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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

OF

CUMBERLAND ESTATES

THIS DECLARATION is made this 7th day of August, 1991 by CUMBERLAND ESTATES, L.P., an Indiana limited partnership (the "Developer").

Recitals

1. Developer is the owner of the real estate which is described in Exhibit "A" attached hereto and made a part hereof (the "Cumberland Estates Real Estate" or the "Initial Real Estate").
2. Developer intends to subdivide the Cumberland Estates Real Estate into residential lots.
3. Before so subdividing the Cumberland Estates Real Estate, Developer desires to subject the Cumberland Estates Real Estate to certain rights, privileges, covenants, conditions, restrictions, easements, assessments, charges and liens for the purpose of preserving and protecting the value and desirability of the Cumberland Estates Real Estate for the benefit of each owner of any part thereof.
4. Developer further desires to create an organization to which shall be delegated and assigned the powers of maintaining and administering the common areas and certain other areas of the Cumberland Estates Real Estate and of administering and enforcing the covenants and restrictions contained in this Declaration and the subdivision plats of the Cumberland Estates Real Estate as hereafter recorded in the office of the Recorder of Marion County, Indiana and of collecting and disbursing the assessments and charges as herein provided.
5. Developer may from time to time subject additional real estate located within the tract adjacent to the Initial Real Estate to the provisions of this Declaration (the Initial Real Estate, together with any such addition, as and when the same becomes subject to the provisions of this Declaration as herein provided, is hereinafter referred to as the "Real Estate").

NOW, THEREFORE, Developer hereby declares that the Cumberland Estates Real Estate is and shall be acquired, held, transferred, sold, hypothecated, leased, rented, improved, used and occupied subject to the following provisions, agreements, covenants, conditions, restrictions, easements, assessments, charges and liens, each of which shall run with the land and be binding upon, and inure to the benefit of, Developer and any other person or entity hereafter acquiring or having any right, title or interest in or to the Cumberland Estates Real Estate or any part thereof.

ARTICLE I

DEFINITIONS

The following terms, when used in this Declaration with initial capital letters, shall have the following respective meanings:

1.1 "Association" means Cumberland Estates Community Association, Inc., an Indiana not-for-profit corporation, which Developer has caused or will cause to be incorporated, and its successors and assigns.

RECORDED
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MARION COUNTY, INDIANA

1.2 "Architectural Review Committee" means the architectural review committee established pursuant to Article VI, paragraph 6.1, of this Declaration.

1.3 "Common Areas" means (i) all portions of the Cumberland Estates Real Estate (including improvements thereto) shown on any Plat of a part of the Cumberland Estates Real Estate which are not located in Lots and which are not dedicated to the public and (ii) all facilities, structures, buildings, improvements and personal property owned or leased by the Association from time to time. Common areas may be located within a public right-of-way.

1.4 "Common Expenses" means (i) expenses of and in connection with the maintenance, repair or replacement of the Common Areas and the performance of the responsibilities and duties of the Association, including (without limitation) expenses for the improvement, maintenance or repair of the improvements, lawn, foliage and landscaping not located on a Lot (unless located on a Drainage Utility and Sewer Easement or unless located on a Tree Preservation Easement or Landscape Preservation Easement located on a Lot to the extent the Association deems it necessary to maintain such easement), (ii) expenses of and in connection with the maintenance, repair or continuation of the drainage facilities located within and upon the Drainage Utility and Sewer Easements, (iii) all judgments, liens and valid claims against the Association, (iv) all expenses incurred to procure liability, hazard and any other insurance with respect to the Common Areas and (v) all expenses incurred in the administration of the Association.

1.5 "Developer" means Cumberland Estates, L.P., an Indiana limited partnership, and any successors and assigns whom it designates in one or more written recorded instruments to have the rights of Developer hereunder.

1.6 "Development Period" means the period of time commencing with the date of recordation of this Declaration and ending on the date Developer or its affiliates no longer own any Residence Unit or Lot within or upon the Cumberland Estates Real Estate, but in no event shall the Development Period extend beyond the date seven (7) years after the date this Declaration is recorded.

1.7 "Drainage Utility and Sewer Easement" means those areas so designated on a Plat of any part of the Cumberland Estates Real Estate. The Drainage Utility and Sewer Easements are hereby created and reserved (a) for the use of all public utility companies (not including transportation companies), governmental agencies and the Association for access to and installation, maintenance, repair or removal of poles, mains, ducts, drains, lines, wires, cables and other equipment and facilities for the furnishing of utility services, including cable television services; and (b) for (i) the use of Developer during the Development Period for access to and installation, repair or removal of a drainage system, either by surface drainage or appropriate underground installations, for the Real Estate and adjoining property and (ii) the use of the Association and the Department of Public Works of the City of Indianapolis for access to and maintenance, repair and replacement of such drainage system. The owner of any Lot subject to a Drainage Utility and Sewer Easement, including any builder, shall be required to keep the portion of said Drainage Utility and Sewer Easement on his Lot free from obstructions so that the storm water drainage will be unimpeded and will not be changed or altered without a permit from the Department of Public Works and prior written approval of the Developer. The delineation of the Drainage Utility and Sewer Easement areas on the Plat shall not be deemed a limitation on the rights of any entity for whose use any such easement is created and reserved to go on any Lot subject to such easement temporarily to the extent reasonably necessary for the exercise

of the rights granted to it hereunder. Except as provided above, no structures or improvements, including without limitation decks, patios, fences, walkways or landscaping of any kind, shall be erected or maintained upon said easements, and any such structure or improvement so erected upon such easement shall, at Developer's written request, be removed by the Owner at the Owner's sole cost and expense. The Owners of Lots in the Subdivision subject to a Drainage Utility and Sewer Easement shall take and hold title to the Lots subject to the Drainage Utility and Sewer Easements herein created and reserved.

1.8 "Landscape Preservation Easements" means those areas of ground so designated on a Plat of any part of the Cumberland Estates Real Estate. Developer hereby declares, creates and reserves the Landscape Preservation Easements for the preservation of the trees, bushes, shrubbery and other vegetation in such areas in their natural unimproved state. No improvements (including, without limitation, decks, walkways, patios and fences) shall be erected or maintained within or upon such Landscape Preservation Easements without the prior written permission of the Architectural Review Committee. No living trees, bushes, shrubbery or other vegetation shall be removed from any Landscape Preservation Easement except (a) by public utility companies, governmental agencies, Developer, the Department of Public Works of the City of Indianapolis or the Association in connection with such entity's use of the Drainage Utility and Sewer Easements as herein permitted; or (b) by Developer (or any entity related to Developer) in connection with the development of the Real Estate. The Owners of Lots in the Subdivision shall take and hold title to the Lots subject to the Landscape Preservation Easements herein created and reserved.

1.9 "Lake Easements" means those areas of ground so designated on a Plat of any part of the Cumberland Estates Real Estate. Such Lake Easements are hereby created and reserved: (a) for the benefit of the Owners, subject to the rights of the Association to promulgate reasonable rules and regulations (not inconsistent with the provisions of any Plat or this Declaration) governing such use and enjoyment; and (b) for the use of Developer for access to and construction, management and control of retention and detention ponds or lakes and the installation, repair and replacement of improvements and vegetation thereon. Except as installed by Developer or installed and maintained by the Association, no improvements, including without limitation piers, decks, walkways, patios and fences, shall be erected or maintained upon any Lake Easements. No swimming, fishing or ice skating shall be permitted in or on the lakes or ponds located in and upon the Lake Easements. The Owners of Lots in the Subdivision subject to a Lake Easement shall take and hold title to the Lots subject to the Lake Easements herein created and reserved.

1.10 "Lot" means any parcel of land shown and identified as a lot on a Plat of any part of the Cumberland Estates Real Estate.

1.11 "Mortgagee" means the holder of a recorded first mortgage lien on any Lot or Residence Unit.

1.12 "Nonaffiliated Owner" means any Owner other than Developer or any entity related to Developer.

1.13 "Owner" means the record owner, whether one or more persons or entities, of fee-simple title to any Lot, or other residential unit designed for occupancy by one family, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation unless specifically indicated to the contrary. The term Owner as used herein shall include Developer so long as Developer shall own any Lot, Residence Unit or any Real Estate in the Cumberland Estates Real Estate.

1.14 "Plat" means a duly approved final plat of any part of the Cumberland Estates Real Estate as hereafter recorded in the office of the Recorder of Marion County, Indiana.

1.15 "Residence Unit" means any single family home designed for residential occupancy.

1.16 "Tree Preservation Easements" means those areas of ground so designated on a Plat of any part of the Cumberland Estates Real Estate. Developer hereby declares, creates and reserves the Tree Preservation Easements for the preservation of trees located within and upon such easements and for the use of Developer during the Development Period for access to and for planting and replacement of trees, bushes, shrubbery, other vegetation providing landscape screening and other improvements. Trees of four (4) inch caliper or larger within any Tree Preservation Easement shall not be removed without the prior written consent of the Architectural Review Committee; provided, however, that such written consent shall not be required for removal of such trees (a) by public utility companies, governmental agencies, Developer, the Department of Public Works of the City of Indianapolis or the Association in connection with any such entity's use of the Drainage Utility and Sewer Easements as herein permitted; or (b) by Developer or any builder in connection with the initial construction of a residence on a Lot if such trees are located within the foot-print of the residence or any driveway, accessory building and other improvement to be constructed by the Developer or the builder on the Lot. The Owners of Lots in the Subdivision subject to a Tree Preservation Easement shall take and hold title to the Lots subject to the Tree Preservation Easements herein created and reserved.

ARTICLE II

APPLICABILITY

All Owners, their tenants, guests, invitees and mortgagees, and any other person using or occupying a Lot or any other part of the Cumberland Estates Real Estate shall be subject to and shall observe and comply with the covenants, conditions, restrictions, terms and provisions set forth in this Declaration and any rules and regulations adopted by the Association as herein provided, as the same may be amended from time to time.

The Owner of any Residence Unit (i) by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from the Developer or its affiliates or any builder or any subsequent Owner of the Residence Unit, or (ii) by the act of occupancy of the Residence Unit, shall conclusively be deemed to have accepted such deed, executed such contract or undertaken such occupancy subject to the covenants, conditions, restrictions, terms and provisions of this Declaration. By acceptance of a deed, execution of a contract or undertaking of such occupancy, each Owner covenants for himself, his heirs, personal representatives, successors and assigns, with Developer and the Owners from time to time, to keep, observe, comply with and perform the covenants, conditions, restrictions, terms and provisions of this Declaration.

ARTICLE III

PROPERTY RIGHTS

3.1 Owners' Easement of Enjoyment of Common Areas. Developer hereby declares, creates and grants a non-exclusive easement in favor of each Owner for the use and enjoyment of the Common Areas. Such easement shall run with and be appurtenant to each Residence Unit, subject to the following provisions:

(i) the right of the Association to charge reasonable admission and other fees for the use of the recreational facilities, if any, situated upon the Common Areas;

(ii) the right of the Association to fine any Owner or make a special assessment against any Residence Unit or lot in the event a person permitted to use the Common Areas by the Owner of the Residence Unit violates any rules or regulations of the Association as long as such rules and regulations are applied on a reasonable and nondiscriminatory basis;

(iii) the right of the Association to make reasonable regular assessments for use of the Common Areas;

(iv) the right of the Association to dedicate or transfer all or any part of the Common Areas or to grant easements to any public agency, authority or utility for such purposes and subject to such conditions as may be set forth in the instrument of dedication or transfer;

(v) the right of the Association to enforce collection of any fines or regular or special assessments through the imposition of a lien pursuant to paragraph 7.7;

(vi) the rights of Developer as provided in this Declaration and in any Plat of any part of the Cumberland Estates Real Estate;

(vii) the zoning covenants or commitments contained in the Development Statement for any part of the Cumberland Estates Real Estate;

(ix) the terms and provisions of this Declaration;

(x) the easements reserved elsewhere in this Declaration and in any Plat of any part of the Cumberland Estates Real Estate; and

(xi) the right of the Association to limit the use of Common Areas in a reasonable nondiscriminatory manner for the common good.

3.2 Permissive Use. Any Owner may permit his or her family members, guests, tenants or contract purchasers who reside in the Residence Unit to use his or her right of enjoyment of the Common Areas. Such permissive use shall be subject to the By-Laws of the Association and any reasonable nondiscriminatory rules and regulations promulgated by the Association from time to time.

3.3 Conveyance of Common Areas. Upon sixty (60) days notice to the Association, Developer may convey all of its right, title and interest in and to any of the Common Areas to the Association by quitclaim deed, and such Common Areas so conveyed shall then be the property of the Association.

ARTICLE IV

USE RESTRICTIONS

4.1 Lakes. There shall be no swimming or fishing in or ice skating on any lake, pond, creek or stream on the Cumberland Estates Real Estate. The Association shall promulgate rules and regulations with respect to the permitted uses, if any, of the lakes or other bodies of water on the Cumberland Estates Real Estate.

4.2 Initial Sale of Units. All initial sales of Residence Units by the Developer or its affiliates or any builder shall be to owner-occupants; provided, however, this provision shall not apply to a mortgagee or its successor who acquires the development or a portion thereof through foreclosure or sale in lieu thereof. If any owner-occupant desires to lease his unit such rental shall be pursuant to a written lease with a minimum term of one year and such lease shall provide that the leasee shall be subject to all rules and regulations of the Association.

4.3 Use of Common Areas. The Common Areas shall not be used for commercial purposes.

4.4 Lot Access. All Lots shall be accessed from the interior streets of the Subdivision. No direct access is permitted to any Lot from East 10th Street or from Cumberland Road.

