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NOTE:

Article VI, Section 3(b) of the rules of the Metropolitan Development Commission requires use of this form in recording commitments made with respect to zoning and approval cases in accordance with I.C. 36-7-4-607. Resolution No. 85-R-69, 1985 of the Metropolitan Development Commission requires the owner to make Commitment #1.

COMMITMENTS CONCERNING THE USE OR DEVELOPMENT OF REAL ESTATE  
MADE IN CONNECTION WITH A REZONING OF PROPERTY OR PLAN APPROVAL

In accordance with I.C. 36-7-4-607, the owner of the real estate located in Marion County, Indiana, which is described below, makes the following COMMITMENTS concerning the use and development of that parcel of real estate:

Legal Description:

See attached legal description.

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METRO DEVELOPMENT COMMISSION

Statement of COMMITMENTS.

1. The owner agrees to abide by the Open Occupancy and Equal Employment Opportunity Commitments required by Metropolitan Development Commission Resolution No. 85-R-59, 1985, which commitments are attached hereto and incorporated herein by reference as Attachment "A".

2. All perimeter lots shall meet or exceed all D-2 standards

3. Minimum living area shall be 1,600 square feet for a one-story residence and 1,800 square feet for a multi-story residence, with a minimum ground floor area of 1,200 square feet.

4. Exterior building materials shall be limited to masonry from the ground to the eave of the first floor, with masonry of wood permitted above the eave.

5. Each residence shall have at least a two-car attached garage.

These COMMITMENTS shall be binding on the owner, subsequent owners of the real estate and other persons acquiring an interest therein; provided that Commitment #1 (Open Occupancy and Equal Opportunity Commitments) shall not be binding on an owner, subsequent owners or other persons acquiring an interest therein if such persons are exempt persons or are engaged in an exempt activity as defined on Attachment "A", which is attached hereto and incorporated herein by reference. These COMMITMENTS may be modified or terminated by a decision of the Metropolitan Development Commission made at a public hearing after proper notice has been given.

FILED

JUN 14 1989

DEPT. METRO DEVELOPMENT  
BY

- Concrete sidewalks shall be installed on both sides of the street.
6. Concrete sidewalks shall be installed on both sides of the street.
  7. All residences shall be custom built.
  8. The fence currently surrounding the site shall remain if located on the subject property.
  9. All construction activity and materials shall be confined to the lot being improved. At no time shall the street or adjacent lots be used for the storage of construction materials.
  10. There shall be a minimum of 3 ponds which shall be located in substantial compliance with Exhibit 1, subject to the approval of the Department of Public Works.
  11. The maximum number of lots in the development shall not exceed 215.
  12. Owner shall screen and landscape the Southport Road frontage, subject to the approval of the Administrator of the Division of Development Services.
  13. Owner shall abide by the covenants stated in attached Exhibit 2.
  14. Owner shall dedicate right-of-way to the Department of Transportation as follows:
    - (a) 70 foot half right-of-way along Shelbyville Road.
    - (b) 60 foot half right-of-way along Southport Road, with a 70 foot half right-of-way at the project entrance.

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COMMITMENTS contained in this instrument shall be effective upon:

(a) the adoption of rezoning petition #89-2-175 by the City-County Council changing the zoning classification of the real estate from a A-2 zoning classification to a D-2 zoning classification; or

(b) the adoption of approval petition #1 by the Metropolitan Development Commission; and shall continue in effect for as long as the above-described parcel of real estate remains zoned to the D-2 zoning classification or until such other time as may be specified herein.

These COMMITMENTS may be enforced jointly or severally by:

1. the Metropolitan Development Commission;
2. Owners of all parcels of ground adjoining the real estate to a depth of two (2) ownerships, but not exceeding six-hundred-sixty (660) feet from the perimeter of the real estate, and all owners of real estate within the area included in the petition who were not petitioners for the rezoning or approval. Owners of real estate entirely located outside Marion County are not included, however. The identity of owners shall be determined from the records in the offices of the various Township Assessors of Marion County which list the current owners of record. (This paragraph defines the category of persons entitled to receive personal notice of the rezoning or approval under the rules in force at the time the commitment was made.);
3. Any person who is aggrieved by a violation of either of the Commitments contained in Commitment #1 (Open Occupancy and Equal Employment Opportunity Commitments); and

4.

The undersigned hereby authorizes the Division of Development Services of the Department of Metropolitan Development to record this Commitment in the office of the Recorder of Marion County, Indiana, upon final approval of petition # 89-2-175.

IN WITNESS WHEREOF, owner has executed this instrument this 14th day of Sept, 1977. (Seal)

Signature David E. Comley (Seal) Signature \_\_\_\_\_

Printed David E. Comley Printed \_\_\_\_\_

STATE OF INDIANA ) SS.  
COUNTY OF MARION )

before me, a Notary Public in and for said County and State,

personally appeared David E. Comley

owner(s) of the real estate who acknowledged the execution of the foregoing instrument and who, having been duly sworn, stated that any representations therein contained are true.

899076937

Witness my hand and Notarial Seal this 4th day

of June, 1989

Signature [Handwritten Signature]  
Printed Dorinda A. McKelvey  
County of Residence MARION

My Commission expires:  
12/15/89

This instrument was prepared by Stephen D. Yeatts, Esq., 50 South Meridian Street, Suite 400, Indianapolis, IN 46204

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ATTACHMENT "A"

OPEN OCCUPANCY AND EQUAL EMPLOYMENT OPPORTUNITY COMMITMENT

- (a.) The owner commits that he shall not discriminate against any person on the basis of race, color, religion, ancestry, national origin, handicap or sex in the sale, rental, lease or sublease, including negotiations for the sale, rental, lease or sublease, of the real estate or any portion thereof, including, but not limited to:
- (1) any building, structure, apartment, single room or suite of rooms or other portion of a building, occupied as or designed or intended for occupancy as living quarters by one or more families or a single individual;
  - (2) any building, structure or portion thereof, or any improved or unimproved land utilized or designed or intended for utilization, for business, commercial, industrial or agricultural purposes;
  - (3) any vacant or unimproved land offered for lease for any purpose whatsoever.
- (b.) The owner commits that in the development, sale, rental or other disposition of the real estate or any portion thereof, neither he nor any person engaged by him to develop, sell, rent or otherwise dispose of the real estate, or portion thereof shall discriminate against any employee or applicant for employment employed or to be employed in the development, sale, rental or other disposition of the real estate, or portion thereof with respect to hire, tenure, conditions of employment, wages or employment, because of race, color, religion, ancestry, national origin, handicap or sex.

EXEMPT REASONS AND EXEMPT ACTIVITIES

An exempt person shall mean the following:

1. With respect to commitments (a) and (b) above:
  - (a) any not-for-profit corporation or association organized exclusively for fraternal or religious purposes;
  - (b) any school, educational, charitable or religious institution owned or conducted by, or with, a church or religious institution;
  - (c) any exclusively social club, corporation or association that is not organized for profit and is not in fact open to the general public;provided that no such entity shall be exempt with respect to a housing facility owned and operated by it if such a housing facility is open to the general public;
2. With respect to commitment b, a person who employs fewer than six (6) employees within Marion County.

An exempt activity with respect only to commitment (a) shall mean the renting of rooms in a boarding house or rooming house or single-family residential unit; provided, however, the owner of the building unit actually maintains and occupies a unit or room in the building as his residence, and, at the time of the rental the owner intends to continue to so occupy the unit or room therein for an indefinite period subsequent to the rental.

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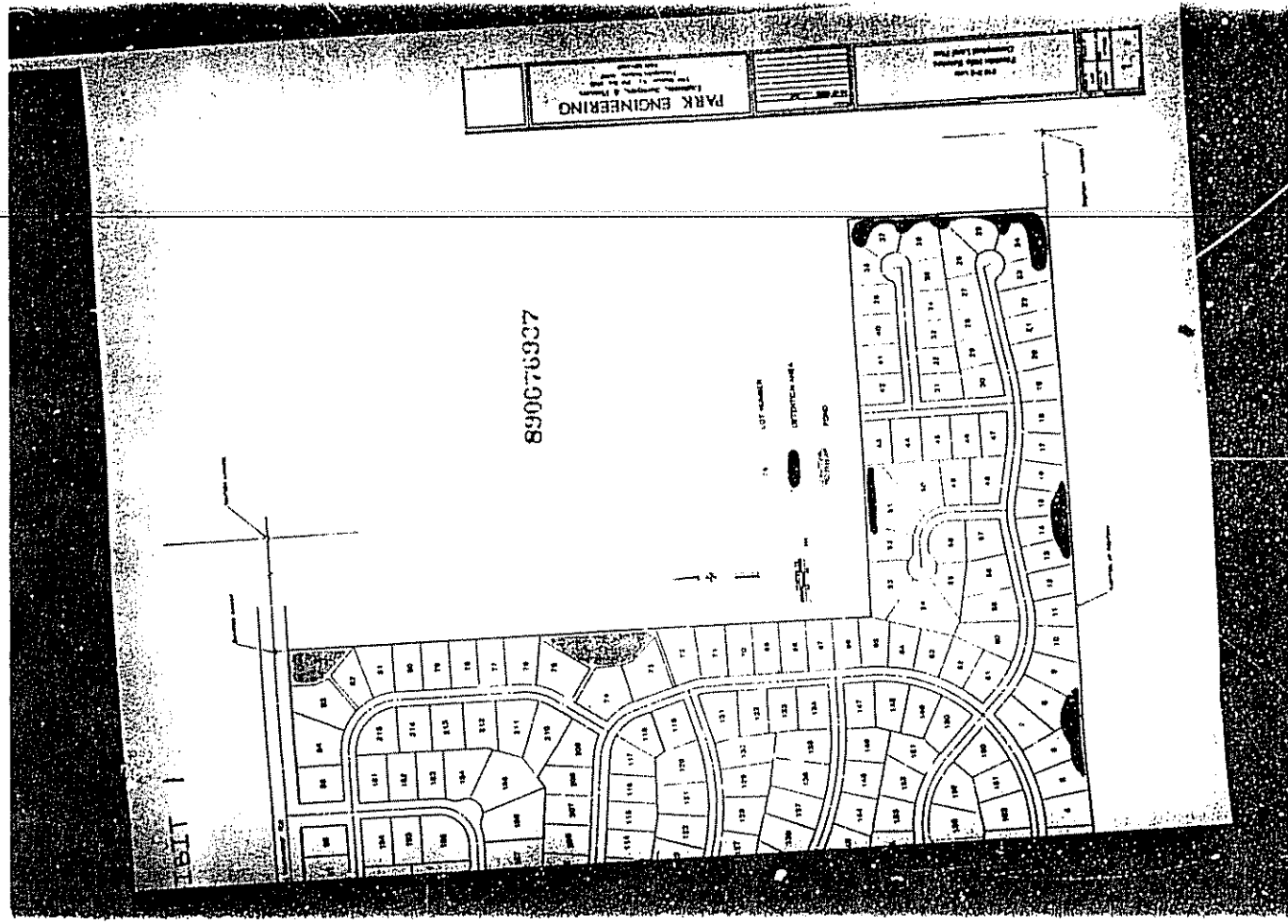
LEGAL DESCRIPTION

The East Half of the Northwest Quarter of Section 13, Township 14 North, Range 4 East of the Second Principal Meridian in Marion County, containing 80 acres, more or less.

Also, the South Half of the Southwest Quarter of the Northeast Quarter of Section 13, Township 14 North, Range 4 East of the Second Principal Meridian in Marion County, Indiana, containing 20 acres, more or less.

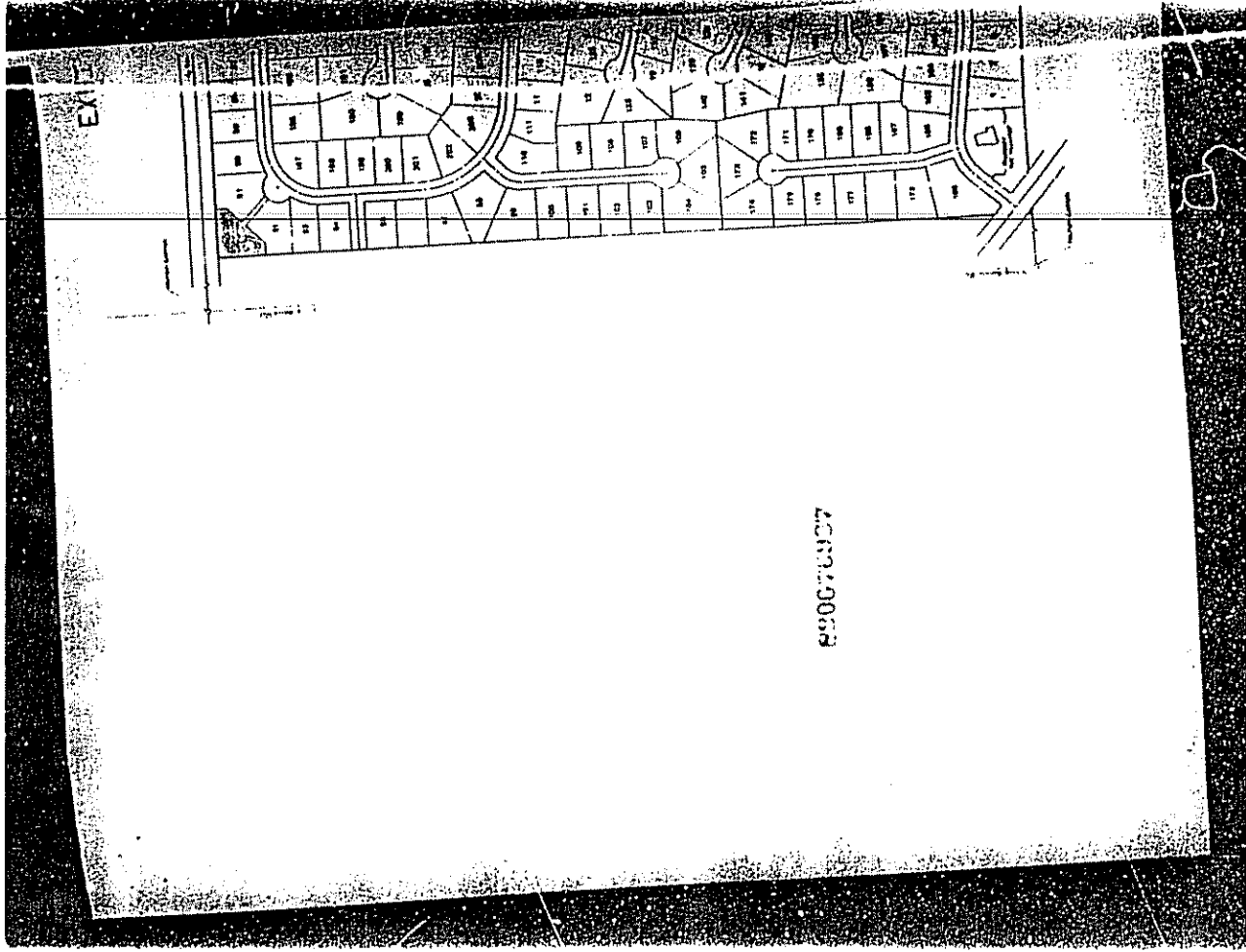
Subject to any legal highways or rights of way.

