to be the ASST SEC'Y of Hook-SupeRx, Inc., a Delaware corporation, who acknowledged the execution of the foregoing "Second Amendment to Supplement Declaration of Covenants and Restrictions of The Marketplace at Anson" on behalf of said corporation.

WITNESS my hand and Notarial Seal this 26th day of DECEMBER, 2006.

My Commission Expires Philip E. Pirro
Notary Public
State of Ohio
My Commission Expires 3-17-10

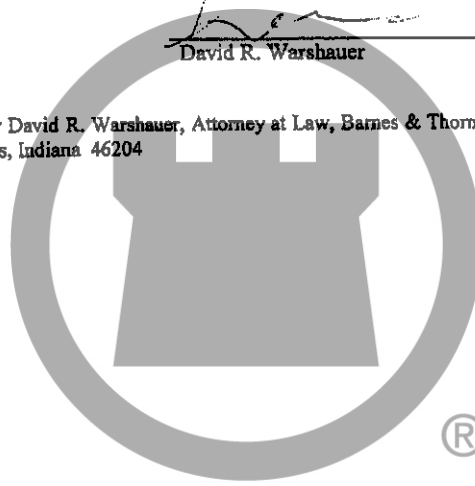
Notary Public Residing in SUMMIT County, OHIO
Philip E. Pirro
(Printed Signature)



I affirm, under the penalties of perjury that I have taken reasonable care to redact each Social Security Number in this document, unless required by law.

David R. Warshauer
David R. Warshauer

This instrument prepared by David R. Warshauer, Attorney at Law, Barnes & Thornburg LLP, 11 South Meridian Street, Indianapolis, Indiana 46204



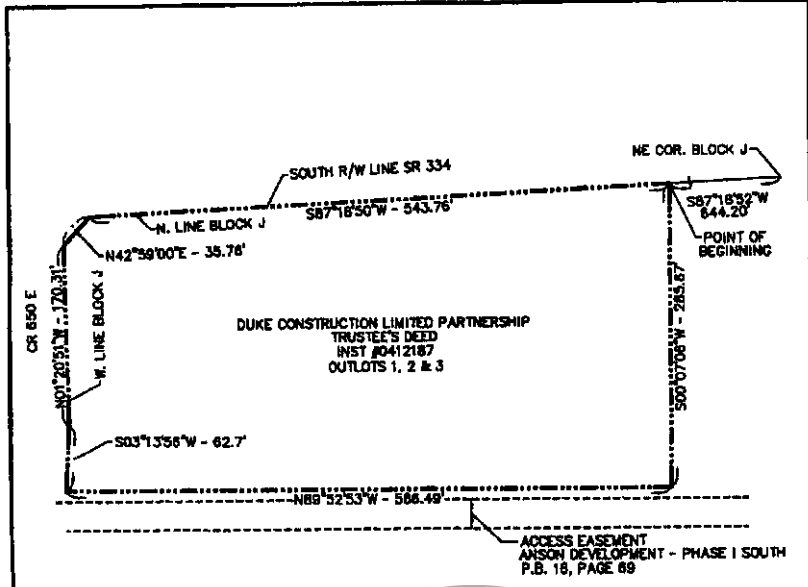
CHICAGO TITLE

EXHIBIT A

Legal Description of Outlot Parcels



CHICAGO TITLE



Land Description
 Outlots 1, 2 & 3
 Anson Marketplace
 3.521 Acre Tract
 December 27, 2006