4.5 Other Use Restrictions Contained in Plat Covenants and Restrictions. The Plat Covenants and Restrictions relating to the Cumberland Estates Real Estate contain additional restrictions on the use of the Lots in the Subdivision, including without limitation prohibitions against commercial use, detached accessory buildings and nuisances and restrictions relating to temporary structures, vehicle parking, signs, mailboxes, garbage and refuse disposal, storage tanks, water supply and sewage systems, ditches and swales, driveways, antenna and satellite dishes, awnings, fencing, swimming pools, solar panels and outside lighting. Such prohibitions and restrictions contained in the Plat Covenants and Restrictions are hereby incorporated by reference as though fully set forth herein.

ARTICLE V

ASSOCIATION

5.1 Membership. Each Owner, automatically upon becoming an Owner, shall be and become a member of the Association and shall remain a member of the Association so long as he or she owns the Residence Unit.

5.2 Classes of Membership and Vote. The Association shall have two (2) classes of membership, as follows:

(i) Class A Members. Class A members shall be all Owners other than Developer (unless Class B membership has been converted to Class A membership as provided in the following subparagraph (ii), in which event Developer shall then be a Class A member). Each Class A member shall be entitled to one (1) vote.

(ii) Class B Member. The Class B member shall be the Developer. The Class B member shall be entitled to three (3) votes for each Lot or Residence Unit owned by Developer. The Class B membership shall cease and terminate and be converted to Class A membership upon the "Applicable Date" (as such term is hereinafter defined in paragraph 5.3).

5.3 Applicable Date. As used herein, the term "Applicable Date" shall mean the date when the total votes outstanding in the Class A membership is equal to the total votes outstanding in the Class B membership.

5.4 Multiple or Entity Owners. Where more than one person or entity constitutes the Owner of a Residence Unit, all such persons or entities shall be members of the Association, but the single vote in respect of such Residence Unit shall be exercised as the persons or entities holding an interest in such Residence Unit determine among themselves. In no event shall more than one person exercise a Residence Unit's vote under paragraph 5.2 (in the case of Class A membership). No Resident Unit's vote shall be split.

5.5 Board of Directors. The members of the Association shall elect a Board of Directors of the Association as prescribed by the Association's Articles of Incorporation and By-Laws. The Board of Directors of the Association shall manage the affairs of the Association.

5.6 Professional Management. No contract or agreement for professional management of the Association, nor any contract between Developer and 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 any termination penalty, on written notice of ninety (90) days or less.

5.7 Responsibilities of the Association. The responsibilities of the Association include, but shall not be limited to:

(i) Maintenance of the Common Areas including any and all improvements thereon in good repair as the Association deems necessary or appropriate.

(ii) Installation and replacement of any and all improvements, signs, lawn, foliage and landscaping in and upon the Common Areas or Lake Easements or Landscape Preservation Easements as the Association deems necessary or appropriate.

(iii) Maintenance, repair and replacement of all private street signs.

(iv) Replacement of the drainage system in and upon the Common Areas as the Association deems necessary or appropriate and the maintenance of any drainage system installed in or upon the Common Areas by Developer or the Association. Nothing herein shall relieve or replace the obligation of the Owner, including any builder, of a Lot subject to a Drainage Utility and Sewer Easement to keep the portion of the drainage system and Drainage Utility and Sewer Easement on his Lot free from obstructions so that the storm water drainage will be unimpeded.

(v) Maintenance of lake water levels so as not to create stagnant or polluted waters affecting the health and welfare of the community through recirculation of accumulated water or chemical treatment.

(vi) Procuring and maintaining for the benefit of the Association, its officers and Board of Directors and the Owners, the insurance coverage required under this Declaration and such other insurance as the Board of Directors deems necessary or advisable.

(vii) Payment of taxes, if any, assessed against and payable with respect to the Common Areas.

(viii) Assessment and collection from the Owners of the Common Expenses.

(ix) Contracting for such services as management, snow removal, Common Area maintenance, security control, trash removal or other services as the Association deems necessary or advisable.

(x) Enforcing the rules and regulations of the Association and the requirements of this Declaration and the zoning covenants and commitments.

5.8 Powers of the Association. The Association may adopt, amend, or rescind, reasonable rules and regulations (not inconsistent with the provisions of this Declaration) governing the use and enjoyment of the Common Areas and the management and administration of the Association, as the Association deems necessary or advisable. The rules and regulations promulgated by the Association may provide for reasonable interest and late charges on past due installments of any regular or special assessments or other charges against any Residence Unit or Lot. The Association shall furnish or make copies available of its rules and regulations to the Owners prior to the time when the rules and regulations become effective.

5.9 Compensation. No director or officer of the Association shall receive compensation for his or her services as such director or officer except to the extent expressly authorized by a majority vote of the Owners present at a duly constituted meeting of the Association members.

5.10 Non-Liability of Directors and Officers. The directors and officers of the Association shall not be liable to the Owners or any other persons for any error or mistake of judgment in carrying out their duties and responsibilities as directors or officers of the Association, except for their own individual willful misconduct or gross negligence. It is intended that the directors and officers of the Association shall have no personal liability with respect to any contract made by them on behalf of the Association except in their capacity as Owners.

5.11 Indemnity of Directors and Officers. The Association shall indemnify, hold harmless and defend any person, his or her heirs, assigns and legal representatives (collectively, the "Indemnitee") made or threatened to be made a party to any action, suit or proceeding by reason of the fact that he or she is or was a director or officer of the Association, against all costs and expenses, including attorneys fees, actually and reasonably incurred by the Indemnitee in connection with the defense of such action, suit or proceeding, or in connection with any appeal thereof, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Indemnitee is guilty of gross negligence or willful misconduct in the performance of his or her duties. The Association shall also reimburse any such Indemnitee for the reasonable costs of settlement of or for any judgment rendered in any action, suit or proceeding, unless it shall be adjudged in such action, suit or proceeding that such Indemnitee was guilty of gross negligence or willful misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against an Indemnitee, no director or officer shall be considered or deemed to be guilty of or liable for gross negligence or willful misconduct in the performance of his or her duties where, acting in good faith, such director or officer relied on the books and records of the Association or statements or advice made by or prepared by any managing agent of the Association or any director or officer of the Association, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service, unless such director or officer had actual knowledge of the falsity or incorrectness thereof; nor shall a director be deemed guilty of gross negligence or willful misconduct by virtue of the fact that he or she failed or neglected to attend a meeting or meetings of the Board of Directors of the Association. The costs and expenses incurred by any Indemnitee in defending any action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Indemnitee to repay the amount paid by the Association if it shall ultimately be determined that the Indemnitee is not entitled to indemnification or reimbursement as provided in this paragraph 5.11.

5.12 Bond. The Board of Directors of the Association may provide surety bonds and may require the managing agent of the Association (if any), the treasurer of the Association and such other officers as the Board of Directors deems necessary, to provide surety bonds, indemnifying the Association against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication and other acts of fraud or dishonesty in such sums and with such sureties as may be approved by the Board of Directors, and any such bond may specifically include protection for any insurance proceeds received for any reason by the Board of Directors. The expense of any such bonds shall be a Common Expense.

ARTICLE VI

ARCHITECTURAL REVIEW COMMITTEE

6.1 Creation. There shall be, and hereby is, created and established the Architectural Review Committee to perform the functions provided for herein. At all times during the Development Period, the Architectural Review Committee shall consist of three (3) members appointed, from time to time, by Developer and who shall be subject to removal by Developer at any time with or without cause. After the end of the Development Period, the Architectural Review Committee shall be a standing committee of the Association, consisting of three (3) persons appointed, from time to time, by the Board of Directors of the Association. The Board of Directors may at any time after the end of the Development Period remove any member of the Architectural Review Committee at any time upon a majority vote of the members of the Board of Directors.

6.2 Purposes and Powers of the Architectural Review Committee. The Architectural Review Committee shall review and approve the design, appearance and location of all residences, buildings, structures or any other improvements placed by any person, including any builder, on any Lot, and the installation and removal of any trees, bushes, shrubbery and other landscaping on any Lot, in such a manner as to preserve and enhance the value and desirability of the Cumberland Estates Real Estate and to preserve the harmonious relationship among structures and the natural vegetation and topography.

(i) In General. No residence, building, structure antenna, walkway, fence, deck, wall, patio or other improvement of any type or kind shall be erected, constructed, placed or altered on any Lot and no change shall be made in the exterior color of any Residence Unit or accessory building located on any Lot without the prior written approval of the Architectural Review Committee. Such approval shall be obtained only after written application has been made to the Architectural Review Committee by the Owner of the Lot requesting authorization from the Architectural Review Committee. Such written application shall be in the manner and form prescribed from time to time by the Architectural Review Committee and, in the case of construction or placement of any improvement, shall be accompanied by two (2) 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 material or information which the Architectural Review Committee may reasonably require. Unless otherwise specified by the Architectural Review Committee, plot plans shall be prepared by either a registered land surveyor, engineer or architect. Plot plans submitted for the Improvement Location Permit shall bear the stamp or signature of the Architectural Review Committee acknowledging the approval thereof. It is contemplated that the Architectural Review Committee will review and grant general approval of the floorplans and exterior styles of the homes expected to be offered and sold in Cumberland Estates by the builders and that such review and approval will occur prior to the builders selling any homes in the community. Unless otherwise directed in writing by the Architectural Review Committee, once a builder has received written approval of a particular floorplan and exterior style, it shall not be necessary to reapply to the Architectural Review Committee in order for such builder to build the same floorplan and exterior style on other Lots.

(ii) Power of Disapproval. The Architectural Review Committee may refuse to approve any application made as required under paragraph 6.2 (i) above (a "Requested Change") when:

(a) The plans, specifications, drawings or other material submitted are inadequate or incomplete, or show the Requested Change to be in violation of any restrictions in this Declaration or in a Plat of any part of the Cumberland Estates Real Estate;

(b) The design or color scheme of a Requested Change is not in harmony with the general surroundings of the Lot or with the adjacent buildings or structures; or

(c) The Requested Change, or any part thereof, in the opinion of the Architectural Review Committee, would not preserve or enhance the value and desirability of the Cumberland Estates Real Estate or would otherwise be contrary to the interests, welfare or rights of the Developer or any other Owner.

(iii) Rules and Regulations. The Architectural Review Committee, from time to time, may promulgate, amend or modify additional rules and regulations as it may deem necessary or desirable to guide Owners as to the requirements of the Architectural Review Committee for the submission and approval of items to it. Such rules and regulations may set forth additional requirements to those set forth in this Declaration or a Plat of any part of the Cumberland Estates Real Estate, as long as the same are not inconsistent with this Declaration or such Plat(s).

6.3 Duties of the Architectural Review Committee. If the Architectural Review Committee does not approve a Requested Change within thirty (30) days after all required information on the Requested Change shall have been submitted to it, then such Requested Change shall be deemed denied. One copy of submitted material shall be retained by the Architectural Review Committee for its permanent files.

6.4 Liability of the Architectural Review Committee. Neither the Architectural Review Committee, the Association nor any agent of any of the foregoing, 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 or for any decision made by it unless made in bad faith or by willful misconduct.

6.5 Inspection. The Architectural Review Committee or its representative may, but shall not be required to, inspect work being performed to assure compliance with this Declaration and the materials submitted to it pursuant to this Article VI and may require any work not consistent with the approved Requested Change, or not approved, to be stopped and removed.

ARTICLE VII

ASSESSMENTS

7.1 Purpose of Assessments. The purpose of Regular and Special Assessments is to provide funds to maintain and improve the Common Areas and related facilities for the benefit of the Owners, and the same shall be levied for the following purposes: (i) to promote the health, safety and welfare of the residents occupying the Cumberland Estates Real Estate, (ii) for the improvement, maintenance and repair of the Common Areas, the improvements, lawn foliage and landscaping within and upon the Common Areas and any Landscape Preservation Easement, Drainage Utility and Sewer Easement or Lake Easement and the drainage system, (iii) for the performance of the responsibilities and

specifically provided herein. A portion of the Regular Assessment may be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of any capital improvements which the Association is required to maintain.

7.2 Regular Assessments. The Board of Directors of the Association shall have the right, power and authority, without any vote of the members of the Association, to fix from time to time the Regular Assessment against each Residence Unit at any amount not in excess of the Maximum Regular Assessment as follows:

(i) Until December 31, 1992, the Maximum Regular Assessment on any Residence Unit for any calendar year shall not exceed Four Hundred Twenty Dollars (\$420.00).

(ii) From and after January 1, 1993, the Maximum Regular Assessment on any Residence Unit for any calendar year may be increased by not more than fifteen percent (15%) above the Regular Assessment for the previous calendar year without a vote of the members of the Association as provided in the following subparagraph (iii).

(iii) From and after January 1, 1993, the Board of Directors of the Association may fix the Regular Assessment at an amount in excess of the maximum amount specified in subparagraph (ii) above only with the approval of a majority of those members of each class of members of the Association who cast votes in person or by proxy at a meeting of the members of the Association duly called for such purpose.

(iv) Each Residence Unit shall be assessed an equal amount for any Regular Assessment, excepting any proration for ownership during only a portion of the assessment period.

7.3 Special Assessments. In addition to Regular Assessments, the Board of Directors of the Association may make Special Assessments against each Residence Unit, for the purpose of defraying, in whole or in part, the cost of constructing, reconstructing, repairing or replacing any capital improvement which the Association is required to maintain or the cost of special maintenance and repairs or to recover any deficits (whether from operations or any other loss) which the Association may from time incur, but only with the assent of two-thirds (2/3) of the members of each class of members of the Association who cast votes in person or by proxy at a duly constituted meeting of the members of the Association called for such purpose.