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PARK ENGINEERING  
Professional Engineer  
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150 FT



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EXHIBIT 2

1. No lot shall be used except for residential purposes, and no buildings shall be erected, altered or placed on any lot other than one (1) detached single family dwelling not to exceed two (2) stories in height, and an attached private garage for not less than two (2) cars. Carports with open sides shall be permitted. All driveways and vehicle parking areas shall be hard surfaced with either concrete, asphalt or brick. No gravel or stone driveways shall be permitted. No plywood siding shall be permitted on any structure.
2. Any dwelling constructed upon any lot in this development shall conform to the following minimum living area requirements. The ground floor living area of all single story dwellings shall contain not less than 1600 square feet exclusive of one (1) story open porches and garages, and other areas not considered living area. No two (2) story dwellings shall contain less than 1200 square feet of living area on the ground floor, and a minimum total square footage of 1800 in the entire structure. No building shall be located on any lot nearer to the front line or nearer the side street line than the minimum building set-back as shown on the recorded plat. No building shall be located nearer than seven (7) feet to a side yard line, and the total side yard set-back (both sides) must total twenty-five (25) feet. No building shall be erected closer than twenty-five (25) feet to the rear lot line. No garage or storage building may be constructed separate and apart from the main dwelling.
3. No building shall be erected, placed or attached on any lot until construction plans and specifications have been submitted and approved by the Architectural Control Committee. These plans shall show existing trees, trees to be removed, ground floor elevations, topography, and finished grade elevations. The Architectural Control Committee shall have control of the quality of workmanship, material, and the harmony of external design with the existing structures. No fence or wall or mail box and post shall be erected, placed or altered on any lot within the development unless previously approved by the Architectural Control Committee in writing. Approvals shall be provided as set forth in paragraphs 4 and 5 of the Covenants. The Architectural Control Committee must approve the owner's plan for preserving existing trees and foliage prior to the commencement of any work on the property. It shall be the lot owner's responsibility to comply precisely with all building and site finished ground elevations as finally required and approved by the Indianapolis Department of Public Works and as evidenced upon the final construction plans for the development of Franklin Hill Estates.

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4. The Architectural Control Committee shall be composed of not less than two (2) nor more than four (4) members, all appointed by the undersigned. A majority of the Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the remaining members shall have full authority to designate a successor. Neither the members of the Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant to the Covenant. The Committee shall serve at the discretion of the undersigned. Within thirty (30) days following July 1, 1991 the Architectural Control Committee shall notify all resident homeowners of an Architectural Control Committee meeting to be held within an additional thirty (30) days. At this meeting, resident homeowners shall elect one new member to serve for a term of one (1) year, and one (1) new member to serve for two (2) years. The remaining Architectural Control Committee member shall serve for an additional one (1) year term. He shall be elected out of the three (3) former members of the Architectural Control Committee and shall serve as President for his remaining year. On July 1, 1992, the Architectural Control Committee shall call yearly meetings with thirty (30) days notification of resident property owners who shall elect one (1) new committee member for a three (3) year term. The majority resident homeowners shall elect officers for the Architectural Control Committee. The Architectural Control Committee shall call yearly meetings for the election of the new member for his or her three (3) year term.
5. The Architectural Control Committee's approval or disapproval as required in these Covenants shall be in writing. In the event the Committee, or its designated representative, fails to approve or disapprove within twenty (20) days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin its construction and commenced prior to the completion thereof, approval shall not be required, and the related Covenants shall be deemed to have been fully complied with.
6. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.
7. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other cut building shall be permitted to remain on any lot or used on any lot at any time as a residence, either temporarily or permanently. The exterior surface of all buildings shall have prior written approval by the Architectural Control Committee. All dwellings shall contain a garbage disposal unit. Outdoor trash burners shall not be permitted. All residences shall contain a trash compactor.

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8. No sign of any kind shall be displayed to the public view on any lot, except signs used by any approved builder to advertise the property during the construction period as approved by the developer. Violation of this sign restriction shall result in fifty dollars (\$50.00) per day.
9. No oil or water drillings, oil development operations, oil refining quarries or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells or tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil, water or natural gas shall be erected, maintained or permitted on any lot. All prepaue tanks must be concealed.
10. No animals, livestock or poultry of any kind shall be bred, or kept on any lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purpose.
11. No lot shall be used or maintained as a dumping ground for rubbish, trash, or garbage. Antenna, masts, towers or satellite dishes of any kind shall not be permitted on any lot or outside any dwelling, unless first approved by the Architectural Control Committee. No trash or building materials may be burned or buried on any lot within the development, and all lots shall be kept clean at all times during any construction, with all trash and excess materials stored in a trash dumpster screened from view and provided by the contractor and removed daily.
12. No fence, wall, hedge or shrub planting which obstructs the sight lines at elevations between two (2) and six (6) feet above roadways 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 them at points twenty-five (25) feet from the intersection of the street property lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within ten (10) feet from the intersection of a street property line with the edge of a driveway pavement. No trees shall be permitted to remain within such distances of such intersections, unless the foliage line is maintained at sufficient heights to prevent obstruction of such sight lines. No driveway shall be located within forty (40) feet of the intersection of two (2) street lines. Sidewalks shall be the responsibility of the lot owners and building contractor, and shall be completed at such time as the driveway on the lot is constructed or within eighteen (18) months of the date such lot is initially conveyed by the undersigned, whichever date shall first occur.

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13. Each lot shall be kept in a neat and pleasing manner. With the grass mowed when necessary to maintain a growth of six (6) inches or less at all times. Campers, recreational vehicles or boats of any kind may not be stored or parked on any lot outside the main dwelling or garage. All basketball backboards and any other fixed games and play structures shall be located behind the front foundation line of the main structure and within lot setback lines, and must be approved by the Architectural Control Committee prior to location on the premises. It is the intention of this restriction to assure that lots and surroundings present a park-like appearance.

14. No individual water supply system or sewage disposal system shall be permitted on any lot without prior written approval by the Architectural Control Committee and Marion County and shall be located and constructed in accordance with requirements, standards and recommendations of the Indiana State Board of Health. Geothermal systems shall be approved by all applicable agencies prior to installation. Solar heating systems of a nature must be approved by the Architectural Control Committee as to design and quality prior to construction. Components are hereby advised that such systems are generally discouraged and shall not be approved unless their design blends with the structure and adjacent properties. All exterior air conditioning units shall be screened from view. A mailbox shall be erected or maintained on any lot or within the development without prior approval of the Architectural Control Committee. The mailboxes throughout the development are intended to be uniform in design and color and shall be specified by the developer.

15. Any field lines or underground drain which is encountered in construction of any improvements within this subdivision shall be perpetuated, and the owners of lots in this subdivision and their successors shall comply with the Indiana Drainage Code 1965 and all amendments thereto.

16. Any motor vehicle which is inoperable or unlicensed, and not being used for normal transportation shall not be permitted to remain on the lot. Above ground swimming pools shall not be permitted or constructed on the lot.

17. All construction commenced on any lot within the development shall be completed within one hundred twenty (120) days, unless circumstances beyond the reasonable control of the builder would prevent such. The undersigned shall have the authority to seek an injunction or order for the removal of materials and partially completed structures in violation of the Covenant.

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18. All costs of litigation and attorneys' fees resulting from violation of these Covenants shall be the financial responsibility of the lot owners found to be in violation.

19. The three (3) ponds located within the subdivision shall be maintained and insured by the Homeowners' Association. The Homeowners' Association shall also be responsible for the maintenance of all common areas and for snow removal.

20. Each lot owner's obligation shall mature thirty (30) days after date of receipt of his obligation and shall draw interest at twelve (12) percent after the obligation matures with reasonable attorney fees, if such services are required to secure payment.

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Accom.

17.0  
CROSS REFERENCE

SECOND SUPPLEMENTAL DECLARATION OF  
COVENANTS AND RESTRICTIONS OF  
MOSS CREEK PROPERTY OWNERSHIP

910023763

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CLERK OF COURSE  
MARION COUNTY RECORDER

Section Five and Section Six

THIS SUPPLEMENTAL DECLARATION made this 28 day of December, 1990,  
by NEWTONE DEVELOPMENTS, INC., an Indiana Corporation ("Declarant"),

W I T N E S S E T H:

WHEREAS, the following facts are true:

A. Declarant is the sole owner in fee simple title to certain real estate located in Marion County, Indiana, more particularly described in the attached Exhibit A and Exhibit B, which is incorporated herein by reference (hereinafter respectively referred to as "Moss Creek, Section Five and Section Six").

B. Declarant has heretofore executed a Declaration of Covenants and Restrictions of Moss Creek Property Ownership which was recorded in the Office of the Recorder of Marion County, Indiana, as Instrument No. 88-120160 (the "Declaration"). Only Moss Creek Section One through Section Four have been subjected to the Declaration initially, however, the Declaration provided that additional real estate could be subjected to the terms and conditions of the Declaration.

C. Moss Creek, Section Five and Section Six, are part of the Additional Tract described in paragraph 22 of the Declaration. Paragraph 22 of the Declaration provides that all or part of the Additional Tract may be annexed to and become a part of Moss Creek and incorporated into the Declaration with the owners thereof becoming members of the Moss Creek Homeowners Association, Inc. in accordance with the provisions of paragraph 22 of the Declaration upon the filing of a Supplemental Declaration by Declarant and the Final Plat of this real estate being incorporated into Moss Creek. All conditions relating to the annexation of the Exhibit A and Exhibit B realty to make it subject to the Declaration have been met and Declarant

OFFICE OF THE CLERK OF COURSE  
MAR 18 10 06 05 8  
MARION COUNTY RECORDER  
JOHN R. VOHLBREK  
RECORDER

by execution of this Supplemental Declaration hereby incorporates Moss Creek Section Five and Section Six, into the Moss Creek development and the Declaration.

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

1. Declaration. Declarant hereby expressly declares that Moss Creek Section Five and Section Six, shall be held, conveyed and transferred in accordance with the provisions of the Declaration as if such had originally been included in the Declaration and shall hereafter be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions and provisions of the Declaration as such may be amended from time to time. Moss Creek Section Five and Section Six, hereafter and for all purposes shall be included in the definition of Tract as defined in paragraph 1(s) of the Declaration.

2. Description of Moss Creek, Section Five and Section Six. Moss Creek Section Five consists of 32 lots numbered 32 through 50, Lots 119 through 123, and Lots 162 through 167, inclusive and Lots 17 and 19, Section Six consists of 26 lots numbered 3 through 16 and Lots 20 through 31, inclusive, together with the Common Area as designated on the plat for these designated Sections. The Common Area and the size of the Lots are as designated on such plat. The legal description for each Lot in this additional realty shall be as follows:

Lot \_\_\_\_\_ in Moss Creek, Section Four (or Section Five), a subdivision in Marion County, Indiana, as per plat thereof, recorded on \_\_\_\_\_, as Instrument No. \_\_\_\_\_, in the Office of the Recorder of Marion County, Indiana.

Moss Creek now consists of 102 Lots numbered 3 through 17, Lots 19 through 51, Lots 75 through 100, Lots 119 through 123, inclusive and Lots 162 through 167, inclusive.

3. Easements. Regardless of the method of development of any other part of the Additional Tract and whether or not all or any part of the remaining Additional Tract becomes subject to the Declaration, Declarant reserves to itself, its successors and assigns, for the use and benefit of that part of the Additional Tract not becoming subject to the Declaration, the right and easement to enter upon the streets and common area of this Section of Moss Creek to provide ingress and egress to the Additional Tract.

Declarant hereby grants to the owner in Moss Creek Section Five and Section Six, the right and easement to enter upon any streets and roadways that may exist in the remaining part of the Additional Tract to provide ingress and egress to these Sections as may be necessary.

It is the purpose and intent of the easements herein granted and reserved to provide free and unrestricted use and access across the roadways and streets of the Tract and the Additional Tract no matter how developed, for the owners of the Tract and the Additional Tract, their guests, invitees and all public and quasi public vehicles, including, but not limited to, police, fire and emergency vehicles, trash and garbage collections, post office vehicles and privately owned delivery vehicles.

4. Acceptance and Ratification. All present and future owners, mortgagees, tenants and occupants of the Lots shall be subject to and shall comply with the provisions of the Declaration, Articles of Incorporation and by By-Laws incorporated by reference into the Declaration, and the rules and regulations as adopted by the Board of Directors as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Lot shall constitute an agreement that the provisions of the Declaration, the Articles of Incorporation, the By-Laws and rules and regulations, as each may be amended and supplemented from time to time are accepted and ratified by each owner, tenant or occupant and all such provisions shall be covenants running with the land and shall be binding on any person having at any time any interest or estate in a Lot or Tract as if such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All persons, corporations, partnerships, trusts, associations or other legal entities that may occupy, use, enjoy, or control a Lot or Lots or any part of the Tract in any manner shall be subject to the Declaration, the Articles of Incorporation, the By-Laws and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

5. Plat of Moss Creek, Section Five and Section Six. The plat of these Sections are incorporated into the Declaration and this Second Supplemental Declaration by reference and will be filed in the Office of the Recorder of Marion County, Indiana.



IN WITNESS WHEREOF, the undersigned has caused this Supplemental Declaration to be executed the day and year first above written.

NEWTOWNE DEVELOPMENTS, INC.

By: Robert K. Yeager, President  
Robert K. Yeager, President

By: Virginia M. Yeager, Secretary  
Virginia M. Yeager, Secretary

STATE OF INDIANA )  
                  ) SS:  
COUNTY OF HARION )

Before me, a Notary Public in and for said County and State, personally appeared Robert K. Yeager and Virginia M. Yeager, President and Secretary, respectively of NEWTOWNE DEVELOPMENT, INC., who acknowledged the execution of the foregoing "Second Supplemental Declaration of Covenants and Restrictions of Moss Creek Property Ownership" on behalf of said Corporation.