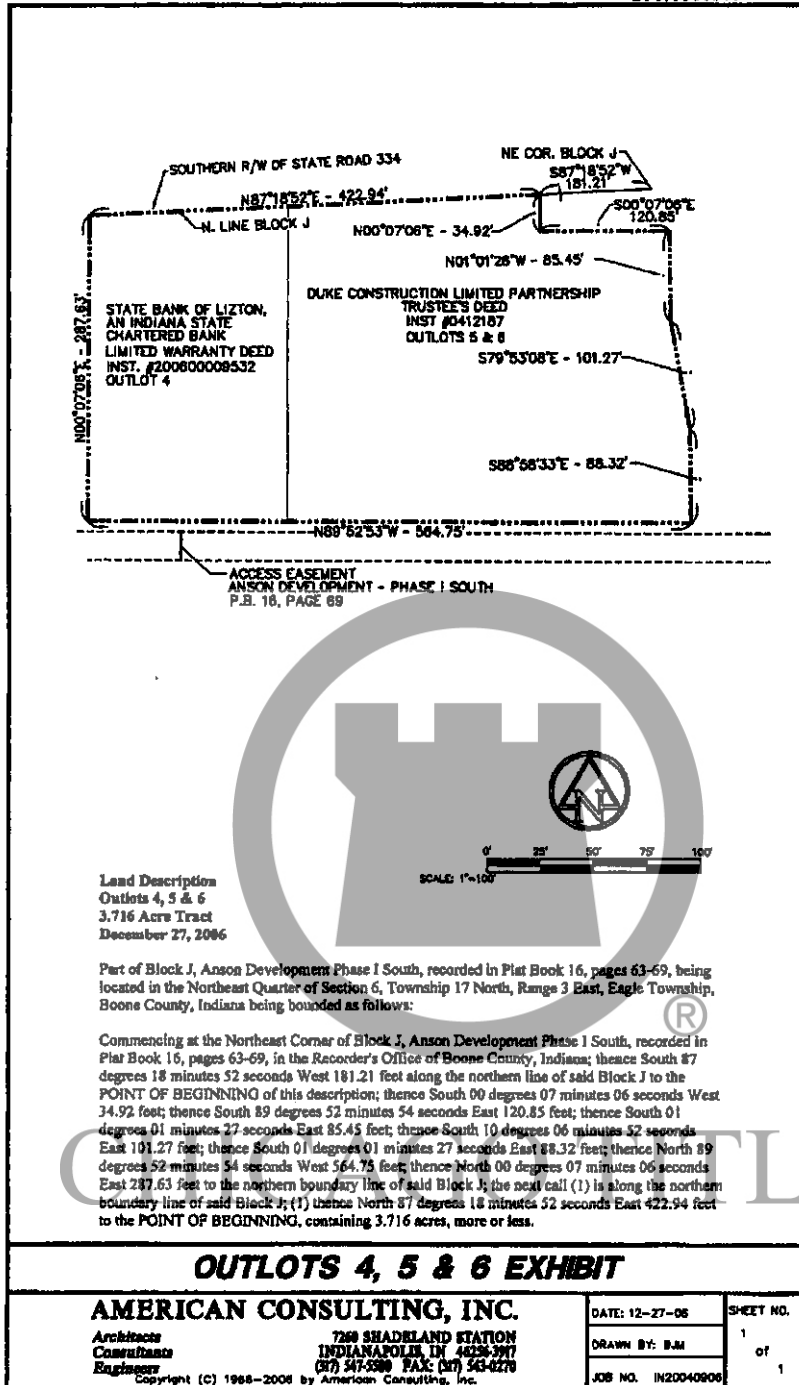
Part of Block J, Anson Development Phase I South, recorded in Plat Book 16, pages 63-69, being located in the Northeast Quarter of Section 6, Township 17 North, Range 3 East, Eagle Township, Boone County, Indiana being bounded as follows:

Commencing at the Northeast Corner of Block J, Anson Development Phase I South, recorded in Plat Book 16, pages 63-69, in the Recorder's Office of Boone County, Indiana; thence South 87 degrees 18 minutes 52 seconds West 644.20 feet along the northern line of said Block J to the POINT OF BEGINNING of this description; thence South 00 degrees 07 minutes 06 seconds West 285.67 feet; thence North 89 degrees 52 minutes 54 seconds West 566.49 feet to the western boundary line of said Block J; the next four (4) courses are along the western and northern boundary lines of said Block J; (1) thence North 03 degrees 13 minutes 57 seconds East 62.70 feet; (2) thence North 01 degrees 20 minutes 52 seconds West 170.31 feet; (3) thence North 42 degrees 59 minutes 21 seconds East 35.76 feet; (4) thence North 87 degrees 18 minutes 52 seconds East 543.76 feet to the POINT OF BEGINNING, containing 3.521 acres, more or less.