7.4 No Assessment against Developer or Builders During the Development Period. Neither the Developer nor, except as otherwise provided in paragraph 7.8 and Article 9 below, any builder nor any related entity shall be assessed any portion of any Regular or Special Assessment during the Development Period.

7.5 Date of Commencement of Regular or Special Assessments; Due Dates. The Regular Assessment or Special Assessment, if any, shall commence as to each Residence Unit on the first day of the first calendar month following the first conveyance of such Residence Unit to an Owner who is not one of the persons named in paragraph 7.4 above.

The Board of Directors of the Association shall fix the amount of the Regular Assessment at least thirty (30) days in advance of each annual assessment period. Written notice of the Regular Assessment, any Special Assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to each Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Board of Directors may provide for reasonable interest and late charges on past due installments of assessments.

7.6 Failure of Owner to Pay Assessments.

(i) No Owner may exempt himself from paying Regular Assessments and Special Assessments due to such Owner's nonuse of the Common Areas or abandonment of the Residence Unit or Lot belonging to such Owner. If any Owner shall fail, refuse or neglect to make any payment of any assessment (or periodic installment of an assessment, if applicable) when due, the lien for such assessment (as described in paragraph 7.7 below) may be foreclosed by the Board of Directors of the Association for and on behalf of the Association as a mortgage on real property or as otherwise provided by law. Upon the failure of an Owner to make timely payments of any assessment when due, the Board of Directors of the Association may in its discretion accelerate the entire balance of any unpaid assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. In any action to foreclose the lien for any assessment, the Owner and any occupant of the Residence Unit shall be jointly and severally liable for the payment to the Association of reasonable rental for such Residence Unit, and the Board of Directors shall be entitled to the appointment of a receiver for the purpose of preserving the Residence Unit or Lot, and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid assessments. The Board of Directors of the Association, at its option, may in the alternative bring suit to recover a money judgment for any unpaid assessment without foreclosing or waiving the lien securing the same. In any action to recover an assessment, whether by foreclosure or otherwise, the Board of Directors of the Association, for and on behalf of the Association, shall be entitled to recover from the Owner of the respective Residence Unit or Lot, costs and expenses of such action incurred (including but not limited to attorneys reasonable fees) and interest from the date such assessments were due until paid.

(ii) Notwithstanding anything contained in this paragraph 7.6 or elsewhere in this Declaration, any sale or transfer of a Residence Unit or Lot to a Mortgagee pursuant to a foreclosure of its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid assessments (or periodic installments, if applicable) which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior Owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Residence Unit, or the purchaser thereof, at such foreclosure sale, or the grantee in the event of conveyance in lieu thereof, from liability for any assessments (or periodic installments of such assessments, if applicable) thereafter becoming due or from the lien therefor.

7.7 Creation of Lien and Personal Obligation. Each Owner (other than the Developer or a builder during the Development Period) of a Residence Unit or Lot by acceptance for itself and related entities of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association for his obligation for (i) regular assessments for Common Expenses ("Regular Assessments") and (ii) special assessments for capital improvements and operating deficits and for special maintenance and repairs ("Special Assessments"). Such assessments shall be established, shall commence upon such dates and shall be collected as herein provided. All such assessments, together with interest, costs of collection and attorneys reasonable fees, shall be a continuing lien upon the Residence Unit or Lot against which such assessment is made prior to all other liens except only (i) tax liens on any Residence Unit or Lot in favor of any unit of government or special taxing district and (ii) the lien of any first mortgage of record. Each such assessment, together with interest, costs

of collection and reasonable attorneys' fees, shall also be the personal obligation of the Owner of the Residence Unit at the time such assessment became due and payable. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. The personal obligation for delinquent assessments (as distinguished from the lien upon the Residence Unit) shall not pass to such Owner's successors in title unless expressly assumed by them. The Association, upon request of a proposed Mortgagee or proposed purchaser having a contractual right to purchase a Residence Unit, shall furnish to such Mortgagee or purchaser a statement setting forth the amount of any unpaid Regular or Special Assessments or other charges against the Residence Unit or Lot. Such statement shall be binding upon the Association as of the date of such statement.

7.8 Expense Incurred to Clear Drainage Utility and Sewer Easement Deemed a Special Assessment. As provided in paragraph 1.7 above, the Owner of any lot subject to a Drainage Utility and Sewer Easement, including any builder, shall be required to keep the portion of said Drainage Utility and Sewer Easement on his lot free from obstructions so that the storm water drainage will not be impeded and will not be changed or altered without a permit from the Department of Public Works and prior written approval of the Developer. Also, no structures or improvements, including without limitation decks, patios, fences, walkways or landscaping of any kind, shall be erected or maintained upon said easements, and any such structure or improvement so erected shall, at Developer's written request, be removed by the Owner at the Owner's sole cost and expense. If, within thirty (30) days after the date of Developer's written request, such Owner shall not have commenced and diligently and continuously effected the removal of any obstruction of storm water drainage or any prohibited structure or improvement, Developer may, on behalf of the Association, enter upon the lot and cause such obstruction, structure or improvement to be removed so that the Drainage Utility and Sewer Easement is returned to its original designed condition. In such event, Developer, on behalf of the Association, shall be entitled to recover the full cost of such work from the offending Owner and such amount shall be deemed a Special Assessment against the Lot owned by such Owner which, if unpaid, shall constitute a lien against such Lot and may be collected by the Association pursuant to this Article 7 in the same manner as any other Regular Assessment or Special Assessment may be collected.

ARTICLE VIII

INSURANCE

8.1 Casualty Insurance. The Association shall purchase and maintain fire and extended coverage insurance in an amount equal to the full insurable replacement cost of any improvements owned by the Association. If the Association can obtain such coverage for a reasonable amount, it shall also obtain "all risk coverage". The Association shall also insure any other property, whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable. Such insurance policy shall name the Association as the insured. The insurance policy or policies shall, if possible, contain provisions that the insurer (i) waives its rights to subrogation as to any claim against the Association, its Board of Directors, officers, agents and employees, any committee of the Association or of the Board of Directors and all Owners and their respective agents and guests and (ii) waives any defense to payment based on invalidity arising from the acts of the insured. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried.

8.2 Liability Insurance. The Association shall also purchase and maintain a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time, but in any event with a minimum combined limit of One Million Dollars (\$1,000,000) per occurrence. Such comprehensive public liability insurance shall cover all of the Common Areas and shall insure to the benefit of the Association, its Board of Directors, officers, agents and employees, any committee of the Association or of the Board of Directors, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Cumberland Estates Real Estate and the Developer.

8.3 Other Insurance. The Association shall also purchase and maintain any other insurance required by law to be maintained, including but not limited to workers compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate but not limited to officers' and directors' liability insurance.

8.4 Miscellaneous. The premiums for the insurance described above shall be paid by the Association as part of the Common Expenses.

ARTICLE IX

MAINTENANCE

9.1 Maintenance of Lots and Improvements. Except to the extent such maintenance shall be the responsibility of the Association under any of the foregoing provisions of this Declaration, it shall be the duty of the Owner of each Lot, including any builder during the building process, to keep the grass on the Lot properly cut and keep the Lot, including any Drainage Utility and Sewer Easements located on the Lot, free of weeds, trash or construction debris and otherwise neat and attractive in appearance, including, without limitation, the proper maintenance of the exterior of any structures on such Lot. If the Owner of any Lot fails to do so in a manner satisfactory to the Association, the Association, after approval by a majority vote of the Board of Directors, shall have the right (but not the obligation), through its agents, employees and contractors, to enter upon said lot and to clean, repair, maintain or restore the Lot, as the case may be, and the exterior of the improvements erected thereon. The cost of any such work shall be and constitute a Special Assessment against such Lot and the owner thereof, whether or not a builder, and may be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general. Neither the Association nor any of its agents, employees or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

9.2 Damage to Common Areas. In the event of damage to or destruction of any part of the Common Areas or any improvements which the Association is required to maintain hereunder, the Association shall repair or replace the same from the insurance to the extent of the availability of such insurance proceeds. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a Special Assessment against all Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds or against such Owners who benefit by the Special Assessments if less than all benefit. Notwithstanding any obligation or duty of the Association hereunder to repair or maintain the Common Areas if, due to the willful, intentional or negligent acts or omissions of any Owner (including any builder) or of a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused

to the Common Areas, or if maintenance, repairs or replacements shall be required thereby which would otherwise be a Common Expense, then the Association shall cause such repairs to be made and such Owner shall pay for such damage and such maintenance, repairs and replacements, unless such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Association, the cost of repairing such damage shall be added to and constitute a Special Assessment against such Owner, whether or not a builder, and its Residence Unit and Lot, to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general.

ARTICLE X

MORTGAGES

10.1 Notice to Mortgagees. The Association, upon request, shall provide to any Mortgagee a written certificate or notice specifying unpaid assessments and other defaults, if any, of the Owner of a Residence Unit or Lot in the performance of the Owner's obligations under this Declaration or any other applicable documents.

10.2 Notice to Association. Any Mortgagee who holds a first mortgage lien on a Lot or Residence Unit may notify the Secretary of the Association of the existence of such mortgage and provide the name and address of the Mortgagee. A record of the Mortgagee and name and address shall be maintained by the Secretary of the Association and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws of the Association or otherwise shall be deemed effectively given if mailed to the Mortgagee at the address shown in such record in the time provided. Unless notification of a Mortgage and the name and address of the Mortgagee are furnished to the Secretary, as herein provided, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws of the Association or otherwise shall be required, and no Mortgagee shall be entitled to vote on any matter to which it otherwise may be entitled by virtue of this Declaration, the By-Laws of the Association, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

10.3 Mortgagees' Rights Upon Default by Association. If the Association fails (i) to pay taxes or the charges that are in default and that have or may become charges against the Common Areas, or (ii) to pay on a timely basis any premium on hazard insurance policies on Common Areas or to secure hazard insurance coverage for the Common Areas upon lapse of a policy, then the Mortgagee on any Lot or Residence Unit may make the payment on behalf of the Association.

ARTICLE XI

AMENDMENTS

11.1 By the Association. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

(i) Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting of the members of the Association at which the proposed amendment is to be considered.

(ii) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of votes of all Owners.

(iii) Meeting. The resolution concerning a proposed amendment must be adopted by the vote required by paragraph 11.1 (iv) at a meeting of the members of the Association duly called and held in accordance with the provisions of the By-Laws.

(iv) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than sixty-seven percent (67%) in the aggregate of all Owners; provided, however, that any such amendment shall require the prior written approval of Developer so long as Developer or any entity related to Developer owns any Lot or Residence unit within and upon the Cumberland Estates Real Estate. In the event any Residence Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors of the Association in accordance with the provisions of the foregoing paragraph 10.2.

(v) Mortgagees' Vote on Special Amendments. No amendments to this Declaration shall be adopted which changes any provision of this Declaration which would be deemed to be of a material nature by the Federal National Mortgage Association under Section 501.02 of Part V, Chapter 4, of the Fannie Mae Selling Guide, or any similar provision of any subsequent guidelines published in lieu of or in substitution for the Selling Guide, or which would be deemed to require the first mortgagee's consent under the Freddie Mac Sellers' and Servicers' Guide, Vol. 1, Section 2103(d) without the written approval of at least sixty-seven percent (67%) of the Mortgagees who have given prior notice of their mortgage interest to the Board of Directors of the Association in accordance with the provisions of the foregoing paragraph 10.2.

Any Mortgagee which has been duly notified of the nature of any proposed amendment shall be deemed to have approved the same if the Mortgagee or a representative thereof fails to appear at the meeting in which such amendment is to be considered (if proper notice of such meeting was timely given to such Mortgagee) or if the Mortgagee does not send its written objection to the proposed amendment prior to such meeting. In the event that a proposed amendment is deemed by the Board of Directors of the Association to be one which is not of a material nature, the Board of Directors shall notify all Mortgagees whose interests have been made known to the Board of Directors the nature of such proposed amendment, and such amendment shall be conclusively deemed not material if no Mortgagee so notified objects to such proposed amendment within thirty (30) days of the date such notices are mailed and if such notice advises the Mortgagee of the time limitation contained in this sentence.

11.2 By the Developer. Developer hereby reserves the right, so long as Developer or any entity related to Developer owns any Lot or Residence Unit within and upon the Cumberland Estates Real Estate, to make any amendments to this declaration, without the approval of any other person or entity, for any purpose reasonably deemed necessary or appropriate by the Developer, including without limitation: to bring Developer or this Declaration into compliance with the requirement of any statute, ordinance, regulation or order of any public agency having jurisdiction thereof; to conform with zoning covenants and conditions; to comply with the requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Veterans Administration or any other governmental agency or to induce any of such agencies to make, purchase, sell, insure or guarantee first mortgages; or to correct clerical or typographical errors in this Declaration or any amendment or supplement hereto; provided that in no event shall Developer be entitled to make any amendment which has a material adverse effect on the rights of

any Mortgagee, or which substantially impairs the rights granted by this Declaration to any Owner or substantially increases the obligations imposed by this Declaration on any Owner.

11.3 Recording. Each amendment to this Declaration shall be executed by Developer only in any case where Developer has the right to amend this Declaration without any further consent or approval, and otherwise by the President or Vice President and Secretary of the Association; provided that any amendment requiring the consent of Developer shall contain Developer's signed consent. All amendments shall be recorded in the office of the Recorder of Marion County, Indiana, and no amendment shall become effective until so recorded.