Witness my hand and Notarial Seal this 1st day of December, 1990.

My Commission Expires:

12-9-94

Raymond F. Duran  
NOTARY PUBLIC

Raymond F. Duran  
Printed  
County of Residence: Indiana

This instrument prepared by:  
Raymond Good  
Attorney at Law  
SCHNORR, GOOD & OLVEY  
144 North Delaware Street  
Indianapolis, Indiana 46204-2551  
(317) 264-3636  
L243/10/16/90

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MOSS CREEK - Section 5  
Exhibit J

I certify that I am a Registered Land Surveyor Licensed under the Laws of Indiana; and that the within plat and description are a true and accurate representation of the described real estate.

#### DESCRIPTION

A part of the Northeast Quarter of the Southwest Quarter of Section 9, Township 14 North, Range 4 East of the Second Principal Meridian, Marion County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of the Southeast Quarter of the Northwest Quarter of Section 9, Township 14 North, Range 4 East; thence North 00 degrees 01 minute 22 seconds East along the West line of said Quarter Section 49.96 feet to a point, said point being 200 feet South of the Southwest corner of Gray Manor Addition (Plat Book 29, Page 433); thence North 87 degrees 46 minutes 52 seconds East parallel with the South line of said Gray Manor Addition 48.98 feet to the Northwest corner of Moss Creek, Section One, (Instrument Number 89-17933) as now established, (the next seven (7) courses are on and along the partial boundary of said Moss Creek, Section One);

(1) thence South 00 degrees 05 minutes 17 seconds West 189.61 feet;  
(2) thence North 88 degrees 09 minutes 38 seconds East 409.01 feet;  
(3) thence South 00 degrees 06 minutes 56 seconds West 117.08 feet to the Point of Beginning of the herein described parcel;  
(4) thence North 88 degrees 17 minutes 14 seconds East 73.00 feet;  
(5) thence South 50 degrees 30 minutes 00 seconds East 85.00 feet;  
(6) thence South 77 degrees 03 minutes 54 seconds East 55.90 feet;  
(7) thence South 50 degrees 30 minutes 00 seconds East 145.00 feet to a point on a Northerly line of the proposed Moss Creek, Section Five (Docket No. 9012);

(the next nine (9) courses are on and along the partial boundary of said proposed Moss Creek, Section Five);

(1) thence South 41 degrees 05 minutes 30 seconds West 112.03 feet;  
(2) thence South 71 degrees 35 minutes 23 seconds East 74.26 feet;  
(3) thence South 24 degrees 00 minutes 00 seconds East 168.17 feet;  
(4) thence North 66 degrees 00 minutes 00 seconds East 24.41 feet;  
(5) thence South 28 degrees 43 minutes 27 seconds East 120.40 feet;  
(6) thence South 47 degrees 55 minutes 18 seconds West 96.69 feet;  
(7) thence South 66 degrees 00 minutes 00 seconds West 158.14 feet;  
(8) thence South 55 degrees 48 minutes 13 seconds West 64.04 feet;  
(9) thence South 41 degrees 58 minutes 45 seconds East 194.89 feet to a point on the Easterly limited access right-of-way line of Interstate #65 as established by a deed to the State of Indiana (Instrument No. 70-41853);  
(the next four (4) courses are on and along said I-65 right-of-way);  
(1) thence North 48 degrees 01 minute 15 seconds West 334.46 feet to a curve to the right whose radius point bears North 41 degrees 58 minutes 45 seconds East 2704.79 feet and has a delta angle of 3 degrees 36 minutes 36 seconds;  
(2) thence Northwesterly on and along said curve, an arc distance of 170.42 feet;

(3) thence North 66 degrees 30 minutes 24 seconds West 77.26 feet;  
(4) thence North 06 degrees 00 minutes 14 seconds West 71.79 feet to the Easterly right-of-way of Gray Road;  
North 01 degree 33 minutes 27 seconds West on and along said Easterly right-of-way 340.14 feet;  
thence North 00 degrees 05 minutes 17 seconds East on and along said right-of-way 17.76 feet to the South line of the Husar property (Instrument No. 76-62141);

thence North 88 degrees 17 minutes 14 seconds East on and along said South line 408.93 feet to the Point of Beginning, Containing 10.57 Acres, more or less.

Subject to all legal rights-of-way, easements and restrictions.

9100233763

DECLARATION OF RESTRICTIONS  
FOR FRANKLIN PARKE ESTATES

This DECLARATION made this 2<sup>nd</sup> day of November  
1977 by FRANKLIN PARKE ESTATES CO. hereinafter referred to as the

W I T N E S S E S T H

WHEREAS, the Developer is the owner of all the land contained in the area shown on Exhibit "A", attached hereto and made part hereof which lands have been subdivided as FRANKLIN PARKE ESTATES hereinafter referred to as the "Development", as more particularly described on the plat thereof recorded in the office of the Recorder of Marion County, Indiana, as Instrument No. \_\_\_\_\_ and

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

NOW, THEREFORE, the Developer hereby declares that all of the platted lots and lands located within the Development as they become platted and held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said lots and lands to the Development, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of said lots situated therein. All of the Restrictions shall run with the land and shall be binding upon the Developer and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property in the Development or to any part or parts thereof, and shall inure to the benefit of the Developer and every one of the Developer's successors in title to any real property in the Development. The Developer specifically reserves unto itself the right and privilege prior to the recording of the plat of a particular lot or tract within the Development as shown on Exhibit "A" to exclude any real estate so shown from the Development or to include additional real estate.

1. DEFINITIONS. The following are the definitions of terms used in this Declaration.

- A. "Committee" shall mean the FRANKLIN PARKE ESTATES Development Committee composed of three (3) members appointed by the Developer who shall be subject to removal by the Developer at any time. The Developer may at his sole option, at any time hereafter, relinquish to the Association the power to appoint and remove one or more members of the Committee. The Committee shall terminate at such time as every lot in the Development is occupied by a dwelling house.
- B. "Association" shall mean the FRANKLIN PARKE ESTATES Homeowners Association, Inc., a not-for-profit corporation.
- C. "Lot" shall mean any parcel of residential real estate described by the plat of the Development which is recorded in the office of the Recorder of Marion County, Indiana.
- D. Approvals, determinations, permissions or consents required herein shall be deemed given if they are given in writing signed, with respect to the Developer of the Association, by the President or Vice-President thereof, and with respect to the Committee, by two (2) members thereof.
- E. "Owner" shall mean a person, partnership, trust or corporation who has or is acquiring any right, title or interest, legal or equitable, in and to a lot, but excluding those persons having such interest merely as security for the performance of an obligation.

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CHARACTER OF THE DEVELOPMENT.

A. In General. Every numbered lot platted as part of the Development is for residential purposes. No structure shall be erected, placed or permitted to remain upon any said residential lots except a single family dwelling. No double occupancy dwelling shall be permitted on any lot. The Developer reserves the right to change the character of the Development with the consent of the Metropolitan Development Commission. The Developer reserves unto itself the right to change the character of such designated use at any time in the future by applying to the Metropolitan Development Commission and its staff for modifications of the plan, and, where necessary, to apply to any other necessary governmental body for such reclassification, rezoning or variance of use needed to accommodate the Developer's planned use.

F. Prohibited Improvements: No sheds, outbuildings, above ground pools, antennae, satellite dishes, lawns, ornaments in side or front yards, nor clothes lines shall be erected or placed on any lot.

G. Continuity or Residential Use of Particular Company or Dwelling House Prohibited. No dwelling house constructed on any of the residential lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed.

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

A. Minimum Living Space Area. The minimum square footage of living space of dwelling constructed on various residential lots in the Development, exclusive of porches, terraces, garages or basements, or portions thereof, and similar facilities not modeled and decorated for regular and continuous habitation, shall be designated on the recorded plat within the Development, but shall in no case contain less than one thousand six hundred (1,600) square feet of living area for a one-story ranch or for more than one story, one thousand two hundred (1,200) square feet for the first floor and six hundred (600) square feet for the second floor.

B. Residential Setback Requirements.

(1) Front Setbacks. Unless otherwise provided in these Restrictions or on the recorded plat, all dwelling houses and above-grade structures shall be constructed or placed on residential lots within the Development so as to comply with the setback lines as established on the plat of the Development.

(2) Side Yards. The aggregate side yard setbacks shall total not less than nineteen (19) feet with a minimum sideyard setback shall be seven (7) feet.

(3) Rear Yards. The rear setback line shall be a least twenty-five (25) feet from the rear lot line.

(4) Plantings and Tree Preservation. In order to preserve the aesthetic quality and aesthetic appearance of the residential areas within the Development, any fence or barrier which shall be approved by the Committee as to size, location, width and composition before it may be installed, within five (5) feet of a trunk diameter of four (4) inches or more when measured at four (4) feet above the ground or any promontory or other obstruction by the Developer may be removed without the written consent of the Committee.

(5) Plantings. Each lot shall have a planting and the plantings approved by the Committee prior to the construction of the house shall include a minimum of six (6) trees at least one (1) being an ornamental shrub of twenty (20) to twenty-four (24) inches or more in size and all other shrubs shall be a minimum of eighteen (18) inches, and a minimum of six (6) trees with shrub trees at least two and one quarter (2 1/4) inches in diameter and ornamental trees at least six (6) inches in height.

E. Exterior Construction. The finished exterior of every building constructed or placed on any lot in the Development shall be of brick or stone to eave height of first floor and balance of exterior may be solid wood siding. Efflorescent brick shall not be used, nor shall irregular brick patterns be used. No plywood, aluminum, vinyl or composition siding will be permitted. No house shall have metal prefabricated flues that extend above the highest roof line. All driveways must be paved with concrete. The minimum roof pitch shall be 6/12. There shall be a separation of two (2) lots before a house type and elevation or color shall be repeated. The same house type and elevation or color cannot be located directly across the street from one another.

F. Committee Approval. All houses in the Development shall be first approved by the Committee. Prior to construction, the builder or owner shall submit to the Committee plans and specifications and a plan showing the location of the structure with all existing trees identified, and the elevations. All fences, awnings, lawn ornaments, and other improvements shall be approved by the Committee prior to erection.

G. Garages Required. All residential dwellings in the Development shall include a minimum enclosed, two (2) car garage.

H. Heating Plants. Every house in the Development must contain a heating plant installed in compliance with the required codes and capable of providing adequate heat and cooling for year-round human habitation of the house.

I. Diligence in Construction. Every building whose construction or placement on any residential lot in the Development is begun shall be completed within six (6) months after the beginning of such construction or placement. No improvement which has partially or totally been destroyed by fire or otherwise shall be allowed to remain in such state for more than sixty (60) days from the time of such destruction or damage.

J. Sidewalks Required. Each lot shall have a sidewalk parallel to the street, or streets in the case of corner lots, on which the lot fronts. The sidewalk shall meet Indiana's Department of Transportation Standards 14-03. Sidewalks must be completed by the owner of a lot at the time the driveway on the lot is constructed, but in no case later than eighteen (18) months after the lot is first conveyed by Developer.

k. Prohibition of Used Structures. All structures constructed or placed on any numbered lot in the Development shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such lot.

l. Maintenance of Lots and Improvements. The owner of any lot in the Development shall at all times maintain the lot and any improvements situated thereon in such a manner as to prevent the lot or improvements from becoming unsightly and, specifically, such owner shall:

(i) Mow the lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds with a four (4) inch maximum height.

(ii) Remove all debris or rubbish.

(iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development.

(iv) Cut down and remove dead trees.

(v) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid them becoming unsightly.

(vi) Contain all construction activity and materials on the lot being improved; and at no time shall the street or adjacent lots, including drainage easements, be used as a driveway or storage of construction materials or construction debris.

m. Association's Right to Perform Certain Maintenance. In the event that the owner of any lot in the Development shall fail to maintain his lot and any improvements situated thereon in accordance with the provisions of these Restrictions, the Association shall have the right, by and through its agents or employees or contractors, to enter upon said lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such lot and improvements situated thereon, if any, conform to the requirements of the Restrictions. The cost therefore to the Association shall be added to and become a part of the annual charge to which said lot is subject, and may be collected in any manner in which such annual charge may be collected. Neither the Association nor any of its agents, employees or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

R Mailboxes and Address Blocks. All mailboxes shall be of a uniform design as furnished by the Committee. All homes in the Development shall have an 8" by 16" limestone address block on the frontside (sample - Riverside Stone).

C Solar Panel Installation. Solar panel installation shall be allowed only when the location, type and size have been approved by the Committee.

K Bushy Line Obstructions at Street Intersections. No fence, wall, hedge, shrub planting or other object which obstructs sight lines at elevations between two feet and six feet above the street shall be placed or be 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 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. No tree shall be permitted to remain within such instances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight line.

#### F. PROVISIONS RESPECTING DISPOSAL OF SANITARY WASTE.

A. Outside Toilets. No outside toilets shall be permitted on any lot in the Development (except during a period of construction).

B. Construction of Sewage Lines. All sanitary sewage lines on the residential building lots shall be designed and constructed in accordance with the provisions and requirements of the Marion County Board of Health for storm water/subsurface drainage shall be designed in accordance with sanitary sewer standards.

#### G. ANIMAL PROHIBITIONS.

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

B. Signs. No signs or advertisements shall be displayed or placed on any lot or structures in the Development except entry signs and home or lot sales signs.

C. Animals. No animals shall be kept or maintained on any lot in the Development except the usual household pets, and, in such case, such household pets shall be kept reasonably contained so as not to become a nuisance.

D. Vehicle Parking. No trucks, campers, trailers, boats or similar vehicles shall be parked on any street or on any lot in the Development except for the parking of such vehicle by a visiting house guest for a period not to exceed ten (10) weeks at the parking of such vehicle for a period not to exceed twenty-four (24) hours while it is being loaded, unloaded or prepared for use by the owner.



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E. Garbage and Other Refuse. No owner of a lot or builder on a lot in the Development shall burn or permit the burning out of doors of garbage or other refuse, including building materials, nor shall any such owner accumulate or permit the accumulation out of doors of such refuse on his lot except as may be permitted in subparagraph "F" below. All houses built in the Development shall be equipped with a garbage disposal unit.