OUTLOTS 1, 2 & 3 EXHIBIT

AMERICAN CONSULTING, INC. Architects Consultants Engineers <small>Copyright (C) 1988-2006 by American Consulting, Inc.</small>	7260 SHADELAND STATION INDIANAPOLIS, IN 46256-3987 (317) 547-8380 FAX: (317) 543-0270	DATE: 12-27-06	SHEET NO.
		DRAWN BY: GJM	1 of 1
		JOB NO. IN20040908	

DESC. FILE:



STATE BANK OF LIZTON,
AN INDIANA STATE
CHARTERED BANK
LIMITED WARRANTY DEED
INST. #200600008532
OUTLOT 4

DUKE CONSTRUCTION LIMITED PARTNERSHIP
TRUSTEE'S DEED
INST #0412187
OUTLOTS 5 & 6

ACCESS EASEMENT
ANSON DEVELOPMENT - PHASE I SOUTH
P.B. 16, PAGE 69

Land Description
Outlots 4, 5 & 6
3.716 Acre Tract
December 27, 2006

Part of Block J, Anson Development Phase I South, recorded in Plat Book 16, pages 63-69, being located in the Northeast Quarter of Section 6, Township 17 North, Range 3 East, Eagle Township, Boone County, Indiana being bounded as follows:

Commencing at the Northeast Corner of Block J, Anson Development Phase I South, recorded in Plat Book 16, pages 63-69, in the Recorder's Office of Boone County, Indiana; thence South 87 degrees 18 minutes 52 seconds West 181.21 feet along the northern line of said Block J to the POINT OF BEGINNING of this description; thence South 00 degrees 07 minutes 06 seconds West 34.92 feet; thence South 89 degrees 52 minutes 54 seconds East 120.85 feet; thence South 01 degrees 01 minutes 27 seconds East 85.45 feet; thence South 10 degrees 06 minutes 52 seconds East 101.27 feet; thence South 01 degrees 01 minutes 27 seconds East 88.32 feet; thence North 89 degrees 52 minutes 54 seconds West 564.75 feet; thence North 00 degrees 07 minutes 06 seconds East 287.63 feet to the northern boundary line of said Block J; the next call (1) is along the northern boundary line of said Block J; (1) thence North 87 degrees 18 minutes 52 seconds East 422.94 feet to the POINT OF BEGINNING, containing 3.716 acres, more or less.

OUTLOTS 4, 5 & 6 EXHIBIT

AMERICAN CONSULTING, INC.

Architects
7280 SHADBLAND STATION
INDIANAPOLIS, IN 46226-3917
Engineers
(317) 547-5590 FAX: (317) 543-0270
Copyright (C) 1988-2006 by American Consulting, Inc.

DATE: 12-27-06

DRAWN BY: BJM

JOB NO. IN20040806

SHEET NO.

1 of 1

DESC. FILE

EXHIBIT B

Legal Description of Bank Outlot

A part of Block - J in Anson Development - Phase I South as per plat thereof recorded as Instrument #200600001996 by the Recorder of Boone County, Indiana being bounded as follows:

BEGINNING at a point on the southern right-of-way line of State Road 334 which is also the northern boundary of Block J - in Anson Development - Phase I South as per plat thereof recorded as instrument #200600001996 by the Recorder of Boone County, Indiana, said point of beginning being South 87 degrees 18 minutes 53 seconds West (the bearing of the plat being assumed) 649.21 feet from the northeastern corner of said Block - J; thence South 00 degrees 07 minutes 06 seconds West 285.43 feet; thence North 89 degrees 52 minutes 54 seconds West 179.00 feet to the southeastern corner of a 2.333 acre tract of land the deed for which is not yet recorded; thence North 00 degrees 07 minutes 06 seconds East 276.66 feet along the eastern boundary of said 2.333 acre tract of land to its northeastern corner on the southern right-of-way line of State Road 334 which is also the northern boundary of said Block - J in Anson Development - Phase I South; thence North 87 degrees 18 minutes 53 seconds East 179.21 feet along the southern right-of-way line of State Road 334 which is also the northern boundary of said Block - J in Anson Development - Phase I South to the POINT OF BEGINNING containing 1.155 acres, more or less.

