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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CARLTON HEIGHTS

THIS DECLARATION, made on the date hereinafter set forth, by McPab Enterprises, Inc., an Indiana corporation with its principal office in Hamilton County, Indiana, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Hamilton County, State of Indiana, which is more particularly described as follows:

The East Half of the Northwest Quarter of Section 15, Township 19 North, Range 4 East. Containing 80.57 acres, more or less, (Measured; 80 acres more or less, Description of Record).

EXCEPT:

A part of the Northwest Quarter of Section 15, Township 19 North, Range 4 East located in Noblesville, Hamilton County, Indiana, being more specifically described as follows:

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Beginning at the Southwest corner of the East Half of the Northwest Quarter of Section 15, Township 19 North, Range 4 East, said Point of Beginning being colinear with and equidistant from the Southwest corner and the Southeast corner (stone found) of said Northwest Quarter; thence North 00 degrees 28 minutes 44 seconds East (assumed bearing) 192.00 feet on and along the West line of the East Half of said North Quarter; thence North 89 degrees 10 minutes 55 seconds East 226.93 feet parallel with the South line of said Northwest Quarter; thence South 00 degrees 28 minutes 44 seconds West 192.00 feet parallel with the West line of the East Half of said Northwest Quarter to the South line of said Northwest Quarter; thence South 89 degrees 10 minutes 55 seconds West 226.93 feet to the POINT OF BEGINNING. Containing 1.00 acres, more or less, being subject to all applicable easements and rights-of-way of record.

With exception containing 79.57 acres, more or less.

ALSO EXCEPT:

Part of the Northwest Quarter of Section 15, Township 19 North, Range 4 East in Hamilton County, Indiana described as follows:

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Commencing at Southeast corner of the Northwest Quarter of Section 15, Township 19 North, Range 4 East in Hamilton County, Indiana; thence South 89 degrees 10 minutes 55 seconds West on the South line of said Northwest Quarter 767.41 feet to the Point of Beginning of the real estate herein described, said point being North 89 degrees 10 minutes 55 seconds East 1875.54 feet from the Southwest corner of said Northwest Quarter; thence North 00 degrees 49 minutes 05 seconds West 191.95 feet; thence North 29 degrees 46 minutes 23 seconds West 86.42 feet; thence South 60 degrees 13 minutes 37 seconds West 96.18 feet; thence South 00 degrees 49 minutes 05 seconds East 221.01 feet to a point on the South line of said Northwest Quarter which bears North

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89 degrees 10 minutes 55 seconds East 1749.54 feet from the Southwest corner of said Northwest Quarter; thence North 89 10 minutes 55 seconds East on said South line 126.00 feet to the Point of Beginning; containing 0.693 acre, more or less.

WHEREAS, Declarant is recording in the Office of the Hamilton County Recorder, on the same date of the recording of this Declaration, a Plat of the above-described real estate which Plat is recorded in Plat Book 14, at page 71-72; and

WHEREAS, it is the desire of Declarant to subject the real estate above-described to the following covenants.

NOW, THEREFORE, Declarant hereby declares that all the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of the property and shall run with the land and be binding on all parties who have any right, title or interest in the described property, or any part thereof, their heirs, successors, or assigns, and shall inure to the benefit of each owner thereof.

Architectural Control - There is created with the recordation of these covenants an architectural control committee consisting of Carl L. Fogelsong, Perry Fogelsong, and a third party to be agreed upon by them, or three persons designated by Carl L. Fogelsong and Perry Fogelsong. The architectural control committee shall be known as Carlton Heights Architectural Control Committee and shall continue until the year 2011, unless a majority of the then owners of lots in the subdivision extend the functioning of the Architectural Control Committee for an additional 10 year period. No structure shall be placed on any lot within the subdivision until two sets of plans for such structure have been submitted to the Architectural Control Committee for review and approval. Upon submission of plans for construction of a structure on any lot in the subdivision, the Architectural Control Committee shall review the plans and make any changes or amendments thereto and return one set to the owner of the lot upon which the structure is to be constructed within thirty (30) days of the submission of such plans to the

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Architectural Control Committee. Any changes, amendments or alterations as indicated on the plans by the Architectural Control Committee shall be made prior to the construction of a structure on a lot. If the plans are not returned to the owner of any lot within thirty (30) days of submission to the Architectural Control Committee, the plans are deemed approved and construction pursuant to those plans is expressly authorized by the Architectural Control Committee.

