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DECLARATION OF COVENANTS AND RESTRICTIONS

Francis View

Carroll, Indiana

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DECLARATION OF COVENANTS AND RESTRICTIONS

PRAIRIE VIEW

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**DECLARATION OF COVENANTS AND RESTRICTIONS
PRAIRIE VIEW**

This Declaration, made as of the 5th day of February, 1997, by BDC/CARDINAL ASSOCIATES, L.P., an Indiana limited partnership ("Declarant"),

WITNESSETH:

WHEREAS, the following facts are true:

A. Declarant owns, or has the right to acquire the real estate located in Hamilton County, Indiana, described in Exhibit A and depicted on Exhibit B, upon which Declarant intends, but is not obligated, to develop a residential community to be known as Prairie View.

B. Declarant intends, but is not obligated, to develop within Prairie View three (3) residential subdivisions to be known as Brooks Landing at Prairie View, Chapman's Claim at Prairie View and Moffitt Farm at Prairie View.

C. Declarant intends, but is not obligated, to construct certain improvements and amenities in Prairie View which shall constitute Community Area.

D. Declarant desires to provide for the preservation and enhancement of the property values, amenities and opportunities in Prairie View and for the maintenance of the Tract and the improvements thereon, and to this end desires to subject the Tract together with such additions as may hereafter be made thereto (as provided in Paragraph 3) to the covenants, restrictions, easements, charges and liens hereinafter set forth, each of which is for the benefit of the Lots and lands in the Tract and the future owners thereof.

E. Declarant deems it desirable, for the efficient preservation of the values and amenities in Prairie View, to create an agency to which may be delegated and assigned the powers of owning, maintaining and administering the Community Area, administering and enforcing the Restrictions, collecting and disbursing the Assessments and charges hereinafter created, and promoting the recreation, health, safety and welfare of the Owners of Lots in Prairie View.

F. Declarant has incorporated under the laws of the State of Indiana a notforprofit corporation known as Prairie View Homeowners Association, Inc. for the purpose of exercising such functions.

NOW, THEREFORE, Declarant hereby declares that all of the Lots and lands in the Tract and such additions thereto as may hereafter be made pursuant to Paragraph 3 hereof, as they are held and shall be held, conveyed, hypothecated or encumbered, leased,

rested, used, occupied and improved, are subject to the following Restrictions, all of which are declared to be in furtherance of a plan for the improvement and sale of Lots in the Tract, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Tract as a whole and of each of Residences, Lots and lands situated therein. The Restrictions shall run with the land and shall be binding upon Declarant, its successors and assigns, and upon the parties having or acquiring any interest in the Tract or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of Declarant and its successors in title to the Tract or any part or parts thereof.

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

"Applegate Parcel" means the real estate described in Exhibit D.

"Applicable Date" means the earlier of (i) the date when all Lots in the Development Area have been improved by the construction thereon of Residences or (ii) December 31, 2007.

"Architectural Control Assessment" means the assessment levied by the Corporation pursuant to Paragraph 17(e).

"Architectural Review Board" means that entity established pursuant to Paragraph 18 of this Declaration for the purposes therein stated.

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

"Assessments" means all sums lawfully assessed against the Members of the Corporation or as declared by this Declaration, any Supplemental Declaration, the Articles or the ByLaws.

"Board of Directors" means the governing body of the Corporation elected by the Members in accordance with the ByLaws.

"Brooks Landing" means that part of Prairie View designated on the General Plan of Development or a Plat as Brooks Landing at Prairie View.

"ByLaws" means the Code of ByLaws of the Corporation, as amended from time to time.

"Chapman's Claim" means that part of Prairie View designated on the General Plan of Development or a Plat as Chapman's Claim at Prairie View.

"Community Area" means (i) the Lake, (ii) the Ponds, (iii) the Private Drives, (iv) the Entry Ways, (v) the Community Center, (vi) the Parks, (vii) the Commons, (viii) the Drainage System, (ix) the Paths, (x) any utility service lines or facilities not maintained by a public utility company or governmental agency that are located on, over or below or through more than one Section, and (xi) any areas of land (1) shown on any Plat, (2) described in any recorded instrument prepared by Declarant or its agents, or (3) conveyed to or acquired by the Corporation, together with all improvements thereto, that are intended to be devoted to the use or enjoyment of some, but not necessarily all, of the Owners of Lots.

"Community Area Access Easement" means the area designated on a Plat as a means of access to a Community Area.

"Community Area Initial Assessment" means the initial assessment for the Reserve for Replacements required by Paragraph 17(c).

"Common Facilities" means the Common Lighting, the Site Furniture and Facilities and other personal property of the Corporation.

"Common Lighting" means the light standards, wiring, bulbs and other appurtenances, if any, installed to illuminate River Road, 131st Street and/or the Community Area.

"Commons" means such land, if any, as may be denoted on a Plat as "Commons" or designated as "Commons" in any recorded instrument executed by Declarant.

"Community Center" means such of the land depicted as "Community Center" on the General Plan of Development as Declarant may make available as a site for development of recreational and other community facilities or, if such site is so developed, the land designated on a Plat as the "Community Center" together with all improvements thereto and structures and facilities thereon.

"Corporation" means Prairie View Homeowners Association, Inc., an Indiana nonprofit corporation, its successors and assigns.

"Declarant" means BDC/Cardinal Associates, L.P., its successors and assigns to its interest in the Tract other than Owners purchasing Lots or Residences by deed from Declarant (unless the conveyance indicated an intent that the grantee assume the rights and obligations of Declarant).

"Designated Builder" means during such period as such designation by Declarant may continue, any Person engaged in the construction of more than one (1) Residence on the Tract who is designated by Declarant as a "Designated Builder". Declarant may make and revoke any such designation at any time and from time to time.

"Detention Area" means an area depicted on a Plat which has been engineered to accommodate from time to time surface water drainage.

"Development Area" means the land described in Exhibit A together with any additional land added to the Tract pursuant to Paragraph 3 of this Declaration.

"Drainage Board" means the Council Board of Public Works, its successors or assigns.

"Drainage System" means the open drainage ditches and swales, the subsurface drainage tiles, pipes and structures, the dry and wet retention and/or detention ponds (including all Detention Areas), and the other structures, fixtures, properties, equipment and facilities (excluding the Lake and the Ponds) located in the Tract and designed for the purpose of controlling, retaining or expediting the drainage of surface and subsurface waters from, over and across the Tract, including but not limited to those shown or referred to on a Plat, all or part of which may be established as legal drains subject to the jurisdiction of the Drainage Board.

"Entry Ways" means the structures constructed as an entrance to Prairie View or a part thereof (exclusive of the street pavement, curbs and drainage structures and tiles), the traffic islands depicted as designated Blocks on a Plat and any other traffic islands dividing a roadway providing access to Prairie View or a part thereof, and the grassy area surrounding such structures.

"General Plan of Development" means that plan prepared by Declarant and approved, if necessary, by appropriate public agencies that outlines the total scheme of development and general uses of land in the Development Area, as such may be amended from time to time.

"Landscape Easement" means a portion of a Lot denoted on a Plat as an area to be landscaped.

"Lake" means the lake located in Moffitt Farm.

"Lake Access Easement" means the area designated on a Plat as a means of access to the Lake or a Pond.

"Lake Liner" means the geosynthetic containment system, if any, installed by Declarant to control the water level of the Lake.

"Lot" means a platted lot as shown on a Plat.

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

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

"Member" means a member of the Corporation and "Members" means all members of the Corporation.

"Moffitt Farm" means that part of Prairie View designated on the General Plan of Development or a Plat as Moffitt Farm at Prairie View.

"Mortgagee" means the holder of a first mortgage on a Residence.

"Owner" means a Person, including Declarant, who at the time has or is acquiring any interest in a Lot except a Person who has or is acquiring such an interest merely as security for the performance of an obligation.

"Parcel" means each of Brooks Landing, Chapman's Claim and Moffitt Farm and any other platted subdivision within the Development Area that is subject to the same Supplemental Declaration or is declared by Declarant to constitute a "Parcel".

"Park" means such land as may be denoted on a Plat as "Park" or designated as "Park" in any recorded instrument executed by Declarant.

"Part of the Development Area" means any part of the Development Area not included in the Tract.

"Paths" means those walkways and/or bikeways installed pursuant to Paragraph 10 and such other real estate or interest therein as is conveyed or granted to the Corporation for the purpose of being used for walkways and/or bikeways.

"Path Lights" means the light standards, conduits, wiring, bulbs and other appurtenances, if any, installed to illuminate the Paths.

"Person" means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

"Plat" means a final secondary plat of a portion of the Development Area executed by Declarant and recorded in the Office of the Recorder of Hamilton County, Indiana.

"Pond" means a body of water located in the Development Area and depicted on the General Plan of Development (other than the Lake) and **"Ponds"** means all of such bodies of water (other than the Lake).

"Private Drive" means a street, lane, road, driveway or other right-of-way designed to provide access to one or more Lots that has not been accepted for maintenance by a public authority.

"Private Gate" means a security gate controlling access to and from a Private Drive.

"Reserve for Replacements" means a fund established and maintained by the Corporation to meet the cost of periodic maintenance, repairs, renewal and replacement of the Community Area and the Common Facilities.

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

"Restrictions" means the covenants, conditions, easements, charges, liens, restrictions, rules and regulations and all other provisions set forth in this Declaration, all applicable Supplemental Declarations and the Register of Regulations, as the same may from time to time be amended.

"Register of Regulations" means the document containing rules, regulations, policies, and procedures adopted by the Board of Directors or the Architectural Review Board, as the same may from time to time be amended.

"Round-About" means the traffic circle at the intersection of 131st Street and River Road.

"Section" means that portion of the Development Area that is depicted on a Plat.

"Site Furniture and Facilities" means any furniture, trash containers, sculpture or other furniture, fixtures, equipment or facilities constructed, installed or placed in the Development Area by Declarant or the Corporation and intended for the common use or benefit of some, if not all, of the Owners.

"Street Trees" means the trees planted by Declarant within the right-of-ways of public streets (including the medians thereof) within and adjacent to Prairie View, as the same may be replaced from time to time.

"Supplemental Declaration" means the Supplemental Declarations of Covenants and Restrictions for each of Brooks Landing, Chapman's Claim and Moffitt Farm and any Plat or other supplementary declaration of covenants, conditions or restrictions which may be recorded and which extends the provisions of this Declaration or any previously recorded Supplemental Declaration to a Section and contains such complementary or supplementary provisions for such Section as are required or permitted by this Declaration.

"Tract" means the land described in Exhibit C and such other real estate as may from time to time be annexed thereto under the provisions of Paragraph 3 hereof.

"Zoning Authority" with respect to any action means the Director of the Department of Economic and Community Development of the City of Carmel or, where he lacks the capacity to take action, or fails to take such action, the governmental body or bodies, administrative or judicial, in which authority is vested under applicable law to hear appeals from, or review the action, or the failure to act, of the Director.

2. **Declaration.** Declarant hereby expressly declares that the Tract and any additions thereto pursuant to Paragraph 3 hereof shall be held, transferred, and occupied subject to the Restrictions. The Owner of any Lot subject to these Restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of

occupancy of any Lot, shall accept such deed and execute such contract subject to each Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, each Owner acknowledges the rights and powers of Declarant and of the Corporation with respect to these Restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant, the Corporation, and the Owners and subsequent Owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreement.

3. Additions to the Tract. Declarant shall have the right to bring within the scheme of this Declaration and add to the Tract real estate that is a Part of the Development Area or that is contiguous to the Development Area. In determining contiguity, public rights of way shall not be considered.

The additions authorized under this Paragraph 3 shall be made by the filing of record of one or more Supplemental Declarations with respect to the additional real estate and by filing with the Corporation any revisions to the General Plan of Development necessary to reflect the scheme of development of the additional real estate. Unless otherwise stated therein, such revisions to the General Plan of Development shall not bind Declarant to make the proposed additions. For purposes of this Paragraph 3, a Plat depicting a portion of the Development Area shall be deemed a Supplemental Declaration.

4. The Lake.

(a) Development. Declarant intends, but is not obligated, to develop the Lake. Declarant reserves the right, subsequent to commencement of development of the Lake, to determine the size and configuration thereof (which may vary from that depicted on the General Plan of Development attached as Exhibit B hereto).

(b) Title and Maintenance. Declarant shall convey title to the Lake to the Corporation. The Corporation shall be responsible for maintaining the Lake. The Maintenance Costs of the Lake shall be assessed as a General Assessment against all Lots subject to assessment. Each Owner of a Lot that abuts the Lake shall be responsible at all times for maintaining so much of the bank of the Lake above the pool level as constitutes a part of, or abuts, his Lot (exclusive of the Lake Liner and any Path) and shall keep that portion of the Lake abutting his Lot free of debris and otherwise in reasonably clean condition.

(c) Use. No boats shall be permitted upon any part of the Lake except if and to the extent authorized by the Board of Directors and then subject to such rules and regulations as may be adopted by the Board of Directors. No dock, pier, wall or other structure may be extended into the

Lake without the prior written consent of the Architectural Review Board and such governmental authority as may have jurisdiction thereover. No swimming will be permitted in the Lake except if and to the extent authorized by the Board of Directors. Each Owner of a Lot abutting the Lake shall indemnify and hold harmless Declarant, the Corporation and each other Owner against all loss or damage incurred as a result of injury to any Person or damage to any property, or as a result of any other cause or thing, arising from or related to use of, or access to, the Lake by any Person who gains access thereto from, over or across such Owner's Lot. Declarant shall have no liability to any Person with respect to the Lake, the use thereof or access thereto, or with respect to any damage to any Lot resulting from the Lake or the proximity of a Lot thereto, including loss or damage from erosion.

(d) Lake Liner. If a Lake Liner is installed at time of development of the Lake, the stability of the water level in the Lake will be dependent upon maintenance of the integrity of the Lake Liner. If a Lake Liner is installed, the Corporation shall be responsible for maintenance of the Lake Liner and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment except that an Owner who causes or permits any damage to the Lake Liner shall be solely responsible for the cost of repairing such damage and shall indemnify and hold harmless Declarant, the Corporation and each other Owner against all loss or damage incurred as a result of injury to any Person or damage to any property, or as a result of any other cause or thing, arising from or related to damage to the Lake Liner caused by such Owner or any Person having or gaining access to such Owner's Lot with the knowledge or consent of such Owner.

5. The Ponds.

(a) Development. Declarant intends, but is not obligated, to develop the Ponds. Declarant reserves the right, subsequent to commencement of development of the Ponds, to determine the size and configuration thereof (which may vary from that depicted on the General Plan of Development attached as Exhibit B hereto).

(b) Title and Maintenance. Declarant shall convey title to the Ponds to the Corporation. The Corporation shall be responsible for maintaining the Ponds. The Maintenance Costs of the Ponds shall be assessed as a General Assessment against all Lots subject to assessment. Each Owner of a Lot that abuts a Pond shall be responsible at all times for maintaining so much of the bank of the Pond above the pool level as constitutes a part of, or abuts, his Lot (exclusive of any Path) and shall keep that portion of the Pond abutting his Lot free of debris and otherwise in reasonably clean condition.

(c) Use. No boats shall be permitted upon any part of a Pond. No dock, pier, wall or other structure may be extended into a Pond without the prior written consent of the Architectural Review Board and such governmental authority as may have jurisdiction thereover. No swimming will be permitted in any Pond except if and to the extent authorized by the Board of Directors. Each Owner of a Lot abutting a Pond shall indemnify and hold harmless Declarant, the Corporation and each other Owner against all loss or damage incurred as a result of injury to any Person or damage to any property, or as a result of any other cause or thing, arising from or related to use of, or access to, a Pond by any Person who gains access thereto from, over or across such Owner's Lot. Declarant shall have no liability to any Person with respect to a Pond, the use thereof or access thereto, or with respect to any damage to any Lot resulting from a Pond or the proximity of a Lot thereto, including loss or damage from erosion.

6. The Commons. Declarant shall convey title to the Commons to the Corporation. The Corporation shall be responsible for maintaining the Commons and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. Except for underground utility facilities, no permanent improvements shall be made to or installed on the Commons other than lighting, seating, walkways, planting structures and fountains or other nonrecreational water features. The use of the Commons shall be subject to rules and regulations adopted by the Board of Directors which are not inconsistent with the provisions of this Declaration or any Supplemental Declaration.

7. Parks. Declarant shall convey title to the Parks to the Corporation. The Corporation shall be responsible for maintaining the Parks and the Maintenance Costs thereof, together with any costs incurred by the Corporation in connection with the improvement thereof, shall be assessed as a General Assessment against all Lots subject to assessment. The use of the Parks shall be subject to rules and regulations adopted by the Corporation which are not inconsistent with the provisions of this Declaration or any Supplemental Declaration.

8. Community Center. Declarant intends, but is not obligated, to construct in the area designated on the General Plan of Development as the Community Center a club house, bath house, swimming pool, tennis courts and other recreational and community facilities if development of the Development Area should, in the sole judgment of Declarant, justify such construction. If Declarant undertakes the development of the Community Center or any part thereof, Declarant intends upon completion of construction to convey the same to the Corporation prior to the Applicable Date free and clear of all financial encumbrances and other liens securing indebtedness of Declarant but subject to the right of Declarant to use the Community Center as provided in Paragraph 22(a). The Corporation shall be responsible for maintenance of the Community Center and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. The Board of Directors may adopt such rules and regulations with

respect to the use of the Community Center as it deems appropriate and may charge reasonable fees for the use thereof, but no rule, regulation or charge shall be inconsistent with the provisions of this Declaration or any Supplemental Declaration.

9. Drainage System. The Drainage System has or will be constructed for the purpose of controlling drainage within and adjacent to the Development Area and maintaining the water level in the Lake and the Pond. The Corporation shall maintain the Drainage System to the extent not maintained by the Drainage Board and the Maintenance Costs thereof shall be assessed against all Lots subject to assessment serviced by that part of the Drainage System with respect to which Maintenance Costs are incurred. Each Owner shall be individually liable for the cost of maintenance of any drainage system located entirely upon his Lot which is devoted exclusively to drainage of his Lot and is not maintained by the Drainage Board.

10. Paths and Path Lights. Declarant may, but is not obligated to, install the Paths and Path Lights at the approximate locations depicted on the General Plan of Development and may reserve easements for such purpose over and across Lots. If installed, the Corporation shall operate and maintain the Paths and Path Lights and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. The Board of Directors may adopt such rules and regulations with respect to the use thereof as it may deem appropriate including but not limited to the prohibition of the use of all or some of the Paths by bicycles, skateboards and/or motorized or non-motorized vehicles.

11. Private Drives and Private Gates.

(a) Maintenance of Private Drives. Unless otherwise provided in a Supplementary Declaration, Declarant shall maintain each Private Drive in good condition satisfactory for the purpose for which it was constructed until the earlier of (i) December 31, 1999 or (ii) the date on which Residences have been constructed on seventy-five percent (75%) of the Lots fronting such Private Drive; at which time responsibility for the maintenance thereof shall be assumed by the Corporation. The Maintenance Costs incurred by the Corporation in maintaining a Private Drive shall be assessed against all Lots whose principal means of vehicular access to a public right-of-way is over and across such Private Drive.

(b) Maintenance of Private Gates. Private Gates shall be maintained by the Corporation. The Maintenance Costs incurred by the Corporation in maintaining Private Gates shall be assessed against all Lots whose principal access to a public right-of-way is through a Private Gate.

12. Entry Ways and Landscape Easements. The Corporation shall maintain the Entry Ways and all improvements and plantings thereon, and the Maintenance Costs thereof

shall be assessed as a General Assessment against all Lots subject to assessment. Grass, trees, shrubs and other plantings located on an Entry Way shall be kept neatly cut, cultivated or trimmed as reasonably required to maintain an attractive entrance to Prairie View or a part thereof. All entrance signs located on an Entry Way shall be maintained at all times in good and sightly condition appropriate to a first-class residential subdivision. Unless the Board of Directors determines that all or some of the Landscape Easements shall be maintained by the Corporation and the Maintenance Costs thereof assessed as a General or Parcel Assessment, the Owner of each Lot upon which a Landscape Easement is located shall at his/her expense keep the grass, trees, shrubs and other plantings located on a Landscape Easement neatly cut, cultivated or trimmed as reasonably necessary to maintain the same at all times in a good and sightly condition appropriate to a first-class residential subdivision and, if such Owner fails to do so, the Corporation may undertake such maintenance and assess the Maintenance Costs thereof as a Special Assessment against such Lot.

13. Common Lighting. Declarant may, but is not obligated to, install Common Lighting in the Tract and may reserve easements for such purpose over and across Lots. If installed, the Corporation shall operate and maintain the Common Lighting and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment.

14. Site Furniture and Facilities. Declarant may, but is not obligated to, construct, install or place Site Furniture and Facilities in the Tract. If it does so, title thereto shall be conveyed to the Corporation. After conveyance to the Corporation, the Corporation shall maintain the Site Furniture and Facilities and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment.

15. Round-About and Street Trees. The Corporation shall maintain the Round-About (exclusive of the street pavement, curbs and drainage structures and tiles) and the Street Trees (including replacement of such trees as appropriate), and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment.

16. Prairie View Homeowners Association, Inc.

(a) Membership. Each Owner shall automatically be a Member and shall enjoy the privileges and be bound by the obligations contained in the Articles and ByLaws. 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 Declaration on other Owners, including those provisions with respect to the payment of Assessments.

(b) Powers. The Corporation shall have such powers as are set forth in this Declaration and in the Articles, together with all other powers that belong to it by law.

(c) Classes of Members. The Corporation 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 ByLaws.

(e) Reserve for Replacements. The Board of Directors shall establish and maintain the Reserve for Replacements by the allocation and payment to such reserve fund of an amount determined annually by the Board to be sufficient to meet the cost of periodic maintenance, repair, renewal and replacement of the Community Area and the Common Facilities. In determining the amount, the Board shall take into consideration the expected useful life of the Community Area and the Common Facilities, projected increases in the cost of materials and labor, interest to be earned by such fund and the advice of Declarant or such consultants as the Board may employ. The Reserve for Replacements shall be deposited in a special account with a leading institution the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. Prior to the Applicable Date, funds from the Reserve for Replacements may be withdrawn and applied at the direction of Declarant to meet the costs of periodic maintenance, repairs, renewal or replacement of the Community Area and the Common Facilities.