CHICAGO TITLE

EXHIBIT C

Legal Description of SBOL Outlot

A part of Block-J in Anson Development-Phase I South as per plat thereof recorded as Instrument No. 2006-1996 by the Recorder of Boone County, Indiana being bounded as follows:

Beginning at a point on the Southern right-of-way line of State Road 334 which is also the Northern boundary of Block-J in Anson Development-Phase I South as per plat thereof recorded as Instrument 2006-1996 by the Recorder of Boone County, Indiana, said Point of Beginning being South 87 degrees 18 minutes 53 seconds West (the bearing system of the plat is assumed) 417.55 feet from the Northeastern Corner of said Block-J; thence South 87 degrees 18 minutes 53 seconds West 186.60 feet along the Southern right-of-way line of State Road 334 and the Northern boundary of said Block-J; thence South 00 degrees 07 minutes 06 seconds West 287.63 feet; thence South 89 degrees 52 minutes 54 seconds East 186.38 feet to a point being South 00 degrees 07 minutes 06 seconds West of the Point of Beginning; thence North 00 degrees 07 minutes 06 seconds East 296.76 feet to the Point of Beginning, containing 1.250 acres more or less.



CHICAGO TITLE

②
+ 25.00
+ 3.00 cover-rol
+ 2.00 1/4 in
Chicago Title

200700007560
Filed for Record in
BOONE COUNTY, INDIANA
MARY ALICE "SAM" BALDWIN
07-18-2007 At 02:03 PM.
COVENANTS 32.00

**THIRD AMENDMENT
TO
SUPPLEMENTAL DECLARATION OF
COVENANTS AND RESTRICTIONS
OF
THE MARKETPLACE AT ANSON**

THIS THIRD AMENDMENT ("Third Amendment") to that certain Supplemental Declaration of Covenants and Restrictions of The Marketplace at Anson (the "Supplemental Declaration"), is executed as of the 3rd day of July, 2007 (the "Effective Date"), by DUKE REALTY LIMITED PARTNERSHIP, an Indiana limited partnership ("Declarant"), who by the execution hereof, hereby declares that:

1. **Recitals.** The following facts are true:

(a) The Supplemental Declaration was recorded in the Office of the Recorder of Boone County, Indiana (the "Recorder's Office") on August 30, 2006 as Instrument Number 200600009529, and amended by that First Amendment recorded in December 14, 2006 as Instrument Number 200600013388, and as further amended by that certain Second Amendment recorded February 8, 2007 as Instrument Number 200700001462.

(b) The Parcel Applicable Date has not yet occurred and, therefore, Declarant has the right unilaterally to amend and revise the Supplemental Declaration pursuant to the provisions of Paragraph 26(b) thereof.

(c) Pursuant to Paragraph 3(b) of the Master Declaration, Declarant has the right to amend the Master Declaration for the purpose of removing any portion of the Property which has not yet been improved with structures from the coverage of the Master Declaration.

2. **Recitals and Defined Terms.** The Recitals set forth above are hereby incorporated by reference. Any capitalized terms, used, but not defined, herein shall have the meaning given such terms in the Supplemental Declaration.

3. **Amendment - Withdrawn Property.** The following amendment shall become effective as of the Effective Date:

(a) Pursuant to the provisions of Paragraph 3(b) of the Master Declaration, the property set out in Exhibit A attached hereto (the "Withdrawn Property") has been withdrawn from the Master Declaration and General Plan of Development and is hereby withdrawn from the Supplemental Declaration and the Parcel and is not part of the General Plan of Development.

4. **Consent of Owners.** Each of the Owners of the Lots in the Parcel, by execution hereof, consent to this Third Amendment.

5. **Effective Date.** Except as expressly amended hereby, the Supplemental Declaration shall remain in full force and effect without amendment. The foregoing amendments shall be effective as of the date this Third Amendment is recorded in the Office of the Recorder of Boone County, Indiana.

[Remainder of Page Intentionally Left Blank]



CHICAGO TITLE

IN WITNESS WHEREOF, this Third Amendment has been executed as of the date first above written.