Use of Land - Only one single-family home will be permitted on any lot within the subdivision. None of the lots in the subdivision may be improved, used or occupied for other than private residential purposes, and no flat or apartment house, though intended for residential purposes, may be erected thereon. No part of any lot herein shall be sold to any person or persons without the written consent of the Architectural Control Committee.

Required Size of Residence - Any one story home erected on a lot shall contain a minimum of 1,600 square feet of enclosed floor area. Any multiple story home or split level home erected on a lot shall contain a minimum of 1,000 square feet of enclosed floor area on the first floor. No multiple story or split level home shall have less than 1,800 square feet of liveable floor space. For purposes of this restriction, the term "floor area" means that portion of the home erected upon any lot on the foundation of the home, exclusive of open porches, garages or appurtenances. Floor area may include up to fifty percent (50%) of finished living area in a basement. Any person desiring to erect a home on a lot in this subdivision shall submit plans and specifications to the Carlton Heights Architectural Control Committee verifying compliance with this restriction.

Outside Storage Buildings - No outside storage buildings shall be constructed separate or apart from a home constructed on any lot without the prior written approval of the Carlton Heights Architectural Control Committee.

Time For Completion of Dwelling - Any single family dwelling must be completed for occupancy within nine (9) months

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from the date of commencement of construction. No improvement which has partially or totally been destroyed by fire or otherwise shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

Construction Materials and Site Plan - All construction materials shall be subject to review by the Carlton Heights Architectural Control Committee. The Committee shall review plans and specifications for conformity and harmony with existing structures, and a site plan for the location of any proposed building and its relation to existing topography and proposed finished floor elevation.

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.

Dusk to Dawn Lights - A dusk to dawn light shall be maintained on each lot within the subdivision by the owner of a lot from and after the completion of the construction of a home and for so long as a home remains on said lot.

Fences and Mailboxes - No fences shall be constructed on any areas reserved in the plat as an easement. No fences shall be constructed on any lot within the subdivision without prior written approval of the Carlton Heights Architectural Control Committee. Mailboxes must be approved, prior to placement, by the Carlton Heights Architectural Control Committee as to size, location, height, material and design.

Easements - The utility easements shown on the within plat are reserved as easement for use of city or county in which this subdivision is located, owners in this subdivision, and public utility companies for the installation, use, maintenance, repair, and removal of sewers, water mains, utility poles, wires and other facilities and utilities necessary or incidental to the common welfare and use and occupancy for residential purposes of the houses to be erected in this subdivision. No building or other structure, except walks or driveways, shall be erected or

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maintained upon, over, under, or across any such utility strip for any use except as set forth herein, and owners in the subdivision shall take their title to the land contained in such utility strip subject to the perpetual easement herein reserved.

The owners of lots 5 - 13, inclusive, in Section One of Carlton Heights, acquire with title to their respective lots, a joint duty to maintain the variable drainage and utility easement area shown on the plat.

Improvements Located on More Than One Lot - Should a person, firm or corporation own more than one lot and all or part of an adjoining lot, such owner may build a home across or near to the dividing line of said lots, but no closer than fifty (50) feet to the property line on the north, west, south and east of the property line of said combined lots.

Amendment - These covenants may be amended by a vote of seventy-five percent (75%) of the then lot owners of all the lots in the subdivision.