ARTICLE XII

MISCELLANEOUS

12.1 Right of Enforcement. Violation or threatened violation of any of the covenants, conditions or restrictions enumerated in this Declaration or in a Plat of any part of the Cumberland Estates Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, or zoning covenants shall be grounds for an action by Developer, the Association, any Owner and all persons or entities claiming under them, against the person or entity violating or threatening to violate any such covenants, conditions or restrictions. Available relief in any such action shall include recovery of damages or other sums due for such violation, injunctive relief against any such violation or threatened violation, declaratory relief and the recovery of costs and attorneys fees reasonably incurred by any party successfully enforcing such covenants and restrictions; provided, however, that neither Developer, any Owner nor the Association shall be liable for damages of any kind to any person for failing to enforce any such covenants, conditions or restrictions.

12.2 Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party, including without limitation the Developer, to invoke any available remedy with respect to any violation or threatened violation of any covenants, conditions or restrictions enumerated in this Declaration or in a Plat of any part of the Cumberland Estates Real Estate shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to it upon the occurrence, recurrence or continuance of such violation or violations.

12.3 Duration. These covenants, conditions and restrictions and all other provisions of this Declaration (as the same may be amended from time to time as herein provided) shall run with the land and shall be binding on all persons and entities from time to time having any right, title or interest in the Cumberland Estates Real Estate or any part thereof, and on all persons claiming under them, until December 31, 2005, and thereafter shall continue automatically until terminated or modified by vote in the majority of all Owners at any time thereafter; provided, however, that no termination of this Declaration shall affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall consent thereto.

12.4 Severability. Invalidation of any of the covenants, restrictions or provisions contained in this Declaration by judgment or court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect.

12.5 Title. The underlined titles preceding the various paragraphs and subparagraphs of this Declaration are for the convenience of reference only, and none of them shall be used as

an aid to the construction of any provisions 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.

12.6 Applicable Law. This Declaration shall be governed by the laws of the State of Indiana.

12.7 Annexation. Additional land adjacent to the Initial Real Estate may be annexed by Developer to the Initial Real Estate (and from and after such annexation shall be deemed part of the Real Estate for all purposes of this Declaration) by execution and recordation in the office of the Recorder of Marion County, Indiana, of a supplemental declaration by Developer; and such action shall require no approvals or action of the Owners.

12.8 Government Financing Entities' Approval. If there is Class B membership in the Association and if there is financing provided for any of the Cumberland Estates Real Estate by the Federal Housing Administration, Veterans Administration, Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, and any of these entities requires that their consent be obtained prior to amending this Declaration or dedicating the Common Areas subject to this Declaration, then while there is Class B Membership the Developer and the Association must obtain the consent of such entity. If none of the Cumberland Estates Real Estate is financed by any of such entities, then the Developer, while there is Class B Membership, or the Association may amend this Declaration or dedicate any Common Areas without obtaining the consent of the above referenced entities.

XIII

DEVELOPER'S RIGHTS

13.1 Access Rights. Developer hereby declares, creates and reserves an access license over and across all the Cumberland Estates Real Estate (subject to the limitations hereinafter provided in this paragraph 13.1) for the use of Developer and its representatives, agents, contractors and affiliates during the Development Period. Notwithstanding the foregoing, the area of the access license created by this paragraph 13.1 shall be limited to that part of the Cumberland Estates Real Estate which is not in, on, under, over, across or through a building or other improvement or the foundation of a building or other improvement properly located on the Cumberland Estates Real Estate. The parties for whose benefit this access license is herein created and reserved shall exercise such access easement rights only to the extent reasonably necessary and appropriate.

13.2 Signs. Developer shall have the right to use signs of any size during the Development Period and shall not be subject to the Plat limitations with respect to signs during the Development Period, except as applicable to the development statement and zoning commitments on the property. The Developer shall also have the right to construct or change any building, improvement or landscaping on the Cumberland Estates Real Estate without obtaining the approval of the Architectural Review Committee at any time during the Development Period.

13.3 Sales Offices and Models. Notwithstanding anything to the contrary contained in this Declaration or a Plat of any part of the Cumberland Estates Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, Developer, any entity related to Developer and any other person or entity with the prior written consent of Developer, during the Development Period, shall be entitled to construct, install, erect and maintain such facilities upon any portion of the Cumberland Estates Real Estate owned by Developer or such person

or entity as, in the sole opinion of Developer, may be reasonably required or convenient or incidental to the development of the Cumberland Estates Real Estate and the sale of Lots and the construction of residences thereon. Such facilities may include, without limitation, storage areas, parking areas, signs, model residences, construction offices and sales offices.

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

By: CUMBERLAND ESTATES, L.P.

By: Davis Development - 10th
Street and Cumberland Road, Inc

By: 
C. Richard Davis
President

APPROVED
DMD-DDS BY DSE

8-12-91

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public, in and for the State of Indiana, personally appeared C. Richard Davis, President of Davis Development - 10th Street and Cumberland Road, Inc., an Indiana corporation, who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions of Cumberland Estates.

WITNESS my hand and Notarial Seal this 7th day of August, 1991.

Deborah L. Scorsca
Notary Public
Deborah L. Scorsca
Printed

My Commission Expires: 12/12/92
County of Residence: Marion

APPROVED THIS 9th
DAY OF AUG. 1991
ASSEMBLED BY [Signature]
UNAP (SMAN)

This instrument was prepared by C. Richard Davis, President of Davis Development - 10th Street and Cumberland Road, Inc., 8250 Haverstick Road, Suite 290, Indianapolis, Indiana 46240, (317) 259-6217.

EXHIBIT "A"

CUMBERLAND ESTATES - PHASE I, SECTION 1

A part of the Southwest Quarter of the Southeast Quarter of Section 34, Township 16 North, Range 5 East, Second Principal Meridian, Marion County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of said Quarter Quarter Section; thence North 00 degrees 03 minutes 16 seconds West (Assumed Bearing) along the West line of said Quarter Quarter Section a distance of 670.10 feet; thence North 89 degrees 54 minutes 23 seconds East, parallel with the South line of said Quarter Quarter Section, a distance of 1071.28 feet to the Beginning Point; thence North 38 degrees 38 minutes 02 seconds East a distance of 134.54 feet; thence North 34 degrees 19 minutes 36 seconds East a distance of 70.13 feet; thence North 25 degrees 17 minutes 57 seconds East a distance of 94.69 feet; thence North 74 degrees 08 minutes 00 seconds West a distance of 170.34 feet to a curve having a radius of 125.00 feet, the radius point of which bears North 74 degrees 08 minutes 00 seconds West; thence Southwesterly along the arc of said curve a distance of 40.27 feet to a point which bears South 55 degrees 40 minutes 24 seconds East from said radius point; thence South 34 degrees 19 minutes 36 seconds West a distance of 27.93 feet; thence South 90 degrees 00 minutes 00 seconds West a distance of 97.92 feet; thence North 64 degrees 03 minutes 18 seconds West a distance of 120.00 feet; thence North 90 degrees 00 minutes 00 seconds West a distance of 394.76 feet; thence South 10 degrees 06 minutes 36 seconds West a distance of 67.23 feet; thence North 79 degrees 53 minutes 24 seconds West a distance of 112.70 feet to a curve having a radius of 165.00 feet, the radius point of which bears South 10 degrees 06 minutes 36 seconds West; thence Westerly along the arc of said curve a distance of 46.63 feet to a point which bears North 06 degrees 05 minutes 01 seconds West from said radius point; thence South 83 degrees 54 minutes 59 seconds West a distance of 39.27 feet; thence North 10 degrees 06 minutes 36 seconds East a distance of 229.67 feet; thence North 00 degrees 03 minutes 16 seconds West, parallel with the West line of said Quarter Quarter Section, a distance of 110.61 feet to the North Line of said Quarter Quarter Section; thence South 89 degrees 59 minutes 29 seconds East along the said North line a distance of 1273.29 feet to the Northeast corner of said Quarter Quarter Section; thence South 00 degrees 10 minutes 23 seconds East along the East line of said Quarter Quarter Section a distance of 670.51 feet to a point being North 00 degrees 10 minutes 17 seconds West a distance of 670.10 feet from Southeast corner of said Quarter Quarter Section; thence South 89 degrees 54 minutes 23 seconds West, parallel with the South line of said Quarter Quarter Section; a distance of 253.40 feet to the Beginning Point, containing 11.099 acres, more or less.

CUMBERLAND ESTATES - PHASE I, SECTION 2

A part of the Southwest Quarter of the Southeast Quarter and part of the Southeast Quarter of the Southwest Quarter of Section 34, Township 16 North, Range 5 East, Second Principal Meridian, Marion County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of the Southwest Quarter of said Southeast Quarter Section; thence North 00 degrees 03 minutes 16 seconds West (Assumed Bearing) along the West line of said Quarter Quarter Section a distance of 671.10 feet to the Beginning Point; thence North 89 degrees 54 minutes 23 seconds East, parallel with the South line of said Quarter Quarter Section, a distance of 1071.28 feet; thence North 38 degrees 38 minutes 02 seconds East a distance of 134.54 feet; thence North 34 degrees 19 minutes 36 seconds East a distance of 70.13 feet; thence North 25 degrees 17 minutes 57 seconds East a distance of 94.69 feet; thence North 74 degrees 08 minutes 00 seconds West a distance of 170.34 feet to a curve having a radius of 125.00 feet, the radius point of which bears North 74 degrees 08 minutes 00 seconds West; thence Southwesterly along the arc of said curve a distance of 40.27 feet to a point which bears South 55 degrees 40 minutes 24 seconds East from said radius point; thence South 34 degrees 19 minutes 36 seconds West; thence Westerly along the arc of said curve a distance of 46.63 feet to a point which bears North 06 degrees 05 minutes 01 seconds West from said radius point; thence South 83 degrees 54 minutes 59 seconds West a distance of 39.27 feet; thence South 10 degrees 06 minutes 36 seconds West a distance of 341.54 feet; thence North 89 degrees 54 minutes 23 seconds East, parallel with the South line of the Southwest Quarter of said Southeast Quarter Section, a distance of 50.80 feet to the Beginning Point, containing 9.195 acres, more or less.

910081720

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RECEIVED FOR RECORD

FIRST SUPPLEMENT TO
1992 JUL -1 PM 2:50 DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF CUMBERLAND ESTATES
JOAN N. ROMERIL
MARION COUNTY RECORDER

JOHN R. VON ARX
MARION COUNTY CLERK
JUL 1 1992 132018607

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This First Supplement is made this 26th day of June, 1992,
by Cumberland Estates, L.P., an Indiana limited partnership (the
"Developer").

RECITALS

1. Developer is the owner of certain real estate more
particularly described in Exhibit A attached hereto (the
"Additional Real Estate").

2. Developer executed that certain Declaration of Cove-
nants, Conditions and Restrictions of Cumberland Estates, on
August 7, 1991, and recorded the same on August 12, 1991 as
Instrument No. 91-81720 in the Office of the Recorder of Marion
county, Indiana (the "Declaration").

3. Developer reserved in the Declaration the right from
time to time, acting alone, to subject certain additional real
estate located within the tracts adjacent to the Initial Real
Estate (as defined in the Declaration) to the terms of the Decla-
ration by execution and recordation in the office of the Recorder
of Marion County of a supplemental declaration so annexing all or
any part of such real estate to the "Real Estate" (as defined in
the Declaration).

NOW, THEREFORE, Declarant, in accordance with the rights
reserved in the Declaration, makes this First Supplement as
follows:

1. Definitions. All terms used in this First Supplement
not otherwise defined in this First Supplement shall have the
meanings set forth in the Declaration, as the same may be amended
or supplemented from time to time as therein provided.
Accordingly, the Additional Real Estate shall hereafter for all
purposes be included in the definition of Real Estate in the
Declaration, as the same may be amended or supplemented from time
to time as therein provided.

2. First Supplement to Declaration. Developer hereby
expressly declares that the Additional Real Estate, together with
all improvements of every kind and nature whatsoever located
thereon, shall be annexed to the Real Estate and be subjected to
provisions of the Declaration, as the same may be amended or

APPROVED THIS 26th
DAY OF JUNE 1992
ASSESSOR OF WARREN TOWNSHIP
CHRIS STEWART DRAFTSMAN

supplemented from time to time as therein provided, and that the Real Estate is hereby expanded to include the Additional Real Estate, all as if the same had originally been included in the Declaration. The Additional Real Estate shall be hereafter held transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to all of the provisions, agreements, covenants, conditions, restrictions, easements, assessments, charges and liens of the Declaration, as the same may be amended or supplemented from time to time as therein provided.

3. Effect of Covenants. All such provisions of the Declaration, as the same may be amended or supplemented from time to time as therein provided, shall be covenants running with the land and shall be binding upon, and inure to the benefit of Developer and any other person or entity having any right, title or interest in the Real Estate or any part thereof.


4. Declaration Continuous. Except as expressly supplemented by this First Supplement, the Declaration shall continue in full force and effect.

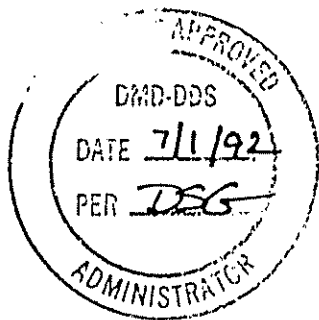
IN WITNESS WHEREOF, this First Supplement to Declaration has been executed by Developer as of the date first above written.

CUMBERLAND ESTATES, L.P., an
Indiana limited partnership

By: Davis Development, L.P.,
general partner

By: Davis Development, Inc.,
general partner

By: 
C. Richard Davis
President



Prepared by: C. Richard Davis, President of Davis Development, Inc., 8250 Haverstick Road, Suite 290, Indianapolis, Indiana 46240.