F. Fuel Storage Tanks and Trash Receptacles. No tank for the storage of fuel or oil shall be allowed on any lot. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be installed underground or shall be so placed and kept as not to be visible from any street within the Development at any time, except at the times when refuse collections are being made.

G. Model Homes. No owner of any lot in the Development shall build or permit the building upon said lot any dwelling house that is to be used as a model home or exhibit house without permission to do so from the Developer.

H. Temporary Structures. No temporary house, trailer, tent, garage or other outbuilding shall be placed or erected on any lot.

I. Utility Services. No utility services shall be installed under finished streets except by jacking, drilling or boring.

J. Wells and Septic Tanks. No water wells for domestic consumption shall be drilled on any of the lots; nor shall any septic tanks be installed on any of the lots in the Development, unless public sewer tap-in is unavailable. Wells for irrigation or for the operation of geothermal heating and cooling systems shall be allowed only upon approval of the Committee.

K. Preservation of Field Tile. Any field tile or underground drain which is encountered in construction of any improvements within this subdivision will be preserved and all owners of lots in this subdivision and their successors will comply with the Indiana Drainage Code 1905 and all amendments thereto.

6. UTILITY AND DRAINAGE EASEMENTS. There are certain areas of ground on the plat of the Developer marked "Drainage Easements" and "Utility Easements" (D. & U.E.) and "Utility Sewer Easements" (S.E.E.) either separately or in combination. The Utility Easements are hereby reserved for the use of all public utility companies including transportation companies and governmental agencies for access to and installation, maintenance, repair or removal of poles, mains, ducts, sanitary sewers, storm sewers, drainage swales, lines, wires, cables and other equipment and facilities for the furnishing of utility services, including cable television services.

The Drainage Easements are hereby created and reserved for the use of Developer during the development of the Subdivision for access to and for the installation, repair or removal of a drainage system, either by surface drainage or appropriate underground installations, for the development and adjoining property, and for the Department of Public Works of the City of Indianapolis for access to maintenance, repair and replacement of such drainage system, provided, however, that the owner of any lot in this Subdivision subject to a Drainage Easement shall be required to keep the portion of said Drainage Easement on his lot free from obstructions so that the surface water drainage will be unimpeded.

The delineation of the Drainage Easement and Utility Easement areas on this 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. No permanent structures or fences shall be erected or maintained upon said easements. The owners of lots in this Subdivision shall take and hold title to the lots subject to the Drainage Easements and Utility Easements herein created and reserved.

It shall be the responsibility of the owner of any lot or parcel of land within the area of this plat to comply at all times with the provisions of the drainage plan as approved for this plat by the Department of Public Works of the City of Indianapolis, and the requirements of all drainage permits for this plat issued by said Department.

It shall be the responsibility of every owner of every lot in the Development on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon his lot continuously unobstructed and in good repair.

7. DEDICATION OF STREETS. The rights-of-way of the streets as shown on this plat, if not heretofore dedicated to the public, are hereby dedicated to the public for use as a public right-of-way, subject however, to a reservation of ingress-egress for the maintenance of medians, if any, in any entranceways to the Subdivision.

8. OWNERSHIP, USE AND ENJOYMENT OF COMMON FACILITIES. Common Facilities, if any, depicted on the recorded plat of the Development, shall remain private, and neither the Developer, its execution or recording of the plat nor the doing of any other act by the Developer is, or is intended to be, or shall be construed as a dedication to the public of the common facilities. Ownership of the common facilities shall be conveyed in fee simple title, free of financial encumbrances to the Association upon their completion as provided in the Declaration of Covenants, Conditions and Restrictions of FRANKLIN PARKE ESTATES. Such conveyance shall be subject to easements and restrictions of record, and such other conditions as Developer may at the time of such conveyance deem appropriate. Such conveyance shall be deemed to have been accepted by the Association and those persons who shall from time to time be members thereof upon the recording of a deed or deeds conveying such common facilities to the Association.

9. REMEDIES.

A. In General. The Association or any party to whose benefit these Restrictions inure, including the Developer, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, but neither the Developer nor the Association shall be liable for damages of any kind to any person for failing to abide by, enforce or carry out any of these Restrictions.

B. Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of these Restrictions shall be held to be a waiver by that party (or an estoppel of that party) to assert any right available to him upon the occurrence, recurrence or continuation of such violation or violations of these Restrictions.

C. Enforcement by Metropolitan Development Commission. The Metropolitan Development Commission, its successors and assigns, shall have no right, power or authority in relation to any covenants, commitments, or limitations contained in this plat other than those covenants, commitments, or limitations that expressly run in favor of the Metropolitan Development Commission; provided further, nothing herein shall be construed to prevent the Metropolitan Development Commission from enforcing any provisions of the subdivision contract ordinance, 58-AO-3, as amended, or any conditions attached to approval of this plat by the Plat Committee.

10. EFFECT OF BECOMING AN OWNER. The owners of any lot subject to these Restrictions, by acceptance of a deed survey thereon, whether from the Developer or a subsequent owner of such lot, shall accept such deed and execute such contract subject to each and every Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the owner acknowledges the rights and powers of the Developer and of the Association with respect to these Restrictions, and also for themselves, their heirs, personal representatives, successors and assigns, such owners covenant, agree

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

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

12. DURATION. These covenants shall run with the land and shall be binding on all persons or entities from time to time having any right, title or interest in the Real Estate, or any part thereof, and on all persons or entities claiming under them, until twenty (20) years after the date of recording hereof, in the last fifteen (15) years thereof seventy percent (70%) of the lot owners may amend these covenants in whole or in part. After said twenty (20) years, said covenants shall be automatically extended for successive periods of ten (10) years each, unless prior to the commencement of any such extension period, by a vote of a majority of the then owners of the lots in the Subdivision it is agreed that said covenants shall terminate in whole or in part; provided, however, that no termination of said covenants shall affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall consent thereto. Any such amendment or termination shall be evidenced by a written instrument, signed and acknowledged by the lot 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.

13. AMENDMENT. This Declaration may be amended at any time by an instrument recorded in the Office of the Recorder of Marion County, Indiana, executed by the Association and at least seventy five percent (75%) of the lot owners.

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

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DECLARATION OF MAINTENANCE OBLIGATION

THIS DECLARATION made this 12th day of October, 1998,  
by Wheeler Development Corp  
("Declarant").

Address 1604 Chestnut St, Noblesville, IN 46060

WITNESSETH

WHEREAS, the following facts are true.

A. Declarant is the owner of fee simple title to certain real estate located in Marion County, Indiana, more particularly described in Exhibit A attached hereto and made a part hereof (hereinafter referred to as the "Real Estate").

B. Declarant has installed or plans to install in the right-of-way known as Southport Rd (740 1/2 + 740 3/4 Street, Indianapolis, Indiana (hereinafter referred to as the "Right-of-Way") adjacent to the Real Estate the equipment described in Exhibit B attached hereto (hereinafter referred to as the "Water Equipment"), which Declarant desires to connect to the water line of the Indianapolis Water Company ("Water Company").

C. The Water Company is objecting to the installation of the Water Equipment pursuant to Rule 7(A) of its Rules and Regulations on file with and approved by the Indiana Utility Regulatory Commission governing its provision of water utility service because it is concerned that in the future the Water Company might be requested to maintain, repair or replace (hereinafter "maintain") the Water Equipment because of its location in the Right-of-Way.

D. Declarant deems it desirable that the owner of the Real Estate be responsible for maintaining the Water Equipment and that the Water Company have no obligation to maintain the Water Equipment.

NOW, THEREFORE, Declarant declares that the Real Estate and the Water Equipment be held, transferred, sold, conveyed, encumbered, leased, rented, used and occupied subject to the provisions, agreements, covenants and restriction hereinafter set forth:

1

1. Declaration. Declarant hereby expressly declares (1) that the Water Company shall have no obligation to maintain in any manner the Water Equipment; (2) that the Water Company shall not be responsible for any damage that might occur to the Water Equipment regardless of the cause; and (3) that the maintenance of the Water Equipment, if such is to be maintained, shall be the obligation of the owners of the Real Estate. No person shall have any right to require that the Water Company expend any funds toward the maintenance of the Water Equipment or any right to impose an obligation on the Water Company to maintain the Water Equipment, and if Declarant or any other person would allegedly have such right pursuant to any rule or regulation, the Declarant for itself and its successors and assigns hereby expressly waives that right.

2. Acceptance and Ratification. All present and future owners, mortgagees, tenants and occupants of the Real Estate and the Water Equipment, shall be subject to and comply with the provisions of the Declaration and all such provisions shall be covenants running with the land and shall be binding on any persons having at any time any interest or estate in the Real Estate or the Water Equipment as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage and lease thereof. This Declaration shall remain in effect for so long as the Water Equipment is connected to the water line of the Water Company. All persons, corporations, partnerships, trust and other legal entities which may own, occupy, use, enjoy or control any of the Real Estate or the Water Equipment shall be subject to this Declaration.

3. Maintenance of the Water Equipment. The obligation to maintain the Water Equipment shall rest with the owners of the Real Estate for so long as the Water Equipment is connected to the water line of the Water Company. If the owners of the Real Estate fail to maintain the Water Equipment, such failure shall not put any obligation on the Water Company or on any other entity to provide maintenance.

IN WITNESS WHEREOF, Declarant has executed this Declaration on  
this day and year first hereinabove set forth.

WHEELER DEVELOPMENT CORP.

By:   
Signature

JAMES K. WHEELER  
Printed Name

PRESIDENT  
Title

STATE OF INDIANA )  
                                  )SS:  
COUNTY OF HAMILTON

Before me, a Notary Public in and for said County and State,  
personally appeared JAMES K. WHEELER, by me known to  
be the PRESIDENT of WHEELER DEVELOPMENT CORP.  
who acknowledged the execution of the foregoing "Declaration of Maintenance  
Obligation" on behalf of said corporation.

WITNESS my hand and Notarial Seal this 12<sup>th</sup> day of October, 1998.

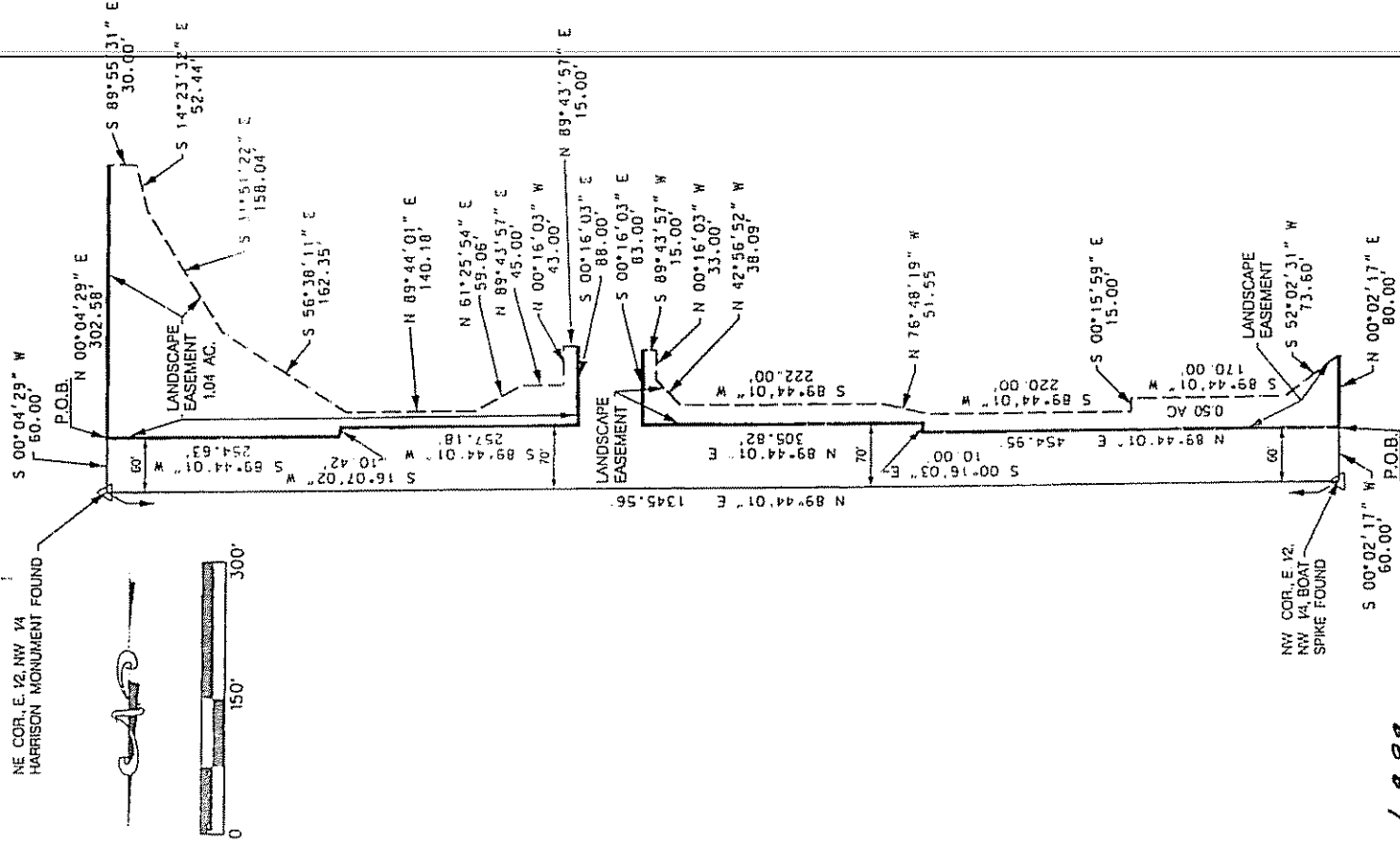
Glenda S. Ferguson  
Notary Public

GLENDA S. FERGUSON  
Printed Signature

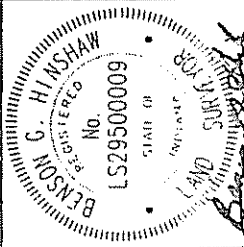
My Commission Expires:  
4/27/08

My County of Residence:  
Hamilton

EXHIBIT A-1



1-8-98



Date:	1-7-97
Job #:	98-12-504
Drawn By:	SJH
Checked:	BLH
Revised:	
Scale:	1" = 150'