DUKE REALTY LIMITED PARTNERSHIP, an Indiana limited partnership

By: Duke Realty Corporation, its general partner

By: Thomas A. Dickey
(Signature)

Thomas A. Dickey
(Printed Name)

Its: Vice President & General Manager,
(Title) Anson

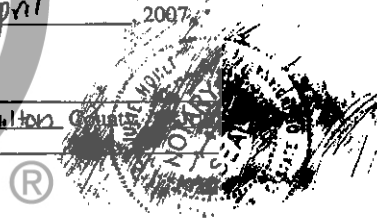
STATE OF INDIANA)
) SS:
COUNTY OF Hamilton)

Before me, a Notary Public in and for said County and State, personally appeared Thomas A. Dickey, by me known and by me known to be the VP + General Manager of Duke Realty Corporation, an Indiana corporation, the general partner of Duke Realty Limited Partnership, an Indiana limited partnership, who acknowledged the execution of the foregoing "Third Amendment to Supplemental Declaration of Covenants and Restrictions of The Marketplace at Anson" on behalf of said partnership.

WITNESS my hand and Notarial Seal this 21st day of April, 2007.

My Commission Expires: 10/27/2013

Jill Hoyt
Notary Public Residing in Hamilton County
Jill Hoyt
(Printed Signature)



CHICAGO TITLE

**CONSENTS TO THIRD AMENDMENT
TO
SUPPLEMENTAL DECLARATION OF
COVENANTS AND RESTRICTIONS
OF
THE MARKETPLACE AT ANSON**

Duke Construction Limited Partnership, an Indiana limited partnership ("DCLP"), is the owner of the Withdrawn Property described in the foregoing Third Amendment to Supplemental Declaration of Covenants and Restrictions of the Marketplace at Anson and does hereby consent on behalf of itself, its successors and assigns, to the terms of the foregoing Third Amendment to Supplemental Declaration of Covenants and Restrictions of the Marketplace at Anson.

DUKE CONSTRUCTION LIMITED PARTNERSHIP, an Indiana limited partnership

By: Duke Business Centers Corporation, its sole general partner

By: Thomas A. Dickey
(Signature)

Thomas A. Dickey
(Printed Name)

Its: Vice President & General Manager,
(Title) Anson

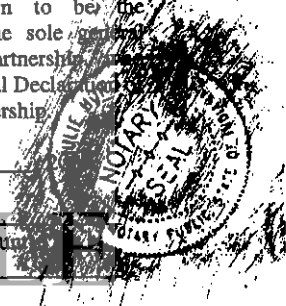
STATE OF INDIANA)
COUNTY OF Hamilton) SS:

Before me, a Notary Public in and for said County and State, personally appeared Thomas A. Dickey, by me known and by me known to be the VP & General Manager of Duke Business Centers Corporation, the sole general partner of Duke Construction Limited Partnership, an Indiana limited partnership, who acknowledged the execution of the foregoing "Third Amendment to Supplemental Declaration of Covenants and Restrictions of the Marketplace at Anson" on behalf of said partnership.

WITNESS my hand and Notarial Seal this 20th day of April

My Commission Expires: 10/27/2013

Julie Hunt
Notary Public Residing in Hamilton County
Julie Hunt
(Printed Signature)



State Bank of Lizton, an Indiana state chartered bank, is the Owner of Lot 4 in The Marketplace at Anson, and does hereby consent on behalf of itself, its successors and assigns, to the terms of the foregoing Third Amendment to Supplemental Declaration of Covenants and Restrictions of the Marketplace at Anson.

STATE BANK OF LIZTON,
an Indiana state chartered bank

By: [Signature]

Name: H. Matthew Ayers

Title: President

STATE OF INDIANA)
) SS:
COUNTY OF HENDRICKS)

Before me, a Notary Public in and for said County and State, personally appeared H. Matthew Ayers, by me known and by me known to be the president of State Bank of Lizton, an Indiana state chartered bank, who acknowledged the execution of the foregoing "Third Amendment to Supplemental Declaration of Covenants and Restrictions of The Marketplace at Anson" on behalf of said bank.