920083220

STATE OF INDIANA)
)SS:
COUNTY OF Marion

Before me, a Notary Public in and for the State of Indiana, personally appeared C. Richard Davis, the President of Davis Development, Inc., who acknowledged the execution of the foregoing First Supplement to Declaration of Covenants, Conditions and Restrictions of Cumberland Estates on behalf of said corporation.

WITNESS my hand and Notarial Seal this 28th day of May, 1992.

Li-Ching Wu
Notary Public

Li-Ching Wu
Printed Name

My Commission Expires:

April 21, 1996

Residing in

Marion County

920083220

EXHIBIT " A "

CUMBERLAND ESTATES, PHASE 2, SECTION 1

Part of the Southeast Quarter of the Southwest Quarter and part of the Southwest Quarter of the Southeast Quarter, all in Section 34, Township 16 North, Range 5 East, Second Principal Meridian, Marlon County, Indiana, described as follows:

Beginning at the southeast corner of said Southeast Quarter of the Southwest Quarter; thence North 00 degrees 03 minutes 16 seconds West (Assumed Bearing) along the West line of said Southwest Quarter of the Southeast Quarter Section a distance of 670.10 feet; thence South 89 degrees 54 minutes 23 seconds West, parallel with the South line of said Southwest Quarter of the Southeast Quarter Section, a distance of 50.80 feet; thence North 10 degrees 06 minutes 36 seconds East a distance of 571.21 feet; thence North 00 degrees 03 minutes 16 seconds West parallel with the said West line, a distance of 110.61 feet to the North line of said Southwest Quarter of the Southeast Quarter Section; thence North 89 degrees 59 minutes 29 seconds West along the said North line a distance of 50.00 feet to the Northeast corner of the Southeast Quarter of the Southwest Quarter Section; thence North 89 degrees 47 minutes 36 seconds West along the North line of said Southeast Quarter of the Southwest Quarter Section a distance of 265.21 feet; thence South 10 degrees 06 minutes 36 seconds West a distance of 261.95 feet; thence South 00 degrees 30 minutes 05 seconds West a distance of 95.02 feet; thence South 78 degrees 02 minutes 18 seconds West a distance of 125.74 feet; thence South 11 degrees 57 minutes 42 seconds East a distance of 100.00 feet to a curve having a radius of 175.00 feet, the radius point of which bears South 11 degrees 57 minutes 42 seconds East; thence Southwesterly along the arc of said curve a distance of 180.25 feet to a point which bears North 70 degrees 58 minutes 37 seconds West from said radius point; thence South 90 degrees 00 minutes 00 seconds West a distance of 103.69 feet; thence South 10 degrees 21 minutes 51 seconds West a distance of 32.64 feet; thence South 00 degrees 00 minutes 00 seconds West a distance of 207.24 feet; thence South 45 degrees 00 minutes 00 seconds West a distance of 123.55 feet; thence North 88 degrees 10 minutes 57 seconds West a distance of 126.90 feet; thence North 39 degrees 13 minutes 35 seconds West a distance of 124.08 feet; thence North 00 degrees 00 minutes 00 seconds East a distance of 107.14 feet; thence South 78 degrees 03 minutes 00 seconds West a distance of 95.53 feet; thence South 74 degrees 08 minutes 01 seconds West a distance of 39.30 feet; thence South 00 degrees 00 minutes 00 seconds West a distance of 258.80 feet; thence North 90 degrees 00 minutes 00 seconds East a distance of 155.53 feet; thence South 00 degrees 00 minutes 00 seconds West a distance of 150.00 feet; thence South 90 degrees 00 minutes 00 seconds West a distance of 8.60 feet; thence South 00 degrees 00 minutes 00 seconds West a distance of 189.32 feet to the South line of said Southeast Quarter of the Southwest Quarter Section; thence South 89 degrees 41 minutes 51 seconds East along the said South line a distance of 931.32 feet to the Beginning Point, containing 19.978 acres, more or less.

920083220

CUMBERLAND ESTATES, PHASE 2 , SECTION 2

A part of the Southeast Quarter of the Southwest Quarter of Section 34, Township 16 North, Range 5 East, Second Principal Meridian, Marion County, Indiana, more particularly described as follows:

Commencing at the Southeast corner of Southeast Quarter of the said Southwest Quarter Section; thence North 89 degrees 41 minutes 51 seconds West (Assumed Bearing) along the South line of said Quarter Quarter Section a distance of 1328.15 feet to the Southwest corner of said Quarter Quarter Section; thence North 00 degrees 01 minutes 38 seconds West along the West line of the said Quarter Quarter Section a distance of 684.44 feet to the Beginning Point; thence continuing North 00 degrees 01 minutes 38 seconds West along said West line a distance of 656.31 feet to the Northwest corner of said Quarter Quarter Section; thence South 89 degrees 47 minutes 36 seconds East along the North line of said Quarter Quarter Section a distance of 1062.30 feet; thence South 10 degrees 06 minutes 36 seconds West a distance of 261.95 feet; thence South 00 degrees 30 minutes 05 seconds West a distance of 95.02 feet; thence South 78 degrees 02 minutes 18 seconds West a distance of 125.74 feet; thence South 11 degrees 57 minutes 42 seconds East a distance of 100.00 feet to a curve having a radius of 175.00 feet, the radius point of which bears South 11 degrees 57 minutes 42 seconds East; thence Southwesterly along said curve an arc distance of 180.25 feet to a point which bears North 70 degrees 58 minutes 37 seconds West from said radius point; thence South 90 degrees 00 minutes 00 seconds West a distance of 103.69 feet; thence North 10 degrees 21 minutes 51 seconds East a distance of 43.93 feet; thence North 42 degrees 28 minutes 06 seconds West a distance of 156.00 feet; thence South 80 degrees 16 minutes 37 seconds West a distance of 438.68 feet; thence South 00 degrees 00 minutes 00 seconds West a distance of 145.74 feet; thence South 90 degrees 00 minutes 00 seconds West a distance of 150.22 feet to the Beginning Point, containing 11.944 acres, more or less.

920086220

SECOND SUPPLEMENT TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF CUMBERLAND ESTATES

JOHN W. FINE, REC. CLERK
SEP 6 10 29 AM '93
4

This Second Supplement is made this 21st day of September, 1993, by Cumberland Estates, L.P., an Indiana limited partnership (the "Developer").

RECITALS

1. Developer is the owner of certain real estate more particularly described in Exhibit A attached hereto (the "Additional Real Estate").

2. Developer executed that certain Declaration of Covenants, Conditions and Restrictions of Cumberland Estates, on August 7, 1991, and recorded the same on August 12, 1991 as Instrument No. 91-81720 in the Office of the Recorder of Marion county, Indiana (the "Declaration").

3. Developer reserved in the Declaration the right from time to time, acting alone, to subject certain additional real estate located within the tracts adjacent to the Initial Real Estate (as defined in the Declaration) to the terms of the Declaration by execution and recordation in the office of the Recorder of Marion County of a supplemental declaration so annexing all or any part of such real estate to the "Real Estate" (as defined in the Declaration).

NOW, THEREFORE, Declarant, in accordance with the rights reserved in the Declaration, makes this Second Supplement as follows:

1. Definitions. All terms used in this Second Supplement not otherwise defined in this Second Supplement shall have the meanings set forth in the Declaration, as the same may be amended or supplemented from time to time as therein provided. Accordingly, the Additional Real Estate shall hereafter for all purposes be included in the definition of Real Estate in the Declaration, as the same may be amended or supplemented from time to time as therein provided.

2. Second Supplement to Declaration. Developer hereby expressly declares that the Additional Real Estate, together with all improvements of every kind and nature whatsoever located thereon, shall be annexed to the Real Estate and be subjected to provisions of the Declaration, as the same may be amended or supplemented from time to time as therein provided, and that the Real Estate is hereby expanded to include the Additional Real Estate, all as if the same had originally been included in the

Declaration. The Additional Real Estate shall be hereafter held transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to all of the provisions, agreements, covenants, conditions, restrictions, easements, assessments, charges and liens of the Declaration, as the same may be amended or supplemented from time to time as therein provided.

3. Effect of Covenants. All such provisions of the Declaration, as the same may be amended or supplemented from time to time as therein provided, shall be covenants running with the land and shall be binding upon, and inure to the benefit of Developer and any other person or entity having any right, title or interest in the Real Estate or any part thereof.

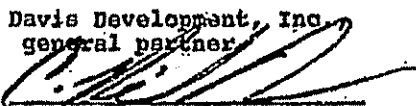
4. Declaration Continuous. Except as expressly supplemented by this Second Supplement, the Declaration shall continue in full force and effect.

IN WITNESS WHEREOF, this Second Supplement to Declaration has been executed by Developer as of the date first above written.

CUMBERLAND ESTATES, L.P., an
Indiana limited partnership

By: Davis Development, L.P.,
general partner

By: Davis Development, Inc.
general partner

By: 
C. Richard Davis
President

Prepared by: C. Richard Davis, President of Davis Development, Inc., 3755 East 82nd Street, Suite 120, Indianapolis, Indiana 46240.

STATE OF INDIANA)
)SS:
COUNTY OF Marion

Before me, a Notary Public in and for the State of Indiana, personally appeared C. Richard Davis, the President of Davis Development, Inc., who acknowledged the execution of the foregoing Second Supplement to Declaration of Covenants, Conditions and Restrictions of Cumberland Estates on behalf of said corporation.

WITNESS my hand and Notarial Seal this 21st day of September, 1993.

Li-Ching Wu
Notary Public

Li-Ching Wu
Printed Name

My Commission Expires:

4-21-96

Residing in

Marion County

APPROVED THIS 21st
DAY OF SEPT. 19 93
ASSESSOR OF VARGEN TOWNSHIP
Chris Stewart DRAFTSMAN

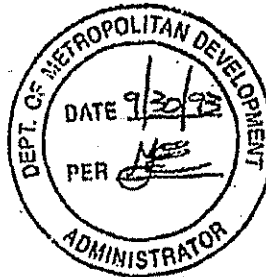


Exhibit A

LAND DESCRIPTION

Cumberland Estates, Phase 3

Section 1

Part of the Southeast Quarter of the Southwest Quarter of Section 34, Township 16 North, Range 5 East in Marion County, Indiana, being more particularly described as follows:

Commencing at the Southeast Corner of the Southeast Quarter of the said Southwest Quarter Section; thence North 89 degrees 41 minutes 51 seconds West (Assumed Bearing) along the South line of said Quarter Quarter Section a distance of 931.32 feet to the Southwest corner of Cumberland Estates Phase 2 Section 1, a subdivision in Marion County, Indiana, the plot of which is recorded as Instrument Number 920086228 in the Office of the Recorder of Marion County, Indiana and the Beginning Point; thence continuing North 89 degrees 41 minutes 51 seconds West along the said South line a distance of 396.83 feet to the Southwest corner of the Southeast Quarter of the said Southwest Quarter Section; thence North 00 degrees 01 minutes 38 seconds West along the West line of the Southeast Quarter of the said Southwest Quarter Section a distance of 684.44 feet to the Southwestmost corner of Cumberland Estates Phase 2 Section 2, a subdivision in Marion County, Indiana, the plot of which is recorded as Instrument Number 920086227 in the Office of the Recorder of Marion County, Indiana; thence North 90 degrees 00 minutes 00 seconds East along the South line of said Cumberland Estates Phase 2 Section 2 a distance of 150.22 feet; thence South 00 degrees 00 minutes 00 seconds West a distance of 70.00 feet; thence North 90 degrees 00 minutes 00 seconds East a distance of 100.00 feet; thence South 00 degrees 00 minutes 00 seconds West along the West line and West line extended northerly of said Cumberland Estates Phase 2 Section 1 a distance of 277.21 feet (the next four (4) described courses being along the said West line); thence North 00 degrees 00 minutes 00 seconds East a distance of 155.53 feet; thence South 00 degrees 00 minutes 00 seconds West a distance of 150.00 feet; thence South 50 degrees 00 minutes 00 seconds West a distance of 8.60 feet; thence South 00 degrees 00 minutes 00 seconds West a distance of 189.32 feet to the Beginning Point, containing 4.945 acres, more or less.

Section 2

Part of the Southeast Quarter of the Southwest Quarter of Section 34, Township 16 North, Range 5 East in Marion County, Indiana, being more particularly described as follows:

Commencing at the Southeast Corner of the Southeast Quarter of the said Southwest Quarter Section; thence North 89 degrees 41 minutes 51 seconds West (Assumed Bearing) along the South line thereof a distance of 1378.15 feet to the Southwest Corner of the Southeast Quarter of the said Southwest Quarter Section; thence North 00 degrees 01 minutes 38 seconds West along the West line of said Quarter Quarter Section a distance of 684.44 feet to the Southwestmost Corner of Cumberland Estates Phase 2 Section 2, a subdivision in Marion County, Indiana, the plot of which is recorded as Instrument Number 920086227 in the Office of the Recorder of Marion County, Indiana (the next four (4) described courses being along the southerly line of said Cumberland Estates Phase 2 Section 2); thence North 90 degrees 00 minutes 00 seconds East a distance of 150.22 feet to the Beginning Point; thence North 00 degrees 00 minutes 00 seconds East a distance of 145.74 feet; thence North 80 degrees 16 minutes 37 seconds East a distance of 438.68 feet; thence South 42 degrees 28 minutes 06 seconds East a distance of 156.00 feet; thence South 10 degrees 21 minutes 51 seconds West along the Southerly line of Cumberland Estates Phase 2 Section 2 and along the Northerly line of Cumberland Estates Phase 2 Section 1, a subdivision in Marion County, Indiana, the plot of which is recorded as Instrument Number 920086228 in the Office of the Recorder of Marion County, Indiana a distance of 76.57 feet (the next seven (7) described courses being along the said Northerly line); thence South 00 degrees 00 minutes 00 seconds West a distance of 207.24 feet; thence South 45 degrees 00 minutes 00 seconds West a distance of 123.55 feet; thence North 88 degrees 10 minutes 57 seconds West a distance of 126.90 feet; thence North 39 degrees 13 minutes 35 seconds West a distance of 124.08 feet; thence North 00 degrees 00 minutes 00 seconds East a distance of 107.14 feet; thence South 78 degrees 03 minutes 00 seconds West a distance of 95.53 feet; thence South 74 degrees 08 minutes 01 seconds West a distance of 39.30 feet; thence North 00 degrees 00 minutes 00 seconds East a distance of 18.41 feet; thence South 90 degrees 00 minutes 00 seconds West a distance of 100.00 feet; thence North 00 degrees 00 minutes 00 seconds East a distance of 70.00 feet to the Beginning Point, containing 4.158 acres, more or less.