(f) Maintenance Standards. In each instance in which this Declaration imposes on the Corporation a maintenance obligation with respect to the Community Area or a part thereof, the Corporation shall maintain the Community Area or designated part thereof 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 residential subdivision. Grass, trees, shrubs and other plantings located on the Community Area for which the Corporation has maintenance responsibility shall be kept neatly cut, cultivated or trimmed as reasonably required and otherwise maintained at all times in good and sightly condition appropriate to a first-class residential subdivision.

(g) Limitations on Action by the Corporation. Unless at least twothirds of the Mortgagees (based on one vote for each first mortgage owned) or twothirds (2/3) of the Members (other than Declarant) have given their prior written approval, the Corporation, the Board of Directors and the

Owners may not: (i) except as authorized by Paragraph 19(a), by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Community Area (but the granting of easements for public utilities or other public purposes consistent with the intended use of the 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 Community Area 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 Community Area for other than the repair, replacement or reconstruction of the Community Area; (iv) change the method of determining the obligations, assessments, dues or other charges that may be levied against the Owner of a Residence; (v) 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 Residences, or the maintenance and upkeep of the Community Area; or (vi) fail to maintain the Reserve for Replacements in the amount required by this Declaration or any Supplemental Declaration.

(h) Mergers. Upon a merger or consolidation of another corporation with the Corporation, 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 Corporation as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established by this Declaration within the Tract 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 Declaration within the Tract except as hereinafter provided.

17. 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 Corporation the following: (1) General Assessments, (2) the Community Area Initial Assessment, (3) annual and special Parcel Assessments, (4) Architectural Control Assessments (to the extent levied) and (5) Special Assessments, such Assessments to be established and collected as hereinafter provided.

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, the vacated or divided Lot(s) shall cease to be Lots for purposes of Assessments under this Paragraph 17.

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) General Assessment.

(i) Purpose of Assessment. The General Assessment levied by the Corporation shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners of Lots and for the improvement, maintenance, repair, replacement and operation of the Community Area and Common Facilities.

(ii) Basis for Assessment.

(1) Lots Generally. Each Lot owned by a Person other than Declarant shall be assessed at a uniform rate without regard to whether a Residence has been constructed upon the Lot.

(2) Lots Owned by Declarant. No Lot owned by Declarant shall be assessed by the Corporation except such Lots as have been improved by the construction thereon of Residences which shall be subject to assessment as provided in Clause (1) above.

(3) Change in Basis. The basis for assessment may be changed upon recommendation of the Board of Directors if such change is approved by (i) twothirds (2/3) of the members (excluding Declarant) or twothirds (2/3) of the Mortgagees (based on one vote for each first mortgage owned) who are voting in person or by proxy at a meeting of such 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 General Assessment for each assessment year of the Corporation at an amount sufficient to meet the obligations imposed by this Declaration and all Supplemental Declarations upon the Corporation. The Board of Directors shall establish the date(s) the General Assessment shall become due, and the manner in which it shall be paid.

(iv) **Allocation of Assessment.** Certain of the costs of maintaining, operating, restoring or replacing the Community Area and Common Facilities have been allocated in this Declaration among Owners of Lots on the basis of the location of the lands and improvements constituting the Community Area and Common Facilities and the intended use thereof. In determining the General Assessment, costs and expenses which in accordance with the provisions of this Declaration are to be borne by all Owners shall first be allocated to all Owners. Costs and expenses which in accordance with the provisions of this Declaration are to be borne by the Owners of certain Lots shall then be allocated to the Owners of such Lots. The provisions of subparagraph (ii) for uniform assessment shall not be deemed to require that all assessments against vacant Lots or Lots improved with comparable types of Residences be equal, but only that each Lot be assessed uniformly with respect to comparable Lots subject to assessment for similar costs and expenses.

(c) **Community Area Initial Assessment.** Except as otherwise provided in Paragraph 32 of this Declaration and unless otherwise provided in a Supplemental Declaration, on the earlier of (i) the date a Lot is conveyed by Declarant to an Owner (other than the holder of a first mortgage on such Lot in a conveyance which constitutes a deed in lieu of foreclosure), (ii) the date a Residence constructed on the Lot has been certified for occupancy by the Zoning Authority or (iii) the date a Residence on the Lot is first occupied by an Owner upon completion of construction thereof, there shall be due and payable to the Corporation by the Owner of such Lot the sum of Five Hundred Dollars (\$500.00) which shall be deposited in the Reserve for Replacements maintained by the Corporation.

(d) Parcel Assessments.

(i) Purpose of Assessments. Parcel Assessments shall be used for such purposes as are authorized by the Supplemental Declaration for such Parcel.

(ii) Method of Assessment. An annual Parcel Assessment shall be levied by the Corporation against Lots in a Parcel using the basis set forth in the Supplemental Declaration for such Parcel, and collected and disbursed by the Corporation. The Board shall fix in accordance with the By-Laws and the provisions of any Supplemental Declaration the annual parcel assessment for each Parcel, the date(s) such Assessment shall become due, and the manner in which it shall be paid.

(iii) Special Assessments. In addition to the annual Parcel Assessment, the Corporation may levy in any fiscal year a special Parcel Assessment against one or more of the Lots in a Parcel for the purpose of (A) defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Parcel, including fixtures and personal property related thereto, provided that any such Assessment shall have the assent of a majority of the Owners of Lots in the Parcel who are voting in person or by proxy at a meeting of such Owners duly called for this purpose or (B) defraying any Maintenance Costs incurred in satisfying any requirements imposed on the Corporation by a Supplemental Declaration relating to a Parcel.

(e) Architectural Control Assessment. If any Owner fails to comply with the requirements of Paragraph 4 of a Supplemental Declaration relating to the Parcel in which such Owner's Lot is located and/or the provisions of Paragraph 18 of this Declaration, then the Corporation may levy against the Lot owned by such Owner an Assessment in an amount determined by the Board of Directors which does not exceed the greater of (i) One Hundred Dollars (\$100.00) for each day that such failure continues after written notice thereof is given by Declarant or the Corporation to such Owner or (ii) Ten Thousand Dollars (\$10,000.00). Such Assessment shall constitute a lien upon the Lot of such Owner and may be enforced in the manner provided in subparagraph (h) below. The levy of an Architectural Control Assessment shall be in addition to, and not in lieu of, any other remedies available to Declarant and/or the Corporation provided in this Declaration, at law or in

equity in the case of the failure of an Owner to comply with the provisions of this Declaration and all applicable Supplemental Declarations.

(f) Special Assessment. In addition to such other Special Assessments as may be authorized herein, the Corporation may levy in any fiscal year a Special Assessment applicable to that year and not more than the next four (4) succeeding fiscal years for the purpose of defraying, in whole or in part, the cost of any construction, repair, or replacement of a capital improvement upon the Community Area, including fixtures and personal property relating thereto, provided that any such Assessment shall have the assent of a majority of the votes of the Members whose Lots are subject to assessment with respect to the capital improvement who are voting in person or by proxy at a meeting of such members duly called for this purpose.

(g) Date of Commencement of Assessments. The General Assessment and Parcel Assessments shall commence with respect to assessable Lots within a Parcel on the first day of the month following conveyance of the first Lot in the Parcel to an Owner who is not Declarant. The initial Assessment on any assessable Lot shall be adjusted according to the days remaining in the month in which the Lot became subject to assessment. Notwithstanding the foregoing, if an Owner owns more than two (2) unimproved Lots, the General Assessment shall not commence with respect to such unimproved Lots until the earlier of (i) the date the Owner commences construction of a Residence thereon or (ii) the first day of the sixth month following the date the Owner acquired title to the Lots.

(h) Effect of Nonpayment of Assessments; Remedies of the Corporation. 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 Corporation 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 Corporation in collecting such Assessment. If the Corporation has provided for collection of any Assessment in installments, upon default in the payment of any one or more installments, the Corporation 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 Community Area or the Common Facilities or abandonment of his Lot.

(i) Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein against a Lot shall be subordinate to the lien

of any recorded first mortgage covering such Lot 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 assessment lien. 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.

(i) **Certificates.** The Corporation shall, upon demand by an Owner, at any time, furnish a certificate in writing signed by an officer of the Corporation that the Assessments on a Lot have been paid or that certain Assessments remain unpaid, as the case may be.

(k) **Annual Budget.** By a majority vote of the Directors, the Board of Directors shall adopt an annual budget for the subsequent fiscal year, which shall provide for allocation of expenses in such a manner that the obligations imposed by the Declaration and all Supplemental Declarations will be met.

18. **Architectural Control.**

(a) **The Architectural Review Board.** An Architectural Review Board consisting of three (3) or more Persons as provided in the ByLaws shall be appointed by the Board of Directors.

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

(c) **Conditions.** Except as otherwise expressly provided in this Declaration, no improvements, alterations, repairs, change of colors, excavations, changes in grade, planting 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 shall be made or done without the prior approval by the Architectural Review Board of a Lot Development Plan therefor. Prior to the commencement by any Owner other than Declarant or a Designated Builder of (i) construction, erection or alteration of any Residence, other building, fence, wall, swimming pool, tennis court, patio, or other structure on a Lot or (ii) any plantings or exterior lighting on a Lot, a Lot Development Plan with respect thereto shall be submitted to the

Architectural Review Board, and no Residence, other building, fence, wall, swimming pool, tennis court, patio or other structure shall be commenced, erected, maintained, improved, altered, made or done, or any plantings made or exterior lighting installed, by any Person other than Declarant or a Designated Builder without the prior written approval of the Architectural Review Board of a Lot Development Plan relating to such construction, erection, alteration, plantings or lighting. 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 Prairie View, and no Owner shall undertake any construction activity within Prairie View unless all legal requirements have been satisfied. Each Owner shall complete all improvements to a Lot strictly in accordance with the Lot Development Plan approved by the Architectural 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 Architectural 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 Architectural Review Board in accordance with procedures established by Declarant or, subsequent to the Applicable Date, the Board of Directors, approval will be deemed denied. A decision of the Architectural 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 approve a Lot Development Plan deemed denied by the failure of the Architectural Review Board to act on such plan within the specified period) by a two-thirds (2/3) vote of the Directors then serving.

(e) Guidelines and Standards. The Architectural Review Board shall have the power to establish and modify from time to time such written architectural and landscaping 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 this Declaration. 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.

(f) Application of Guidelines and Standards. The Architectural Review Board shall apply the guidelines and standards established pursuant to subparagraph (e) in a fair, uniform and reasonable manner consistent with the discretion inherent in the design review process. In disapproving any Lot Development Plan, the Architectural 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 Board if resubmitted.

(g) **Design Consultants.** The Architectural 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 Architectural Review Board.

(h) **Existing Violations of Declaration.** The Architectural 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 Paragraph 4 of a Supplemental Declaration relating to the Parcel in which such Owner's Lot is located and/or the provisions of this Paragraph 18, unless such Owner submits to the Architectural 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 or exterior lighting 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 or exterior lighting is not subsequently approved by the Architectural Review Board. The Architectural Review Board shall have the power to recommend to the Board of Directors that the Corporation assess an Architectural Control Assessment against any Owner who fails to comply with the requirements of Paragraph 4 of a Supplemental Declaration or Paragraph 18 of this Declaration. Under no circumstances shall any action or inaction of the Architectural 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 Architectural Review Board has violated Paragraph 4 of a Supplemental Declaration or Paragraph 18 of this Declaration and such violation remains uncured.

(i) **Exercise of Discretion.** Declarant intends that the members of the Architectural 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 Architectural Review Board and in any action initiated to enforce this Declaration in which an abuse of discretion by the Architectural 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 Architectural Review Board, nor any member thereof, nor any agent thereof, nor the Declarant 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) Inspection. Members of the Architectural Review Board may inspect work being performed to assure compliance with these Restrictions and applicable regulations.

19. Community Area and Common Facilities.

(a) Ownership. The Community Area and the Common Facilities shall remain private, and neither Declarant's execution or recording of an instrument portraying the Community Area, 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 the Community Area or the Common Facilities. Declarant or the Corporation may, however, dedicate or transfer all or any part of the Community Area or the Common Facilities to any public agency, authority or utility for use as roads, utilities, parks or other public purposes.

(b) Density of Use. Declarant expressly disclaims any warranties or representations regarding the density of use of the Community Area or any facilities located thereon.

(c) Obligations of the Corporation. The Corporation, subject to the rights of Declarant and the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Community Area and all improvements thereon (including Common Facilities and other furnishings and equipment related thereto), and, except as otherwise provided herein or in a Supplemental Declaration, shall keep the Community Area and Common Facilities in good, clean, attractive and sanitary condition, order and repair.

(d) Easements of Enjoyment. No Person shall have any right or easement of enjoyment in or to the Community Area except to the extent

granted by, and subject to the terms and provisions of, this Declaration or any Supplemental Declaration. Such rights and easements as are thus granted shall be appurtenant to and shall pass with the title to every Lot for whose benefit they are granted. Unless otherwise provided in a Supplemental Declaration or a Plat, all Owners may use the Paths, the Community Center, the Parks and the Commons subject to the reserved rights of Declarant and the Corporation. The Owners of Lots abutting the Lake or a Pond may use the Lake or a Pond, but such use shall be limited to fishing and such other uses as may be authorized by resolution adopted by the Board of Directors. Subject to restrictions on points of access, the Lake and the Ponds may be used by all Owners, but only for fishing and such other purposes as may be authorized by the Board of Directors. No Owner whose Lot does not abut the Lake or a Pond shall have any right of access to the Lake or a Pond over any Lot, but only such right of access over the Community Area as may be designated on a Plat or by the Board of Directors for such purpose.

(e) Extent of Easements. The easements of enjoyment created hereby shall be subject to the following:

(i) the right of the Corporation to establish reasonable rules for the use of the Community Area and to charge reasonable admission and other fees for the use of any recreational facilities located in or constituting a part of the Community Area except that no fee shall be charged to those specifically authorized to use such facilities by this Declaration or any Supplemental Declaration unless the Corporation is specifically authorized to do so by this Declaration or a Supplemental Declaration;

(ii) the right of the Corporation to suspend the right of an Owner and all Persons whose right to use the Paths, the Lake, the Ponds, the Community Center, the Commons or the Parks derives from such Owner's ownership of a Lot to use such portions of the Community Area for any period during which any Assessment against his Lot remains unpaid for more than thirty (30) days after notice;

(iii) the right of the Corporation to suspend the right of an Owner or any Person claiming through the Owner to use the Paths, the Lake, the Ponds, the Community Center, the Commons or the Park for a period not to exceed sixty (60) days for any other infraction of this Declaration, any Supplemental Declaration or the Register of Regulations;

(iv) the right of the Corporation to mortgage any or all of the Community Area, the facilities constructed thereon and the Common Facilities for the purposes of improvements to, or repair of, the Community Area, the facilities constructed thereon or the Common Facilities, pursuant to approval of two-thirds (2/3) of the votes of the Members (excluding Declarant) or two-thirds (2/3) of the Mortgagees (based on one vote for each first mortgage owned), voting in person or by proxy at a regular meeting of the Corporation or a meeting duly called for this purpose;

(v) the right of the Corporation to dedicate or transfer all or any part of the Community Area and/or the Common Facilities to any public agency, authority or utility, but no such dedication or transfer shall be effective unless an instrument signed by the appropriate officers of the Corporation acting pursuant to authority granted by two-thirds (2/3) of the votes of the Members (excluding Declarant) or two-thirds (2/3) of the Mortgagees (based on one vote for each first mortgage owned), agreeing to such dedication or transfer, has been recorded; and

(vi) the right of Declarant in any Supplemental Declaration or Plat to restrict the use of Community Area and/or Common Facilities located in a Section to (a) Owners of Residences located in such Section or (b) to other Owners of less than all of the Lots in the Tract.

(f) Additional Rights of Use. The members of the family and the guests of every Person who has a right of enjoyment to the Community Area and the Common Facilities may use the Community Area and the Common Facilities subject to such general regulations consistent with the provisions of this Declaration and all Supplemental Declarations as may be established from time to time by the Corporation and included within the Register of Regulations.

(g) Damage or Destruction by Owner. In the event the Community Area or any Common Facility is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents, or member of his family, such Owner authorizes the Corporation to repair said damaged area; the Corporation shall repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Corporation in the discretion of the Corporation. An amount equal to the costs incurred to

effect such repairs shall be assessed against such Owner as a Special Assessment and shall constitute a lien upon the Lot of said Owner.

(b) Conveyance of Title. Declarant may retain the legal title to the Community Area and the Common Facilities until the Applicable Date, but notwithstanding any provision herein, the Declarant hereby covenants that it shall convey the Lake, the Ponds, the Community Center, the Parks, the Commons and the Common Facilities to the Corporation, free and clear of all liens and other financial encumbrances exclusive of the lien for taxes not yet due and payable, not later than the Applicable Date.

20. Use of Tract.

(a) Protective Covenants.

(i) Land Use. Lots may be used only for residential purposes and only one Residence may be constructed thereon. No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of Residences in Prairie View than the number of original Lots depicted on the Plats. Notwithstanding any provision in the applicable zoning ordinance to the contrary, no Lot may be used for any "Special Use" that is not clearly incidental and necessary to single family dwellings. No home occupation shall be conducted or maintained on any Lot other than one which does not constitute a "special use" and is incidental to a business, profession or occupation of the Owner or occupant of such Lot and which is generally or regularly conducted at another location which is away from such Lot. No signs of any nature, kind or description shall be erected, placed, or permitted to remain on any Lot advertising a permitted home occupation.

(ii) Nuisances. No nuisance shall be permitted to exist or operate upon any Lot so as to be detrimental to any other Lot in the vicinity thereof or to its occupants.

(iii) Other Restrictions. The Architectural Review Board may adopt general rules and regulations to implement the purposes set forth in Paragraph 18(b) and to supplement any covenants or restrictions set forth in a Supplemental Declaration, including but not limited to rules to regulate animals, antennas, signs, fences, walls and screens, mailboxes, storage tanks, awnings, storage and use of recreational vehicles, storage and use of machinery, use of outdoor drying lines, trash

containers, and planting, maintenance and removal of vegetation on the Tract. The Architectural Review Board may adopt general rules and regulations appropriate to each Parcel, which rules and regulations may vary among Parcels. Such general rules may be amended by a two-thirds (2/3) vote of the Architectural Review Board. Subsequent to the Applicable Date, any such amendment may be made only after a public hearing 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 be placed in the Register of Regulations and shall constitute Restrictions.

(iv) **Exceptions.** The Architectural Review Board may authorize exceptions to or variances from the general rules and regulations adopted pursuant to clause (iii) if the Architectural Review Board can show good cause and acts in accordance with adopted guidelines and procedures.

(b) **Maintenance of Tract.** To the extent that exterior maintenance is not provided for in a Supplemental Declaration, each Owner shall keep all Lots owned by him, and all improvements therein or thereon, in good order and repair and free of debris including, but not limited to, the seeding, watering, and mowing of all lawns, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management as determined by the Architectural Review Board. In the event an Owner of any Lot in the Tract shall fail to maintain the premises and the improvements situated thereon, as provided herein, the Corporation, after notice to the Owner as provided by the By-Laws and approval by two-thirds (2/3) vote of the Board of Directors, shall have the right to enter upon said Lot to correct drainage and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon. All costs related to such correction, repair or restoration shall become a Special Assessment upon such Lot.

21. **Easements.**

(a) **Flat Easements.** In addition to such easements as are created elsewhere in this Declaration or in a Supplemental Declaration and as may be created by Declarant pursuant to written instruments recorded in the office of the Recorder of Hamilton County, Indiana, Lots are subject to drainage easements, sewer easements, utility easements, entry way easements, landscape easements, lake access easements, community area access

easements, pathway easements and nonaccess easements, either separately or in any combination thereof, as shown on the Plans, which are reserved for the use of Declarant, Owners, the Corporation, the Architectural Review Board, public utility companies and governmental agencies as follows:

(i) Drainage Easements (DE) are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of Prairie View and adjoining ground and/or public drainage systems; and it shall be the individual responsibility of each Owner to maintain the drainage across his own Lot. Under no circumstance shall said easement be blocked in any manner by the construction or reconstruction of any improvement, nor shall any grading restrict, in any manner, the waterflow. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage, by Declarant, and by the Architectural Review Board, but neither Declarant nor the Architectural Review Board shall have any duty to undertake any such construction or reconstruction. Said easements are for the mutual use and benefit of the Owners.

(ii) Sewer Easements (SE) are created for the use of the local governmental agency having jurisdiction over any storm and sanitary waste disposal system which may be designed to serve Prairie View for the purpose of installation and maintenance of sewers that are a part of said system.

(iii) Utility Easements (UE) are created for the use of Declarant, the Corporation and all public or municipal utility companies, not including transportation companies, for the installation and maintenance of mains, ducts, poles, lines and wires, as well as for all uses specified in the case of sewer easements.

(iv) Entry Way Easements (EWE) are created for the use by Declarant, the Architectural Review Board and the Corporation for the installation, operation and maintenance of the Entry Ways.

(v) Landscape Easements (LE) are created for the use by Declarant, the Architectural Review Board and the

Corporation for the planting and maintenance of trees, shrubs and other plantings.

(vi) Lake Access Easements (LAE) are created for the use of Declarant, the Corporation, the Drainage Board and the City of Carmel for the purpose of gaining access to the Lake and the Ponds in the course of maintenance, repair or replacement of any thereof.

(vii) Community Area Access Easements (CAE) are created for the use of Declarant and the Corporation for the purpose of gaining access to the Parks and the Commons in the course of maintenance, repair or replacement thereof and for the use of Owners for the purpose of gaining access to such Community Area to enjoy the use thereof to the extent authorized herein.

(viii) Pathway Easements (PE) are created for the installation by Declarant, the maintenance by the Corporation and the use by the Owners of the Paths and Path Lights.

(ix) NonAccess Easements (NAE) are created to preclude access from certain Lots to abutting rights-of-way across the land subject to such easements.

All easements mentioned herein include the right of reasonable ingress and egress for the exercise of other rights reserved. No structure, including fences, shall be built on any drainage, sewer or utility easement if such structure would interfere with the utilization of such easement for the purpose intended or violate any applicable legal requirement or the terms and conditions of any easement specifically granted to a Person who is not an Owner by an instrument recorded in the Office of the Recorder of Hamilton County, but a paved driveway necessary to provide access to a Lot from a public street or Private Drive and a sidewalk installed by or at the direction of Declarant (and replacements thereof) shall not be deemed a "structure" for the purpose of this Restriction.