WITNESS my hand and Notarial Seal this 28th day of June

My Commission Expires:
January 29, 2009

[Signature]
Notary Public Residing in Boone County, Indiana
Barbara J. Suiter
(Printed Signature)



CHICAGO TITLE

Fifth Third Bank (Central Indiana), a Michigan state chartered bank, is the Owner of Lot 3 in The Marketplace at Anson, and does hereby consent on behalf of itself, its successors and assigns, to the terms of the foregoing Third Amendment to Supplemental Declaration of Covenants and Restrictions of the Marketplace at Anson.

FIFTH THIRD BANK (Central Indiana),
a Michigan state chartered bank

By: Benjamin B. Moore
Name: BENJAMIN B. MOORE
Title: OFFICER

STATE OF Ohio)
COUNTY OF Hamilton) SS:

Before me, a Notary Public in and for said County and State, personally appeared Benjamin B. Moore by me known and by me known to be the Officer of Fifth Third Bank (Central Indiana), a Michigan state chartered bank, who acknowledged the execution of the foregoing "Third Amendment to Supplemental Declaration of Covenants and Restrictions of The Marketplace at Anson" on behalf of said bank.

WITNESS my hand and Notarial Seal this 28th day of June, 2007.

My Commission Expires: 10-26-07
Marjorie A. Duffly
Notary Public Residing in Hamilton County, Ohio
Marjorie A. Duffly
(Printed Signature)



MARJORIE A. DUFFY
Notary Public, State of Ohio
My Commission Expires
October 26, 2007

I affirm, under the penalties of perjury that I have taken reasonable care to redact each Social Security Number in this document, unless required by law.

Angela E. Tempel

This instrument prepared by: Angela E. Tempel, Bose McKinney & Evans LLP, 2700 First Indiana Plaza, 135 N. Pennsylvania Street, Indianapolis, Indiana 46204.

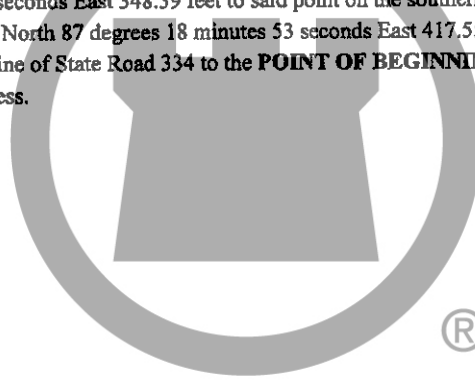


CHICAGO TITLE

Exhibit ALowe's Parcel

A part of Block - J in Anson Development - Phase I South as per plat thereof recorded as instrument #200600001996 by the Recorder of Boone County, Indiana being bounded as follows:

BEGINNING at the northeastern corner of Block - J in Anson Development - Phase I South as per plat thereof recorded as instrument 200600001996 by the Recorder of Boone County, Indiana; thence South 01 degree 01 minute 27 seconds East (the bearing system of the plat is assumed) 988.17 feet along the eastern boundary of said Block - J; thence South 89 degrees 32 minutes 33 seconds West 82.53 feet; thence North 68 degrees 37 minutes 36 seconds West 26.54 feet; thence North 89 degrees 54 minutes 14 seconds West 592.71 feet; thence North 00 degrees 00 minutes 00 seconds 213.84 feet; thence North 90 degrees 00 minutes 00 seconds East 30.31 feet; thence North 00 degrees 00 minutes 00 seconds 225.16 feet; thence North 90 degrees 00 minutes 00 seconds East 25.40 feet; thence North 00 degrees 00 minutes 00 seconds 171.50 feet; thence South 89 degrees 52 minutes 54 seconds East 208.77 feet to a point that is South 00 degrees 07 minutes 06 seconds West of a point on the southern right-of-way line of State Road 334, which is also the northern boundary of said Block - J, that is South 87 degrees 18 minutes 53 seconds West 417.55 feet from the northeastern corner of said Block - J; thence North 00 degrees 07 minutes 06 seconds East 348.39 feet to said point on the southern right-of-way line of State Road 334; thence North 87 degrees 18 minutes 53 seconds East 417.55 feet along the southern right-of-way line of State Road 334 to the **POINT OF BEGINNING** containing 12.839 acres, more or less.



CHICAGO TITLE