LANDSCAPE EASEMENT PREPARED FOR FRANKLIN PARKE ESTATES

PART OF THE E. 12, NW 1/4, SEC. 13, T. 14 N., R. 4 E. MARION COUNTY, INDIANA



*Exhibit A-2*

**BANNING ENGINEERING, P.C.**

698 TOWER ROAD, SUITE 100  
PLAINFIELD, IN 46168  
Ph. 317-839-2581 / Fax 838-9171

Job No.: 96-12-504  
Date: 12/22/97  
Page 2 of 2

LANDSCAPE EASEMENT DESCRIPTION  
FRANKLIN PARKE ESTATES

The following represents a landscape easement being a part of the East half of the Northwest Quarter of Section 13, Township 14 North, Range 4 East of the Second Principal Meridian, Marion County, Indiana, more particularly described as follows:

Commencing at the Northwest corner of the East half of the Northwest Quarter of said Section, said point being marked by a Boat Spike; thence South 00 degrees 02 minutes 17 seconds West, along the West line of said Half Quarter Section, 60.00 feet to a point being 60.00 feet southerly of and perpendicular to the North line of said Half Quarter Section, said point being the Point of Beginning; thence North 89 degrees 44 minutes 01 seconds East, parallel with said North line, 454.95 feet; thence South 00 degrees 16 minutes 03 seconds East 10.00 feet to a point being 70.00 feet southerly of and perpendicular to said North line; thence North 89 degrees 44 minutes 01 seconds East, parallel with said North line, 305.82 feet; thence South 00 degrees 16 minutes 03 seconds East 83.00 feet; thence South 89 degrees 43 minutes 57 seconds West 15.00 feet; thence North 00 degrees 16 minutes 03 seconds West 33.00 feet; thence North 42 degrees 56 minutes 52 seconds West 38.09 feet; thence South 89 degrees 44 minutes 01 seconds West, parallel with said North line, 222.00 feet; thence North 76 degrees 48 minutes 19 seconds West 51.55 feet; thence South 89 degrees 44 minutes 01 seconds West, parallel with said North line, 220.00 feet; thence South 00 degrees 15 minutes 59 seconds East 15.00 feet; thence South 89 degrees 44 minutes 01 seconds West, parallel with said North line, 170.00 feet; thence South 52 degrees 02 minutes 31 seconds West 73.60 feet to the West line of said East Half Quarter Section; thence North 00 degrees 02 minutes 17 seconds East, along said West line, 80.00 feet to the Point of Beginning, containing 0.50 acres, more or less, subject to all rights-of-way, easements, and restrictions of record.

ALSO.

The following represents a landscape easement being a part of the East half of the Northwest Quarter of Section 13, Township 14 North, Range 4 East of the Second Principal Meridian, Marion County, Indiana, more particularly described as follows:

Commencing at the Northwest corner of the East half of the Northwest Quarter of said Section, said point being marked by a Boat Spike; thence North 89 degrees 44 minutes 01 seconds East, 1345.56 feet to the Northeast corner of the East half of the Northwest Quarter of said Section 13, said point being marked by a Harrison Monument; thence South 00 degrees 04 minutes 29 seconds West, along the East line of said Half Quarter Section, 60.00 feet to a point being 60.00 feet southerly of and perpendicular to the North line of said Half Quarter Section, said point being the Point of Beginning; thence South 89 degrees 44 minutes 01 seconds West, parallel with said North line, 254.63 feet; thence South 16 degrees 07 minutes 02 seconds West 10.42 feet to a point being 70.00 feet southerly of and perpendicular to said North line; thence South 89 degrees 44 minutes 01 seconds West, parallel with said North line, 257.18 feet; thence South 00 degrees 16 minutes 03 seconds East 88.00 feet; thence North 89 degrees 43 minutes 57 seconds East 15.00 feet; thence North 00 degrees 16 minutes 03 seconds West 43.00 feet; thence North 89 degrees 43 minutes 57 seconds East 45.00 feet; thence North 61 degrees 25 minutes 54 seconds East 59.06 feet; thence North 89 degrees 44 minutes 01 seconds East, parallel with said North line, 140.18 feet; thence South 56 degrees 38 minutes 11 seconds East 162.35 feet; thence South 31 degrees 51 minutes 22 seconds East 58.04 feet; thence South 14 degrees 23 minutes 32 seconds East 52.44 feet; thence South 89 degrees 55 minutes 31 seconds East 30.00 feet to the East line of said Half Quarter Section; thence North 00 degrees 04 minutes 29 seconds East, along said East line, 302.58 feet to the Point of Beginning, containing 1.04 acres, more or less, subject to all rights-of-way, easements, and restrictions of record.



The Landscape Company, Inc.

P.O. Box 566 Noblesville, IN 46061 (317) 845-1590 FAX (317) 595-9271

FRANKLIN TRACE

The Landscape Company hereby proposes to furnish all materials and perform all labor necessary for the installation of the following underground sprinkler system.

Rain Bird Sprinkler System

39	1804 Spray Heads
4	PGA-100 Valves
1	PVB-100 Backflow Device
1	ESP-4 Controller
4	Ametek 10" Valve Box
200	ft. PVC Pipe -- 1.5"
600	ft. Poly Pipe -- 1"
250	ft. 18-5 Conductor Wire
	Fittings, Clamps, Glue, Etc.
	Water Tap

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JOHN D. WOOD, ARX  
151159  
FOR TRANSFER

**DECLARATION OF RESTRICTIONS  
OF  
FRANKLIN PARKE ESTATES SECTIONS 5(a) & 8**

THIS DECLARATION made this 23rd day of October, 1998, by Wheeler Development Corporation (hereinafter referred to as the "Developer"),

WITNESSETH:

WHEREAS, the Developer is the owner of the lands contained in the area shown on Exhibit "A", Sections 5(A) and 8, attached hereto and made a part hereof, which lands will be subdivided (all of which are hereinafter referred to as the "Development"); and

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

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

The additional real estate which could be added to Exhibit "A" is contiguous to the development and lies within the real estate described in Exhibit "B" attached hereto and made a part hereof and incorporated herein. The real estate depicted on Exhibit "B" shall be deemed and labeled additional real estate and if added at the Developer's option will become part of the original development, for all purposes hereunder, when declarant places of record in Marion County, Indiana, an instrument entitled Designation of Additional Real Estate, which would recite therein the real estate described. Upon the recording of such instrument or instruments, the real estate which would be described therein shall for all purposes thereafter be deemed additional real estate and the owners of any lots within such additional real estate shall be deemed for all

Inst # 1998-0189384

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other purposes to have all rights, duties, privileges and obligations of owners of lots within the original real estate Declaration, as herein provided, without regard to whether the common properties have been conveyed by the declarant to the corporation or property owner's association, as hereinafter defined in accordance with the terms of the Declaration and without regard to the record ownership of the common properties. For purposes of this paragraph a plat depicting a portion of the development area shall be deemed Supplementary Declaration. The decision whether to add additional real estate to the original development shall be at the sole discretion of the developer and that no act on behalf of the developer in adding real estate to the original development is intended to nor shall it be construed as transferring of any ownership interest until such time as the real estate is platted and the lots are sold to individual owners.

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

A. "Committee" shall mean the Franklin Trace Development Control Committee, composed of three members appointed by the Developer who shall be subject to removal by the Developer at any time with or without cause. Any vacancies from time to time existing shall be filled by appointment of the Developer. The Developer may, at its sole option at any time hereafter relinquish to the Association the power to appoint and remove one or more members of the Committee.

B. "Association" shall mean the Franklin Trace Property Owners' Association, Inc., a not-for-profit corporation, the membership and powers of which are more fully described in Paragraph 10 of this Declaration.

C. "Lot" shall mean any parcel of real estate excluding "Blocks", whether residential or otherwise, described by one of the plats of the Development which is recorded in the Office of the Recorder of Marion County, Indiana.

D. Approvals, determinations, permissions, or consents required herein shall be deemed given if they are given in writing, signed with respect to the Developer or the Association, by the President or a Vice President thereof, and with respect to the Committee, by two members thereof.

E. "Owner" shall mean a person who has or is acquiring any right, title or interest, legal or equitable, in and to a lot, but excluding those persons having such interest merely as security for the performance of any obligation.

2. CHARACTER OF THE DEVELOPMENT.

A. In General. Every lot in the Development, unless it is otherwise designated by the Developer, is a residential lot and shall be used exclusively for single-family residential purposes. No structures shall be erected, placed or permitted to remain upon any of said residential lots except a single-family dwelling house and such outbuildings as are usually accessory to dwelling houses. All tracts of land located within the Development which have not been designated by numbering as residential building lots in the recorded Plat shall be used in a manner generally consistent with the zoning and use designed in the plan filed by the Developer in a rezoning proceeding before the Metropolitan Development Commission of Marion County, Indiana, under Docket No. 89-Z-125. However, the Developer reserves unto itself the right to change the character of such designated use at any time in the future by applying to the Metropolitan Development Commission and its staff for modifications of the plan, and, where necessary, to apply to any other necessary governmental body for such reclassification, rezoning or variance of use needed to accommodate the Developer's planned use.

B. Prohibited Improvements. No sheds, outbuildings, above ground pools, antennae, satellite disks, lawn ornaments in side or front yards, nor clothes lines shall be erected or placed on any lot.

C. Occupancy or Residential Use of Partially Completed Dwelling House Prohibited. No dwelling house constructed on any of the residential lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed. The determination of whether the house shall have been substantially completed shall be made by the Committee and such decision shall be binding on all parties. The foregoing is subject to the rules, regulations and ordinances of the City of Indianapolis and its Department of Metropolitan Development or appropriate entity.

D. Other Restrictions. All tracts of land in the Development shall be subject to the easements, restrictions and limitations of record appearing on the recorded plat of the subdivision, on recorded easements, rights-of-ways, and also to all governmental zoning authority and regulation affecting the Development, all of which are incorporated herein by reference.

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

A. Minimum Living Space Areas. The minimum square footage of living space of dwellings constructed on various residential lots in the Development, exclusive of porches, terraces, garages, carports, or accessory buildings shall be as specified in the recorded plats of the various sections of the Development but shall in no case contain less

than one thousand six hundred (1600) square feet of living area for a one-story ranch or for more than a one story, one thousand two hundred (1,200) square feet for the first floor and six hundred (600) square feet for the second floor. Basements shall not be included in the computation of the minimum living area except for that portion of a walkout basement which is to be finished as a living area.

B. Residential Set-Back Requirements.

(i) In General. Unless otherwise provided in these Restrictions or on the record plat, no dwelling house or above-grade structure shall be constructed or placed on any residential lot in the Development except as provided herein.

(ii) Definitions. "Side line" means a lot boundary line that extends from the road on which a lot abuts to the rear line of said lot. "Rear line" means the lot boundary line that is farthest from, and substantially parallel to, the road on which the lot abuts, except that on corner lots, it may be determined from either abutting road.

(iii) Front Yards. The front building set-back lines shall be the designated number of feet from the right-of-way of the road upon which the lot abuts as set forth upon the plats of the Development.

(iv) Side Yards. The aggregate side yard set-backs shall total not be less than nineteen (19), and the minimum side-yard setback shall be seven (7) feet

from the rear lot line.

C. Fences and Trees. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Development, any fence must be approved by the committee as to size, location, height and composition before it may be installed. No live tree with a trunk diameter of four (4) inches or more when measured four (4) feet above the ground or any community planting installed by the Developer may be removed without the prior written consent of the Committee.

D. Landscaping. Each home is required to have a minimum planting requirement of:

Front and Side Yard

- 2 Deciduous shade trees
- 1 Flowering tree
- 3 Conifer trees

- 2-2 1/2" caliper
- 1-1 1/2" caliper
- 8-10' height

6 Shrubs  
10 Shrubs

3-4' height  
18-24" spread

E. Individual Yard Lights Required on Each Lot. At the time that the owner of the lot in the Development completes the construction of a home on his lot, he shall install or cause to have installed a dusk to dawn yard light in the front yard of his lot. The design, type and location of the yard light shall be subject to the approval of the Committee which may require, for the purpose of uniformity and appearance, that said yard light be purchased from the Developer or its designee.

F. Mailboxes and Address Blocks. Owners of a lot in the Development shall install or cause to have installed a mailbox which shall be in accordance with the design, type and location of a mailbox approved by the Committee. The Committee may require, for the purpose of uniformity and appearance, that the mailbox be purchased from the Developer or its designee. All homes in the Development shall have an 8" by 16 " limestone address block on the front side (sample – Riverside Stone).

G. Exterior Construction. The finished exterior of every building constructed or placed on any lot in the Development shall be of material acceptable to and approved by the Development Control Committee. All driveways must be paved with asphalt or concrete from their point of connection with the abutting street or road. The finished exterior of every building constructed or placed on any lot in the Development shall be of brick or stone to eave height of first floor and balance of exterior may be solid wood siding. Efflorescent brick shall not be used, nor shall irregular brick patterns be used. No plywood, aluminum, vinyl or composition siding will be permitted. No house shall have metal prefabricated flues that extend above the highest roof line. All driveways must be paved with concrete. The minimum roof pitch shall be 6/12. There shall be a separation of two (2) lots before a house type and elevation or color shall be repeated. The same house type and elevation or color cannot be located directly across the street from one another.

H. Heating Plants and Garages. Every house in the Development must contain a heating plant installed in compliance with the required codes and capable of providing adequate heat for year-round human habitation of the house. Every house in the Development must have at least an enclosed two-car garage, of the same architectural design and material as that of the house constructed on the lot.

I. Diligence in Construction. Every building whose construction or placement on any residential lot in the Development is begun shall be completed within six (6) months after the beginning of such construction or placement. No improvement which has partially or totally been destroyed by fire or otherwise, shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

J. Sidewalks Required. Each lot shall have a sidewalk parallel to the street, or streets in the case of corner lots, on which the lot fronts. The sidewalk shall meet Indianapolis Department of Transportation Standards 14-03. Sidewalks must be completed by the owner of a lot at the time the driveway on the lot is constructed, but in no case later than eighteen (18) months after the lot is first conveyed by Developer.

K. Prohibition of Used Structures. All structures constructed or placed on any numbered lot in the Development shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such lot.

L. Maintenance of Lots and Improvements. The owner of any lot in the Development shall at all times maintain the lot and any improvements situated thereon in such a manner as to prevent the lot or improvements from becoming unsightly, and, specifically, such owner shall:

- (i) Mow the lot at such times as may be reasonably required in order to prevent unsightly growth of vegetation and noxious weeds.
- (ii) Remove all debris or rubbish.
- (iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development.
- (iv) Cut down and remove dead trees.
- (v) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.
- (vi) Within sixty (60) days following completion of a house on a lot, the owner shall landscape the lot, weather permitting.
- (vii) Contain all construction activity and materials to the lot being improved; and at no time shall the street or adjacent lots (including drainage easements) be used for the delivery or storage of construction materials or construction debris.