9

PLAT COVENANTS AND RESTRICTIONS

CUMBERLAND ESTATES

PHASE 3, SECTIONS 1 and 2

The undersigned, CUMBERLAND ESTATES, L.P., an Indiana limited partnership (the "Developer"), is the Owner of the real estate more specifically described in Exhibit "A" attached hereto (the "Real Estate"). The Developer is concurrently platting and subdividing the Real Estate as shown on the plats for Cumberland Estates - Phase 3, Sections 1 and 2, which are filed of record on Feb. 5, 1993, in the office of the Recorder of Marion County, Indiana (together, the "Plat") and desires in the Plat to subject the Real Estate to the provisions of these Plat Covenants and Restrictions. The subdivision created by the Plat (the "Subdivision") is to be known and designated as "Cumberland Estates". In addition to the covenants and restrictions hereinafter set forth, the Real Estate is also subject to those covenants and restrictions contained in the Declaration of Covenants, Conditions and Restrictions of Cumberland Estates, dated August 7, 1991 and recorded on August 12, 1991 as Instrument No. 91-81720, in the office of the Recorder of Marion County, Indiana, as the same may be amended or supplemented from time to time as therein provided (the "Declaration"), and to the rights, powers, duties and obligations of the Cumberland Estates Community Association, Inc. (the "Association"), set forth in the Declaration. If there is any irreconcilable conflict between any of the covenants and restrictions contained herein and any of the covenants and restrictions contained in the Declaration, the covenants and restrictions contained in the Declaration shall govern and control, but only to the extent of the irreconcilable conflict, it being the intent hereof that all covenants and restrictions contained herein shall be applicable to the Real Estate to the fullest extent possible. Capitalized terms used herein shall have the same meaning as given in the Declaration.

In order to provide adequate protection to all present and future Owners of Lots or Residence Units in the Subdivision, the following covenants and restrictions, in addition to those set forth in the Declaration, are hereby imposed upon the Real Estate:

1. **PUBLIC RIGHT OF WAY.** The rights-of-way of the streets as shown on the plat, if not heretofore dedicated to the public, are hereby dedicated to the public for use as a public right-of-way.

2. **COMMON AREAS.** There are areas of ground on the Plat marked "Common Area". Developer hereby declares, creates and grants a non-exclusive easement in favor of each Owner for the use and enjoyment of the Common Areas, subject to the conditions and restrictions contained in the Declaration.

3. DRAINAGE UTILITY AND SEWER EASEMENTS. There are areas of ground on the Plat marked "Drainage Utility and Sewer Easements". The Drainage Utility and Sewer Easements are hereby created and reserved (a) for the use of all public utility companies (not including transportation companies), governmental agencies and the Association for access to and installation, maintenance, repair or removal of poles, mains, ducts, drains, lines, wires, cables and other equipment and facilities for the furnishing of utility services, including cable television services; and (b) for (i) the use of Developer during the "Development Period" (as such term is defined in the Declaration) for access to and installation, repair or removal of a drainage system, either by surface drainage or appropriate underground installations, for the Re: Estate and adjoining property and (ii) the use of the Association and the Department of Public Works of the City of Indianapolis for access to and maintenance, repair and replacement of such drainage system. The owner of any Lot in the Subdivision subject to a Drainage Utility and Sewer Easement, including any builder, shall be required to keep the portion of said Drainage Utility and Sewer Easement on his Lot free from obstructions so that the storm water drainage will be unimpeded and will not be changed or altered without a permit from the Department of Public Works and prior written approval of the Developer. The delineation of the "Drainage Utility and Sewer Easement areas on the Plat shall not be deemed a limitation on the rights of any entity for whose use any such easement is created and reserved to go on any Lot subject to such easement temporarily to the extent reasonably necessary for the exercise of the rights granted to it by this Paragraph 3. Except as provided above, no structures or improvements, including without limitation decks, patios, fences, walkways or landscaping of any kind, shall be erected or maintained upon said easements.

4. LANDSCAPE EASEMENTS. There are areas on the Plat marked "Landscape Easements" which are hereby created and reserved: (i) for the use of the Developer during the Development Period for access to and the installation, maintenance and replacement of foliage, landscaping, screening materials and other improvements and (ii) for the use of the Association for access to and the installation, maintenance and replacement of foliage, landscaping, screening materials and other improvements. Except as installed by Developer or installed and maintained by the Association or with the prior written consent of the Architectural Review Committee, no structure or improvements, shall be maintained in or upon said Landscape Easements.

5. LANDSCAPE PRESERVATION EASEMENTS. There are areas of ground on the plat marked "Landscape Preservation Easements". Developer hereby declares, creates and reserves the Landscape Preservation Easements for the preservation of the trees, bushes, shrubbery and other vegetation in such areas in their natural unimproved state. No improvements (including, without limitation, decks, walkways, patios and fences) shall be erected or maintained within or upon such Landscape Preservation Easements without the prior written permission of the Architectural Review

Committee. No living trees, bushes, shrubbery or other vegetation shall be removed from the Landscape Preservation Easement except (a) by public utility companies, governmental agencies, Developer, the Department of Public Works of the City of Indianapolis or the Association in connection with such entity's use of the Drainage Utility and Sewer Easements as hereix permitted; or (b) by Developer (or any entity related to Developer) in connection with the development of the Real Estate.

6. LAKE EASEMENTS. There are areas of ground on the plat marked "Lake Easements". Such Lake Easements are hereby declared created and reserved by developer: (a) for the benefit of the Owners, subject to the rights of the Association to promulgate reasonable rules and regulations (not inconsistent with the provisions of the Plat or the Declaration) governing such use and enjoyment; and (b) for the use of the Developer for access to and construction, maintenance and control of retention and detention ponds or lakes and the installation, repair and replacement of improvements and vegetation thereon. Except as installed by Developer or installed and maintained by the Association, no improvements, including without limitation piers, decks, walkways, patios and fences, shall be erected or maintained upon any Lake Easements.

7. BUILDING LOCATION - FRONT, BACK AND SIDE YARD REQUIREMENTS. Building setback lines are established on the Plat. No building shall be erected or maintained between said setback lines and the front, rear or side lot line (as the case may be) of a Lot. The setback lines may vary in depth from the minimum as designated on the Plat. The minimum front setback shall be twenty (20) feet from the right-of-way to the living area. The minimum rear yard setback shall be twenty (20) feet from the rear property line to the living area. In addition, no building shall be erected or maintained closer to any side Lot line of any Lot than five (5) feet.

8. RESIDENTIAL UNIT SIZE AND OTHER REQUIREMENTS. No residence constructed on a Lot shall have less than one thousand, two hundred (1,200) square feet of floor area, exclusive of garages, carports and open porches. The minimum main (first floor) living area of any building higher than one story shall be eight hundred (800) square feet. Each residence Unit shall include an attached two-car enclosed garage. The portion of the total area of any Lot that is covered by the residential dwelling (including any attached residential accessory building) shall not exceed sixty-five percent (65%). The maximum height of any residential dwelling constructed on a lot shall be thirty-five (35) feet. The maximum height of any attached residential accessory building shall be twenty (20) feet.

9. RESIDENTIAL UNIT USE. All Lots in the Subdivision shall be used solely for residential purposes. No business building shall be erected on any lot, and no business may be conducted on

any part thereof. No structure shall be erected, placed or permitted to remain on any Lot other than one detached single-family residence not to exceed two stories in height and permanently attached residential accessory buildings. Any attached garage, attached tool shed, storage building or any other attached building erected or used as an accessory building to a residence shall be of a permanent type of construction and shall conform to the general architecture and appearance of such residence.

10. ACCESSORY AND TEMPORARY BUILDINGS. No trailers, shacks, outhouses or detached or unenclosed storage sheds, tool sheds or accessory buildings of any kind shall be erected or situated on any Lot in the Subdivision, except that used by the Developer or by a builder during the construction of a residential building on the property, which temporary construction structures shall be promptly removed upon completion of construction of the Subdivision or building, as the case may be.

11. TEMPORARY STRUCTURES. No trailer, camper, motor home, truck, shack, tent, boat, recreational vehicle, basement, garage or outbuilding may be used at any time as a residence, temporary or permanent; nor may any structure of a temporary character be used as a residence.

12. NUISANCES. No domestic animals raised for commercial purposes and no farm animals or fowl shall be kept or permitted on any Lot. No noxious, unlawful or otherwise offensive activity shall be carried out on any Lot, nor shall anything be done thereon which may be or may become a serious annoyance or nuisance to the neighborhood.

13. VEHICLE PARKING. No camper, motor home, truck, trailer, boat or recreational vehicle of any kind may be stored on any Lot in open public view. No vehicles of any kind may be put up on blocks or jacks to accommodate car repair on a Lot unless such repairs are done in the garage. Disabled vehicles shall not be allowed to remain in open public view.

14. SIGNS. No sign of any kind shall be displayed to the public view on any Lot, except that one sign of not more than six (6) square feet may be displayed at any time for the purpose of advertising a property for sale, and except that Developer and its affiliates and designees, including the builders, may use larger signs during the sale and development of the Subdivision.

15. MAILBOXES. All mailboxes and replacement mailboxes shall be uniform and shall conform to the standards set forth by the Architectural Review Committee.

16. GARBAGE AND REFUSE DISPOSAL. Trash and refuse disposal will be on an individual basis, lot by lot. The community shall not contain dumpsters or other forms of general or common trash

accumulation except to facilitate development and house construction. No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage and other waste shall be kept in sanitary containers. All equipment for storage or disposal of such materials shall be kept clean and shall not be stored on any Lot in open public view. No rubbish, garbage or other waste shall be allowed to accumulate on any Lot. No homeowner or occupant of a Lot shall burn or bury any garbage or refuse.

17. STORAGE TANKS. No gas, oil or other storage tanks shall be installed on any Lot.

18. WATER SUPPLY AND SEWAGE SYSTEMS. No private or semi-private water supply or sewage disposal system may be located upon any Lot. No septic tank, absorption field or other method of sewage disposal shall be located or constructed on any Lot.

19. DITCHES AND SWALES. All owners, including builders, shall keep unobstructed and in good maintenance and repair all open storm water drainage ditches and swales which may be located on their respective Lots.

20. DRIVEWAYS. Each driveway in the Subdivision shall be of concrete or asphalt material.

21. ANTENNA AND SATELLITE DISHES. No outside antennas or satellite dishes shall be permitted in the Subdivision.

22. AWNINGS. No metal, fiberglass, canvas or similar type material awnings or patio covers shall be permitted in the Subdivision, except that a builder may utilize a canvas or similar type material awning on its model home sales center in the Subdivision.

23. FENCING. Any fencing permitted to be used in the Subdivision must be wooden or black vinyl coated chain link and shall not be higher than six (6) feet. Uncoated chain link fencing is prohibited. No fencing shall extend forward of the furthest back front corner of the residence. All fencing style, color, location and height shall be generally consistent within the Subdivision and shall be subject to prior written approval of the Architectural Review Committee.

24. SWIMMING POOLS. No above-ground swimming pools shall be permitted in the Subdivision.

25. SOLAR PANELS. No solar heat panels shall be permitted on roofs of any structures in the Subdivision. All such panels shall be enclosed within fenced areas and shall be concealed from the view of neighboring Lots, common areas and the streets.

26. OUTSIDE LIGHTING. Except as otherwise approved by the Developer in connection with a builder's model home sales center,

all outside lighting contained in or with respect to the Subdivision shall be of an ornamental nature compatible with the architecture of the project and shall provide for projection of light so as not to create a glare, distraction or nuisance to other property owners in the vicinity of or adjacent to the project.

27. SITE OBSTRUCTIONS. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and nine (9) 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 twenty-five (25) feet from the intersection of said street lines, or in the case of a rounded property corner, from the intersection of the street lines extended. The same sight-line limitations shall apply to any Lot within ten (10) feet from the intersection 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 a sufficient height to prevent obstruction of such sight lines.

28. VIOLATION. Violation or threatened violation of these covenants and restrictions shall be grounds for an action by the Developer, the Association or any person or entity having any right, title or interest in the Real Estate, and all persons or entities claiming under them, against the person or entity violating or threatening to violate any such covenants or restrictions. Available relief in any such action shall include recovery of damages for such violation, injunctive relief against any such violation or threatened violation, declaratory relief and the recovery of costs and attorneys reasonable fees incurred by any party successfully enforcing these covenants and restrictions; provided, however, that neither the Developer nor the Association shall be liable for damages of any kind to any person for failing to enforce such covenants or restrictions.