(b) General Easement. There is hereby created a blanket easement over, across, through and under the Tract for ingress, egress, installation, replacement, repair and maintenance of underground utility and service lines and systems, including but not limited to water, sewers, gas, telephones, electricity, television, cable or communication lines and systems. By virtue of this easement it shall be expressly permissible for Declarant or the providing utility or service company to install and maintain facilities and equipment on

the Tract and to excavate for such purposes if Declarant or such company restores the disturbed area as nearly as is practicable to the condition in which it was found. No sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or relocated in a Section except as proposed and approved by Declarant prior to the conveyance of the first Lot in a Section to an Owner or by the Architectural Review Board thereafter. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Corporation shall have the right to grant such easement on the Tract without conflicting with the terms hereof. This blanket easement shall in no way affect any other recorded easements on the Tract, shall be limited to improvements as originally constructed, and shall not cover any portion of a Lot upon which a Residence has been constructed.

(c) Public Health and Safety Easements. An easement is hereby created for the benefit of, and granted to, all police, fire protection, ambulance, delivery vehicles, and all similar Persons to enter upon the Community Area in the performance of their duties.

(d) Drainage Board Easement. An easement is hereby created for the benefit of, and granted to, the Drainage Board to enter the Tract and all Lots therein to the extent necessary to exercise its rights with respect to any legal drain constituting a part of the Drainage System.

(e) Crossing Underground Easements. Easements utilized for underground service may be crossed by driveways, walkways, Paths, Lake Access Easements and Community Area Access Easements provided prior arrangements are made with the utility company furnishing service. Such easements as are actually utilized for underground service shall be kept clear of all other improvements, including buildings, patios, or other pavings, other than crossings, driveways, walkways, Paths, Lake Access Easements or Community Area Access Easements, and neither Declarant nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, agents, employees, or servants to shrubbery, trees, flowers or other improvements of the Owner located on the land covered by said easements.

(f) Declarant's Easement to Correct Drainage. For a period of ten (10) years from the date of conveyance of the first Lot in a Section, Declarant reserves a blanket easement and right on, over and under the ground within that Section to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any

gradings of the soil, or to take any other similar action reasonably necessary, following which Declarant shall restore the affected property to its original condition as nearly as practicable. Declarant shall give reasonable notice of its intention to take such action to all affected Owners, unless in the opinion of Declarant an emergency exists which precludes such notice.

(g) **Water Retention.** The Owner of each Lot, by acceptance of a deed thereto, consents to the temporary storage (detention) of storm water within the drainage easements (DE) on such Owner's Lot.

22. Use of Lots During Development.

(a) **By Declarant.** Notwithstanding any provisions to the contrary contained herein or in any other instrument or agreement, Declarant or its sales agents or contractors, or any Designated Builder, may maintain during the period of construction and sale of Lots and Residences in the Tract or the Development Area, upon such portion thereof as is owned or leased by Declarant or any Designated Builder, such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of Lots and Residences, including, but without limiting the generality thereof, a business office, storage area, construction yards, signs, model Residences and sales offices. Declarant specifically reserves the right to maintain a sales office in, and make other use of, the Community Center during the period that it is engaged in the sale of Lots in Prairie View.

(b) **By Builders.** Notwithstanding any provisions to the contrary contained herein, a builder who has constructed a Residence in Prairie View may, with the prior consent of the Board of Directors, use such Residence as a "model" home and may hold such home open to the public, either individually or as part of a "home show" approved by the Board of Directors for such reasonable period as the Board of Directors may specify. With the approval of Declarant, Lots adjacent to or in proximity to such model home may be used for parking by visitors to such model home.

23. **Enforcement.** The Corporation, any Owner or Declarant shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration and of any Supplemental Declarations, but neither Declarant nor the Corporation shall be liable for damage of any kind to any Person for failure either to abide

by, enforce or carry out any of the Restrictions. No delay or failure by any Person to enforce any of the Restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that Person of the right to do so thereafter, or an estoppel of that Person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the Restrictions. In any action to enforce this Declaration, the Person seeking enforcement shall be entitled to recover all costs of enforcement, including attorneys' fees, if it substantially prevails in such action.

24. **Limitations on Rights of the Corporation.** Prior to the Applicable Date, the Corporation may not use its resources nor take a public position in opposition to the General Plan of Development or to changes thereto proposed by Declarant. Nothing in this paragraph shall be construed to limit the rights of the Members acting as individuals or in affiliation with other Members or groups as long as they do not employ the resources of the Corporation or identify themselves as acting in the name, or on the behalf, of the Corporation.

25. **Approvals by Declarant.** Notwithstanding any other provisions hereof, prior to the Applicable Date, the following actions shall require the prior approval of Declarant: the addition of real estate to the Tract; dedication or transfer of the Community Area; mergers and consolidations of Sections within the Tract or of the Tract with other real estate; mortgaging of the Community Area; amendment of this Declaration and any Supplemental Declaration; and changes in the basis for assessment or the amount, use and time of payment of the Community Area Initial Assessment.

26. **Mortgages.**

(a) **Notice to Corporation.** Any Owner who places a first mortgage lien upon his Residence or the Mortgagee shall notify the Secretary of the Board of Directors of such mortgage and provide the name and address of the Mortgagee. A record of such Mortgagee's name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of the Declaration any Supplemental Declaration, the Articles or the ByLaws (the "Organizational Documents") shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by the Organizational Documents shall be required and no Mortgagee shall be entitled to vote by virtue of the Organizational Documents or a proxy granted to such Mortgagee in connection with the mortgage.

(b) **Notices to Mortgagees.** The Corporation shall promptly provide to any Mortgagee of whom the Corporation has been provided notice under subparagraph (a) above notice of any of the following:

(i) Any condemnation or casualty loss that affects a material portion of the Community Area;

(ii) Any delinquency in the payment of any Assessment owed by the Owner of any Residence on which said Mortgagee holds a mortgage or any default by an Owner under the Organizational Documents, if said delinquency or default continues for more than sixty (60) days;

(iii) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Corporation;

(iv) Any proposed action that requires the consent of a specified percentage of Mortgagees; and,

(v) Any proposed amendment of the Organizational Documents effecting a change in (A) the interests in the Community Area appertaining to any Residence or the liability for Maintenance Costs appertaining thereto, (B) the vote appertaining to a Residence or (C) the purposes for which any Residence or the Community Area are restricted.

(c) **Notice of Unpaid Assessments.** The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Residence, furnish to such mortgagee or purchaser a statement setting forth the amount of the unpaid Assessments against the Residence and the Owners, and any Mortgagee or grantee of the Residence shall not be liable for, nor shall the Residence conveyed be subject to a lien for, any unpaid Assessments in excess of the amount set forth in such statement.

(d) **Financial Statements.** Upon the request of any Mortgagee, the Corporation shall provide to said Mortgagee the most recent financial statement prepared on behalf of the Corporation.

(e) **Payments by Mortgagees.** Any Mortgagee may (i) pay taxes or other charges that are in default and that may or have become a lien upon the Community Area or any part thereof and (ii) pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage for the

Community Area in case of a lapse of a policy. A Mortgagee making such payments shall be entitled to immediate reimbursement from the Corporation.

27. Amendments.

(a) Generally. This Declaration may be amended at any time by an instrument signed by (i) the appropriate officers of the Corporation acting pursuant to the authority granted by 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 Declaration and, to the extent required by Paragraph 25, (ii) Declarant.

(b) By Declarant. Declarant hereby reserves the right prior to the Applicable Date unilaterally to amend and revise the standards, covenants and restrictions contained in this Declaration. Such amendments shall be in writing, executed by Declarant, and recorded with the Recorder of Hamilton County, Indiana. No such amendment, however, shall restrict or diminish the rights or increase or expand the obligations of Owners with respect to Lots conveyed to such Owners prior to the amendment or adversely affect the rights and interests of Mortgagees holding first mortgages on Residences at the time of such amendment. Declarant shall give notice in writing to such Owners and Mortgagees of any amendments. Except to the extent authorized in Paragraph 21(b), Declarant shall not have the right at any time by amendment of this Declaration to grant or establish any easement through, across or over any Lot which Declarant has previously conveyed without the consent of the Owner of such Lot.

(c) Effective Date. Any amendment shall become effective upon its recordation in the Office of the Recorder of Hamilton County, Indiana.

28. Interpretation. The underlined titles preceding the various paragraphs and subparagraphs of this Declaration are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

29. Duration. The foregoing covenants and restrictions are for the mutual benefit and protection of the present and future Owners, the Corporation, and Declarant, and shall run with the land and shall be binding on all parties and all Persons claiming under them until January 1, 2027, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part by vote of those Persons who are then the Owners of a majority of the Lots in the Tract.

30. Severability. Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.

31. Non-Liability of Declarant. Declarant shall not have any liability to an Owner or to any other Person with respect to drainage on, over or under a Lot or erosion of a Lot. Such drainage and erosion control shall be the responsibility of the Owner of the Lot upon which a Residence is constructed and of the builder of such Residence and an Owner, by an acceptance of a deed to a Lot, shall be deemed to agree to indemnify and hold Declarant free and harmless from and against any and all liability arising from, related to, or in connection with the erosion of or drainage on, over and under the Lot described in such deed. Declarant shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Declarant, and no duty of, or warranty by, Declarant shall be implied by or inferred from any term or provision of this Declaration.

32. Special Provisions Applicable to the Applegate Parcel. The owner of the Applegate Parcel may, at any time, elect to have the Applegate Parcel annexed to the Tract. Such annexation shall be effected by such owner filing of record with the Recorder of Hamilton County, Indiana, a declaration of annexation pursuant to which such owner agrees that this Declaration and all applicable Supplemental Declarations shall apply to and be binding upon the Applegate Parcel. Within ten (10) days following recordation of such declaration, the owner of the Applegate Parcel shall deliver a copy thereof to the Secretary of the Corporation and shall pay to the Corporation the Community Area Initial Assessment specified in Paragraph 17(c) of this Declaration. From and after the recordation of such declaration and the payment of such Assessment, the Applegate Parcel shall be deemed a Lot located in Chapman's Claim and shall be subject to the terms and provisions of this Declaration and all applicable Supplemental Declarations. The improvements existing on the Applegate Parcel on the date of annexation shall be deemed a "Residence" in compliance with the terms and provisions of this Declaration and all applicable Supplemental Declarations, but any subsequent alteration, repair, replacement or modification thereof shall be subject to the Restrictions.

33. Compliance with the Soil Erosion Control Plan.

(a) The Plan. Declarant has established and implemented an erosion control plan pursuant to the requirements and conditions of Rule 5 of 327 IAC 15, Storm Water Run-Off Associated with Construction Activity. In connection with any construction activity on a Lot by an Owner, its contractor or the subcontractors of either, Owner shall take or cause to be taken all erosion control measures contained in such plan as the plan applies to "land disturbing activity" undertaken on a Lot and shall comply with the

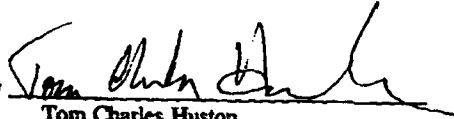
terms of Declarant's general permit under Rule 5 as well as all other applicable state, county or local erosion control authorities. All erosion control measures shall be performed by personnel trained in erosion control and shall meet the design criteria, standards, and specifications for erosion control measures established by the Indiana Department of Environmental Management in guidance documents similar to, or as effective as, those outlined in the Indiana Handbook for Erosion Control in Developing Areas from the Division of Soil Conservation, Indiana Department of Natural Resources.

(b) **Indemnity.** The Owner of each Lot shall indemnify and hold Declarant harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which may arise out of or are connected with, or are claimed to arise out of or be connected with, any work done by such Owner, its contractor and their respective employees, agents, or subcontractors which is not in compliance with the erosion control plan implemented by the Declarant.

IN TESTIMONY WHEREOF, Declarant has executed this Declaration as of the date set forth above.

BDC/CARDINAL ASSOCIATES, L.P.

By



Tom Charles Huston
Assistant General Manager

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Tom Charles Huston, the Assistant General Manager of BDC/Cardinal Associates, L.P., an Indiana limited partnership, who acknowledged the execution of the above and foregoing Declaration of Covenants and Restrictions for and on behalf of said partnership.

WITNESS my hand and Notarial Seal this 5 day of February, 1997.

Marie M. Urick
Notary Public Residing in Hamilton County

My Commission Expires:

May 24, 1999

Marie M. Urick
(printed signature)



This instrument prepared by Tom Charles Huston, Attorney at Law, 1313 Merchants Bank Building, 11 South Meridian Street, Indianapolis, Indiana 46204.

INDIAN TCR 150766

DECLARATION OF COVENANTS AND RESTRICTIONS

EXHIBIT A

DESCRIPTION OF DEVELOPMENT AREA



EXHIBIT A

Land Description
(Overall based on survey)

Part of the Northeast Quarter of Section 27 and part of the Northwest and Southwest Quarters of Section 26 of Township 18 North, Range 4 East of the Second Principal Meridian, Clay Township, in Hamilton County, Indiana, described as follows:

Beginning at a brass plug at the southeast corner of said northeast quarter, thence South 89 degrees 59 minutes 50 seconds West (assumed bearing) along the south line of said northeast quarter a distance of 1090.70 feet to a railroad spike at the southwest corner of the land tract described in Deed Record 104, page 208 recorded in the Hamilton County Recorder's Office; thence North 00 degrees 04 minutes 25 seconds East through a stone along the west line of said land tract a distance of 2646.77 feet to a 5/8" diameter rebar with yellow cap on the north line of said northeast quarter; thence South 89 degrees 56 minutes 39 seconds East along said north quarter line a distance of 1090.75 feet to a capped rebar at the northwest corner of the northwest quarter of said Section 26; thence South 89 degrees 37 minutes 45 seconds East along the north line of said northwest quarter through a capped rebar a distance of 1246.70 feet to the west low water line of White River; thence southeasterly along the meandering of said river (the following eight courses are calculated lines and are for mathematical closure, the actual boundary being along the west low water line).

- 1) South 20 degrees 35 minutes 24 seconds West a distance of 345.78 feet;
- 2) South 05 degrees 19 minutes 26 seconds West a distance of 275.94 feet;
- 3) South 01 degrees 25 minutes 22 seconds East a distance of 178.11 feet;
- 4) South 06 degrees 56 minutes 58 seconds East a distance of 147.88 feet;
- 5) South 12 degrees 05 minutes 51 seconds East a distance of 234.71 feet;
- 6) South 24 degrees 33 minutes 22 seconds East a distance of 212.18 feet;
- 7) South 50 degrees 45 minutes 00 seconds East a distance of 375.00 feet;
- 8) South 71 degrees 45 minutes 00 seconds East a distance of 570.00 feet;

thence South 36 degrees 35 minutes 17 seconds West a distance of 74.80 feet; thence North 72 degrees 05 minutes 51 seconds West 31.67 feet; thence South 36 degrees 35 minutes 17 seconds West a distance of 90.00 feet; thence South 72 degrees 05 minutes 51 seconds East a distance of 31.67 feet; thence South 36 degrees 35 minutes 17 seconds West a distance of 872.10 feet; thence South 00 degrees 11 minutes 20 seconds West a distance of 24.01; thence South 89 degrees 48 minutes 40 seconds East parallel with the south line of said northwest quarter section a distance of 24.76 feet; thence South 00 degrees 11 minutes 20 seconds West a distance of 24.50 feet to said south quarter line; thence South 89 degrees 48 minutes 40 seconds East along said south quarter line a distance of 138.07 feet to a point (distant 1639.06 feet South 89 degrees 48 minutes 40 seconds East from the southwest corner of said northwest quarter, as measured along the south line thereof); thence South 00 degrees 00 minutes 18 seconds East a distance of 1776.78 feet to a point, (distant 845.41 feet North 00 degrees 00 minutes 18 seconds West

from a stone with cut "X"); thence North 89 degrees 50 minutes 56 seconds West a distance of 1430.21 feet to a capped rebar; thence North 00 degrees 02 minutes 46 seconds West along the east line of the land tract described in Instrument 86-8941 a distance of 149.15 feet to a capped rebar on the northeast corner of said land tract; thence South 89 degrees 57 minutes 14 seconds West along the north line of said land tract and along the north line of the land tract described in Deed Record 179, page 38, a distance of 207.58 feet to a railroad spike on the west line of the southwest quarter of said Section 26; thence North 00 degrees 02 minutes 46 seconds West along said west line a distance of 1629.42 feet to the Point of Beginning. Containing 218.794 acres, more or less.

Except,

Part of the Southwest Quarter of Section 26 of Township 18 North, Range 4 East of the Second Principal Meridian, Clay Township, in Hamilton County, Indiana, described as follows:

Commencing at a brass plug at the northwest corner of said southwest quarter, thence South 89 degrees 48 minutes 40 seconds East (assumed bearing) along the north line of said southwest quarter a distance of 295.12 feet to the Point of Beginning; thence South 00 degrees 02 minutes 46 seconds East parallel with the west line of said southwest quarter a distance of 212.00 feet; thence South 89 degrees 48 minutes 40 seconds East parallel with said north quarter line a distance of 440.00 feet; thence North 00 degrees 02 minutes 46 seconds West parallel with said west quarter line a distance of 198.90 feet; thence North 89 degrees 40 minutes 42 seconds West a distance of 88.70 feet; thence North 00 degrees 19 minutes 18 seconds East a distance of 11.84 feet; thence North 89 degrees 48 minutes 40 seconds West parallel with said north quarter line a distance of 135.00 feet; thence North 00 degrees 11 minutes 20 seconds East a distance of 1.06 feet to the north line of said southwest quarter; thence North 89 degrees 48 minutes 40 seconds West along said north quarter line a distance of 216.38 feet to the Point of Beginning. Containing 2.112 acres, more or less.

Above parcel containing after said exception, a total of 216.682 acres, more or less.

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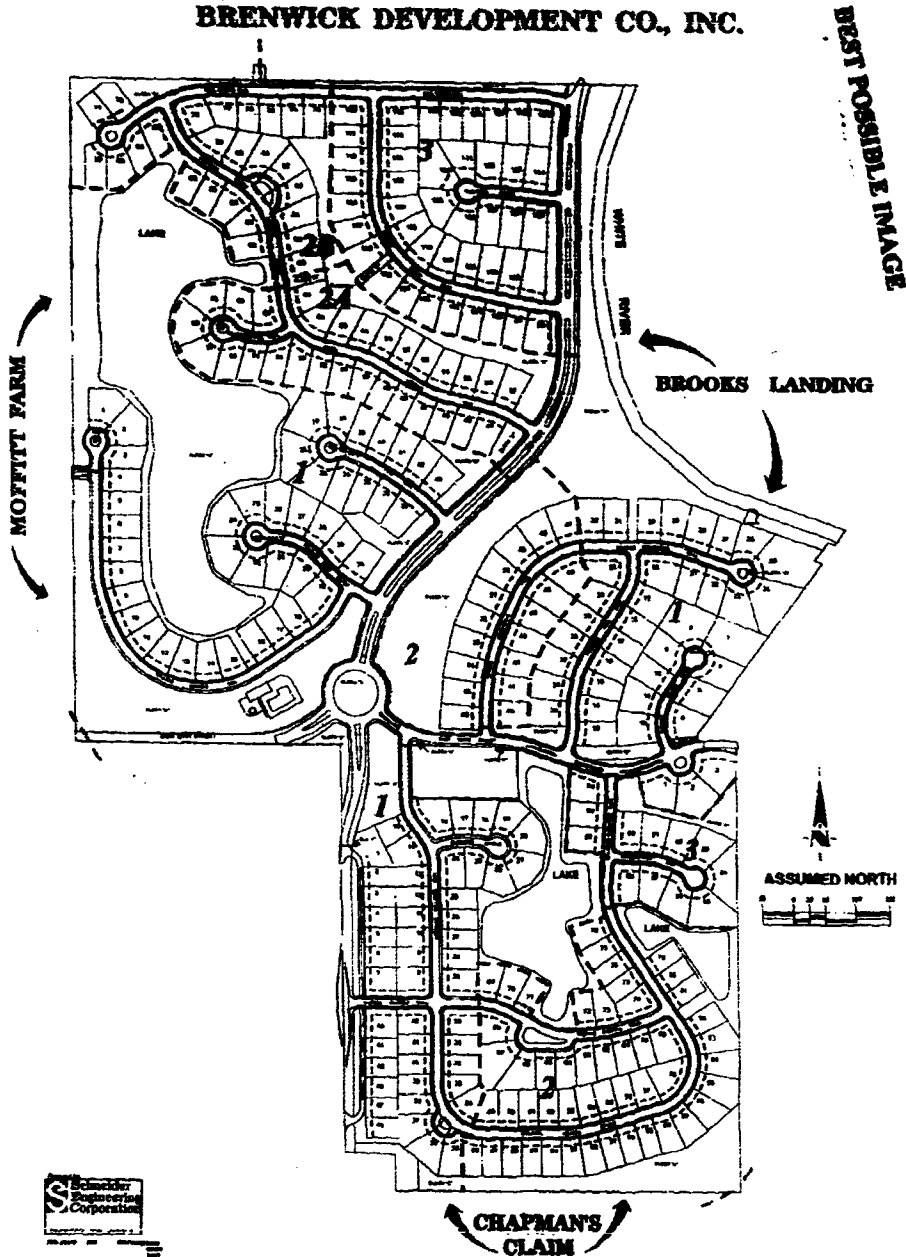
DECLARATION OF COVENANTS AND RESTRICTIONS

EXHIBIT B

GENERAL PLAN OF DEVELOPMENT

PRAIRIE VIEW

BRENWICK DEVELOPMENT CO., INC.



.....