Animals - No livestock or farm animals shall be allowed to be kept on any lot in the subdivision. No animals shall be kept on any lot in the subdivision except usual household pets and so long as those are not kept, bred, or maintained for commercial purposes.

Maintenance of Lots and Improvements - The owner of any 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 the 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.

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Developer'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 situated thereon in accordance with the provisions of these restrictions, the Developer shall have the right, but not the obligation, by and through its agents and employees or contractors, to enter upon said lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such lot and improvements situation thereon, if any, conform to the requirements of these restrictions. The cost therefor to the Developer shall be collected in any reasonable manner from the Owner. Neither the Developer nor any of its agents, employees, or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

Boats, Trailers and Campers - No campers, trailers, boats or similar vehicles shall be stored or parked on any lot so as to be visible from any street in Carlton Heights or from any other lot in Carlton Heights. No trucks except pickup trucks may be parked overnight on any lot unless it is not visible from the streets in Carlton Heights or visible by occupants of other lots in Carlton Heights.

Satellite Receivers - No satellite receivers shall be permitted on any lot.

Swimming Pools - No above-ground swimming pools shall be placed, kept, or maintained on any lot in Carlton Heights.

Carlton Heights Property Owners Association - Every owner of a lot in Carlton Heights shall be a member of the Carlton Heights Property Owners Association upon taking title to a lot in Carlton Heights.

Creation of the Lien and Personal Obligation - The Declarant, for each lot owned within Carlton Heights, hereby covenants, and each owner of any lot 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) annual assessments or charges, and (2) special assessments for

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capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's 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 attorney's 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.

Purpose of Assessment - The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area.

Maximum Annual Assessment - Until January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment shall be Forty Dollars (\$40.00) per year for lots 5 - 13, inclusive, and Twenty Dollars (\$20.00) per year for all other lots in Carlton Heights.

- A. From and after January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.
- B. From and after January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment may be increased above five percent (5%) by a vote of two-thirds (2/3) of members maximum annual assessment may be increased above five percent (5%) by a vote of two-thirds (2/3) of members who are voting in person or by proxy, at a meeting duly called for this purpose.
- C. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Special Assessments - In addition to the annual assessments authorized above, the Association may levy, in any assessment

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year; a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

The owners of lots 5 - 13, inclusive, in Section One of Carlton Heights shall be assessed annually for the costs of maintaining the variable drainage and utility easement areas as they shall exist on these lots.

Notice and Quorum for Any Action Authorized Under Maximum Annual Assessment and Special Assessments - Written notice of any meeting called for the purpose of taking any action authorized under the paragraphs denoted Maximum Annual Assessment and Special Assessments 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 each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, 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.

Uniform Rate of Assessment - Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis.

Date of Commencement of Annual Assessments; Due Dates - The annual assessments provided for herein shall commence as to all lots on the 1st day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual

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assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Effect of Nonpayment of Assessments; Remedies of the Association - Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the owner personally obligated to pay the same, including an action to foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his lot.

Subordination of the Lien of Mortgages - 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. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due 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.

DECLARANT
McPab Enterprises, Inc.

By Carl L. Fogelberg
Carl L. Fogelberg, President

Attested:

Perry M. Fogelberg
Perry M. Fogelberg, Secretary

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STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State,
personally appeared officers of McPab Enterprises, Inc., Carl L.
Fogelsong, President, and Perry M. Fogelsong, Secretary, who
acknowledged the execution of the foregoing Declaration of
Covenants, Conditions and Restrictions to be their voluntary act
and deed.

Witness my hand and Notarial seal this 26th day of August,
1987.

[Handwritten Signature]

Douglas B. Floyd
Notary Public
Resident of Hamilton County

My commission expires:
March 6, 1990
This instrument prepared by Douglas B. Floyd, Attorney at Law,
198 South 9th Street, P.O. Box E, Noblesville, Indiana 46060.

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