29. METROPOLITAN DEVELOPMENT COMMISSION. The Metropolitan Development Commission, its successors and assigns shall have no right, power or authority to enforce any covenants, restrictions or other limitations contained herein other than those covenants, restrictions or limitations that expressly run in favor of the Metropolitan Development Commission; provided that nothing herein shall be construed to prevent the Metropolitan Development Commission from enforcing any provisions of the Subdivision Control Ordinance, 58-A0-3, as amended, or any conditions attached to approval of the Plat by the Plat Committee.

30. AMENDMENT. These covenants and restrictions may be amended at any time by the then owners of at least sixty-seven percent (67%) of the Lots or Residence Units in all Subdivisions which are now or hereafter made subject to and annexed to the Declaration; provided, however, that until all of the Lots in such Subdivisions have been sold by Developer, any such amendment shall require the prior written approval of Developer. Each such

amendment shall be evidenced by a written instrument, signed by the Owner or Owners concurring therein, which instrument shall set forth facts sufficient to indicate compliance with this paragraph and shall be recorded in the office of the Recorder of Marion County, Indiana. No amendment which adversely affects the rights of a public utility shall be effective with respect to such public utility without its written consent thereto. No amendment which is contrary to a zoning commitment shall be effective without the written approval of the affected adjacent homeowners associations designated by the Department of Metropolitan Development.

31. **TERM.** The foregoing plat covenants and restrictions, as the same may be amended from time to time, shall run with the land and shall be binding upon all persons or entities from time to time having any right, title or interest in the Real Estate and on all persons or entities claiming under them, until December 31, 2005, and thereafter they shall continue automatically in effect unless terminated by a vote of a majority of the then Owners of the Lots or Residence Units in the Subdivision; provided, however, that no termination of said these covenants and restrictions shall affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall have consented thereto in writing.


32. **SEVERABILITY.** Invalidation of any of the foregoing covenants or restrictions by judgment or court order shall in no way affect any of the other covenants and restrictions, which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned Developer, as the owner of the Real Estate, has hereunto caused its name to be subscribed this 21st day of September, 1993.

By: Cumberland Estates, L.P.

By: Davis Development, L.P.,
general partner

By: Davis Development, Inc.
general partner

By: 
C. Richard Davis
President

STATE OF INDIANA)
)SS:
COUNTY OF MARION)

Before me, a Notary Public in and for the State of Indiana, personally appeared C. Richard Davis, the President of Davis Development, Inc., an Indiana corporation, and acknowledged the execution of this instrument as his voluntary act and deed as such officer on behalf of such corporation for the uses and purposes hereinabove set forth.

Witness my signature and Notarial Seal this 21st day of September, 1993.

Li. Ching Wu
Notary Public
Li. Ching Wu
Printed

My commission expires:
4-21-96

I am a resident of
Marion County, Indiana.

APPROVED THIS 21st
DAY OF SEPT. 19 93
ASSESSOR OF WARREN TOWNSHIP
Chas. Stewart DRAFTSMAN



This instrument was prepared by C. Richard Davis, President of Davis Development, Inc., 3755 East 82nd Street, Suite 120, Indianapolis, Indiana 46240.

Exhibit 'A'

LAND DESCRIPTION

Cumberland Estates, Phase 3

Section 1

Part of the Southeast Quarter of the Southwest Quarter of Section 34, Township 16 North, Range 5 East in Marion County, Indiana, being more particularly described as follows:

Commencing at the Southeast Corner of the Southwest Quarter of the said Southwest Quarter Section; thence North 89 degrees 41 minutes 51 seconds West (Assumed Bearing) along the South line of said Quarter Quarter Section a distance of 931.32 feet to the Southwest corner of Cumberland Estates Phase 2 Section 1, a subdivision in Marion County, Indiana, the plot of which is recorded as Instrument Number 920086228 in the Office of the Recorder of Marion County, Indiana and the Beginning Point; thence continuing North 89 degrees 41 minutes 51 seconds West along the said South line a distance of 396.03 feet to the Southwest corner of the Southeast Quarter of the said Southwest Quarter Section; thence North 00 degrees 01 minutes 38 seconds West along the West line of the Southeast Quarter of the said Southwest Quarter Section a distance of 684.44 feet to the Southwestmost corner of Cumberland Estates Phase 2 Section 2, a subdivision in Marion County, Indiana, the plot of which is recorded as Instrument Number 920086227 in the Office of the Recorder of Marion County, Indiana; thence North 90 degrees 00 minutes 00 seconds East along the South line of said Cumberland Estates Phase 2 Section 2 a distance of 150.22 feet; thence South 00 degrees 00 minutes 00 seconds West a distance of 70.00 feet; thence North 90 degrees 00 minutes 00 seconds East a distance of 100.00 feet; thence South 00 degrees 00 minutes 00 seconds West along the West line and West line extended northerly of said Cumberland Estates Phase 2 Section 1 a distance of 277.21 feet (the next four (4) described courses being along the said west line); thence North 90 degrees 00 minutes 00 seconds East a distance of 155.53 feet; thence South 00 degrees 00 minutes 00 seconds West a distance of 150.00 feet; thence South 00 degrees 00 minutes 00 seconds West a distance of 8.60 feet; thence South 00 degrees 00 minutes 00 seconds West a distance of 189.32 feet to the Beginning Point, containing 4.945 acres, more or less.

Section 2

Part of the Southeast Quarter of the Southwest Quarter of Section 34, Township 16 North, Range 5 East in Marion County, Indiana, being more particularly described as follows:

Commencing at the Southeast Corner of the Southeast Quarter of the said Southwest Quarter Section; thence North 89 degrees 41 minutes 51 seconds West (Assumed Bearing) along the South line thereof a distance of 1328.15 feet to the Southwest Corner of the Southeast Quarter of the said Southwest Quarter Section; thence North 00 degrees 01 minutes 38 seconds West along the West line of said Quarter Quarter Section a distance of 684.44 feet to the Southwestmost Corner of Cumberland Estates Phase 2 Section 2, a subdivision in Marion County, Indiana, the plot of which is recorded as Instrument Number 920086227 in the Office of the Recorder of Marion County, Indiana (the next four (4) described courses being along the southerly line of said Cumberland Estates Phase 2 Section 2); thence North 90 degrees 00 minutes 00 seconds East a distance of 150.22 feet to the Beginning Point; thence North 00 degrees 00 minutes 00 seconds East a distance of 145.74 feet; thence North 80 degrees 16 minutes 37 seconds East a distance of 438.68 feet; thence South 42 degrees 28 minutes 06 seconds East a distance of 156.00 feet; thence South 10 degrees 21 minutes 51 seconds West along the Southerly line of Cumberland Estates Phase 2 Section 2 and along the Northerly line of Cumberland Estates Phase 2 Section 1, a subdivision in Marion County, Indiana, the plot of which is recorded as Instrument Number 920086228 in the Office of the Recorder of Marion County, Indiana a distance of 76.57 feet (the next seven (7) described courses being along the said Northerly line); thence South 00 degrees 00 minutes 00 seconds West a distance of 207.24 feet; thence South 45 degrees 00 minutes 00 seconds West a distance of 123.55 feet; thence North 88 degrees 10 minutes 57 seconds West a distance of 126.90 feet; thence North 39 degrees 13 minutes 35 seconds West a distance of 124.08 feet; thence North 00 degrees 00 minutes 00 seconds East a distance of 107.14 feet; thence South 78 degrees 03 minutes 00 seconds West a distance of 95.53 feet; thence South 74 degrees 08 minutes 01 seconds West a distance of 39.30 feet; thence North 00 degrees 00 minutes 00 seconds East a distance of 18.41 feet; thence South 90 degrees 00 minutes 00 seconds West a distance of 100.00 feet; thence North 00 degrees 00 minutes 00 seconds East a distance of 70.00 feet to the Beginning Point, containing 4.158 acres, more or less.

JOHN R. VON ARX
MARION COUNTY CLERK

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FILED FOR REGISTRATION
SUBJECT TO PUBLIC ACCEPTANCE
FOR TRANSFER

42

**AMENDMENT TO
PLAT COVENANTS AND RESTRICTIONS**

**CUMBERLAND ESTATES
PHASE 3, SECTIONS 1 AND 2**

This Amendment ("Amendment") declared by the undersigned Developer as of the date last set forth below, amends those certain Plat Covenants and Restrictions recorded in the office of the Recorder of Marion County Indiana on October 6, 1993, as Instrument No. 93-0148286, as amended, if any, to date (the "Plat") as follows:

1. **Defined Terms.** Terms used herein, not otherwise defined herein, shall have the meanings ascribed to them in the Plat.

2. **Antenna and Satellite Dishes.** Notwithstanding anything contained in the Plat, the Declaration or elsewhere to the contrary, outdoor satellite dishes shall be permitted in the Subdivision; provided, however, that: (a) the diameter of the satellite dish shall be no more than twenty-four inches (24"), (b) only one (1) satellite dish shall be permitted on each Lot, (c) the Architectural Review Committee shall have first determined that the satellite dish is appropriately placed and properly screened in order to preserve property values and maintain a harmonious and compatible relationship among the houses in the Subdivision, and (d) the Architectural Review Committee shall have first expressly approved the same in writing.

3. **Effect.** In the event of any conflict between the terms of this Amendment and the terms of the Plat or the Declaration, this Amendment shall govern and control over the terms of the Plat and the Declaration. Except as otherwise expressly modified hereby, the terms and conditions of the Plat and the Declaration shall continue in full force and effect without modification.

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Inst # 1995-0093123


4. **Authority.** The terms of this Amendment were duly approved in writing by the affirmative vote of a sufficient number of owners of Lots in the Subdivision to amend the Plat and the Declaration pursuant to and in compliance with the terms of the Plat and the Declaration.

IN WITNESS WHEREOF, the undersigned Developer has executed this Amendment as of July 28, 1995.

CUMBERLAND ESTATES, L.P.,
by its general partner

DAVIS HOMES, LLC, an Indiana limited
liability company, by its sole manager

DAVIS HOLDING CORPORATION,
an Indiana corporation

By: 
Christopher R. White, Vice President

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Christopher R. White Before me, a Notary Public in and for said County and State, personally appeared ~~C. Richard Davis~~, Vice President of Davis Holding Corporation, the Manager of Davis Homes, LLC, who acknowledged execution of the foregoing Deed and who, having been duly sworn, stated that the representations therein contained are true.


Witness my hand and Notarial Seal this 28th day of July, 1995.

Li-Ching Wu
Notary Public

Li-Ching Wu
Printed Name

My Commission Expires:
4-21-96

My County of Residence:
Hamilton

 This instrument was prepared by and return recorded Deed to Ronald F. Shady, Jr., Attorney at Law, Lowe Gray Steele & Hoffman, Bank One Tower, 111 Monument Circle, Suite 4600, Indianapolis, Indiana 46204-5146, (317) 236-8020.

wprts\Davis\cumbrind.ph3

Exhibit A

LAND DESCRIPTION

Cumberland Estates, Phase 3

Section 1

Part of the Southeast Quarter of the Southwest Quarter of Section 34, Township 16 North, Range 5 East in Marion County, Indiana, being more particularly described as follows:

Commencing at the Southeast Corner of the Southeast Quarter of the said Southwest Quarter Section; thence North 89 degrees 41 minutes 51 seconds West (Assumed Bearing) along the South line of said Quarter Quarter Section a distance of 931.32 feet to the Southwest corner of Cumberland Estates Phase 2 Section 1, a subdivision in Marion County, Indiana, the plat of which is recorded as Instrument Number 920086228 in the Office of the Recorder of Marion County, Indiana and the Beginning Point; thence continuing North 89 degrees 41 minutes 51 seconds West along the said South line a distance of 396.83 feet to the Southwest corner of the Southeast Quarter of the said Southwest Quarter Section; thence North 00 degrees 01 minutes 38 seconds West along the West line of the Southeast Quarter of the said Southwest Quarter Section a distance of 684.44 feet to the Southwestmost corner of Cumberland Estates Phase 2 Section 2, a subdivision in Marion County, Indiana, the plat of which is recorded as Instrument Number 920086227 in the Office of the Recorder of Marion County, Indiana; thence North 90 degrees 00 minutes 00 seconds East along the South line of said Cumberland Estates Phase 2 Section 2 a distance of 150.22 feet; thence South 00 degrees 00 minutes 00 seconds West a distance of 70.00 feet; thence North 90 degrees 00 minutes 00 seconds East a distance of 100.00 feet; thence South 00 degrees 00 minutes 00 seconds West along the West line and West line extended northerly of said Cumberland Estates Phase 2 Section 1 a distance of 277.21 feet (the next four (4) described courses being along the said west line); thence North 90 degrees 00 minutes 00 seconds East a distance of 155.53 feet; thence South 00 degrees 00 minutes 00 seconds West a distance of 150.00 feet; thence South 90 degrees 00 minutes 00 seconds West a distance of 8.60 feet; thence South 00 degrees 00 minutes 00 seconds West a distance of 189.32 feet to the Beginning Point, containing 4.945 acres, more or less.