DECLARATION OF COVENANTS AND RESTRICTIONS

EXHIBIT C

DESCRIPTION OF THE TRACT

EXHIBIT C

LAND DESCRIPTION
MOFFITT FARM
AT PRAIRIE VIEW SECTION 3-A

Part of the Northeast Quarter of Section 27 and part of the Northwest Quarter of Section 26 of Township 18 North, Range 4 East of the Second Principal Meridian in Hamilton County, Indiana described as follows:

Beginning at the Northwest corner of the Northwest Quarter of Section 26; thence South 89 degrees 37 minutes 45 seconds East (assumed bearing) along the north line of said northwest quarter section 1050.84 feet; thence South 13 degrees 18 minutes 12 seconds West 121.12 feet to a curve having a radius of 555.00 feet, the radius point of which bears South 76 degrees 41 minutes 48 seconds East; thence southerly along said curve an arc distance of 118.76 feet to a point which bears North 88 degrees 57 minutes 27 seconds West from said radius point; thence South 01 degrees 02 minutes 33 seconds West 244.46 feet; thence North 88 degrees 57 minutes 27 seconds West 114.56 feet to a curve having a radius of 325.00 feet, the radius point of which bears North 01 degrees 02 minutes 33 seconds East; thence westerly along said curve an arc distance of 35.13 feet to a point which bears South 07 degrees 14 minutes 08 seconds West from said radius point; thence North 82 degrees 45 minutes 52 seconds West 70.23 feet; thence south 07 degrees 14 minutes 08 seconds West 188.61 feet; thence South 83 degrees 24 minutes 11 seconds East 30.71 feet; thence South 11 degrees 49 minutes 47 seconds West 184.73 feet; thence South 78 degrees 10 minutes 13 seconds East 69.90 feet to a curve having a radius of 275.00 feet, the radius point of which bears North 11 degrees 49 minutes 47 seconds East; thence easterly along said curve an arc distance of 51.77 feet to a point which bears South 01 degrees 02 minutes 33 seconds West from said radius point; thence South 01 degrees 02 minutes 33 seconds West 50.00 feet to a curve having a radius of 325.00 feet, the radius point of which bears North 01 degrees 02 minutes 33 seconds East; thence westerly along said curve an arc distance of 61.19 feet to a point which bears South 11 degrees 49 minutes 47 seconds West from said radius point; thence North 78 degrees 10 minutes 13 seconds West 13.28 feet; thence South 11 degrees 49 minutes 47 seconds West 160.00 feet; thence North 78 degrees 10 minutes 13 seconds West 365.65 feet; thence North 63 degrees 49 minutes 53 seconds West 230.88 feet; thence North 51 degrees 20 minutes 25 seconds West 128.39 feet; thence North 38 degrees 04 minutes 20 seconds West 30.01 feet; thence North 25 degrees 56 minutes 21 seconds West 236.62 feet; thence North 00 degrees 23 minutes 39 seconds East 303.23 feet; thence North 06 degrees 44 minutes 04 seconds East 90.55 feet; thence North 00 degrees 23 minutes 39 seconds East 175.30 feet to the north line of the Northeast Quarter of Section 27; thence South 89 degrees 56 minutes 39 seconds East along said north line 7.73 feet to the Point of Beginning, containing 19.608 acres, more or less.

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DECLARATION OF COVENANTS AND RESTRICTIONS

EXHIBIT D

DESCRIPTION OF THE APPLGATE PARCEL

EXHIBIT D

PERIMETER LAND DESCRIPTION

"APPLEGATE PARCEL"

INST. #10961, BK. 179 PG. 38 & INST. #86-8841 BK. 355, PG. 934

Part of the Southwest Quarter of Section 26, Township 18 North, Range 4 East of the Second Principal Meridian in Hamilton County, Indiana described as follows:

Commencing at the northwest corner of said southwest quarter; thence South 00 degrees 02 minutes 46 seconds East (Assumed Bearing) along the west line thereof, a distance of 1629.42 feet to the Point of Beginning; thence continuing along said west line South 00 degrees 02 minutes 46 seconds East a distance of 147.58 feet; thence North 89 degrees 57 minutes 14 seconds East a distance of 207.58 feet to the west line of a tract of land described in deed to M.J Kitchen & Natalie Wilkins, Instrument #90-28327; thence North 00 degrees 02 minutes 46 seconds West along said west line a distance of 147.58 feet to the south line of said Kitchen & Wilkins tract; thence South 89 degrees 57 minutes 14 seconds West along said south line a distance of 207.58 feet to the Point of Beginning, containing 0.703 acres, more or less.

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**SUPPLEMENTAL DECLARATION OF
COVENANTS AND RESTRICTIONS
PRAIRIE VIEW**

MOFFITT FARM

9709703350
Filed for Record in
HAMILTON COUNTY, INDIANA
MARY L CLARK
On 02-14-1997 At 04:05 pm.
DEC COV RES 31.00

This Supplemental Declaration, dated as of the 5th day of February, 1997, by
BDC/CARDINAL ASSOCIATES, L.P., an Indiana limited partnership,

WITNESSES THAT:

WHEREAS, the following facts are true:

- A. Declarant is the owner of the fee simple title to the real estate located in Hamilton County, Indiana, more particularly described in Exhibit A attached hereto and incorporated herein by this reference.
- B. This Declaration is a Supplemental Declaration as that term is defined in the Declaration of Covenants and Restrictions.
- C. Declarant intends to subdivide the Parcel into Lots upon each of which a Residence may be constructed.

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

1. Definitions. Words, phrases and terms that are defined in the Declaration of Covenants and Restrictions 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:

"Declaration of Covenants and Restrictions" means the Declaration of Covenants and Restrictions of Prairie View dated as of February, 1997 and recorded in the Office of the Recorder of Hamilton County, Indiana as Instrument Number 97- 057-1, as amended from time to time.

"Lot" means a numerically designated subdivided parcel of land depicted on a Plat.

"Moffitt Farm" means the name by which the Parcel shall be known.

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

"Parcel" means that part of the real estate described in Exhibit A which is at any time subject to the covenants, restrictions, easements, charges and liens imposed by the Declaration of Covenants and Restrictions.

"Plat" means the secondary plat of a Section within the Parcel.

"Section" means that part of the Parcel which is depicted on a Plat.

"Tract" means the real estate, including all or any part of the Parcel, that is subject to the covenants, restrictions, easements, charges and liens imposed by the Declaration of Covenants and Restrictions.

2. **Declaration.** Declarant hereby declares that, in addition to the covenants, restrictions, easements, charges and liens imposed by the Declaration of Covenants and Restrictions, the Parcel shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

3. **Land Use.** Lots may be used only for residential purposes as provided in the Declaration of Covenants and Restrictions. No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of houses in a Section than the number of original Lots shown on a Plat of such Section.

4. **Construction of Residences.**

(a) **Lot Development Plans.** Except to the extent such requirement is waived by Declarant, prior to commencement of any construction on a Lot, a Lot Development Plan shall be submitted to the Architectural Review Board in accordance with the requirements of Paragraph 18 of the Declaration of Covenants and Restrictions. Each Owner shall comply with the terms and provisions of Paragraph 18 of the Declaration of Covenants and Restrictions and the requirements of the Architectural Review Board established pursuant to the authority granted by the Declaration of Covenants and Restrictions.

(b) **Size of Residence.** Except as otherwise provided herein, no Residence may be constructed on any Lot unless such Residence, exclusive of open porches, attached garages and basements, shall have a ground floor area of 2,400 square feet if a one-story structure, or 1,500 square feet if a higher structure, but in the case of a building higher than one story, and the total floor area shall not be less than 2,400 square feet.

(c) Temporary Structures. No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a dwelling, temporary or permanent, nor may any structure of a temporary character be used as a dwelling.

(d) Building Location and Finished Floor Elevation. No building may be erected between the building line shown on a Plat and the front Lot line, and no structure or part thereof (exclusive of open areas or terraces, unenclosed porches not more than one story high, fireplace chimney and architectural features that project no more than two (2) feet) may be built or erected nearer than ten (10) feet to any side Lot line or nearer than twenty (20) feet to any rear Lot line; provided, however, if the Zoning Authority requires a greater side yard setback, then such greater requirement shall prevail. The aggregate side yard setback shall be not less than twenty (20) feet. A minimum finished floor elevation, shown on the development plan for each Section, has been established for each Lot and no finished floor elevation with the exception of flood protected basements shall be constructed lower than said minimum without the written consent of the Architectural Review Board. Demonstration of adequate storm water drainage in conformity with both on-Lot and overall project drainage plans shall be a prime requisite for alternative finished floor elevations.

(e) Driveways. All driveways shall be paved with either concrete or asphalt and maintained dust free.

(f) Yard Lights. If street lights are not installed in the Parcel, then each Owner or his builder shall install and maintain in operable condition either (i) a pole light on the Lot at a location, having a height and of a type, style and manufacture approved by the Architectural Review Board prior to the installation thereof or (ii) two (2) carriage lights on the front of the Residence of a type, style and manufacture approved by the Architectural Review Board prior to the installation thereof. Each such light fixture shall also have a bulb of a wattage approved by Architectural Review Board to insure uniform illumination on each Lot and shall be equipped with a photo electric cell or similar device to insure automatic illumination from dusk to dawn each day.

(g) Storage Tanks. Any gas or oil storage tanks used in connection with a Lot shall be either buried or located in a Residence such that they are completely concealed from public view.

(h) Construction and Landscaping. All construction upon, landscaping of and other improvement to a Lot shall be completed strictly in accordance with the Lot Development Plan approved by the Architectural

Review Board. All landscaping specified on the landscaping plan approved by the Architectural Review Board shall be installed on the Lot strictly in accordance with such approved plan within thirty (30) days following substantial completion of the Residence if such completion occurs between April 1 and October 15; otherwise prior to May 1. Unless a delay is caused by strikes, war, court injunction or acts of God, construction of a residence on a Lot shall be completed within one (1) year after the date of commencement of the building process.

The failure of the Owner of a Lot to apply for approval of, or receive approval from, the Architectural Review Board of a Lot Development Plan shall not relieve such Owner from his obligation to complete construction of a Residence upon the Lot within the time period specified herein. For the purposes of this subparagraph (h), construction of a Residence will be deemed "completed" when the exterior of the Residence (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.

(i) **Mailboxes.** All mailboxes installed upon Lots shall be uniform and shall be of a type, color and manufacture approved by the Architectural Review Board. Such mailboxes shall be installed upon posts approved as to type, size and location by the Architectural Review Board.

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

(k) **Water Systems.** No private or semi-private water supply system may be located upon any Lot which is not in compliance with regulations or procedures adopted or established by the Indiana State Board of Health, or other civil authority having jurisdiction. To the extent that domestic water service is available from a water line located within 200 feet of the lot line maintained by a public or private utility company, each Owner shall connect to such water line to provide water for domestic use on the Lot and shall pay all connection, availability or other charges lawfully established with respect to connections thereto. Notwithstanding the foregoing, an Owner may establish, maintain and use an irrigation water well on his Lot as long as the well does not adversely affect the normal pool level of a Lake or Pond.

(l) **Drainage.** In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of such

Lot to permit such drainage to continue, without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, although no specific drainage easement for such flow of water is provided on the Plat. To the extent not maintained by the Drainage Board, "Drainage Easements" reserved as drainage swales shall be maintained by the Owner of the Lot upon which such easements are located such that water from any adjacent Lot shall have adequate drainage along such swale. Lots within the Parcel may be included in a legal drain established by the Drainage Board. In such event, each Lot in the Parcel will be subject to assessment by the Drainage Board for the costs of maintenance of the portion of the Drainage System and/or the Lakes included in such legal drain, which assessment will be a lien against the Lot. The elevation of a Lot shall not be changed so as to affect materially the surface elevation or grade of surrounding Lots. Each Owner shall maintain the subsurface drains and tiles located on his Lot and shall be liable for the cost of all repairs thereto or replacements thereof.

(m) Accessory Buildings. No mini-barns, storage shed or other accessory building or structure other than gazebos shall be permitted on any Lot.

(n) Pools. No above ground swimming pool, other than a children's wading pool, shall be permitted on any Lot.

(o) Basketball Goals. No basketball goal shall be placed or maintained in the front driveway of a Lot or within the right-of-way of any street. Unless the Architectural Review Board establishes a policy establishing other specifications, backboards of all basketball goals shall be of a translucent material such as fiberglass or Lexan and attached to a black pole or similar type of post. The location of a basketball goal on the Lot is subject to approval of the Architectural Review Board if it would be visible from a public right-of-way adjoining the Lot.

5. Maintenance of Lots.

(a) Vehicle Parking. No recreational vehicle, motor home, truck which exceeds ½ ton in weight, trailer, boat or disabled vehicle may be parked or stored overnight or longer on any Lot in open public view.

(b) Signs. Except for such signs as Declarant may in its absolute discretion display in connection with the development of Prairie View or the Parcel and the sale of Lots therein, such signs as may be located on the Community Area and such signs as may, with the consent of Declarant, be displayed by a Designated Builder to advertise the property during construction and sale of Residences and the maintenance of model homes, no

sign of any kind shall be displayed to the public view on any Lot except that one sign of not more than four (4) square feet may be displayed at any time for the purpose of advertising the property for sale or for rent.

(c) Fencing. No fence, wall, hedge or shrub planting higher than eighteen (18) inches shall be permitted between the front property line and the front building set-back line except where such planting is located on a Landscape Easement or is part of Residence landscaping and the prime root thereof is within four (4) feet of the Residence. Trees shall not be deemed "shrubs" unless planted in such a manner as to constitute a "hedge". No chain link fence shall be erected upon a Lot. No fence shall be erected or maintained on or within any Landscape Easement except such as may be installed by Declarant and subsequently replaced by the Corporation in such manner as to preserve the uniformity of such fence. In no event may any fence be erected or maintained on any Lot without the prior approval of the Architectural Review Board, which may establish design standards for fences and further restrictions with respect to fencing, including limitations on (or prohibition of) the installation of fences in the rear yard of a Lot and along the bank of any Lake or Pond. All fences shall be kept in good repair. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting points 25 feet from the intersection of said street lines, or in the case of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(d) Vegetation. An Owner shall not permit the growth of weeds and volunteer trees and bushes on his Lot, and shall keep his Lot reasonably clear from such unsightly growth at all times. If an Owner fails to comply with this Restriction, the Board of Directors shall cause the weeds to be cut and the Lot cleared of such growth at the expense of the Owner thereof and the Corporation shall have a lien against the cleared Lot for the expense thereof.

(e) Nuisances. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood. Barking dogs shall constitute a nuisance.

(f) Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste

shall be kept in sanitary containers out of public view. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

(g) Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. The owners of such permitted pets shall confine them to their respective Lots such that they will not be a nuisance. Owners of dogs shall so control or confine them so as to avoid barking which will annoy or disturb adjoining Owners.

(h) Outside Burning. No trash, leaves, or other materials shall be burned upon a Lot if smoke therefrom would blow upon any other Lot and, then, only in acceptable incinerators and in compliance with all applicable legal requirements.

(i) 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 permitted on any Lot without the prior written consent of the Architectural Review Board. Unless consent thereto is granted by a majority of the Owners, the Architectural Review Board shall not give its consent to the installation of any exterior television antenna if television reception is available from underground cable connections serving the Lot, nor shall it give its consent to the installation of any other exterior antenna unless all Owners of Lots within 200 feet of the Lot upon which the proposed antenna would be erected consent in writing to the installation thereof.

(j) Exterior Lights. No exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Lot.

(k) Electric Bug Killers. Electric bug killers, "zappers" and other similar devices shall not be installed at a location or locations which will result in the operation thereof becoming a nuisance or annoyance to other Owners and shall only be operated when outside activities require the use thereof and not continuously.

(l) Air Conditioners. No room air conditioning unit shall be installed so as to protrude from any structure located on a Lot (including but not limited to the window of any Residence or garage) if the same would be visible from a public way, a Community Area or any other Lot; provided, however, that this Restriction shall not apply to central air conditioning units.

6. General Community Rules. Each Lot shall be subject to the guidelines, rules, regulations and procedures adopted by the Architectural Review Board pursuant to Paragraph 20(a)(iii) of the Declaration of Covenants and Restrictions, and each Owner of a Lot shall at all times comply therewith.

7. Assessments. The Board of Directors may make Assessments to cover any costs incurred in enforcing these covenants or in undertaking any maintenance or other activity that is the responsibility of the Owner of a Lot hereunder but which such Owner has not undertaken as required hereunder. Any such Assessment shall be assessed only against those Owners whose failure to comply with the requirements of these covenants necessitated the action to enforce these covenants or the undertaking of the maintenance or other activity.

8. Enforcement. The right to enforce each of the foregoing Restrictions by injunction, together with the right to cause the removal by due process of law of structures erected or maintained in violation thereof, is reserved to Declarant, the Corporation, the Architectural 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 Corporation, the Architectural Review Board, any Owner or Owners, or such Zoning Authority by or through any such violation or attempted violation. Under no circumstances shall Declarant, the Corporation or the Architectural 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. There shall be no rights of reversion or forfeiture of title resulting from any violations.

9. 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.

10. Non-Liability of Declarant. Declarant shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Declarant, and no duty of, or warranty by, Declarant shall be implied by or inferred from any term or provision of this Supplemental Declaration.

11. General Provisions. This Supplemental Declaration may be amended at any time in the manner provided in Paragraph 27 of the Declaration of Covenants and Restrictions except that no amendment adopted pursuant to Paragraph 27(a) of the Declaration of Covenants and Restrictions shall be effective as against a Mortgagee who subsequently acquires title to a Lot unless approved by at least two-thirds (2/3) of the Mortgagees who hold first mortgages on the Lots in the Parcel (based on one vote for each first mortgage owned) or at least two-thirds (2/3) of the Owners of the Lots in the Parcel (excluding Declarant).

Except as the same may be amended from time to time, the foregoing restrictions will be in full force and effect until January 1, 2027, 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.

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

BDC/CARDINAL ASSOCIATES, L.P.

By Tom Charles Huston
Tom Charles Huston
Assistant General Manager

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared Tom Charles Huston, the Assistant General Manager of BDC/Cardinal Associates, L.P., an Indiana limited partnership, who acknowledged execution of the foregoing Supplemental Declaration of Covenants and Restrictions for and on behalf of said limited partnership.

WITNESS my hand and Notarial Seal this 5th day of February, 1997.

My Commission Expires:

May 24, 1999

Marie M. Unick
Notary Public Residing in Hamilton County

Marie M. Unick
(printed signature)

This instrument prepared by Tom Charles Huston, Attorney at Law, 1313 Merchants Bank Building, 11 South Meridian Street, Indianapolis, Indiana 46204.

00001 TCH 150792

EXHIBIT A
LAND DESCRIPTION
(Moffitt Farm at Prairie View - All Sections)

Part of the Northeast Quarter of Section 27 and part of the Northwest and Southwest Quarter of Section 26 all in Township 18 North, Range 4 East of the Second Principal Meridian in Hamilton County, Indiana being described as follows:

Beginning at the Southeast corner of said Northeast Quarter of Section 27; thence on an assumed bearing of South 89 degrees 59 minutes 50 seconds West along the south line of said southeast quarter section a distance of 1080.70 feet; thence North 00 degrees 04 minutes 25 seconds East a distance of 2646.77 feet to the north line of said Northeast Quarter; thence South 89 degrees 56 minutes 39 seconds East along said north line a distance of 1080.75 feet to the northwest corner of the Northwest Quarter of Section 26; thence South 89 degrees 37 minutes 45 seconds East along the north line thereof a distance of 1060.84 feet; thence South 13 degrees 18 minutes 12 seconds West 121.12 feet to a curve having a radius of 555.00 feet, the radius point of which bears South 76 degrees 41 minutes 48 seconds east; thence southerly along said curve an arc distance of 118.76 feet to a point which bears North 88 degrees 57 minutes 27 seconds West from said radius point; thence South 01 degrees 02 minutes 33 seconds West 817.43 feet a point on a curve having a radius of 645.00 feet, the radius point of which bears North 88 degrees 57 minutes 27 seconds West; thence southerly along said curve an arc distance of 522.07 feet to a point which bears South 42 degrees 34 minutes 54 second East from said radius point; thence South 47 degrees 25 minutes 06 seconds West a distance of 627.25 feet to a curve having a radius of 555.00 feet, the radius point of which bears South 42 degrees 34 minutes 54 seconds East; thence southwesterly along said curve an arc distance of 327.91 feet to a point which bears North 76 degrees 26 minutes 01 seconds West from said radius point; thence South 13 degrees 33 minutes 59 seconds West a distance of 75.13 feet; to a curve having a radius of 20.00 feet, the radius point of which bears South 76 degrees 26 minutes 01 seconds East; thence southeasterly along said curve an arc distance of 23.16 feet to a point which bears South 37 degrees 13 minutes 19 seconds West from said radius point also being a point of reverse curvature of a curve having a radius of 142.00 feet, the radius point of which bears South 37 degrees 13 minutes 19 seconds West; thence southeasterly along said curve an arc distance of 187.74 feet to a point which bears South 67 degrees 01 minutes 33 seconds East from said radius point also being a point of reverse curvature of a curve having a radius of 21.00 feet, the radius point of which bears South 67 degrees 01 minutes 33 seconds East; thence southeasterly along said curve an arc distance of 26.96 feet to a point which bears South 39 degrees 25 minutes 08 seconds West from said radius point also being a point of compound curvature of a curve having a radius of 375.00 feet, the radius point of which bears North 39 degrees 25 minutes 08 seconds East; thence southeasterly along said curve an arc distance of 70.18 feet to a point which bears South 28 degrees 41 minutes 48 seconds West from said radius point; thence South 28 degrees 41 minutes 48 seconds West a distance of 50.00 feet to a curve having a radius of 425.00 feet, the radius point of which bears South 28 degrees 41 minutes 48 seconds East; thence northwesterly along said curve an arc distance of 79.45 feet to a point which bears South 39 degrees 24 minutes 29 seconds West from said radius point also being a point of reverse curvature of a curve having a radius of 21.00 feet, the radius point of which bears South 39 degrees 24 minutes 29 seconds West; thence westerly along said curve an arc distance of 26.99 feet to a point which bears North 34 degrees 14 minutes 30 seconds West from said radius point also being a point of reverse curvature of a curve having a radius of 142.00 feet, the radius point of which bears North 34 degrees 14 minutes 30 seconds West; thence southwesterly along said curve an arc distance of 24.19 feet to a point which bears South 24 degrees 28 minutes 56

seconds East from said radius point also being a point of reverse curvature of a curve having a radius of 20.00 feet, the radius point of which bears South 24 degrees 28 minutes 56 seconds East; thence southwesterly along said curve an arc distance of 23.83 feet to a point which bears South 87 degrees 15 minutes 22 seconds West from said radius point; thence South 02 degrees 44 minutes 38 seconds East a distance of 92.95 feet to a curve having a radius of 640.00 feet, the radius point of which bears South 87 degrees 15 minutes 22 seconds West; thence southwesterly along said curve an arc distance of 227.32 feet to a point which bears South 07 degrees 25 minutes 54 seconds West from said radius point; thence South 17 degrees 08 minutes 54 seconds West a distance of 72.25 feet to a curve having a radius of 580.00 feet, the radius point of which bears South 72 degrees 08 minutes 50 seconds East; thence southwesterly along said curve an arc distance of 84.01 feet to a point which bears North 80 degrees 45 minutes 34 seconds West from said radius point; thence South 89 degrees 57 minutes 14 seconds West a distance of 47.34 feet to the west line of the Southwest Quarter of Section 26; thence North 00 degrees 02 minutes 46 seconds West along said west line a distance of 402.88 feet to the Point of Beginning, containing 109.98 acres, more or less.