Section 2

Part of the Southeast Quarter of the Southwest Quarter of Section 34, Township 16 North, Range 5 East in Marion County, Indiana, being more particularly described as follows:

Commencing at the Southeast Corner of the Southeast Quarter of the said Southwest Quarter Section; thence North 89 degrees 41 minutes 51 seconds West (Assumed Bearing) along the South line thereof a distance of 1328.15 feet to the Southwest Corner of the Southeast Quarter of the said Southwest Quarter Section; thence North 00 degrees 01 minutes 38 seconds West along the West line of said Quarter Quarter Section a distance of 684.44 feet to the Southwestmost Corner of Cumberland Estates Phase 2 Section 2, a subdivision in Marion County, Indiana, the plat of which is recorded as Instrument Number 920086227 in the Office of the Recorder of Marion County, Indiana (the next four (4) described courses being along the southerly line of said Cumberland Estates Phase 2 Section 2); thence North 90 degrees 00 minutes 00 seconds East a distance of 150.22 feet to the Beginning Point; thence North 00 degrees 00 minutes 00 seconds East a distance of 145.74 feet; thence North 80 degrees 16 minutes 37 seconds East a distance of 438.68 feet; thence South 42 degrees 28 minutes 06 seconds East a distance of 156.00 feet; thence South 10 degrees 21 minutes 51 seconds West along the Southerly line of Cumberland Estates Phase 2 Section 2 and along the Northerly line of Cumberland Estates Phase 2 Section 1, a subdivision in Marion County, Indiana, the plat of which is recorded as Instrument Number 920086228 in the Office of the Recorder of Marion County, Indiana a distance of 76.57 feet (the next seven (7) described courses being along the said Northerly line); thence South 00 degrees 00 minutes 00 seconds West a distance of 207.24 feet; thence South 45 degrees 00 minutes 00 seconds West a distance of 123.55 feet; thence North 88 degrees 10 minutes 57 seconds West a distance of 126.90 feet; thence North 39 degrees 13 minutes 35 seconds West a distance of 124.08 feet; thence North 00 degrees 00 minutes 00 seconds East a distance of 107.14 feet; thence South 78 degrees 03 minutes 00 seconds West a distance of 95.53 feet; thence South 74 degrees 08 minutes 01 seconds West a distance of 39.30 feet; thence North 00 degrees 00 minutes 00 seconds East a distance of 18.41 feet; thence South 90 degrees 00 minutes 00 seconds West a distance of 100.00 feet; thence North 00 degrees 00 minutes 00 seconds East a distance of 70.00 feet to the Beginning Point, containing 4.158 acres, more or less.

FIRST AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF CUMBERLAND ESTATES

THIS DECLARATION is made this 9th day of August, 1999 by CUMBERLAND ESTATES HOMEOWNERS ASSOCIATION, INC. ("Association").

WITNESSETH:

WHEREAS, control of the Community has been delivered to the Association by the Developer, the Association properly adopted two amendments to the Declaration of Covenants, Conditions and Restrictions of Cumberland Estates ("Covenants"), dated August 7, 1991, recorded as Instrument Number 91-0081720 in the Office of the Recorder of Marion County, Indiana.

WHEREAS, said amendments were properly adopted pursuant to the requirements and procedures described in Article XI of the Covenants. Specifically, a notice of the proposed amendments was delivered to each of the members of the Association. Said notice described the proposed amendments to be considered at the annual meeting of the members of the Association and a resolution to adopt the following two (2) amendments was proposed by the Board of Directors and adopted by at least sixty-seven percent (67%) of the Owners, either in person or by proxy. All known Mortgagees were given prior notice of the proposed amendments and of the annual meeting to consider the same.

NOW, THEREFORE, the Association hereby amends Article XI of the Covenants to read as follows:

ARTICLE XI

AMENDMENTS

11.1 By the Association. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

- (i) Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting of the members of the Association at which the proposed amendment is to be considered.
(ii) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of votes of all Owners.

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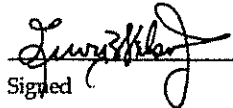
(iii) Meeting. The resolution concerning a proposed amendment must be adopted by the vote required by paragraph 11.1 (iv) at a meeting of the members of the Association duly called and held in accordance with the provisions of the By-Laws

(iv) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than sixty-seven percent (67%) of the Owners who participate in any vote upon proposed amendments to the Plat Covenants and Restrictions, either in person or by proxy.

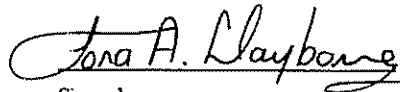
11.2 Recording. Each amendment to this Declaration shall be executed by Developer only in any case where Developer has the right to amend this Declaration without any further consent or approval, and otherwise by the President or Vice President and Secretary of the Association; provided that any amendment requiring consent of Developer shall contain Developer's signed consent. All amendments shall be recorded in the office of the Recorder of Marion County, Indiana, and no amendment shall become effective until so recorded.

NOW, THEREFORE, the Association hereby incorporates herein by reference all of the remaining covenants, rights, restrictions, and liabilities contained in the original Covenants.

IN WITNESS WHEREOF, the undersigned, being the President or Vice President and the Secretary of the Association, have hereunto set our hands this 9th day of AUGUST, 1999.


Signed

Lenoy Wilson Jr.
Printed


Signed

Lora A. Clayborne
Printed

STATE OF INDIANA)
): SS
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Leroy Wilson, Jr. and LORA A. Crayborne, the President or Vice President and the Secretary of the Cumberland Estates Homeowners Association, Inc. each of whom, after having been first duly sworn, acknowledged the execution of the foregoing FIRST AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF CUMBERLAND ESTATES for and on behalf of said Corporation, on this 9th day of AUGUST, 1999.

My Commission Expires:


01-28-00

Cindy L Dean
Notary Public

County of Residence:

PUTNAM

CINDY L DEAN
Printed

This instrument was prepared by William T. Niemier, Attorney at Law, 21 East Main Street, Post Office Box 441, New Palestine, Indiana, 46163 (317) 861-8690. 

SECOND AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF CUMBERLAND ESTATES

THIS SECOND AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF CUMBERLAND ESTATES is made this 2nd day of October, 2000 by CUMBERLAND ESTATES HOMEOWNERS ASSOCIATION, INC. ("Association").

WITNESSETH:

WHEREAS, said control of the Community has been delivered to the Association by the Developer, the Association properly adopted an Amendment to the Declaration of Covenants, Conditions and Restrictions of Cumberland Estates ("Covenants") dated August 7, 1991, recorded on August 12, 1991 as Instrument Number 91-0081720 in the Office of the Recorder of Marion County, Indiana; and

WHEREAS, the Plat Covenants and Restrictions Cumberland Estates Phase 1, Sections 1 and 2 was executed on August 7, 1991 by the Declarant, Cumberland Estates, L.P., Davis Development, L.P., general partner and Davis Development, Inc., general partner and recorded on August 12, 1991 as Instrument No. 91-0081721 in the Office of the Recorder of Marion County, Indiana; and

WHEREAS, the Plat Covenants and Restrictions Cumberland Estates Phase 2, Sections 1 and 2 was executed on May 28, 1992 by the Declarant, Cumberland Estates, L.P., Davis Development, L.P., general partner and Davis Development, Inc., general partner and recorded on July 1, 1992 as Instrument No. 92-86226 in the Office of the Recorder of Marion County, Indiana; and

WHEREAS, the Plat Covenants and Restrictions Cumberland Estates Phase 3, Sections 1 and 2 was executed on September 21, 1993 by the Declarant, Cumberland Estates, L.P., Davis Development, L.P., general partner and Davis Development, Inc., general partner and recorded on October 6, 1993 as Instrument No. 93-148286 in the Office of the Recorder of Marion County, Indiana; and

WHEREAS, the Amendment to Plat Covenants and Restrictions Cumberland Estates Phase 1, Sections 1 and 2 was executed on July 28, 1995 by the Declarant, Cumberland Estates, L.P., Davis Homes, LLC, and Davis Holding Corporation and recorded on August 1, 1995 as Instrument No. 95-93121 in the Office of the Recorder of Marion County, Indiana; and

WHEREAS, the Amendment to Plat Covenants and Restrictions Cumberland Estates Phase 2, Sections 1 and 2 was executed on July 28, 1995 by the Declarant, Cumberland Estates, L.P., Davis Homes, LLC, and Davis Holding Corporation and recorded on August 1, 1995 as Instrument No. 95-93122 in the Office of the Recorder of Marion County, Indiana; and

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10/05/00 09:22PM MARION COUNTY RECORDER
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WHEREAS, the Amendment to Plat Covenants and Restrictions Cumberland Estates Phase 3, Sections 1 and 2 was executed on July 28, 1995 by the Declarant, Cumberland Estates, L.P., Davis Homes, LLC, and Davis Holding Corporation and recorded on August 1, 1995 as Instrument No. 95-93123 in the Office of the Recorder of Marion County, Indiana; and

WHEREAS, the First Amendment to the Declarations, Covenants, Conditions and Restrictions of Cumberland Estates was executed on August 9, 1999 by the Declarant, Cumberland Estates and recorded on August 10, 1999 as Instrument No. in the Office of the Recorder of Marion County, Indiana; and

WHEREAS, the First Amendment to the Declarations, Covenants, Conditions and Restrictions of Cumberland Estates, amended the documents to incorporate that any vote put to the association, being properly executed and notice given to all, would pass by not less than 67% of the owners who participated in said vote, the Association

NOW THEREFORE, amends the Plat Covenants and Restrictions Cumberland Estates Phase 1, Sections 1 and 2, Item 10; and Plat Covenants and Restrictions Cumberland Estates Phase 2, Sections 1 and 2, Item 10; and Plat Covenants and Restrictions Cumberland Estates Phase 3, Sections 1 and 2, Item 10 and replace, Item 10 IN ITS ENTIRETY WITH:

10.) Mini-Barns will be permitted that have received PRIOR ARCHITECTURAL APPROVAL and also meet the following criteria: The dimensions will not exceed 8' width by 12' length and the walls not to exceed 8' height. The roof pitch shall not exceed 3'. The mini-barn must be at the rear of the home and at least 2' from any property line. The mini-barn shall not be placed in a utility easement. Roofing and paint must match the home. Mini-barns must be constructed of T-111, or equivalent, siding only. All construction must be finished within 30 days, once started.

NOW, THEREFORE, the Association hereby incorporates by reference all of the remaining covenants, rights, restrictions and liabilities contained in the original Declaration of Covenants, Conditions and Restrictions of Cumberland Estates, Plat Covenants and Restrictions Cumberland Estates Phase 1, Sections 1 and 2, Phase 2, Sections 1 and 2 and Phase 3, Sections 1 and 2 and any Amendments recorded to any of the documents herein referenced as if fully set forth herein. All shall remain in full force and effect except as amended herein.

IN WITNESS WHEREOF, the undersigned, being PRESIDENT or VICE-PRESIDENT and SECRETARY of the Association, have hereunto set our hands this 2nd day of October, 2000. CUMBERLAND ESTATES HOMEOWNERS ASSOCIATION, INC.

Lenny Wilson
Signed

Lora Clayborne
Signed

Lenny Wilson
Printed

Lora Clayborne
Printed

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

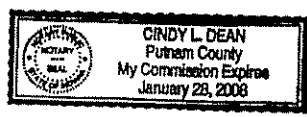
Before me, a Notary Public in and for said County and State, personally appeared Lenny Wilson Jr, President or Vice President of Cumberland Estates Homeowners Association, Inc. and Lora Clayborne, Secretary of Cumberland Estates Homeowners Association, Inc. who acknowledged the execution of the foregoing Second Amendment to the Declaration of Covenants, Conditions and Restrictions of Cumberland Estates

WITNESS my hand and notarial seal this 2nd day of October, 2000.

My Commission Expires:
01-28-08

Cindy L. Dean
Notary Public

CINDY L. DEAN
Printed



Residing in Putnam
County, Indiana

This instrument prepared by Cumberland Estates Homeowners Association, Inc. c/o Harmony Management 7412 Rockville Road, Suite B, Indianapolis, Indiana 46214.

OK

②

**THIRD AMENDED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
OF CUMBERLAND ESTATES COMMUNITY ASSOCIATION, INC.**

CUMBERLAND ESTATES COMMUNITY ASSOCIATION, INCORPORATED, makes THIS DECLARATION this 30th day of October, 2001.

WHEREAS, the Developer has delivered control of the Community to the Association, the Association properly adopted an amendment to the Declaration of Covenants, Conditions and Restrictions of Cumberland Estates Community Association, Inc., dated August 7, 1991, and recorded as Instrument Number 91-0081720 in the Office of the Recorder of Marion County, Indiana.

WHEREAS, said amendments were properly adopted pursuant to the requirements and procedures described in Article XI of the covenants. Specifically, a notice of the proposed amendments was delivered to each of the members of the Association. Said notice described the proposed amendments to be considered at the annual meeting of the members of the Association and a resolution to adopt the following amendments was proposed by the Board of Directors and adopted by at least 67% of the Owners, either in person or by proxy.

Awnings shall be permitted, however, they must meet the following guidelines:

- They must receive Architectural approval before purchase.
- Must be fully retractable.
- Must be commercially installed.
- Must be constructed of commercial materials.
- Any colors must conform to the existing color scheme of the house siding and trim.
- May not be left extended during winter months (November-March).
- Must meet other standards as may be established by the Board of Directors of Cumberland Estates Community Association, Inc.

NOW THEREFORE, the Association hereby amends Article IV Sec. 4.5 of the Declaration of Covenants, Conditions, and Restrictions of Cumberland Estates Community Association, Inc.

4.5 Other Use Restrictions Contained in Plat Covenants and Restrictions. The Plat Covenants and Restrictions relating to the Cumberland Estates Real Estate contain additional restrictions on the use of Lots In the Subdivision, including without limitation prohibitions against commercial use, detached accessory buildings and nuisances and restrictions relating to temporary structures, vehicle parking, signs, mailboxes, garbage and refuse disposal, storage tanks, water supply and sewage systems, ditches and swales, driveways, antenna and satellite dishes, fencing, swimming pools, solar panels and outside lighting. Such prohibitions and restrictions are hereby incorporated by reference as though fully set forth herein.

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Inst # 2001-0195386

MARTHA A. WOMACKS
MADISON, WISCONSIN

394559 NOV-28

ORDER FOR TAXATION
SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER