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Feb. 3, 1997 BD

32.00
12
2.00 P.P.T.

INSTRUMENT
970972007

**SUPPLEMENTAL DECLARATION OF
COVENANTS AND RESTRICTIONS
PRAIRIE VIEW**

BROOKS LANDING

970972007
Filed for Record in
HAMILTON COUNTY, INDIANA
MARY L CLARK
On 05-22-1997 At 04:06 pm.
DEC COV RES 32.00

This Supplemental Declaration, dated as of the 22nd day of May, 1997, by BDC/CARDINAL ASSOCIATES, L.P., an Indiana limited partnership,

WITNESSES THAT:

WHEREAS, the following facts are true:

A. Declarant is the owner of the fee simple title to the real estate located in Hamilton County, Indiana, more particularly described in Exhibit A attached hereto and incorporated herein by this reference.

B. This Declaration is a Supplemental Declaration as that term is defined in the Declaration of Covenants and Restrictions.

C. Declarant intends to subdivide the Parcel into Lots upon each of which a Residence may be constructed.

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

1. Definitions. Words, phrases and terms that are defined in the Declaration of Covenants and Restrictions 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:

"Brooks Landing" means the name by which the Parcel shall be known.

"Declaration of Covenants and Restrictions" means the Declaration of Covenants and Restrictions of Prairie View dated as of February 5, 1997 and recorded in the Office of the Recorder of Hamilton County, Indiana as Instrument Number 9709705549, as amended from time to time.

"Lot" means a numerically designated subdivided parcel of land depicted on a Plat.

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

"Parcel" means that part of the real estate described in Exhibit A which is at any time subject to the covenants, restrictions, easements, charges and liens imposed by the Declaration of Covenants and Restrictions.

"Plat" means the secondary plat of a Section within the Parcel.

"Section" means that part of the Parcel which is depicted on a Plat.

"Tract" means the real estate, including all or any part of the Parcel, that is subject to the covenants, restrictions, easements, charges and liens imposed by the Declaration of Covenants and Restrictions.

2. Declaration. Declarant hereby declares that, in addition to the covenants, restrictions, easements, charges and liens imposed by the Declaration of Covenants and Restrictions, the Parcel shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

3. Land Use. Lots may be used only for residential purposes as provided in the Declaration of Covenants and Restrictions. No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of houses in a Section than the number of original Lots shown on a Plat of such Section.

4. Construction of Residences.

(a) Lot Development Plans. Except to the extent such requirement is waived by Declarant, prior to commencement of any construction on a Lot, a Lot Development Plan shall be submitted to the Architectural Review Board in accordance with the requirements of Paragraph 18 of the Declaration of Covenants and Restrictions. Each Owner shall comply with the terms and provisions of Paragraph 18 of the Declaration of Covenants and Restrictions and the requirements of the Architectural Review Board established pursuant to the authority granted by the Declaration of Covenants and Restrictions.

(b) Size of Residence. Except as otherwise provided herein, no Residence may be constructed on any Lot unless such Residence, exclusive of open porches, attached garages and basements, shall have a ground floor area of 3,000 square feet if a one-story structure, or 1,800 square feet if a higher structure, but in the case of a building higher than one story, the total floor area shall not be less than 3,000 square feet.

(c) Temporary Structures. No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a dwelling, temporary or permanent, nor may any structure of a temporary character be used as a dwelling.

(d) Building Location and Finished Floor Elevation. No building may be erected between the building line shown on a Plat and the front Lot line, and no structure or part thereof (exclusive of open areas or terraces, unenclosed porches not more than one story high, fireplace chimney and architectural features that project no more than two (2) feet) may be built or erected nearer than ten (10) feet to any side Lot line or nearer than twenty (20) feet to any rear Lot line; provided, however, if the Zoning Authority requires a greater side yard setback, then such greater requirement shall prevail. The aggregate side yard setback shall be not less than twenty (20) feet. A minimum finished floor elevation, shown on the development plan for each Section, has been established for each Lot and no finished floor elevation with the exception of flood protected basements shall be constructed lower than said minimum without the written consent of the Architectural Review Board. Demonstration of adequate storm water drainage in conformity with both on-Lot and overall project drainage plans shall be a prime requisite for alternative finished floor elevations.

(e) Driveways. All driveways shall be paved with either concrete or asphalt and maintained dust free.

(f) Yard Lights. If street lights are not installed in the Parcel, then each Owner or his builder shall install and maintain in operable condition either (i) a pole light on the Lot at a location, having a height and of a type, style and manufacture approved by the Architectural Review Board prior to the installation thereof or (ii) two (2) carriage lights on the front of the Residence of a type, style and manufacture approved by the Architectural Review Board prior to the installation thereof. Each such light fixture shall also have a bulb of a wattage approved by Architectural Review Board to insure uniform illumination on each Lot and shall be equipped with a photo electric cell or similar device to insure automatic illumination from dusk to dawn each day.

(g) Storage Tanks. Any gas or oil storage tanks used in connection with a Lot shall be either buried or located in a Residence such that they are completely concealed from public view.

(h) Construction and Landscaping. All construction upon, landscaping of and other improvement to a Lot shall be completed strictly in accordance with the Lot Development Plan approved by the Architectural Review Board. All landscaping specified on the landscaping plan approved by the Architectural Review Board shall be installed on the Lot strictly in accordance with such approved plan within thirty (30) days following substantial completion of the Residence if such completion occurs

between April 1 and October 15; otherwise prior to May 1. Unless a delay is caused by strikes, war, court injunction or acts of God, construction of a Residence on a Lot shall be completed within one (1) year after the date of commencement of the building process

The failure of the Owner of a Lot to apply for approval of, or receive approval from, the Architectural Review Board of a Lot Development Plan shall not relieve such Owner from his obligation to complete construction of a Residence upon the Lot within the time period specified herein. For the purposes of this subparagraph (h), construction of a Residence will be deemed "completed" when the exterior of the Residence (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.

(i) Mailboxes. All mailboxes installed upon Lots shall be uniform and shall be of a type, color and manufacture approved by the Architectural Review Board. Such mailboxes shall be installed upon posts approved as to type, size and location by the Architectural Review Board.

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(k) Water Systems. No private or semi-private water supply system may be located upon any Lot which is not in compliance with regulations or procedures adopted or established by the Indiana State Board of Health, or other civil authority having jurisdiction. To the extent that domestic water service is available from a water line located within 200 feet of the lot line maintained by a public or private utility company, each Owner shall connect to such water line to provide water for domestic use on the Lot and shall pay all connection, availability or other charges lawfully established with respect to connections thereto. Notwithstanding the foregoing, an Owner may establish, maintain and use an irrigation water well on his Lot as long as the well does not adversely affect the normal pool level of a Lake or Pond.

(l) Drainage. In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of such Lot to permit such drainage to continue, without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, although no specific drainage easement for such flow of water is provided on the Plat. To the extent not maintained by the Drainage Board, "Drainage Easements" reserved as drainage swales shall be maintained by the Owner of the Lot upon which such easements are located such that water from any adjacent Lot shall have adequate drainage along such swale. Lots

within the Parcel may be included in a legal drain established by the Drainage Board. In such event, each Lot in the Parcel will be subject to assessment by the Drainage Board for the costs of maintenance of the portion of the Drainage System and/or the Lakes included in such legal drain, which assessment will be a lien against the Lot. The elevation of a Lot shall not be changed so as to affect materially the surface elevation or grade of surrounding Lots. Each Owner shall maintain the subsurface drains and tiles located on his Lot and shall be liable for the cost of all repairs thereto or replacements thereof.

(m) Accessory Buildings. No mini-barns, storage shed or other accessory building or structure other than gazebos shall be permitted on any Lot.

(n) Pools. No above ground swimming pool, other than a children's wading pool, shall be permitted on any Lot.

(o) Basketball Goals. No basketball goal shall be placed or maintained in the front driveway of a Lot or within the right-of-way of any street. Unless the Architectural Review Board establishes a policy establishing other specifications, backboards of all basketball goals shall be of a translucent material such as fiberglass or Lexan and attached to a black pole or similar type of post. The location of a basketball goal on the Lot is subject to approval of the Architectural Review Board if it would be visible from a public right-of-way adjoining the Lot.

5. Maintenance of Lots.

(a) Vehicle Parking. No recreational vehicle, motor home, truck which exceeds ¾ ton in weight, trailer, boat or disabled vehicle may be parked or stored overnight or longer on any Lot in open public view

(b) Signs. Except for such signs as Declarant may in its absolute discretion display in connection with the development of Prairie View or the Parcel and the sale of Lots therein, such signs as may be located on the Community Area and such signs as may, with the consent of Declarant, be displayed by a Designated Builder to advertise the property during construction and sale of Residences and the maintenance of model homes, no sign of any kind shall be displayed to the public view on any Lot except that one sign of not more than four (4) square feet may be displayed at any time for the purpose of advertising the property for sale or for rent.

(c) Fencing. No fence, wall, hedge or shrub planting higher than eighteen (18) inches shall be permitted between the front property line and the front building set-back line except where such planting is located on a Landscape Easement or is part of Residence landscaping and the prime root thereof is within four (4) feet of the Residence. Trees shall not be deemed "shrubs" unless planted in such a manner as to

constitute a "hedge". No chain link fence shall be erected upon a Lot. No fence shall be erected or maintained on or within any Landscape Easement except such as may be installed by Declarant and subsequently replaced by the Corporation in such manner as to preserve the uniformity of such fence. In no event may any fence be erected or maintained on any Lot without the prior approval of the Architectural Review Board, which may establish design standards for fences and further restrictions with respect to fencing, including limitations on (or prohibition of) the installation of fences in the rear yard of a Lot and along the bank of any Lake or Pond. All fences shall be kept in good repair. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting points 25 feet from the intersection of said street lines, or in the case of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(d) Vegetation. An Owner shall not permit the growth of weeds and volunteer trees and bushes on his Lot, and shall keep his Lot reasonably clear from such unsightly growth at all times. If an Owner fails to comply with this Restriction, the Board of Directors shall cause the weeds to be cut and the Lot cleared of such growth at the expense of the Owner thereof and the Corporation shall have a lien against the cleared Lot for the expense thereof.

(e) Nuisances. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood. Barking dogs shall constitute a nuisance.

(f) Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers out of public view. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

(g) Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. The owners of such permitted pets shall confine them to their respective Lots such that they will not be a nuisance. Owners of dogs shall so control or confine them so as to avoid barking which will annoy or disturb adjoining Owners.

(h) Outside Burning. No trash, leaves, or other materials shall be burned upon a Lot if smoke therefrom would blow upon any other Lot and, then, only in acceptable incinerators and in compliance with all applicable legal requirements.

(i) 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 permitted on any Lot without the prior written consent of the Architectural Review Board. Unless consent thereto is granted by a majority of the Owners, the Architectural Review Board shall not give its consent to the installation of any exterior television antenna if television reception is available from underground cable connections serving the Lot, nor shall it give its consent to the installation of any other exterior antenna unless all Owners of Lots within 200 feet of the Lot upon which the proposed antenna would be erected consent in writing to the installation thereof.

(j) Exterior Lights. No exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Lot.

(k) Electric Bug Killers. Electric bug killers, "zappers" and other similar devices shall not be installed at a location or locations which will result in the operation thereof becoming a nuisance or annoyance to other Owners and shall only be operated when outside activities require the use thereof and not continuously.

(l) Air Conditioners. No room air conditioning unit shall be installed so as to protrude from any structure located on a Lot (including but not limited to the window of any Residence or garage) if the same would be visible from a public way, a Community Area or any other Lot; provided, however, that this Restriction shall not apply to central air conditioning units.

6. General Community Rules. Each Lot shall be subject to the guidelines, rules, regulations and procedures adopted by the Architectural Review Board pursuant to Paragraph 20(a)(iii) of the Declaration of Covenants and Restrictions, and each Owner of a Lot shall at all times comply therewith.

7. Assessments. The Board of Directors may make Assessments to cover any costs incurred in enforcing these covenants or in undertaking any maintenance or other activity that is the responsibility of the Owner of a Lot hereunder but which such Owner has not undertaken as required hereunder. Any such Assessment shall be assessed only against those Owners whose failure to comply with the requirements of these covenants necessitated the action to enforce these covenants or the undertaking of the maintenance or other activity.

8. Enforcement. The right to enforce each of the foregoing Restrictions by injunction, together with the right to cause the removal by due process of law of structures erected or maintained in violation thereof, is reserved to Declarant, the Corporation, the Architectural 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 Corporation, the Architectural Review Board, any Owner or Owners, or such Zoning Authority by or through any such violation or attempted violation. Under no circumstances shall Declarant, the Corporation or the Architectural 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. There shall be no rights of reversion or forfeiture of title resulting from any violations.

9. 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.

10. Non-Liability of Declarant. Declarant shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Declarant, and no duty of, or warranty by, Declarant shall be implied by or inferred from any term or provision of this Supplemental Declaration.

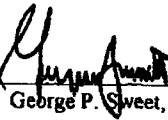
11. General Provisions. This Supplemental Declaration may be amended at any time in the manner provided in Paragraph 27 of the Declaration of Covenants and Restrictions except that no amendment adopted pursuant to Paragraph 27(a) of the Declaration of Covenants and Restrictions shall be effective as against a Mortgagee who subsequently acquires title to a Lot unless approved by at least two-thirds (2/3) of the Mortgagees who hold first mortgages on the Lots in the Parcel (based on one vote for each first mortgage owned) or at least two-thirds (2/3) of the Owners of the Lots in the Parcel (excluding Declarant).

Except as the same may be amended from time to time, the foregoing restrictions will be in full force and effect until January 1, 2027, 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.

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

BDC/CARDINAL ASSOCIATES, L.P.

By



George P. Sweet, General Manager

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared George P. Sweet, the General Manager of BDC/Cardinal Associates, L.P., an Indiana limited partnership, who acknowledged execution of the foregoing Supplemental Declaration of Covenants and Restrictions for and on behalf of said limited partnership.

WITNESS my hand and Notarial Seal this 22nd day of May, 1997.

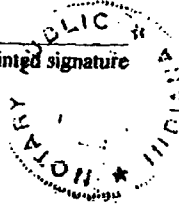
My Commission Expires:

May 24, 1999

Marie M. Urick
Notary Public Residing in Hendricks County

Marie M. Urick

(printed signature)



This instrument prepared by Tom Charles Huston, Attorney at Law, 1313 Merchants Bank Building, 11 South Meridian Street, Indianapolis, Indiana 46204.

RD0201 TCM 150776

**LAND DESCRIPTION
BROOKS LANDING SECTION 1
AT PRAIRIE VIEW**

Part of the Northwest and Southwest Quarter of Section 26 all in Township 18 North, Range 4 East in the Second Principal Meridian in Hamilton County, Indiana being described as follows:

Commencing at the Southeast corner of the Northeast Quarter of Section 27; thence on an assumed bearing of South 89 degrees 59 minutes 50 seconds West along the south line of said northeast quarter section a distance of 1090.70 feet; thence North 00 degrees 04 minutes 25 seconds East 2646.77 feet to the north line of said northeast quarter; thence South 89 degrees 56 minutes 29 seconds East along said north line 1090.75 feet to the northeast corner of the northwest quarter of Section 26; thence South 89 degrees 37 minutes 45 seconds East along the north line of said northwest quarter section a distance of 1050.84 feet to the Point of Beginning; thence continuing South 89 degrees 37 minutes 45 seconds East along said north line 195.85 feet to the west low water line of White River; thence meandering said west low water line the following eight courses, South 20 degrees 35 minutes 24 seconds West 345.78 feet; thence South 05 degrees 19 minutes 26 seconds West 275.94 feet; thence South 01 degrees 25 minutes 22 seconds East 178.11 feet; thence South 06 degrees 56 minutes 58 seconds East 147.86 feet; thence South 12 degrees 05 minutes 51 seconds East 234.71 feet; thence South 24 degrees 33 minutes 22 seconds East 212.18 feet; thence South 50 degrees 45 minutes 00 seconds East 375.00 feet; thence South 71 degrees 45 minutes 00 seconds East 570.00 feet; thence South 36 degrees 35 minutes 17 seconds West 74.60 feet; thence North 72 degrees 05 minutes 51 seconds West 31.67 feet; thence South 36 degrees 35 minutes 17 seconds West 90.00 feet; thence South 72 degrees 05 minutes 51 seconds East 31.67 feet; South 36 degrees 35 minutes 17 seconds West 872.10 feet; thence South 00 degrees 11 minutes 20 seconds West 24.01 feet; thence South 89 degrees 48 minutes 40 seconds East, parallel with the north line of the southwest quarter of section 26, 24.76 feet; thence South 00 degrees 11 minutes 20 seconds West 24.50 feet to said north line of the southwest quarter; thence South 89 degrees 48 minutes 40 seconds East along said north line 138.06 feet to the northeast corner of said southwest quarter section; thence South 00 degrees 00 minutes 18 seconds East along the east line thereof a distance of 113.59 feet; thence South 41 degrees 54 minutes 07 seconds West 220.10 feet; thence North 77 degrees 59 minutes 02 seconds West 243.70 feet; thence North 11 degrees 44 minutes 44 seconds West 117.90 feet to a curve having a radius of 425.00 feet, the radius point of which bears North 11 degrees 40 minutes 32 seconds West; thence westerly along said curve an arc distance of 222.34 feet to a point which bears South 18 degrees 17 minutes 54 seconds West from said radius point; thence North 71 degrees 42 minutes 06 seconds West 260.52 feet to a curve having a radius of 375.00 feet, the radius point of which bears South 18 degrees 17 minutes 54 seconds West; thence westerly along said curve an arc distance of 23.18 feet to a point which bears North 14 degrees 45 minutes 25 seconds East from said radius point; thence North 89 degrees 40 minutes 43 seconds West a distance of 94.27 feet; thence North 00 degrees 19 minutes 18 seconds East a distance of 11.84 feet; thence North 89 degrees 38 minutes 18 seconds West 351.38 feet; thence South 89 degrees 57 minutes 14 seconds West 50.00 feet to a curve having a radius of 225.00 feet, the radius point of which bears North 89 degrees 57 minutes 14 seconds East; thence northerly along said curve an arc distance of 31.14 feet to a point which bears North 82 degrees 07 minutes 00 seconds West from said radius point to a point of compound curvature of a curve having a radius of 20.00 feet, the radius point of which bears North 82 degrees 07 minutes 00 seconds West; thence northwesterly along said curve an arc distance of 24.15 feet to a point which bears North 28 degrees 41 minutes 48 seconds East from said radius point; thence North 28 degrees 41 minutes 48 seconds East 50.00 feet to a curve having a radius of 375.00

EXHIBIT A - Page 1 of 3

feet, the radius point of which bears North 28 degrees 41 minutes 48 seconds East; thence southeasterly along said curve an arc distance of 185.45 feet to a point which bears South 00 degrees 21 minutes 42 seconds West from said radius point; thence South 89 degrees 38 minutes 18 seconds East a distance of 123.24 feet to a curve having a radius of 20.00 feet, the radius point of which bears North 00 degrees 21 minutes 42 seconds East; thence northeasterly along said curve an arc distance of 31.48 feet to a point which bears South 89 degrees 48 minutes 40 seconds East from said radius point; thence North 00 degrees 11 minutes 20 seconds East 15.98 feet; thence South 89 degrees 48 minutes 40 seconds East 200.07 feet; thence North 00 degrees 11 minutes 20 seconds East 115.70 feet; thence North 10 degrees 31 minutes 30 seconds East 75.54 feet; thence North 17 degrees 35 minutes 42 seconds East 94.27 feet; thence North 21 degrees 14 minutes 42 seconds East 94.72 feet; thence North 34 degrees 59 minutes 45 seconds East 90.46 feet; thence North 37 degrees 15 minutes 27 seconds East 202.52 feet; thence North 22 degrees 23 minutes 00 seconds West 103.25 feet to a curve having a radius of 325.00 feet, the radius point of which bears South 10 degrees 03 minutes 36 seconds East; thence northeasterly along said curve an arc distance of 12.85 feet to a point which bears North 07 degrees 47 minutes 41 seconds West from said radius point; thence North 07 degrees 47 minutes 41 seconds West 215.74 feet; thence North 46 degrees 11 minutes 09 seconds West 222.51 feet to a curve having a radius of 645.00 feet, the radius point of which bears North 46 degrees 11 minutes 09 seconds West; thence northeasterly along said curve an arc distance of 481.50 feet to a point which bears South 88 degrees 57 minutes 27 seconds East from said radius point; thence North 01 degrees 02 minutes 33 seconds East a distance of 817.43 feet to a curve having a radius of 555.00 feet, the radius point of which bears South 88 degrees 57 minutes 27 seconds East; thence northeasterly along said curve an arc distance of 118.76 feet to a point which bears North 76 degrees 41 minutes 48 seconds West from said radius point; thence North 13 degrees 18 minutes 12 seconds East 121.12 feet to the Point of Beginning, containing 32.930 acres, more or less.

EXHIBIT A - Page 2 of 3

**LAND DESCRIPTION
BROOKS LANDING SECTION 2
AT PRAIRIE VIEW**

Part of the Northwest Quarter of Section 26 all in Township 18 North, Range 4 East in the Second Principal Meridian in Hamilton County, Indiana being described as follows:

Commencing at the Northwest corner of the Northwest Quarter of Section 26; thence South 89 degrees 37 minutes 45 seconds East along the north line of said northwest quarter section a distance of 1050.84 feet; thence South 13 degrees 18 minutes 12 seconds West a distance of 121.12 feet to a curve having a radius of 555.00 feet, the radius point of which bears South 76 degrees 41 minutes 48 seconds East; thence southerly along said curve an arc distance of 118.76 feet to a point which bears North 88 degrees 57 minutes 27 seconds West from said radius point; thence South 01 degrees 02 minutes 33 seconds East a distance of 817.43 feet to a curve having a radius of 645.00 feet, the radius point of which bears North 88 degrees 57 minutes 27 seconds West; thence southerly along said curve an arc distance of 440.93 feet to the Point of Beginning, said point bearing South 45 degrees 11 minutes 09 seconds East from said radius point; thence South 46 degrees 11 minutes 09 seconds East a distance of 222.51 feet; thence South 07 degrees 47 minutes 41 seconds East a distance of 215.74 feet to a curve having a radius of 325.00 feet, the radius point of which bears South 07 degrees 47 minutes 41 seconds East; thence westerly along said curve an arc distance of 12.85 feet to a point which bears North 10 degrees 03 minutes 36 seconds West from said radius point; thence South 22 degrees 23 minutes 00 seconds East a distance of 103.25 feet; thence South 37 degrees 15 minutes 27 seconds West a distance of 202.52 feet; thence South 34 degrees 59 minutes 45 seconds West a distance of 90.46 feet; thence South 21 degrees 14 minutes 42 seconds West a distance of 94.72 feet; thence South 17 degrees 35 minutes 42 seconds West a distance of 94.27 feet; thence South 10 degrees 31 minutes 30 seconds West a distance of 75.54 feet; thence South 00 degrees 11 minutes 20 seconds West a distance of 115.70 feet; thence North 89 degrees 48 minutes 40 seconds West, parallel with the north line of the southwest quarter of section 26, a distance of 200.07 feet; thence South 00 degrees 11 minutes 20 seconds West a distance of 15.98 feet to a curve having a radius of 20.00 feet, the radius point of which bears North 89 degrees 48 minutes 40 seconds West; thence southwesterly along said curve an arc distance of 31.48 feet to a point which bears South 00 degrees 21 minutes 42 seconds West from said radius point; thence North 89 degrees 38 minutes 18 seconds West a distance of 123.24 feet to a curve having a radius of 375.00 feet, the radius point of which bears North 00 degrees 21 minutes 42 seconds East; thence westerly along said curve an arc distance of 255.63 feet to a point which bears South 39 degrees 25 minutes 08 seconds West from said radius point to a point of compound curvature of a curve having a radius of 21.00 feet, the radius point of which bears North 39 degrees 25 minutes 08 seconds East; thence northerly along said curve an arc distance of 26.96 feet to a point which bears North 67 degrees 01 minutes 33 seconds West from said radius point to a point of reversed curvature of a curve having a radius of 142.00 feet, the radius point of which bears North 67 degrees 01 minutes 33 seconds West; thence northerly along said curve an arc distance of 187.74 feet to a point which bears North 37 degrees 13 minutes 19 seconds East from said radius point to a point of reversed curvature of a curve having a radius of 20.00 feet, the radius point of which bears North 37 degrees 13 minutes 19 seconds East; thence northerly along said curve an arc distance of 23.16 feet to a point which bears North 76 degrees 26 minutes 01 seconds West from said radius point; thence North 13 degrees 33 minutes 59 seconds East a distance of 75.13 feet to a curve having a radius of 555.00 feet, the radius point of which bears South 76 degrees 26 minutes 01 seconds East; thence northeasterly along said curve an arc distance of 327.91 feet to a point which bears North 42 degrees 34 minutes 54 seconds West from said radius point; thence North 47 degrees 25 minutes 06 seconds East a distance of 627.25 feet to a curve having a radius of 645.00 feet, the radius point of which bears North 42 degrees 34 minutes 54 seconds West; thence northeasterly along said curve an arc distance of 40.57 feet to the Point of Beginning, said point bearing South 46 degrees 11 minutes 09 seconds East from said radius point, containing 13.542 acres, more or less.

EXHIBIT A - Page 3 of 3

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Instrument
9709745142

AMENDMENT TO
DECLARATION OF COVENANTS AND RESTRICTIONS
PRAIRIE VIEW

This Amendment to Declaration of Covenants and Restrictions, made as of the ___ day of September, 1997, by BDC/CARDINAL ASSOCIATES, L.P., an Indiana limited partnership, ("Declarant")

WITNESSES THAT:

9709745142
Filed for Record in
HAMILTON COUNTY, INDIANA
MARY L CLARK
On 10-23-1997 At 10:53 am.
AMEND DECL 17.00

WHEREAS, the following facts are true:

A. Declarant is the owner of the fee simple title to the real estate located in Hamilton County, Indiana, more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Real Estate").


B. The Real Estate is subject to the Declaration of Covenants and Restrictions in Prairie View dated February 5, 1997 and recorded February 14, 1997 as Instrument No. 9709705549 and supplemented by the Supplemental Declaration of Covenants and Restrictions Prairie View dated February 5, 1997 and recorded February 14, 1997 as Instrument No. 9709705550 and also the Supplemental Declaration of Covenants and Restrictions Prairie View, Brooks Landing dated May 22, 1997 and recorded May 22, 1997 as Instrument No. 9709720007 and the Supplemental Declaration of Covenants and Restrictions Chapman's Claim recorded July 16, 1997 as Instrument No. 9709728755 as amended in a document recorded August 4, 1997 as Instrument No. 9709731764 (collectively, the "Declaration").

C. Declarant is as of this day conveying the Real Estate to the Carmel-Clay Parks and Recreation Board (the "Park Board"), a governmental entity of Hamilton County, Indiana, for use as a public park, subject to certain easements and restrictions contain in the deed from Declarant to the Parks Board, and Declarant desires to amend the Declaration in order to release the Real Estate from the burdens and benefits of the Declaration.

D. This release is being made pursuant to the right of Declarant to unilaterally amend and revise the standards, covenants and restrictions contained therein prior to the Applicable Date (as that term is defined in the Declaration).

NOW, THEREFORE, Declarant hereby amends the Declaration to provide that the Real Estate shall not be subject thereto, nor entitled to the benefits thereof. Except as expressly modified herein, the Declaration remains in full force and effect without amendment.

BDC/CARDINAL ASSOCIATES, L.P.

By 
George P. Sweet
General Manager

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared George P. Sweet, the General Manager of BDC/Cardinal Associates, L.P., an Indiana limited partnership, who acknowledged the execution of the foregoing Amendment to Declaration of Covenants and Restrictions for and on behalf of said Grantor, and who, having been first duly sworn, stated that the representations therein contained are true.

WITNESS my hand and Notarial Seal this 24 day of September, 1997.

Marie M. Urick
Marie M. Urick
(printed name)
Notary Public Residing in Wendricks County

My Commission Expires:

May 24, 1999

This instrument prepared by David R. Warshauer, attorney-at-law, 12722 Hamilton Crossing Boulevard, Carmel, Indiana 46032

EXHIBIT A - LEGAL DESCRIPTION

BLOCK D IN BROOKS LANDING AT PRAIRIE VIEW, SECTION 1 AS PER PLAT THEREOF RECORDED AS INSTRUMENT NUMBER 9720008 IN THE OFFICE OF THE RECORDER OF HAMILTON COUNTY, INDIANA.

ALSO:

BLOCKS F, G, H AND J IN CHAPMAN'S CLAIM AT PRAIRIE VIEW, SECTION 1 AS PER PLAT THEREOF RECORDED AS INSTRUMENT NUMBER 9728786 IN THE OFFICE OF THE RECORDER OF HAMILTON COUNTY, INDIANA.

ALSO:

PART OF THE NORTHWEST QUARTER OF SECTION 26, TOWNSHIP 18 NORTH, RANGE 4 EAST OF THE SECOND PRINCIPAL MERIDIAN IN HAMILTON COUNTY, INDIANA DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 26; THENCE SOUTH 89 DEGREES 37 MINUTES 46 SECONDS EAST ALONG THE NORTH LINE THEREOF A DISTANCE OF 1080.00 FEET TO THE NORTHEAST CORNER OF NOWYTT FARM AT PRAIRIE VIEW SECTION 3-A AS RECORDED PER INSTRUMENT NUMBER 9703351, P.C. 1, SLIDE 759 IN THE OFFICE OF THE HAMILTON COUNTY RECORDER (THE FOLLOWING 3 COURSES BEING ALONG SAID RECORD PLAT); (1) THENCE SOUTH 13 DEGREES 18 MINUTES 12 SECONDS WEST A DISTANCE OF 131.13 FEET TO A POINT ON A CURVE HAVING A RADIUS OF 580.00 FEET, THE RADIUS POINT OF WHICH BEARS SOUTH 76 DEGREES 41 MINUTES 48 SECONDS EAST; (2) THENCE SOUTHERLY ALONG SAID CURVE AN ARC DISTANCE OF 118.76 FEET TO A POINT WHICH BEARS NORTH 38 DEGREES 57 MINUTES 27 SECONDS WEST FROM SAID RADIUS POINT; (3) THENCE SOUTH 81 DEGREES 02 MINUTES 33 SECONDS WEST A DISTANCE OF 244.46 FEET TO THE NORTH EAST CORNER OF THE 131ST STREET RIGHT-OF-WAY AS RECORDED PER INSTRUMENT NUMBER 9724327; THENCE CONTINUING SOUTH 01 DEGREE 02 MINUTES 33 SECONDS WEST ALONG SAID RIGHT-OF-WAY A DISTANCE OF 572.97 FEET TO A POINT ON A CURVE HAVING A RADIUS OF 645.00 FEET, THE RADIUS POINT OF WHICH BEARS NORTH 88 DEGREES 57 MINUTES 27 SECONDS WEST; THENCE SOUTHERLY ALONG SAID CURVE AN ARC DISTANCE OF 481.50 FEET TO A POINT WHICH BEARS SOUTH 46 DEGREES 11 MINUTES 09 SECONDS EAST FROM SAID RADIUS POINT, AND THE POINT OF BEGINNING; THENCE SOUTH 46 DEGREES 11 MINUTES 09 SECONDS EAST A DISTANCE OF 101.47 FEET TO A POINT 100.00 FEET SOUTHEASTERLY MEASURED PERPENDICULARLY TO SAID 131ST STREET RIGHT-OF-WAY; THENCE SOUTH 47 DEGREES 25 MINUTES

06 SECONDS WEST PARALLEL WITH THE EAST LINE OF SAID 131ST STREET RIGHT-OF-WAY A DISTANCE OF 674.18 FEET TO A POINT ON A CURVE HAVING A RADIUS OF 455.00 FEET, THE RADIUS POINT OF WHICH BEARS SOUTH 42 DEGREES 34 MINUTES 54 SECONDS EAST; THENCE SOUTHERLY ALONG SAID CURVE AND PARALLEL WITH THE EAST LINE OF SAID 131ST STREET RIGHT-OF-WAY AN ARC DISTANCE OF 168.33 FEET TO A POINT WHICH BEARS NORTH 76 DEGREES 26 MINUTES 01 SECONDS WEST FROM SAID RADIUS POINT; THENCE SOUTH 13 DEGREES 13 MINUTES 59 SECONDS WEST PARALLEL WITH THE EAST LINE OF SAID 131ST STREET RIGHT-OF-WAY A DISTANCE OF 29.77 FEET TO A POINT ON A CURVE HAVING A RADIUS OF 242.00 FEET, THE RADIUS POINT OF WHICH BEARS SOUTH 58 DEGREES 22 MINUTES 38 SECONDS WEST; THENCE SOUTHERLY ALONG SAID CURVE AND PARALLEL WITH THE EAST LINE OF SAID 131ST STREET RIGHT-OF-WAY AN ARC DISTANCE OF 299.24 FEET TO A POINT WHICH BEARS SOUTH 58 DEGREES 46 MINUTES 29 SECONDS EAST FROM SAID RADIUS POINT AND BEING A POINT ON THE NORTH RIGHT-OF-WAY LINE OF LONGEST DRIVE AS PLATTED IN BROOKS LANDING AT PRAIRIE VIEW SECTION 1 AS RECORDED PER INSTRUMENT NUMBER 9720008, P.C. 1, SLIDE 780, SAID POINT BEING ON A CURVE HAVING A RADIUS OF 175.00 FEET, THE RADIUS POINT OF WHICH BEARS NORTH 26 DEGREES 36 MINUTES 02 SECONDS EAST; THENCE WESTERLY ALONG SAID CURVE AND SAID LONGEST DRIVE AND AFORESAID 131ST STREET RIGHT-OF-WAY (THE REMAINING EIGHT (8) COURSES ALONG SAID 131ST STREET RIGHT-OF-WAY) AN ARC DISTANCE OF 83.90 FEET TO A POINT OF COMPOUND CURVATURE HAVING A RADIUS OF 21.00 FEET, THE RADIUS POINT OF WHICH BEARS NORTH 39 DEGREES 25 MINUTES 04 SECONDS EAST FROM SAID POINT; THENCE NORTHERLY ALONG SAID CURVE AN ARC DISTANCE OF 26.96 FEET TO A POINT OF REVERSE CURVATURE HAVING A RADIUS OF 142.00 FEET, THE RADIUS POINT OF WHICH BEARS NORTH 67 DEGREES 01 MINUTES 33 SECONDS WEST FROM SAID POINT; THENCE NORTHERLY ALONG SAID CURVE AN ARC DISTANCE OF 187.74 FEET TO A POINT OF REVERSE CURVATURE HAVING A RADIUS OF 20.00 FEET, THE RADIUS POINT OF WHICH BEARS NORTH 37 DEGREES 13 MINUTES 19 SECONDS EAST FROM SAID POINT; THENCE NORTHERLY ALONG SAID CURVE AN ARC DISTANCE OF 23.18 FEET TO A POINT WHICH BEARS NORTH 76 DEGREES 26 MINUTES 01 SECONDS WEST FROM SAID POINT; THENCE NORTH 13 DEGREES 33 MINUTES 59 SECONDS EAST A DISTANCE OF 75.13 FEET TO A POINT ON A CURVE HAVING A RADIUS OF 585.00 FEET, THE RADIUS POINT OF WHICH BEARS SOUTH 76 DEGREES 26 MINUTES 01 SECONDS EAST; THENCE NORTHERLY ALONG SAID CURVE AN ARC DISTANCE OF 327.91 FEET TO A POINT WHICH BEARS NORTH 47 DEGREES 34 MINUTES 25 SECONDS WEST FROM SAID RADIUS POINT; THENCE NORTH 47 DEGREES 25 MINUTES 06 SECONDS EAST A DISTANCE OF 627.28 FEET TO A POINT ON A CURVE HAVING A RADIUS OF 645.00 FEET, THE RADIUS POINT OF WHICH BEARS NORTH 42 DEGREES 34 MINUTES 54 SECONDS WEST; THENCE NORTHERLY ALONG SAID CURVE AN ARC DISTANCE OF 40.57 FEET TO THE POINT OF BEGINNING

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Instrument
199909970897

**AMENDMENT TO DECLARATION OF COVENANTS AND RESTRICTIONS
FOR BROOKS LANDING SUBDIVISION**

THIS AMENDMENT made by the undersigned, being all the owners of lots in the subdivision known as Brooks Landing, and in consideration of the terms and conditions stated herein and other good and valuable consideration the receipt of which is hereby acknowledged do hereby agree to and do hereby amend the Declaration of Covenants and Restrictions regarding the said subdivision executed by Macs Landing, LLC, an Indiana limited liability company, on November 12, 1999 and recorded February 12, 1999 as Instrument Number 9909909504 in the office of the Recorder of Hamilton County, Indiana to include the following changes:

1. Paragraph 1, **DEFINITIONS**, Section B, is hereby amended by deleting "Paragraph 10" and substituting therefor "Paragraphs 9 and 10";
2. Paragraph 9, **BROOKS LANDING PROPERTY OWNER'S ASSOCIATION** Section A., **In General**, is hereby amended by deleting in its entirety "There has been or will be created, under the laws of the State of Indiana, a not-for-profit corporation to be known as Brooks Landing Property Owner's Association, which is referred to as the "Association"".
3. Paragraph 9, **BROOKS LANDING PROPERTY OWNER'S ASSOCIATION** Section D., **Class B**, subsection "ii" is hereby amended by deleting "2004" and substituting therefor "2010".

4. Paragraph 16 is hereby added:

199909970897
Filed for Record in
HAMILTON COUNTY, INDIANA
MARY L CLARK
On 12-09-1999 At 03:29 pm.
AMEND DECL 22.00

"16. ACQUIRED PROPERTY.

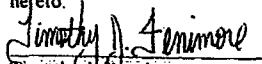
It is recognized that after the date of recording this Declaration in the office of the Recorder of Hamilton County, Indiana ("Recording Date"), that the Developer, its successors or assigns or designee, may acquire real property that is adjacent or in close proximity (as determined by the Developer, its successors assigns or designee in its sole discretion) to the Real Estate ("Acquired Property") and desire that such Acquired Property be subject to the covenants, easements, and restrictions of this Declaration and the plat restrictions of the Development, as amended, if any amendments occur after the Recording Date. From time to time and at any time prior to the date of the sale by Developer, its successors or assigns or designee of the last Lot owned by it in the Subdivision (inclusive of any prior Acquired Property), Developer, its successors or assigns or designee, may by notice recorded in the office of the Recorder of Hamilton County, Indiana, make the Acquired Property subject to this Declaration, the plat, and the plat restrictions of the Development, as amended if any, inclusive of all covenants, easements, and restrictions therein ("Acquired Property Notice"). Notwithstanding anything in this Declaration, the plat or the plat restrictions of the Development, the Articles of Incorporation of the Association, or the Bylaws of the Association including any amendments thereto after the Recording Date, if any, which would prohibit making the Acquired Property subject to the Declaration and plat restrictions of the Development or part of the plat of the Development, upon the recording of the Acquired Property Notice and without any notice to or any prior or other

approval of the Association or any Owner being required in any form whatsoever, Declarant, its successors or assigns or designee shall have the right to thereafter amend Exhibit A to the Declaration and amend the plat of the Development to include the Acquired Property, and upon the recording of Acquired Property Notice.

(i) all defined terms however or wherever defined in the Declaration, the plat restrictions or the plat of the Development shall apply to the Acquired Property as if the Acquired Property was part of the said Declaration inclusive of Exhibit A and the plat and plat restrictions of the Development as of the date of recording the Acquired Property Notice, and

(ii) the Acquired Property shall be subject to the covenants, easements, restrictions, terms, and conditions of the Declaration and plat restrictions of the Development, and shall be incorporated into and be made part of the plat of the Development as if the Acquired Property was part of the said Declaration inclusive of Exhibit A and plat and plat restrictions of the Development as of the date of recording the Acquired Property Notice. The Developer shall have the right to exercise its rights under this Paragraph 16 without any prior or other notice or prior or any other approval of the Association or of any Owner."

IN WITNESS WHEREOF, the undersigned do hereby execute this amendment as of the date(s) below written and shall become effective as of the date of execution by the last signatory hereto:

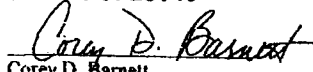

Timothy J. Fenimore

Date: 12-2-99


Jennifer A. Fenimore

Date: 12/2/99

OWNERS OF LOT 78



Corey D. Barnett

Date: 12/1/99



Bobbi Barnett

Date: 12-1-99

OWNERS OF LOT 40


Todd S. Tucker

Date: 12/6/99


Roger S. Tucker

Date: 12/6/99

OWNERS OF LOT 35

MACS LANDING, LLC, an Indiana limited liability company
BY: Pam, Ltd. (AKA Pam, L.P.), Managing Member and an Indiana limited partnership
BY: Pam, Inc. an Indiana corporation, and the managing general partner of Pam, Ltd.

By: [Signature]
Charles D. Staton, President of Pam, Inc.

Date: 12/6/99

OWNERS OF ALL REMAINING LOTS IN BROOKS LANDING SUBDIVISION

State of Indiana)
) SS:
County of Hamilton)

Before me, a Notary Public in and for said County and State, personally appeared on Dec. 2, 1999 Timothy J. Fenimore, an individual over the age of eighteen, and an owner of lot 78 in Brooks Landing subdivision, who, after being duly sworn, acknowledged the execution of the above Amendment to Declaration of Covenants and Restrictions for Brooks Landing Subdivision as his free act and deed and stated that the facts therein are true.



[Signature]
Signature

NOTARY PUBLIC

James E. Reed
Printed

My County of Residence: Hamilton

My Commission Expires: 9-24-00

State of Indiana)
) SS:
County of Hamilton)

Before me, a Notary Public in and for said County and State, personally appeared on Dec. 2, 1999 Jennifer A. Fenimore, an individual over the age of eighteen, and an owner of lot 78 in Brooks Landing subdivision, who, after being duly sworn, acknowledged the execution of the above Amendment to Declaration of Covenants and Restrictions for Brooks Landing Subdivision as her free act and deed and stated that the facts therein are true.



[Signature]
Signature

NOTARY PUBLIC

JAMES E. REED
Printed

My County of Residence: Hamilton

My Commission Expires: 9-24-00

State of Indiana)
) SS:
County of Hamilton)

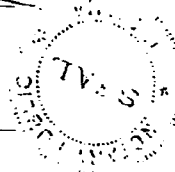
Before me, a Notary Public in and for said County and State, personally appeared on Dec. 1, 1999 Corey D. Barnett, an individual over the age of eighteen, and an owner of lot 40 in Brooks Landing subdivision, who, after being duly sworn, acknowledged the execution of the above Amendment to Declaration of Covenants and Restrictions for Brooks Landing Subdivision as his free act and deed and stated that the facts therein are true.

SEAL

[Signature]
Signature

NOTARY PUBLIC

Melinda Carden
Printed

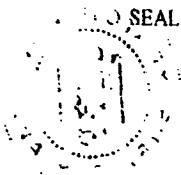


My County of Residence: Marion

My Commission Expires: 2-9-07

State of Indiana)
) SS:
County of Hamilton)

Before me, a Notary Public in and for said County and State, personally appeared on Dec 6, 1999 Roger S. Tucker, an individual over the age of eighteen, and an owner of lot 35 in Brooks Landing subdivision, who, after being duly sworn, acknowledged the execution of the above Amendment to Declaration of Covenants and Restrictions for Brooks Landing Subdivision as his free act and deed and stated that the facts therein are true.




Signature

NOTARY PUBLIC

JAMES E. REED
Printed

My County of Residence: HAMILTON

My Commission Expires: 9-24-00

State of Indiana)
) SS:
County of Hamilton)

Before me, a Notary Public in and for said County and State, personally appeared on Dec 6, 1999 Charles D. Staton, President of Pam, Inc., the managing general partner of Pam, Ltd. (a.k.a. Pam, L.P.), a member of Macs Landing, LLC and an Indiana Limited Partnership, who, after being duly sworn, acknowledged the execution of the above Amendment of Declaration of Covenants and Restrictions for Brooks Landing Subdivision as his free act and deed on behalf of the said limited liability company and stated that the facts therein are true.




Signature

NOTARY PUBLIC

JAMES E. REED
Printed

My County of Residence: HAMILTON

My Commission Expires: 9-24-00

State of Indiana)
) SS:
County of Hamilton)

Before me, a Notary Public in and for said County and State, personally appeared on Dec. 1, 1999 Bobbi Barnett, an individual over the age of eighteen, and an owner of lot 40 in Brooks Landing subdivision, who, after being duly sworn, acknowledged the execution of the above Amendment to Declaration of Covenants and Restrictions for Brooks Landing Subdivision as his free act and deed and stated that the facts therein are true.

SEAL


Signature

NOTARY PUBLIC

Melinda Carden
Printed

My County of Residence: Marion

My Commission Expires: 2-9-07

State of Indiana)
) SS:
County of Hamilton)

Before me, a Notary Public in and for said County and State, personally appeared on Dec 6, 1999 Todd S. Tucker, an individual over the age of eighteen, and an owner of lot 35 in Brooks Landing subdivision, who, after being duly sworn, acknowledged the execution of the above Amendment to Declaration of Covenants and Restrictions for Brooks Landing Subdivision as his free act and deed and stated that the facts therein are true.

SEAL


Signature

NOTARY PUBLIC

James E. Reed
Printed

My County of Residence: Hamilton

My Commission Expires: 9-24-00

Prepared by Pam Inc.

PREPARER'S CERTIFICATE

**This Amendment to Declaration of Covenants and Restrictions for Brooks Landing
Subdivision prepared by Michael H. Stikeleather, Attorney-at-Law, 8395 Keystone Crossing,
Suite 315, Indianapolis, Indiana 46240.**

Instrument
9909909504

9909909504
Filed for Record in
HAMILTON COUNTY, INDIANA
MARY L CLARK
On 02-12-1999 At 02:34 pm.
DEC COV RES 41.00

DECLARATION OF
COVENANTS AND RESTRICTIONS

4100
17)
270000
THIS DECLARATION, made this 12TH day of November, 98 by Macs
Landing L.L.C., Limited Liability Company (hereinafter referred to as the "Developer").

WITNESSETH:

WHEREAS, the Developer is the owner of the lands contained in the area shown in Exhibit "A", attached hereto and made a part hereof, which lands will be subdivided (all of which are hereinafter referred to as the "Development"); and

WHEREAS, the Developer is about to sell and convey the residential lots situated within the platted areas of the Development and before doing so desires to subject and impose upon all real estate within the platted areas of the Development mutual and beneficial restrictions, covenants, conditions, and charges (hereinafter referred to as the "Restrictions") under a general plan or scheme of improvement for the benefit and complement of the lots and lands in the Development and the future owners thereof.

NOW, THEREFORE, the Developer hereby declares that all of the platted lots and lands located within the Development as they become platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said lots and lands in the Development, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of said lots situated therein. All of the Restrictions shall run with the land and shall be binding upon the Developer and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to such Restrictions, and shall insure to the benefit of the Developer and every one of the Developer's successors in title to any real estate in the Development.

1. DEFINITIONS.

The following are the definitions of the terms as they are used in this Declaration:

- A. "Committee" shall mean the Brooks Landing Development Control Committee, composed of three members appointed by the Developer who shall be subject to removal by the Developer at any time with or without cause. Any vacancies from time to time existing shall be filled by appointment by the Developer. The Developer may, at its sole option, at any time hereafter relinquish to the Association the power to appoint and remove one or more members of the Committee.
- B. "Association" shall mean Brooks Landing Neighborhood Association, a not-for-profit corporation, the membership and powers of which are more fully described in Paragraph 10 of this Declaration.
- C. "Lot" shall mean any parcel of real estate excluding "Blocks", described by the plat of the Development which is recorded in the Office of the Recorder of Hamilton County, Indiana.

- D. Approvals, determinations, permissions, or consents required herein shall be deemed given if they are given in writing, signed with respect to the Developer or the Association, by the President or a Vice President thereof, and with respect to the Committee, by two members thereof.
- E. "Owner" shall mean a person who has or is acquiring any right, title or interest, legal or equitable, in and to a lot, but excluding those persons having such interest merely as security for the performance of any obligation.

2. **CHARACTER OF THE DEVELOPMENT**

- A. In General. Every lot in the Development, unless it is otherwise designated by the Developer, is a residential lot and shall be used exclusively for single-family residential purposes. No structures shall be erected, placed or permitted to remain upon any of said residential lots except in single-family dwelling house and such outbuildings as are usually accessory to dwelling houses.

Prior to issuance of an Improvement Location Permit, a delineation of the lot shall be submitted for approval to the Development Control Committee. Said delineation shall indicate all trees which have a diameter of more than twelve (12) inches caliper at a point five feet about the tree's natural base and which are located outside the building and driving areas. These shall be designated by type and size and shall not be removed unless approved by the Development Control Committee upon proof of unusual hardship in the practical utilization of the lot and such removal shall not cause a materially adverse effect upon the aesthetic values of adjoining lands and rights-of-way.

Removal or destruction of such trees by a lot owner or his successors in title, other than by acts of God or circumstances beyond the lot owner's control shall be replaced, within ninety (90) days notice in writing, by a tree of a size and type established by the Development Control Committee, and upon failure to do so, the Development Control Committee shall cause such tree to be replaced and the cost of such replacement shall be a lien upon the property collectible in any court of law or equity together with reasonable attorney's fees for the enforcement of such lien. For the purposes of executing this covenant, an easement for ingress and egress shall be reserved on each lot for the performance thereof.

Also, adequate physical barriers, such a straw bales or snow fence, shall be provided by the builder to protect trees to be preserved from damage by construction equipment or otherwise in the erection of building improvements. Pruning of trees outside the building line shall be permitted subject to the review and approval of the Development Control Committee and shall be undertaken only by qualified persons having adequate equipment to properly protect and preserve such trees.

In addition to individual site plan restrictions and tree preservation requirements administered by the Development Control Committee, platted building lines, minimum distances between buildings and minimum front and rear building lines shall be established on each plat. Since two sides of the perimeter is heavily wooded, additional ornamental plantings or other landscape devices should be minimal with primary

emphasis being placed upon preservation of natural amenities and enforced by the Development Control Committee as hereinbefore stated.

- B. Occupation or Residential Use of Partially Completed Dwelling House Prohibited. No dwelling house constructed on any of the residential lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed. The determination of whether the house shall have been substantially completed shall be made by the Committee and such decision shall be binding on all parties. The foregoing is subject to the rules, regulations and ordinances of the City of Noblesville and of its building commissioners or directors of planning or appropriate entity.
- C. Other Restrictions. All tracts of land in the Development shall be subject to the easements, restrictions and limitations of record appearing on the recorded plat of the subdivision, on recorded easements, rights-of-way, and also to all governmental zoning authority and regulation affecting the Development, all of which are incorporated herein by reference.

3. RESTRICTIONS CONCERNING SIZE, PLACEMENT AND MAINTENANCE OF DWELLING HOUSES AND OTHER STRUCTURES.

- A. Minimum Living Space Areas. The minimum square footage of living space of dwellings constructed on various residential lots in the Development, exclusive of porches, terraces, garages, carports, or accessory buildings shall be specified in the recorded plat. Basements shall not be included in the computation of the minimum living areas except for that portion of a walkout basement which is to be finished as a living area.
- B. Residential Set-Back Requirements.
 - i) In General. Unless otherwise provided in the Restrictions or on the recorded plat, no dwelling house or above-grade structure shall be constructed or placed on any residential lot in the Development except as provided herein.
 - ii) Definitions. "Side line" means a lot boundary line that extends from the road on which a lot abuts to the rear line of said lot. "Rear line" means the lot boundary that is the farthest from, and substantially parallel to, the road on which the lot abuts, except that on corner lots, it may be determined from either abutting road.
 - iii) Front Yards. The front building set-back lines shall be the designated number of feet from the right-of-way on the road upon which the lot abuts as set forth upon the plat of the Development.
 - iv) Side Yards. The side yard set-back lines shall not be less than nine (9) feet from either side line of the lot and the total of both side yards shall be not less than twenty percents (20%) of the minimum lot width.
 - v) Rear Yards. The rear set-back line shall be at least twenty (20) feet from the rear line.

- C. Fences and Trees. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Development, any fence must be approved by the Committee as to size, location, height and composition before it may be installed. A lot must have at least two (2) trees growing upon it in the front yard by the time the house is completed. Approval must be obtained by the Committee prior to planting of such trees as to size, species, and location
- D. Individual Yard Lights Required on Each Lot. At the time that the owner of each lot in the Development completes the construction of a home on his lot, he shall cause to have installed a dusk to dawn yard light in the front yard of his lot. The design, type and location of the yard light shall be as stated in the Plat Restrictions.
- E. Mailboxes. The owner of each lot in the Development shall cause to have installed a mailbox which shall be in accordance with the design, type and location stated in the Plat Restrictions.
- F. Exterior Construction. The finished exterior of every building constructed or placed on any lot in the development shall be of material acceptable to and approved by the Committee. All driveways must be paved with asphalt or concrete from their point of connection with the abutting street or road.
- G. Heating Plants and Garages. Every house in the Development must contain a heating plant installed in compliance with the required codes and capable of providing adequate heat for year-round human habitation of the house. Every house in the Development must have a least a two car garage, attached of the same architectural design and materials as that of the house constructed on the lot.
- H. Diligence in Construction. Every building whose construction or placement on any residential lot in the Development is begun shall be completed within twelve (12) months after the beginning of such construction or placement. No improvement which has been partially or totally destroyed by fire or otherwise shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.
- I. Prohibition of Used Structures. All structures constructed or placed on any numbered lot in the Development shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such lot.
- J. Maintenance of Lots and Improvements. The owner of any such lot in the Development shall at all times maintain the lot and any improvements situated thereon in such a manner as to prevent the lot or improvements from becoming unsightly; and specifically, such owner shall:
- i) Mow the lot at such times as may be reasonably required in order to prevent unsightly growth of vegetation and noxious weeds;
 - ii) Remove all debris and rubbish;
 - iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development;

- iv) Cut down and remove dead trees;
 - v) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly; and
 - vi) Within sixty (60) days following completion of a house on a lot, the owner shall landscape the lot, weather permitting.
- K. Association's Right to Perform Certain Maintenance. In the event that the owner of any lot in the Development shall fail to maintain his lot and any improvements situation thereon in accordance with the provisions of these Restrictions, the Association shall have the right, but not the obligation, by and through its agents or employees or contractors, to enter upon said lot and repair, mow, clean or perform such other acts as may be reasonable necessary to make such lot and improvements situated thereon, if any, conform to the requirements of these Restrictions. The cost therefor to the Association shall be added to and become a part of the annual charge to which said lot is subject and may be collected in any manner in which such annual charge may be collected. Neither the Association or any of its agents, employees, or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

4. PROVISIONS RESPECTING DISPOSAL OF SANITARY WASTE.

- A. Nuisance. No outside toilets shall be permitted on any lot in the Development (except during a period of construction and then only with the consent of the Committee), and no sanitary waste or any other wastes shall be permitted to enter any storm drain. By purchase of a lot, each owner agrees that any violation of this paragraph constitutes a nuisance which may be abated by the Indianapolis Water Company, the Developer or the Association in any manner provided at law or in equity. The cost or expense of abatement, including court costs and attorney's fees, shall become a charge or lien upon the lot, and may be collected in any manner provided by law or in equity for collection of a liquidated debt. Neither the Developer, nor the Association, nor the Indianapolis Water Company, nor any officer, agent, employee or contractor thereof, shall be liable for any damage which may result from enforcement of this paragraph.
- B. Construction of Sewage Lines. All sanitary sewage lines on the residential building lots shall be designed and constructed in accordance with the provisions and requirements of the City of Noblesville, Indiana, or other governing body.

5. GENERAL PROHIBITIONS AND REQUIREMENTS

- A. In General. No noxious or offensive activities shall be carried on any lot in the Development, nor shall anything be done on any of said lots that shall become or be an unreasonable annoyance or nuisance to any owner of another lot in the Development.

- B. Signs. No signs or advertisements shall be displayed or placed on any lot or structures in the Development without the prior written approval of the Committee except for real estate sales signs.
- C. Animals. No animals shall be kept or maintained on any lot in the Development except the usual household pets, and in such case, such household pets shall be kept reasonably confined so as not to become a nuisance.
- D. Vehicle Parking. No trucks (one ton or larger), campers, trailers, commercial vehicles, boats, or similar vehicles shall be parked on any street or lot in the Development.
- E. Garbage and Other Refuse. No owner of a lot in the Development shall burn or permit the burning out of doors of garbage or other refuse, nor shall any such owner accumulate or permit the accumulation out of doors of such refuse on his lot except as may be permitted in Subparagraph F below. All houses built in the Development shall be equipped with a garbage disposal unit.
- F. Fuel Storage Tanks and Trash Receptacles. Every tank for the storage of fuel that is installed outside any building in the Development shall be buried below the surface of the ground. Any receptacle for trash, rubbish or garbage shall be so placed and kept as not to be visible from any street or lot within the Development at any time, except at the times when refuse collections are being made.
- G. Model Homes. No owner on any lot in the Development shall build or permit the building upon said lot of any dwelling house that is to be used as a model home or exhibit house without permission to do so from the Developer.
- H. Temporary Structures. No temporary structure of any kind, such as a house, trailer, tent, storage building, garage or other outbuilding shall be placed or erected on any lot, nor shall any overnight camping be permitted on any lot.
- I. Ditches and Swales. It shall be the duty of the owner on every lot in the Development on which any part of any open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon the lot continuously unobstructed and in good repair, and to provide for the installation of such culverts upon said lot as may be reasonably necessary to accomplish the purposes of this subsection. All owners, if necessary, shall install dry culverts between the road rights-of-way and their lots in conformity with specifications and recommendations of the City of Noblesville, Hamilton County, Indiana, and of the appropriate zoning bodies.
- J. Utility Services. Utility services shall be installed underground in or adjacent to public rights-of-way to minimize removal of trees. No utility services shall be installed, constructed, repaired, replaced and/or removed under finished streets except by jacking, drilling or boring and shall required the approval of the appropriate governmental body.
- K. Wells and Septic Tanks. No water wells shall be drilled on any of the lots nor shall any septic tanks be installed on any of the lots in the Development.

- L. Prohibition of Antennas. No exposed radio, cable, television antennas and/or dishes shall be permitted within the Development.

6. BROOKS LANDING DEVELOPMENT CONTROL COMMITTEE

- A. Statement of Purposes and Powers. The committee shall regulate the external design, appearance, use, location and maintenance of lands subject to these Restrictions and improvements thereon, in such a manner as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography.
- i) Generally. No dwelling, building structure or improvement of any type or kind shall be constructed or placed on any lot in the Development without the prior approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee by the owner of the lot requesting authorization from the Committee. Such written application shall be in the manner and form prescribed from time to time by the Committee, and shall be accompanied by three (3) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon the lot and the location of the improvement proposed to be constructed or placed upon the lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other materials or information which the Committee may require. All building plans and drawings required to be submitted to the Committee shall be drawn to a scale of $\frac{1}{4}'' = 1'$ and all plot plans shall be drawn to a scale of $1'' = 30'$, or to such other scale as the Committee shall require.
- ii) Power of Disapproval. The committee may refuse to grant permission to construct, place or make the requested improvement, when:
- (a) The plans, specifications, drawings or other materials submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of these Restrictions;
- (b) The design, building materials or color scheme of a proposed improvement is not in harmony with the general surroundings of the lot or with adjacent buildings or structures;
- (c) The proposed improvement, or any part hereof, would in the opinion of the Committee be contrary to the interests, welfare or rights of all or any part of other owners.
- iii) Power to Grant Variances. The Committee may allow reasonable variances or adjustments of these Restrictions where literal application would result in unnecessary hardship, but any such variance or adjustment shall be granted in conformity with the general intent and purposes of these Restrictions and no variance or adjustment shall be granted which is materially detrimental or injurious to other lots in the Development.

- B. Duties of Committee. The Committee shall approve or disapprove proposed improvements within a reasonable time after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons.
- C. Liability of Committee. Neither the Committee nor any agent thereof, nor the Developer, 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 Committee does not make 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.
- D. Inspection. The Committee may inspect work being performed with its permission to assure compliance with these Restrictions and applicable regulations.
- E. Continuation of Committee. When the Developer notifies the Association of discontinuance of his Developmental Control Committee, then the Directors of the Association, or their designees shall continue the functions of the Committee with like powers.
7. RULES GOVERNING BUILDING ON SEVERAL CONTIGUOUS LOTS HAVING ONE OWNER. Whenever two or more contiguous lots in the Development shall be owned by the same person, and such owner shall desire to use two or more of said lots as a site for a single-dwelling house, he shall apply in writing to the Committee for permission to so use said lots. If permission for such a use shall be granted, the lots constituting the site for such single-dwelling house shall be treated as a single lot for the purpose of applying these Restrictions to said lots, so long as the lots remain improved with one single-dwelling house.
8. PROPERTY RIGHTS IN BLOCKS
- A. Landscape and Common Area Blocks, Brooks Landing
- i) LANDSCAPE BLOCKS. Certain alphabetical blocks are created for the reserve for the benefit of the Developer and the Property Owners Association for the installation, construction, maintenance, repair, reconstruction and replacement of earthen mounds, plantings and other landscaping, walls, fences, entryways, columns, landscape irrigation systems, accent lighting systems, street lights, subdivision identification and other items.
- ii) OWNERSHIP, USE AND ENJOYMENT OF LANDSCAPE EASEMENT BLOCKS AND COMMON AREA BLOCKS. "Commons" and "Commons Area" and "Landscape Easements" shall mean those areas set aside for conveyance to the Association, as shown on the plat. Any commons depicted on the recorded plat of the Development shall remain private, and no act of the Developer, including the execution of the recording of the plat, is intended to be, or shall be construed as, a dedication to the public of the commons.

iii) A license upon such terms and conditions as the Developer, and the successors, assigns or licensees of the Developer, shall from time to time grant, for the use and enjoyment of the commons, is granted to the persons who are from time to time members of the Association. Ownership of any commons shall be conveyed in fee simple title, free of financial encumbrances to the Association upon their completion. Such conveyance shall be subject to easements and restrictions of record, and such other conditions as the Developer may at the time of such conveyance deem appropriate. Such conveyance shall be deemed to have been accepted by the Association and those persons who shall from time to time be members thereof upon the recording of a deed or deeds conveying such commons to the Association.

9. **BROOKS LANDING PROPERTY OWNER'S ASSOCIATION**

- A. **In General.** There has been or will be created, under the laws of the State of Indiana, a not-for-profit corporation to be known as Brooks Landing Property Owner's Association, which is referred to as the "Association". Every owner of a residential lot in the Development shall be a member of the Association and shall be subject to all the requirements and limitations imposed in the Restrictions on other owners of residential lots within the Development and on members of the Association, including those provisions with respect to the payment of a semi-annual charge.
- B. **Classes of Membership.** The Association shall have two classes of voting membership:
- C. **Class A.** Class A members shall be all owners with the exception of the Developer and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they themselves determine, but in no event shall more than one vote be cast with respect to any lot.
- D. **Class B.** The Class B member(s) shall be the Developer, who shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:
- i) On the date the Developer sells the last lot and no longer owns any lots or land in the Development; or
 - ii) On January 1, 2004
- E. **Board of Directors.** The members shall elect a Board of Directors of the Association as prescribed by the Association's By-Laws. The Board of Directors shall manage the affairs of the Association.
- F. **Professional Management.** No contract or agreement for professional management of the Association shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause without termination fee by written notice of ninety (90) days or less.

G. Responsibilities of the Association.

- i) The Association shall maintain and repair the Common Areas and Landscape Easements shown on the plat(s) including improvements thereof.
- ii) The Association shall maintain the landscaping located in Landscape Easement and the landscaping and any entrance treatments located in the right-of-way at the entrance and shall keep such areas in a neat, clean and presentable condition at all times.
- iii) The Association shall procure and maintain casualty insurance for the Common Areas, liability insurance (including directors; and officers' insurance) and such other insurance as it deems necessary or advisable.
- iv) The association shall maintain the intersection lighting, island lighting, mailboxes, yard lights and street signs and an easement is granted to the Association for this purpose.
- v) The Association may contract for such services as management, snow removal, security control, trash removal, and such other services as the Association deems necessary or advisable.
- vi) The Association shall provide a means for the promulgation and enforcement of regulations necessary to govern the use and enjoyment of Common Areas.

10. COVENANT FOR MAINTENANCE ASSESSMENTS

- A. Creation of the Lien and Personal Obligation of Assessments. Each owner of any lot in the subdivision, except the Developer, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) semi-annual assessments or charges; and (2) special assessments for capita improvements and operating deficits; such assessment to be established and collected as hereinafter provided. The semi-annual and special assessments, together with interest, cost, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. No charge or assessment shall ever be levied by the Association against the Developer.
- B. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents in the properties and for the improvement and maintenance of the Common Area and improvements, operated or maintained by the Association, and the landscape easements on the Development and other purposes as specifically provided herein.
- C. Special Assessments for Capital Improvements and Operating Deficits. In addition to the semi-annual assessments authorized above, the Association may levy a special

assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

- D. Notice and Quorum for Any Action Authorized Under Sections C and D. Written notice for any meeting called for the purpose of taking any action authorized under Section C or D shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.
- E. Date of Commencement of Semi-Annual Assessments: Due Dates. The semi-annual assessment provided for herein shall commence for each lot on the date of conveyance to the owner by deed or on the date the owner signs a land contract to purchase a lot. The Board of Directors shall fix any increase in the amount of the assessment at least thirty (30) days in advance of the effective date of such increase. Written notice for special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every owner subject thereto. The due dates for all assessments shall be January 1 and July 1 of each calendar year, and in the case of sale or transfer of a lot, a pro rata share of the assessment for the period between the closing date and the next applicable due date shall be collected at closing. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate from the Association regarding the status of assessment for any lot shall be binding upon the Association as of the date of its issuance.
- F. Effect of Non-Payment of Assessments: Remedies of the Association. Any charge levied or assessed against any lot, together with interest and other charges or costs as hereinafter provided, shall become and remain a lien upon that lot until paid in full and shall also be a personal obligation of the owner or owners of that lot at the time the charge fell due. Such charge shall bear interest at the rate of twelve (12%) per annum until paid in full. If, in the opinion of the Board of Directors of the Association, such charge has remained due and payable for an unreasonably long period of time, the Board may, on behalf of the Association, institute such procedures, either at law or in equity, by foreclosure or otherwise, to collect the amount owing in any court of competent jurisdiction. The owner of the lot or lots subject to the charge, shall, in addition to the amount of the charge at the time legal action is instituted, be obliged to pay an expense of costs, including attorneys' fees, incurred by the Association in collection the same. Every owner of a lot in the Development and any person who may acquire any interest in such lot, whether as an owner or otherwise, is hereby notified, and by acquisition of such interest agrees, that any such liens which may exist upon said lot at the time of the

acquisition of such interest are valid liens and shall be paid. Every person who shall become an owner of a lot in the Development is hereby notified that by the act of acquiring, making such purchase or acquiring such title, such person shall be conclusively held to have Covenanted to pay the Association all charges that the Association shall make pursuant to this paragraph of the Restrictions.

- G. Subordination of the Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof. Provided, however, the sale or transfer of any lot pursuant to the foreclosure of any first mortgage on such lot (Without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer.
- H. Suspension of Privileges of Membership. Notwithstanding any other provision contained herein, the Board of Directors of the Association shall have the right to suspend the voting rights, if any, and the services to be provided by the Association together with the right to use the facilities of the Association, if any, member (i) for any period during which any of the Association's charges or any fines assessed under these Restrictions owed by the member remains unpaid; (ii) during the period of any continuing violation of the restrictive covenants for the Development, after the existence of the violation shall have been declared by the Board of Directors of the Association; and (iii) during the period of any violation by the Articles of Incorporation, By-Laws, or regulations of the Association.

11. REMEDIES.

- A. In General. The Association or any party to whose benefit these Restriction incur, including the Developer, may proceed at law or in equity to prevent the occurrence of continuation of any violation of these Restriction, but neither the Developer nor the Association shall be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any of these Restrictions.
- B. Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of these Restrictions shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, reoccurrence or continuance of such violation or violations of these Restrictions.

12. EFFECT OF BECOMING AN OWNER.

The owners of any lot subject to these Restrictions by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from the Developer or a subsequent owner of such lot, shall accept such deed and execute such contract subject to each and every Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the owner acknowledges the rights and powers of the Developer, Committee and of the Association with respect to these Restrictions, and also, for themselves, their heirs, personal representatives, successors and assigns, such owners

covenant and agree and consent to and with the Developer, Committee and the Association and to and with the owners and subsequent owners of each lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreements.

13. **TITLES.**

The titles preceding the various paragraphs and subparagraphs of the Restrictions are for convenience of reference only, and none of them shall be used as an aid to the construction of any provisions of the Restrictions. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

14. DURATION.

The foregoing Covenants and Restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2080, at which time said Covenants and Restrictions shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part by vote of those persons who are then the owners of a majority of the numbered lots in the development.

15. SEVERABILITY.

Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.

IN TESTIMONY WHEREOF, witness the signature of the Declarant this 17TH day of November 1998.

Macs Landing L.L.C.

By: 

STATE OF INDIANA)

)SS:

COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Macs Landing, L.L.C., by its President, who, for and on behalf of said Limited Liability Company, Acknowledged the execution of the foregoing Declaration of Restrictions of Brooks Landing.

Subscribed and sworn to before me this 12th day of November, 1998

Holly J. Lee
NOTARY PUBLIC Holly J. Lee
A Resident of Hamilton County

My Commission Expires: April 1, 2000



This instrument prepared by Michael H. Stikeleather, Attorney at Law,
8395 Keystone Crossing, Suite 315, Indianapolis, Indiana 46240

EXHIBIT A

A part of the South Half of the Southeast Quarter of Section 1, Township 17 North, Range 5 East, and a part of the North Half of the Northeast Quarter of Section 12, Township 17 North, Range 5 East in Hamilton County, Indiana, more particularly described as follows:

Commencing at a railroad spike in 104th Street at the Southeast Corner of the North Half of the Northeast Quarter of Section 12, Township 17 North, Range 5 East; thence along the south line of said North Half, South 89 degrees 56 minutes 16 seconds West 909.53 feet to the Point of Beginning; thence continuing along the south line of said North Half, South 89 degrees 56 minutes 16 seconds West 915.12 feet to a railroad spike in 104th Street; thence parallel with the west line of said North Half, North 04 degrees 25 minutes 47 seconds East 1329.92 feet to a 5/8" x 24" rebar with a plastic cap stamped "P. I. Cripe, Inc." (hereinafter called a PIC rebar) on the north line of said North Half; thence along said north line North 89 degrees 55 minutes 09 seconds East 344.81 feet to a PIC rebar; thence passing into the South Half of the Southeast Quarter of Section 1, Township 17 North, Range 5 East, North 00 degrees 37 minutes 47 seconds East 332.41 feet to a PIC rebar; thence North 88 degrees 46 minutes 54 seconds East 85.89 feet to a PIC rebar; thence South 84 degrees 54 minutes 29 seconds East 102.25 feet to the centerline of Thor Run Creek (the next 22 calls being along said creek): 1. South 75 degrees 02 minutes 54 seconds East 37.89 feet; 2. North 66 degrees 15 minutes 48 seconds East 49.18 feet; 3. North 60 degrees 33 minutes 09 seconds East 51.97 feet; 4. South 85 degrees 14 minutes 56 seconds East 32.24 feet; 5. South 36 degrees 06 minutes 08 seconds East 43.87 feet; 6. South 85 degrees 36 minutes 30 seconds East 18.22 feet; 7. North 57 degrees 26 minutes 43 seconds East 16.34 feet; 8. South 68 degrees 39 minutes 37 seconds East 56.72 feet; 9. South 22 degrees 19 minutes 56 seconds East 44.14 feet; 10. South 25 degrees 58 minutes 38 seconds West 39.95 feet; 11. South 25 degrees 00 minutes 06 seconds East 46.90 feet; 12. South 58 degrees 11 minutes 15 seconds East 15.46 feet; 13. North 81 degrees 41 minutes 53 seconds East 25.35 feet; 14. North 57 degrees 19 minutes 40 seconds East 85.02 feet; 15. North 85 degrees 21 minutes 00 seconds East 33.48 feet; 16. South 49 degrees 52 minutes 33 seconds East 22.20 feet; 17. South 19 degrees 13 minutes 05 seconds West 53.33 feet; 18. South 00 degrees 32 minutes 08 seconds East 104.34 feet; 19. returning to Section 12, South 41 degrees 31 minutes 28 seconds East 126.75 feet; 20. South 73 degrees 49 minutes 08 seconds East 32.68 feet; 21. returning to Section 1, North 51 degrees 49 minutes 50 seconds East 75.11 feet; 22. North 34 degrees 48 minutes 20 seconds East 20.82 feet; thence South 06 degrees 26 minutes 49 seconds West 335.14 feet; thence South 89 degrees 42 minutes 21 seconds East 44.79 feet; thence South 00 degrees 17 minutes 39 seconds West 190.00 feet; thence North 89 degrees 42 minutes 21 seconds West 190.00 feet; thence South 25 degrees 58 minutes 51 seconds West 453.73 feet; thence South 52 degrees 56 minutes 28 seconds West 31.83 feet; thence South 00 degrees 03 minutes 44 seconds East 109.21 feet; thence North 89 degrees 56 minutes 16 seconds East 50.78 feet; thence South 00 degrees 03 minutes 44 seconds East 285.00 feet to the Point of Beginning containing 34.87 acres more or less.

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23.00
(1x) 1.00
N2020C

SECOND AMENDMENT TO DECLARATION OF COVENANTS AND RESTRICTIONS FOR BROOKS LANDING SUBDIVISION

THIS SECOND AMENDMENT made by the undersigned, being all the owners of lots in the subdivision known as Brooks Landing, and in consideration of the terms and conditions stated herein and other good and valuable consideration the receipt of which is hereby acknowledged do hereby agree to and do hereby amend the Declaration of Covenants and Restrictions regarding the said subdivision executed by Macs Landing, LLC, an Indiana limited liability company, on November 12, 1998 and recorded February 12, 1999 as Instrument Number 9909909504 in the office of the Recorder of Hamilton County, Indiana ("Declaration") as amended by Amendment to Declaration of Covenants and Restrictions for Brooks Landing Subdivision recorded December 9, 1999 as Instrument Number 9970897 in the office of the Recorder of Hamilton County, Indiana ("First Amendment") and amend the First Amendment to include the following changes:

1. Any reference in the First Amendment to November 12, 1999 is hereby deleted and substituted therefor "November 12, 1998"

2. Paragraph 17 is hereby added:

" 17. **RECREATION AREA.**

200000019715
Filed for Record in
HAMILTON COUNTY, INDIANA
MARY L CLARK
On 04-25-2000 At 02:20 pm.
AMEND DECL 33.00

M.L.C.

A. **Lot 1.** Lot numbered 1 on the Plat of the Development recorded February 12, 1999 at Plat Cabinet 2, Slide 224 in the office of the Recorder of Hamilton County, Indiana ("hereinafter referred to as Plat") is hereby removed from the terms, conditions, covenants and restrictions of the Declaration and First Amendment and any plat restrictions set forth in or accompanying the Plat.

B. **Recreation Area.** As soon as reasonably practical after the date of this Second Amendment, the Developer, its successors, assigns, or designees, shall develop Lot 1 as a recreation area for the benefit of those owners of lots in the Development and Acquired Property (as that term is defined in the First Amendment). Such recreation area may include, but not necessarily be limited to, a swimming pool, a clubhouse, a suntan deck, and basketball and tennis courts (hereinafter referred to as "Recreation Area"). The Developer, its successors, assigns, or designees shall have sole controlling discretion regarding the development of the Recreation Area including, but not limited to, layout, materials, type of constructions, financing, and time of completion. At the time of completion of the Recreation Area, the Developer, its successors, assigns, or designees shall (i) either declare such Recreation Area a part of the Common Area and subject to the covenants and restrictions of the Declaration and any amendments thereto, and to the restrictions in the plat, and convey the Recreation Area to the Association, or (ii) impose a second declaration of covenants, restrictions, and plat restrictions of whatever type over all of the Recreation Area which shall supercede the Declaration and any amendments thereto and any plat restrictions associated with the Plat, convey the same to the Association. Notwithstanding the conveyance to the Association, The Developer, its successors, assigns, and designees may have the right to use a part of any structure constructed on the Recreation Area as a sales office so long as such sales office shall not interfere with the use of the Recreation Area for recreational activities.

C. **Assessments.** Once the Recreation Area is conveyed to the Association, the Association shall maintain, upgrade, replace, and repair the Recreation Area as it seems fit. The Association shall have the right to develop any rules and regulations regarding the use and other activities associated with the Recreation Area. As part of the Section 10 of the Declaration, **COVENANT FOR MAINTENANCE ASSESSMENT**, the Association shall have the right to assess the Owner or Owners of any Lot or Lots in the Development to fulfill its obligations under this subparagraph 17.C."

IN WITNESS WHEREOF, the undersigned do hereby execute this amendment as of the date(s) below written and shall become effective as of the date of execution by the last signatory hereto:

Robert E. Updike
Robert E. Updike

Date: 4-7-2000

OWNERS OF LOT 51

James Timberman
James Timberman

Date: 4/16/2000

OWNERS OF LOT 67

Wayne Weber
Wayne Weber

Date: 4/11/00

OWNERS OF LOT 32

Howard A. Polk
Howard A. Polk

Date: 4-7-00

OWNERS OF LOT 25

Timothy J. Fenimore
Timothy J. Fenimore

Date: 4/11/2000

OWNERS OF LOT 78

Corey D. Barnett
Corey D. Barnett

Date: 4/11/2000

OWNERS OF LOT 40

Elaine A. Updike
Elaine A. Updike

Date: April 7, 2000

Lisa Timberman
Lisa Timberman

Date: 4-11-00

Claudia Weber
Claudia Weber

Date: 4-11-00

Geralyn A. Polk
Geralyn A. Polk

Date: 4/11/00

Jennifer A. Fenimore
Jennifer A. Fenimore

Date: 4/11/00

Bobbi Barnett
Bobbi Barnett

Date: 4/11/00

Todd S. Tucker
Todd S. Tucker

Date: 4/11/00

OWNER OF LOT 35

Roger S. Tucker
Roger S. Tucker

Date: 4-11-00

Carol Tucker
Carol Tucker

Date: 4/11/00

OWNERS OF LOTS 27 & 82

MACS LANDING, LLC, an Indiana limited liability company

BY: Pam, Ltd. (AKA Pam, L.P.), Managing Member and an Indiana limited partnership

BY: Pam, Inc., an Indiana corporation, and the managing general partner of Pam, Ltd.

By: Charles D. Staton
Charles D. Staton, President of Pam, Inc.

Date: 4/20/2000

OWNER OF ALL REMAINING LOTS IN BROOKS LANDING SUBDIVISION

SECOND AMENDMENT TO DECLARATION OF COVENANTS AND RESTRICTIONS
FOR BROOKS LANDING SUBDIVISION NOTARY ACKNOWLEDGEMENT AND
PREPARERS CERTIFICATE

State of Indiana)
) SS:
County of Hamilton)

Before me, a Notary Public in and for said County and State, personally appeared on
April 7, 2000 Robert L. Updike, an individual over the age of eighteen, and an owner of lot
51 in Brooks Landing subdivision, who, after being duly sworn, acknowledged the execution of
the above Second Amendment to Declaration of Covenants and Restrictions for Brooks Landing
Subdivision as his free act and deed and stated that the facts therein are true.



Ann P. Kenney
Signature
NOTARY PUBLIC
ANN P. KENNEY
Printed

My County of Residence: Marion

My Commission Expires: 5-15-2000

State of Indiana)
) SS:
County of Hamilton)

Before me, a Notary Public in and for said County and State, personally appeared on
April 7, 2000 Elaine A. Updike, an individual over the age of eighteen, and an owner of lot
51 in Brooks Landing subdivision, who, after being duly sworn, acknowledged the execution of
the above Second Amendment to Declaration of Covenants and Restrictions for Brooks Landing
Subdivision as his free act and deed and stated that the facts therein are true.



Ann P. Kenney
Signature
NOTARY PUBLIC
ANN P. KENNEY
Printed

My County of Residence: Marion

My Commission Expires: 5-15-2000

State of Indiana)
) SS:
County of Hamilton)

Before me, a Notary Public in and for said County and State, personally appeared on 4/18, 2000 James Timberman, an individual over the age of eighteen, and an owner of lot 67 in Brooks Landing subdivision, who, after being duly sworn, acknowledged the execution of the above Second Amendment to Declaration of Covenants and Restrictions for Brooks Landing Subdivision as his free act and deed and stated that the facts therein are true.



Helen D. White
Signature

NOTARY PUBLIC

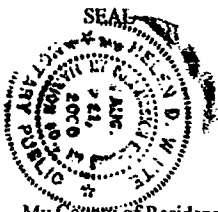
Helen D. White
Printed

My County of Residence: Marion

My Commission Expires: Aug 21, 2000

State of Indiana)
) SS:
County of Hamilton)

Before me, a Notary Public in and for said County and State, personally appeared on 4/11/00, 2000 Lisa Timberman, an individual over the age of eighteen, and an owner of lot 67 in Brooks Landing subdivision, who, after being duly sworn, acknowledged the execution of the above Second Amendment to Declaration of Covenants and Restrictions for Brooks Landing Subdivision as her free act and deed and stated that the facts therein are true.



Helen D. White
Signature

NOTARY PUBLIC

Helen D. White
Printed

My County of Residence: Marion

My Commission Expires: August 21, 2000

State of Indiana)
) SS:
County of Hamilton)

Before me, a Notary Public in and for said County and State, personally appeared on 4/11/00, 2000 Wayne Weber, an individual over the age of eighteen, and an owner of lot 32 in Brooks Landing subdivision, who, after being duly sworn, acknowledged the execution of the above Second Amendment to Declaration of Covenants and Restrictions for Brooks Landing Subdivision as his free act and deed and stated that the facts therein are true.



Helen D. White
Signature

NOTARY PUBLIC

Helen D. White
Printed

My County of Residence: Marion

My Commission Expires: August 21, 2000

State of Indiana)
) SS:
County of Hamilton)

Before me, a Notary Public in and for said County and State, personally appeared on 4/11/00, 2000 Wayne Weber, an individual over the age of eighteen, and an owner of lot 32 in Brooks Landing subdivision, who, after being duly sworn, acknowledged the execution of the above Second Amendment to Declaration of Covenants and Restrictions for Brooks Landing Subdivision as his free act and deed and stated that the facts therein are true.



Helen D. White
Signature

NOTARY PUBLIC

Helen D. White
Printed

My County of Residence: Marion

My Commission Expires: August 21, 2000

State of Indiana)
) SS:
County of Hamilton)

Before me, a Notary Public in and for said County and State, personally appeared on April 7, 2000 Howard A. Polk, an individual over the age of eighteen, and an owner of lot 25 in Brooks Landing subdivision, who, after being duly sworn, acknowledged the execution of the above Second Amendment to Declaration of Covenants and Restrictions for Brooks Landing Subdivision as his free act and deed and stated that the facts therein are true.



Ann P. Kenney
Signature

NOTARY PUBLIC

ANN P KENNEY
Printed

My County of Residence: Marion

My Commission Expires: 5-15-2000

State of Indiana)
) SS:
County of Hamilton)

Before me, a Notary Public in and for said County and State, personally appeared on 4/18, 2000 GERALYN A. Polk, an individual over the age of eighteen, and an owner of lot 25 in Brooks Landing subdivision, who, after being duly sworn, acknowledged the execution of the above Second Amendment to Declaration of Covenants and Restrictions for Brooks Landing Subdivision as his free act and deed and stated that the facts therein are true.



Helen D. White
Signature

NOTARY PUBLIC

Helen D. White
Printed

My County of Residence: Marion

My Commission Expires: Aug. 21, 2000

State of Indiana)
) SS:
County of Hamilton)

Before me, a Notary Public in and for said County and State, personally appeared on 4/11/00, 2000 Timothy J. Fenimore, an individual over the age of eighteen, and an owner of lot 78 in Brooks Landing subdivision, who, after being duly sworn, acknowledged the execution of the above Second Amendment to Declaration of Covenants and Restrictions for Brooks Landing Subdivision as his free act and deed and stated that the facts therein are true.



Helen D. White
Signature

NOTARY PUBLIC

Helen D. White
Printed

My County of Residence: Marion

My Commission Expires: August 24, 2000

State of Indiana)
) SS:
County of Hamilton)

Before me, a Notary Public in and for said County and State, personally appeared on 4/11/00, 2000 Jennifer A. Fenimore, an individual over the age of eighteen, and an owner of lot 25 in Brooks Landing subdivision, who, after being duly sworn, acknowledged the execution of the above Second Amendment to Declaration of Covenants and Restrictions for Brooks Landing Subdivision as his free act and deed and stated that the facts therein are true.



Helen D. White
Signature

NOTARY PUBLIC

Helen D. White
Printed

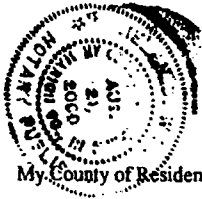
My County of Residence: Marion

My Commission Expires: August 21, 2000

State of Indiana)
) SS:
County of Hamilton)

Before me, a Notary Public in and for said County and State, personally appeared on 4/11, 2000 Corey D. Barnett, an individual over the age of eighteen, and an owner of lot 40 in Brooks Landing subdivision, who, after being duly sworn, acknowledged the execution of the above Second Amendment to Declaration of Covenants and Restrictions for Brooks Landing Subdivision as his free act and deed and stated that the facts therein are true.

SEAL



Helen D. White
Signature

NOTARY PUBLIC

Helen D. White
Printed

My County of Residence: Marion

My Commission Expires: August 21, 2000

State of Indiana)
) SS:
County of Hamilton)

Before me, a Notary Public in and for said County and State, personally appeared on 4/11, 2000 Bobbi Barnett, an individual over the age of eighteen, and an owner of lot 40 in Brooks Landing subdivision, who, after being duly sworn, acknowledged the execution of the above Second Amendment to Declaration of Covenants and Restrictions for Brooks Landing Subdivision as his free act and deed and stated that the facts therein are true.

SEAL



Helen D. White
Signature

NOTARY PUBLIC

Helen D. White
Printed

My County of Residence: Marion

My Commission Expires: August 21, 2000

State of Indiana)
) SS:
County of Hamilton)

Before me, a Notary Public in and for said County and State, personally appeared on 4/11, 2000 Todd S. Tucker, an individual over the age of eighteen, and an owner of lot 35 in Brooks Landing subdivision, who, after being duly sworn, acknowledged the execution of the above Second Amendment to Declaration of Covenants and Restrictions for Brooks Landing Subdivision as his free act and deed and stated that the facts therein are true.



Helen D. White
Signature

NOTARY PUBLIC

Helen D. White
Printed

My County of Residence: Marion

My Commission Expires: August 21, 2000

State of Indiana)
) SS:
County of Hamilton)

Before me, a Notary Public in and for said County and State, personally appeared on 4/11, 2000 Roger S. Tucker, an individual over the age of eighteen, and an owner of lots 27 and 82 in Brooks Landing subdivision, who, after being duly sworn, acknowledged the execution of the above Second Amendment to Declaration of Covenants and Restrictions for Brooks Landing Subdivision as his free act and deed and stated that the facts therein are true.



Helen D. White
Signature

NOTARY PUBLIC

Helen D. White
Printed

My County of Residence: Marion

My Commission Expires: August 21, 2000

State of Indiana)
) SS:
County of Hamilton)

Before me, a Notary Public in and for said County and State, personally appeared on 4/11, 2000 Carol Tucker, an individual over the age of eighteen, and an owner of lots 27 and 82 in Brooks Landing subdivision, who, after being duly sworn, acknowledged the execution of the above Second Amendment to Declaration of Covenants and Restrictions for Brooks Landing Subdivision as his free act and deed and stated that the facts therein are true.

SEAL



Helen D. White
Signature

NOTARY PUBLIC

HELEN D White
Printed

My County of Residence: Marion

My Commission Expires: August 24, 2000

State of Indiana)
) SS:
~~County of Hamilton~~)

Before me, a Notary Public in and for said County and State, personally appeared on April 20, 1999 Charles D. Staton, President of Pam, Inc., the managing general partner of Pam, Ltd. (a.k.a. Pam, L.P.), a member of Macs Landing, LLC and an Indiana Limited Partnership, who, after being duly sworn, acknowledged the execution of the above Second Amendment of Declaration of Covenants and Restrictions for Brooks Landing Subdivision as his free act and deed on behalf of the said limited liability company and stated that the facts therein are true.



Nora S. Cooper
Signature

NOTARY PUBLIC

NORA S. COOPER
Printed

My County of Residence: DELAWARE

My Commission Expires: JUNE 27, 2000

PREPARER'S CERTIFICATE

This Second Amendment to Declaration of Covenants and Restrictions for Brooks Landing Subdivision prepared by Michael H. Stikeleather, Attorney-at-Law, 8395 Keystone Crossing, Suite 315, Indianapolis, Indiana 46240.