M. Association's Right to Perform Certain Maintenance. In the event that the owner of any lot in the Development shall fail to maintain his lot and any improvements situated thereon in accordance with the provisions of these Restrictions, the Association shall have the right, but not the obligation, by and



through its agents or employees or contractors, to enter upon said lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such lot and improvements situated thereon, if any, conform to the requirements of these Restrictions. The cost therefor to the Association shall be added to and become a part of the annual charge to which said lot is subject and may be collected in any manner in which such annual charge may be collected. Neither the Association or any of its agents, employees, or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

- N. Solar Panel Installation. Solar panel installation shall be allowed only when the location, type, and size have been approved by the Committee
- O. Sight Line Obstructions at Street Intersections. No fence, wall, hedge, shrub planting or other object which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or be 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. No tree shall be permitted to remain within such instances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight line.

4. PROVISIONS RESPECTING DISPOSAL OR SANITARY WASTE.

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

5. GENERAL PROHIBITIONS AND REQUIREMENTS.

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

B. Signs. No signs or advertisements shall be displayed or placed on any lot or structures in the Development without the prior written approval of the Committee except for home or lot sales signs.

C. Animals. No animals shall be kept or maintained on any lot in the Development except the usual household pets, and, in such case, such household pets shall be kept reasonably confined so as not to become a nuisance.

D. Vehicle Parking. No trucks, campers, trailers, boats or similar vehicles shall be parked on any street or on any lot in the Development, except for the parking of such vehicle by a visiting house guest for a period not to exceed one (1) week; or the parking of such vehicle for a period not to exceed twenty-four (24) hours while it is being loaded, unloaded or prepared for use by the owner.

E. Vehicle Parking. No trucks (one ton or larger), campers, trailers, commercial vehicles, boats, or similar vehicles shall be parked on any street or lot in the Development.

F. Garbage and Other Refuse. No owner of a lot in the Development shall burn or permit the burning out of doors of garbage or other refuse, nor shall any such owner accumulate or permit the accumulation out of doors of such refuse on his lot except as may be permitted in Subparagraph G below. All houses built in the Development shall be equipped with a garbage disposal unit.

G. Fuel Storage Tanks and Trash Receptacles. Every tank for the storage of fuel that is installed outside any building in the Development shall be buried below the surface of the ground. Any receptacle for trash, rubbish or garbage shall be so placed and kept as not to be visible from any street or lot within the Development at any time, except at the times when refuse collections are being made.

H. Model Homes. no owner or any lot in the Development shall build or permit the building upon said lot of any dwelling house that is to be used as a model home or exhibit house without permission to do so from the Developer.

I. Temporary Structures. No temporary structure of any kind, such as a house, trailer, tent, storage building, garage or other outbuilding shall be placed or erected on any lot nor shall any overnight camping be permitted on any lot.

J. Ditches and Swales. It shall be the duty of the owner on every lot in the Development on which any part of any open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon the lot continuously unobstructed and in good repair, and to provide for the installation of such culverts upon said lot as may be reasonably necessary to accomplish the purposes of this subsection.

K. Utility Services. Utility services shall be installed underground in or adjacent to public rights-of-way to minimize removal of trees. No utility services shall be installed, constructed, repaired, replaced and/or removed under finished streets except by jacking, drilling or boring and shall require the approval of the appropriate governmental body where the streets are public and by the property owners where there are private drives, if any.

L. Wells and Septic Tanks. No water wells shall be drilled on any of the lots nor shall any septic tanks be installed on any of the lots in the Development.

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

6. UTILITY AND DRAINAGE EASEMENTS. There are areas of ground on the plat of the Developer marked "Drainage Easements" and "Utility Easements" (D. & U.E.), and Sanitary Sewer Easements (S.S.E.) either separately or in combination. The Utility Easements are hereby created and reserved for the use of all public utility companies (not including transportation companies) and governmental agencies for access to and installation, maintenance, repair or removal of poles, mains, ducts, sanitary sewers, storm sewers, drainage swales, lines, wires, cables and other equipment and facilities for the furnishing of utility services, including cable television services.

The Drainage Easements are hereby created and reserved: (i) for the use of Developer during the development of the Subdivision for access to and for the installation, repair or removal of a drainage system, either by surface drainage or appropriate underground installations, for the Development and adjoining property and (ii) for the Department of Public Works of the City of Indianapolis for access to maintenance, repair and replacement of such drainage system, provided, however, that the owner of any lot in this Subdivision subject to a Drainage Easement shall be required to keep the portion of said Drainage Easement on his lot free from obstructions so that the surface water drainage will be unimpeded.

The delineation of the Drainage Easement and Utility Easement areas on this 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. No permanent structures or fences shall be erected or maintained upon said easements. The owners of lots in this Subdivision shall take and hold title to the lots subject to the Drainage Easements and Utility

Easements herein created and reserved.

It shall be the responsibility of the owner of any lot or parcel of land within the area of this plat to comply at all times with the provisions of the drainage plan as approved for this plat by the Department of Public Works of the City of Indianapolis and requirements of all drainage permits for this plat issued by said Department.

It shall be the responsibility of every owner of every lot in the Development on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon his lot continuously unobstructed and in good repair.

7. DEDICATION OF STREETS. The rights-of-way of the streets as shown on this plat, if not heretofore dedicated to the public, are hereby dedicated to the public for use as a public right-of-way, subject, however, to a reservation of ingress-egress for the maintenance of medians, if any, in any entranceways to the Subdivision.

8. FRANKLIN TRACE DEVELOPMENT CONTROL COMMITTEE.

A. Statement of Purposes and Powers. The Committee shall regulate the external design, appearance, use, location and maintenance of lands subject to these Restrictions and improvements thereon, in such a manner as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography.

(i) Generally. No dwelling, building structure or improvement of any type or kind shall be constructed or placed on any lot in the Development without the prior approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee by the owner of the lot requesting authorization from the Committee. Such written application shall be in the manner and form prescribed from time to time by the Committee, and shall be accompanied by three (3) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon the lot and the location of the improvement proposed to be constructed or placed upon the lot, each property and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other materials or information which the Committee may require. All building plans and drawings required to be submitted to the Committee shall be drawn to a scale of 1/4" = 1' and all plot plans shall be drawn to a scale of 1" = 30', or to such other scale as the Committee shall require.

(ii) Power of Disapproval. The Committee may refuse to grant permission to construct, place or make the requested improvement, when:

(a) The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of these Restrictions;

(b) The design, building materials or color scheme of a proposed improvement is not in harmony with the general surroundings of the lot or with adjacent buildings or structures;

(c) The proposed improvement, or any part hereof, would in the opinion of the Committee be contrary to the interests, welfare or rights of all or any part of other owners.

(iii) Power to Grant Variances. The Committee may allow reasonable variances or adjustments of these Restrictions where literal application would result in unnecessary hardship, but any such variance or adjustment shall be granted in conformity with the general intent and purposes of these Restrictions and no variance or adjustment shall be granted which is materially detrimental or injurious to other lots in the Development.

B. Duties of Committee. The Committee shall approve or disapprove proposed improvements within a reasonable time after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons.

C. Liability of Committee. neither the Committee nor any agent thereof, nor the Developer, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Committee does or make any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.

D. Inspection. The Committee may inspect work being performed with its permission to assure compliance with these Restrictions and applicable regulations.

E. Continuation of Committee. When the Developer notifies the Association of discontinuance of his Architectural Control Committee, then the Directors of the Association, or their designees, shall continue the functions of the Committee with like powers.

9. RULES GOVERNING BUILDING ON SEVERAL CONTIGUOUS LOTS HAVING ONE OWNER. Whenever two or more contiguous lots in the Development shall be owned by the same person, and such owner shall desire to use two or more of said lots as a site for a single-dwelling house, he shall apply in writing to the Committee for permission to so use said lots. If permission for such a use shall be granted, the lots constituting the site for such single-dwelling house shall be treated as a single lot for the purpose of applying these Restrictions to said lots, so long as the lots remain improved with one single-dwelling house.

10. OWNERSHIP, USE AND ENJOYMENT OF COMMONS AND LANDSCAPE EASEMENTS. "Commons" and "Commons Area" and "Landscape Easements" shall mean those areas set aside for conveyance to the Association, as shown on the plat. Any commons depicted on the recorded plats of the Development shall remain private, and neither the Developer's execution of recording of the plats nor the doing of any other act by the Developer is, or is intended to be, or shall be construed as, a dedication to the public of the commons.

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

11. FRANKLIN TRACE PROPERTY OWNERS' ASSOCIATION, INC.

A. In General. There has been or will be created, under the laws of the State of Indiana, a not-for-profit corporation to be known as the "Franklin Trace Property Owners' Association, Inc.", which is referred to as the "Association". Every owner of a residential lot in the Development shall be a member of the Association and shall be subject to all the requirements and limitations imposed in these Restrictions on other owners of residential lots within the Development and on members of the Association, including those provisions with respect to the payment of a semi-annual charge.

B. Classes of Membership. The Association shall have two classes of voting membership.

Class A. Class A members shall be all owners with the exception of the Developer and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The

vote for such lot shall be exercised as they themselves determine, but in no event shall more than one vote be cast with respect to any lot.

Class B. The Class B member(s) shall be the Developer, who shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) On the date the Developer sells the last lot and no longer owns any lots or land in the Development; or

(ii) On January 1, 2010.

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

D. Professional Management. No contract or agreement for professional management of the Association shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause without termination fee by written notice of ninety (90) days or less.

E. Responsibilities of the Association.

(i) The Association shall maintain and repair the Common Areas and Landscape Easements shown on the plat(s) including improvements thereof.

(ii) The Association shall maintain the landscaping located in Landscape Easement and the landscaping and any entrance treatments located in the right-of-way at the entrance and shall keep such areas in a neat, clean and presentable condition at all times.

(iii) The Association shall procure and maintain casualty insurance for the Common Areas, liability insurance (including directors' and officers' insurance) and such other insurance as it deems necessary or advisable.

(iv) The Association may contract for such services as management, snow removal, security control, trash removal, and such other services as the Association deems necessary or advisable.

(v) The Association shall provide a means for the promulgation and enforcement of regulations necessary to govern the use and enjoyment of Common Areas.

(vi) The Association shall be responsible for performing the Developer's obligation to maintain in good operating condition and repair the Drainage Facilities located on both the Development and on the property directly to the east of the development belonging to Richard W. and Mabel W. Canfield. This obligation is described in that EASEMENT AGREEMENT between Wheeler Development Corporation and Richard W. and Mabel W. Canfield dated August 9, 1996, and recorded in the office of the Recorder of Marion County, Indiana as Instrument No. 1996-0145862, and includes, but is not limited to, cutting of grass and weeds and removing silt, debris and other obstructions from that portion of the Drainage Facilities that are located upon the Canfield's Property.

12. COVENANT FOR MAINTENANCE ASSESSMENTS.

A. Creation of the Lien and Personal Obligation of Assessments. Each owner of any lot in the subdivision, except the Developer, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) semi-annual assessments or charges; and (2) special assessments for capital improvements and operating deficits; such assessments to be established and collected as hereinafter provided. The semi-annual and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. No charge or assessment shall ever be levied by the Association against the Developer.

B. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents in the properties and for the improvement and maintenance of the Common Area and improvements, operated or maintained by the Association, and the landscape easements on the Development and other purposes as specifically provided herein.

C. Special Assessments for Capital Improvements and Operating Deficits. In addition to the semi-annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.



D. Notice and Quorum for Any Action Authorized Under Sections C and D. Written notice of any meeting called for the purpose of taking any action authorized under Section C or D shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

E. Date of Commencement of Semi-Annual Assessments; Due Dates. The semi-annual assessment provided for herein shall commence for each lot on the date of conveyance to the owner by deed or on the date the owner signs a land contract to purchase a lot. The Board of Directors shall fix any increase in the amount of the assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any lot shall be binding upon the Association as of the date of its issuance.

F. Effect of Non-Payment of Assessments; Remedies of the Association. Any charge levied or assessed against any lot, together with interest and other charges or costs as hereinafter provided, shall become and remain a lien upon that lot until paid in full and shall also be a personal obligation of the owner or owners of that lot at the time the charge fell due. Such charge shall bear interest at the rate of twelve percent (12%) per annum until paid in full. If, in the opinion of the Board of Directors of the Association, such charge has remained due and payable for an unreasonably long period of time, the Board may, on behalf of the Association, institute such procedures, either at law or in equity, by foreclosure or otherwise, to collect the amount owing in any court of competent jurisdiction. The owner of the lot or lots subject to the charge, shall, in addition to the amount of the charge at the time legal action is instituted, be obliged to pay any expense or costs, including attorneys' fees, incurred by the Association in collecting the same. Every owner of a lot in the Development and any person who may acquire any interest in such lot, whether as an owner or otherwise, is hereby notified, and by acquisition of such interest agrees, that any such liens which may exist upon said lot at the time of the acquisition of such interest are valid liens and shall be paid. Every person who shall become an owner of a lot in the Development is hereby notified that by the act of acquiring, making such purchase or acquiring such title, such person shall be conclusively held to have

covenanted to pay the Association all charges that the Association shall make pursuant to this subparagraph of the Restrictions.

G. Subordination of the Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof. Provided, however, the sale or transfer of any lot pursuant to the foreclosure of any first mortgage on such lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer.

H. Suspension of Privileges of Membership. Notwithstanding any other provision contained herein, the Board of Directors of the Association shall have the right to suspend the voting rights, if any, and the services to be provided by the Association together with the right to use the facilities of the Association, of any member (i) for any period during which any of the Association's charges or any fines assessed under these Restrictions owed by the member remains unpaid, (ii) during the period of any continuing violation of the restrictive covenants for the Development, after the existence of the violation shall have been declared by the Board of Directors of the Association, and (iii) during the period of any violation of the Articles of Incorporation, By-Laws or regulations of the Association.

### 13. REMEDIES.

A. In General. The Association or any party to whose benefit these Restrictions inure, including the Developer, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, but neither the Developer nor the Association shall be liable for damages of any kind to any person fore failing either to abide by, enforce or carry out any of these Restrictions.

B. Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of these Restrictions shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, reoccurrence or continuance of such violation or violations of these Restrictions.

### 14. EFFECT OF BECOMING AN OWNER.

The owners of any lot subject to these Restrictions by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from the Developer or a subsequent owner of such lot, shall accept such deed and execute such contract

subject to each and every Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the owner acknowledges the rights and powers of the Developer, Committee and of the Association with respect to these Restrictions, and also, for themselves, their heirs, personal representatives, successors and assigns, such owners covenant and agree and consent to and with the Developer, Committee and the Association and to and with the owners and subsequent owners of each of the lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreements.

15. TITLES.

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

16. DURATION.

The foregoing Covenants and Restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2081, at which time said Covenants and Restrictions shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part by vote of those persons who are then the owners of a majority of the numbered lots in the Development.

17. SEVERABILITY.

Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of an from every other one of the Restrictions, and of and from every combination of the Restrictions.

Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.

Adelby WITNESSTIMONY WHEREOF, witness the signature of the Declarant this 23<sup>rd</sup> day of October, 1998.

WHEELER DEVELOPMENT CORPORATION

BY James K. Wheeler  
James K. Wheeler, President

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF Hamilton

Before me, a Notary Public in and for said County and State, personally appeared James K. Wheeler, President of Wheeler Development Corporation, who, for and on behalf of said corporation, acknowledged the execution of the foregoing Declaration of Restrictions of Franklin Parke Estates Sections 5(a) & 8.

Subscribed and sworn to before me this 23<sup>rd</sup> day of October, 1998.

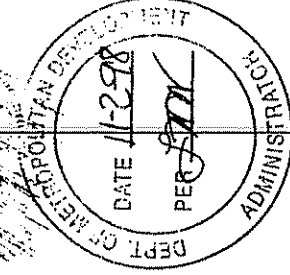
Lynia Q. Habrowski  
NOTARY PUBLIC  
A Resident of Madison County

My Commission Expires:

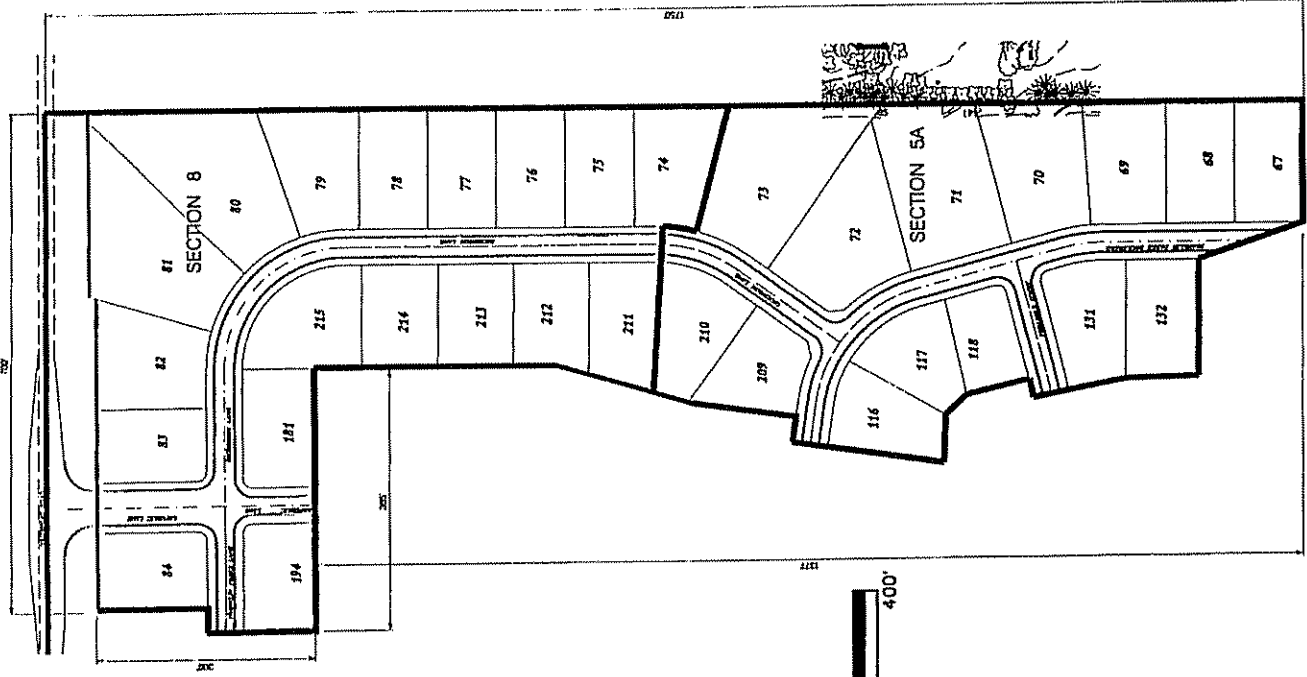
11-24-01

This instrument prepared by James K. Wheeler, attorney at law.

C:\Wheeler Development Corporation\DECLARA.Franklin Trace.doc



APPROVED THIS 27<sup>TH</sup> .....  
DAY OF OCTOBER ..... 1998...  
R.A. White  
FRANKLIN TOWNSHIP ASSESSOR  
DRAFTSMAN



**EXHIBIT "A"**

**FILED**

FEB 25 2000

FRANKLIN TOWNSHIP  
ASSESSOR

**DECLARATION OF RESTRICTIONS**

**OF**

**FRANKLIN PARKE ESTATES SECTIONS 5(B) & 10**

MARTIN A. WOHACKS  
PLAT

16616 MAR 15 8

TO BE USED AS A BASIS  
FOR TRANSFER

THIS DECLARATION made this 17th day of February, 2000, by Wheeler Development Corporation (hereinafter referred to as the "Developer"),

WITNESSETH:

WHEREAS, the Developer is the owner of the lands contained in the area shown on Exhibit "A", Sections 5(B) and 10, attached hereto and made a part hereof, which lands will be subdivided (all of which are hereinafter referred to as the "Development"); and

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

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

The additional real estate which could be added to Exhibit "A" is contiguous to the development and lies within the real estate described in Exhibit "B" attached hereto and made a part hereof and incorporated herein. The real estate depicted on Exhibit "B" shall be deemed and labeled additional real estate and if added at the Developer's option will become part of the original development, for all purposes hereunder, when declarant places of record in Marion County, Indiana, an instrument entitled Designation of Additional Real Estate, which would recite therein the real estate described. Upon the recording of such instrument or instruments, the real estate which would be described therein shall for all purposes thereafter be deemed additional real estate and the owners of any lots within such additional real estate shall be deemed for all

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other purposes to have all rights, duties, privileges and obligations of owners of lots within the original real estate Declaration, as herein provided, without regard to whether the common properties have been conveyed by the declarant to the corporation or property owner's association, as hereinafter defined in accordance with the terms of the Declaration and without regard to the record ownership of the common properties. For purposes of this paragraph a plat depicting a portion of the development area shall be deemed Supplementary Declaration. The decision whether to add additional real estate to the original development shall be at the sole discretion of the developer and that no act on behalf of the developer in adding real estate to the original development is intended to nor shall it be construed as transferring of any ownership interest until such time as the real estate is platted and the lots are sold to individual owners.

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

A. "Committee" shall mean the Franklin Trace Development Control Committee, composed of three members appointed by the Developer who shall be subject to removal by the Developer at any time with or without cause. Any vacancies from time to time existing shall be filled by appointment of the Developer. The Developer may, at its sole option at any time hereafter relinquish to the Association the power to appoint and remove one or more members of the Committee.

B. "Association" shall mean the Franklin Trace Property Owners' Association, Inc., a not-for-profit corporation, the membership and powers of which are more fully described in Paragraph 10 of this Declaration.

C. "Lot" shall mean any parcel of real estate excluding "Blocks", whether residential or otherwise, described by one of the plats of the Development which is recorded in the Office of the Recorder of Marion County, Indiana.

D. Approvals, determinations, permissions, or consents required herein shall be deemed given if they are given in writing, signed with respect to the Developer or the Association, by the President or a Vice President thereof, and with respect to the Committee, by two members thereof.

E. "Owner" shall mean a person who has or is acquiring any right, title or interest, legal or equitable, in and to a lot, but excluding those persons having such interest merely as security for the performance of any obligation.

2. CHARACTER OF THE DEVELOPMENT.

A. In General. Every lot in the Development, unless it is otherwise designated by the Developer, is a residential lot and shall be used exclusively for single-family residential purposes. No structures shall be erected, placed or permitted to remain upon any of said residential lots except a single-family dwelling house and such outbuildings as are usually accessory to dwelling houses. All tracts of land located within the Development which have not been designated by numbering as residential building lots in the recorded Plat shall be used in a manner generally consistent with the zoning and use designed in the plan filed by the Developer in a rezoning proceeding before the Metropolitan Development Commission of Marion County, Indiana, under Docket No. 89-Z-125. However, the Developer reserves unto itself the right to change the character of such designated use at any time in the future by applying to the Metropolitan Development Commission and its staff for modifications of the plan, and, where necessary, to apply to any other necessary governmental body for such reclassification, rezoning or variance of use needed to accommodate the Developer's planned use.

B. Prohibited Improvements. No sheds, outbuildings, above ground pools, antennae, satellite disks, lawn ornaments in side or front yards, nor clothes lines shall be erected or placed on any lot.

C. Occupancy of Residential Use of Partially Completed Dwelling House Prohibited. No dwelling house constructed on any of the residential lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed. The determination of whether the house shall have been substantially completed shall be made by the Committee and such decision shall be binding on all parties. The foregoing is subject to the rules, regulations and ordinances of the City of Indianapolis and its Department of Metropolitan Development or appropriate entity.

D. Other Restrictions. All tracts of land in the Development shall be subject to the easements, restrictions and limitations of record appearing on the recorded plat of the subdivision, on recorded easements, rights-of-ways, and also to all governmental zoning authority and regulation affecting the Development, all of which are incorporated herein by reference.

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

A. Minimum Living Space Areas. The minimum square footage of living space of dwellings constructed on various residential lots in the Development, exclusive of porches, terraces, garages, carports, or accessory buildings shall be as specified in the recorded plats of the various sections of the Development but shall in no case contain less



than one thousand six hundred (1600) square feet of living area for a one-story ranch or for more than a one story, one thousand two hundred (1,200) square feet for the first floor and six hundred (600) square feet for the second floor. Basements shall not be included in the computation of the minimum living area except for that portion of a walkout basement which is to be finished as a living area.

B. Residential Set-Back Requirements.

(i) In General. Unless otherwise provided in these Restrictions or on the record plat, no dwelling house or above-grade structure shall be constructed or placed on any residential lot in the Development except as provided herein.

(ii) Definitions. "Side line" means a lot boundary line that extends from the road on which a lot abuts to the rear line of said lot. "Rear line" means the lot boundary line that is farthest from, and substantially parallel to, the road on which the lot abuts, except that on corner lots, it may be determined from either abutting road.

(iii) Front Yards. The front building set-back lines shall be the designated number of feet from the right-of-way of the road upon which the lot abuts as set forth upon the plats of the Development.

(iv) Side Yards. The aggregate side yard set-backs shall total not be less than nineteen (19), and the minimum side-yard setback shall be seven (7) feet

(v) Rear Yards. The rear set-back line shall be at least twenty five (25) feet from the rear lot line.

C. Fences and Trees. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Development, any fence must be approved by the committee as to size, location, height and composition before it may be installed. No live tree with a trunk diameter of four (4) inches or more when measured four (4) feet above the ground or any community planting installed by the Developer may be removed without the prior written consent of the Committee.

D. Landscaping. Each home is required to have a minimum planting requirement of:

Front and Side Yard

2 Deciduous shade trees            2-2 1/2" caliper  
1 Flowering tree                    1-1 1/2" caliper  
3 Conifer trees                        8-10' height

6 Shrubs  
10 Shrubs

3-4' height  
18-24" spread

E. Individual Yard Lights Required on Each Lot. At the time that the owner of the lot in the Development completes the construction of a home on his lot, he shall install or cause to have installed a dusk to dawn yard light in the front yard of his lot. The design, type and location of the yard light shall be subject to the approval of the Committee which may require, for the purpose of uniformity and appearance, that said yard light be purchased from the Developer or its designee.

F. Mailboxes and Address Blocks. Owners of a lot in the Development shall install or cause to have installed a mailbox which shall be in accordance with the design, type and location of a mailbox approved by the Committee. The Committee may require, for the purpose of uniformity and appearance, that the mailbox be purchased from the Developer or its designee. All homes in the Development shall have an 8" by 16" limestone address block on the front side (sample – Riverside Stone).

G. Exterior Construction. The finished exterior of every building constructed or placed on any lot in the Development shall be of material acceptable to and approved by the Development Control Committee. All driveways must be paved with asphalt or concrete from their point of connection with the abutting street or road. The finished exterior of every building constructed or placed on any lot in the Development shall be of brick or stone to eave height of first floor and balance of exterior may be solid wood siding. Efflorescent brick shall not be used, nor shall irregular brick patterns be used. No plywood, aluminum, vinyl or composition siding will be permitted. No house shall have metal prefabricated flues that extend above the highest roof line. All driveways must be paved with concrete. The minimum roof pitch shall be 6/12. There shall be a separation of two (2) lots before a house type and elevation or color shall be repeated. The same house type and elevation or color cannot be located directly across the street from one another.

H. Heating Plants and Garages. Every house in the Development must contain a heating plant installed in compliance with the required codes and capable of providing adequate heat for year-round human habitation of the house. Every house in the Development must have at least an enclosed two-car garage, of the same architectural design and material as that of the house constructed on the lot.

I. Diligence in Construction. Every building whose construction or placement on any residential lot in the Development is begun shall be completed within six (6) months after the beginning of such construction or placement. No improvement which has partially or totally been destroyed by fire or otherwise, shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

J. Sidewalks Required. Each lot shall have a sidewalk parallel to the street, or streets in the case of corner lots, on which the lot fronts. The sidewalk shall meet Indianapolis Department of Transportation Standards 14-03. Sidewalks must be completed by the owner of a lot at the time the driveway on the lot is constructed, but in no case later than eighteen (18) months after the lot is first conveyed by Developer.

K. Prohibition of Used Structures. All structures constructed or placed on any numbered lot in the Development shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such lot.

L. Maintenance of Lots and Improvements. The owner of any lot in the Development shall at all times maintain the lot and any improvements situated thereon in such a manner as to prevent the lot or improvements from becoming unsightly; and, specifically, such owner shall:

(i) Mow the lot at such times as may be reasonably required in order to prevent unsightly growth of vegetation and noxious weeds.

(ii) Remove all debris or rubbish.

(iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development.

(iv) Cut down and remove dead trees.

(v) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.

(vi) Within sixty (60) days following completion of a house on a lot, the owner shall landscape the lot, weather permitting.

(vii) Contain all construction activity and materials to the lot being improved; and at no time shall the street or adjacent lots (including drainage easements) be used for the delivery or storage of construction materials or construction debris.

M. Association's Right to Perform Certain Maintenance. In the event that the owner of any lot in the Development shall fail to maintain his lot and any improvements situated thereon in accordance with the provisions of these Restrictions, the Association shall have the right, but not the obligation, by and

through its agents or employees or contractors, to enter upon said lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such lot and improvements situated thereon, if any, conform to the requirements of these Restrictions. The cost therefor to the Association shall be added to and become a part of the annual charge to which said lot is subject and may be collected in any manner in which such annual charge may be collected. Neither the Association or any of its agents, employees, or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

N. Solar Panel Installation. Solar panel installation shall be allowed only when the location, type, and size have been approved by the Committee.

O. Sight Line Obstructions at Street Intersections. No fence, wall, hedge, shrub planting or other object which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or be 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. No tree shall be permitted to remain within such instances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight line.

#### 4. PROVISIONS RESPECTING DISPOSAL OR SANITARY WASTE.

A. Nuisance. No outside toilets shall be permitted on any lot in the Development (except during a period of construction and then only with the consent of the Committee), and no sanitary waste or other wastes shall be permitted to enter any storm drain. By purchase of a lot, each owner agrees that any violation of this paragraph constitutes a nuisance which may be abated by the Developer or the Association in any manner provided at law or in equity. The cost or expense of abatement, including court costs and attorney's fees, shall become a charge or lien upon the lot, and may be collected in any manner provided by law or in equity for collection of a liquidated debt. Neither the Developer, nor the Association, nor any officer, agent, employee or contractor thereof, shall be liable for any damage which may result from enforcement of this paragraph.

B. Construction of Sewage Lines. All sanitary sewage lines on the residential building lots shall be designed and constructed in accordance with the provisions and requirements of the City of Indianapolis, Department of Public Works Marion County or other governing body. No storm water (subsurface or surface) shall be discharged into sanitary sewers.

5. GENERAL PROHIBITIONS AND REQUIREMENTS.

- A. In General. No noxious or offensive activities shall be carried on any lot in the Development, nor shall anything be done on any of said lots that shall become or be an unreasonable annoyance or nuisance to any owner of another lot in the Development.
- B. Signs. No signs or advertisements shall be displayed or placed on any lot or structures in the Development without the prior written approval of the Committee except for home or lot sales signs.
- C. Animals. No animals shall be kept or maintained on any lot in the Development except the usual household pets, and, in such case, such household pets shall be kept reasonably confined so as not to become a nuisance.
- D. Vehicle Parking. No trucks, campers, trailers, boats or similar vehicles shall be parked on any street or on any lot in the Development, except for the parking of such vehicle by a visiting house guest for a period not to exceed one (1) week; or the parking of such vehicle for a period not to exceed twenty-four (24) hours while it is being loaded, unloaded or prepared for use by the owner.
- E. Vehicle Parking. No trucks (one ton or larger), campers, trailers, commercial vehicles, boats, or similar vehicles shall be parked on any street or lot in the Development.
- F. Garbage and Other Refuse. No owner of a lot in the Development shall burn or permit the burning out of doors of garbage or other refuse, nor shall any such owner accumulate or permit the accumulation out of doors of such refuse on his lot except as may be permitted in Subparagraph G below. All houses built in the Development shall be equipped with a garbage disposal unit.
- G. Fuel Storage Tanks and Trash Receptacles. Every tank for the storage of fuel that is installed outside any building in the Development shall be buried below the surface of the ground. Any receptacle for trash, rubbish or garbage shall be so placed and kept as not to be visible from any street or lot within the Development at any time, except at the times when refuse collections are being made.
- H. Model Homes. no owner or any lot in the Development shall build or permit the building upon said lot of any dwelling house that is to be used as a model home or exhibit house without permission to do so from the Developer.
- I. Temporary Structures. No temporary structure of any kind, such as a house, trailer, tent, storage building, garage or other outbuilding shall be placed or erected on any lot nor shall any overnight camping be permitted on any lot.

J. Ditches and Swales. It shall be the duty of the owner on every lot in the Development on which any part of any open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon the lot continuously unobstructed and in good repair, and to provide for the installation of such culverts upon said lot as may be reasonably necessary to accomplish the purposes of this subsection.

K. Utility Services. Utility services shall be installed underground in or adjacent to public rights-of-way to minimize removal of trees. No utility services shall be installed, constructed, repaired, replaced and/or removed under finished streets except by jacking, drilling or boring and shall require the approval of the appropriate governmental body where the streets are public and by the property owners where there are private drives, if any.

L. Wells and Septic Tanks. No water wells shall be drilled on any of the lots nor shall any septic tanks be installed on any of the lots in the Development.

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

6. UTILITY AND DRAINAGE EASEMENTS. There are areas of ground on the plat of the Developer marked "Drainage Easements" and "Utility Easements" (D. & U.E.), and Sanitary Sewer Easements (S.S.E.) either separately or in combination. The Utility Easements are hereby created and reserved for the use of all public utility companies (not including transportation companies) and governmental agencies for access to and installation, maintenance, repair or removal of poles, mains, ducts, sanitary sewers, storm sewers, drainage swales, lines, wires, cables and other equipment and facilities for the furnishing of utility services, including cable television services.

The Drainage Easements are hereby created and reserved: (i) for the use of Developer during the development of the Subdivision for access to and for the installation, repair or removal of a drainage system, either by surface drainage or appropriate underground installations, for the Development and adjoining property and (ii) for the Department of Public Works of the City of Indianapolis for access to maintenance, repair and replacement of such drainage system, provided, however, that the owner of any lot in this Subdivision subject to a Drainage Easement shall be required to keep the portion of said Drainage Easement on his lot free from obstructions so that the surface water drainage will be unimpeded.

The delineation of the Drainage Easement and Utility Easement areas on this 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. No permanent structures or fences shall be erected or maintained upon said easements. The owners of lots in this Subdivision shall take and hold title to the lots subject to the Drainage Easements and Utility

Easements herein created and reserved.

It shall be the responsibility of the owner of any lot or parcel of land within the area of this plat to comply at all times with the provisions of the drainage plan as approved for this plat by the Department of Public Works of the City of Indianapolis and requirements of all drainage permits for this plat issued by said Department.

It shall be the responsibility of every owner of every lot in the Development on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon his lot continuously unobstructed and in good repair.

7. DEDICATION OF STREETS. The rights-of-way of the streets as shown on this plat, if not heretofore dedicated to the public, are hereby dedicated to the public for use as a public right-of-way, subject, however, to a reservation of ingress-egress for the maintenance of medians, if any, in any entranceways to the Subdivision.

8. FRANKLIN TRACE DEVELOPMENT CONTROL COMMITTEE.

A. Statement of Purposes and Powers. The Committee shall regulate the external design, appearance, use, location and maintenance of lands subject to these Restrictions and improvements thereon, in such a manner as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography.

(i) Generally. No dwelling, building structure or improvement of any type or kind shall be constructed or placed on any lot in the Development without the prior approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee by the owner of the lot requesting authorization from the Committee. Such written application shall be in the manner and form prescribed from time to time by the Committee, and shall be accompanied by three (3) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon the lot and the location of the improvement proposed to be constructed or placed upon the lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other materials or information which the Committee may require. All building plans and drawings required to be submitted to the Committee shall be drawn to a scale of 1/4" = 1' and all plot plans shall be drawn to a scale of 1" = 30', or to such other scale as the Committee shall require.

(ii) Power of Disapproval. The Committee may refuse to grant permission to construct, place or make the requested improvement, when:

(a) The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of these Restrictions;

(b) The design, building materials or color scheme of a proposed improvement is not in harmony with the general surroundings of the lot or with adjacent buildings or structures;

(c) The proposed improvement, or any part hereof, would in the opinion of the Committee be contrary to the interests, welfare or rights of all or any part of other owners.

(iii) Power to Grant Variances. The Committee may allow reasonable variances or adjustments of these Restrictions where literal application would result in unnecessary hardship, but any such variance or adjustment shall be granted in conformity with the general intent and purposes of these Restrictions and no variance or adjustment shall be granted which is materially detrimental or injurious to other lots in the Development.

B. Duties of Committee. The Committee shall approve or disapprove proposed improvements within a reasonable time after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing and, in the event that such notification is one of disapproval, it shall specify the reason or reasons.

C. Liability of Committee. neither the Committee nor any agent thereof, nor the Developer, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Committee does or make any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.

D. Inspection. The Committee may inspect work being performed with its permission to assure compliance with these Restrictions and applicable regulations.

E. Continuation of Committee. When the Developer notifies the Association of discontinuance of his Architectural Control Committee, then the Directors of the Association, or their designees, shall continue the functions of the Committee with like powers.



9. RULES GOVERNING BUILDING ON SEVERAL CONTIGUOUS LOTS HAVING ONE OWNER. Whenever two or more contiguous lots in the Development shall be owned by the same person, and such owner shall desire to use two or more of said lots as a site for a single-dwelling house, he shall apply in writing to the Committee for permission to so use said lots. If permission for such a use shall be granted, the lots constituting the site for such single-dwelling house shall be treated as a single lot for the purpose of applying these Restrictions to said lots, so long as the lots remain improved with one single-dwelling house.

10. OWNERSHIP, USE AND ENJOYMENT OF COMMONS AND LANDSCAPE EASEMENTS. "Commons" and "Commons Area" and "Landscape Easements" shall mean those areas set aside for conveyance to the Association, as shown on the plat. Any commons depicted on the recorded plats of the Development shall remain private, and neither the Developer's execution of recording of the plats nor the doing of any other act by the Developer is, or is intended to be, or shall be construed as, a dedication to the public of the commons.

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

11. FRANKLIN TRACE PROPERTY OWNERS' ASSOCIATION, INC.

A. In General. There has been or will be created, under the laws of the State of Indiana, a not-for-profit corporation to be known as the "Franklin Trace Property Owners' Association, Inc.", which is referred to as the "Association". Every owner of a residential lot in the Development shall be a member of the Association and shall be subject to all the requirements and limitations imposed in these Restrictions on other owners of residential lots within the Development and on members of the Association, including those provisions with respect to the payment of a semi-annual charge.

B. Classes of Membership. The Association shall have two classes of voting membership.

Class A. Class A members shall be all owners with the exception of the Developer and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The

vote for such lot shall be exercised as they themselves determine, but in no event shall more than one vote be cast with respect to any lot.

Class B. The Class B member(s) shall be the Developer, who shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) On the date the Developer sells the last lot and no longer owns any lots or land in the Development; or

(ii) On January 1, 2010.

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

D. Professional Management. No contract or agreement for professional management of the Association shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause without termination fee by written notice of ninety (90) days or less.

E. Responsibilities of the Association.

(i) The Association shall maintain and repair the Common Areas and Landscape Easements shown on the plat(s) including improvements thereof.

(ii) The Association shall maintain the landscaping located in Landscape Easement and the landscaping and any entrance treatments located in the right-of-way at the entrance and shall keep such areas in a neat, clean and presentable condition at all times.

(iii) The Association shall procure and maintain casualty insurance for the Common Areas, liability insurance (including directors' and officers' insurance) and such other insurance as it deems necessary or advisable.

(iv) The Association may contract for such services as management, snow removal, security control, trash removal, and such other services as the Association deems necessary or advisable.

(v) The Association shall provide a means for the promulgation and enforcement of regulations necessary to govern the use and enjoyment of Common Areas.

(vi) The Association shall be responsible for performing the Developer's obligation to maintain in good operating condition and repair the Drainage Facilities located on both the Development and on the property directly to the east of the development belonging to Richard W. and Mabel W. Canfield. This obligation is described in that EASEMENT AGREEMENT between Wheeler Development Corporation and Richard W. and Mabel W. Canfield dated August 9, 1996, and recorded in the office of the Recorder of Marion County, Indiana as instrument No. 1996-0145862, and includes, but is not limited to, cutting of grass and weeds and removing silt, debris and other obstructions from that portion of the Drainage Facilities that are located upon the Canfield's Property.

12. COVENANT FOR MAINTENANCE ASSESSMENTS.

A. Creation of the Lien and Personal Obligation of Assessments. Each owner of any lot in the subdivision, except the Developer, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) semi-annual assessments or charges; and (2) special assessments for capital improvements and operating deficits; such assessments to be established and collected as hereinafter provided. The semi-annual and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. No charge or assessment shall ever be levied by the Association against the Developer.

B. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents in the properties and for the improvement and maintenance of the Common Area and improvements, operated or maintained by the Association, and the landscape easements on the Development and other purposes as specifically provided herein.

C. Special Assessments for Capital Improvements and Operating Deficits. In addition to the semi-annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

D. Notice and Quorum for Any Action Authorized Under Sections C and D. Written notice of any meeting called for the purpose of taking any action authorized under Section C or D shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

E. Date of Commencement of Semi-Annual Assessments; Due Dates. The semi-annual assessment provided for herein shall commence for each lot on the date of conveyance to the owner by deed or on the date the owner signs a land contract to purchase a lot. The Board of Directors shall fix any increase in the amount of the assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any lot shall be binding upon the Association as of the date of its issuance.

F. Effect of Non-Payment of Assessments; Remedies of the Association. Any charge levied or assessed against any lot, together with interest and other charges or costs as hereinafter provided, shall become and remain a lien upon that lot until paid in full and shall also be a personal obligation of the owner or owners of that lot at the time the charge fell due. Such charge shall bear interest at the rate of twelve percent (12%) per annum until paid in full. If, in the opinion of the Board of Directors of the Association, such charge has remained due and payable for an unreasonably long period of time, the Board may, on behalf of the Association, institute such procedures, either at law or in equity, by foreclosure or otherwise, to collect the amount owing in any court of competent jurisdiction. The owner of the lot or lots subject to the charge, shall, in addition to the amount of the charge at the time legal action is instituted, be obliged to pay any expense or costs, including attorneys' fees, incurred by the Association in collecting the same. Every owner of a lot in the Development and any person who may acquire any interest in such lot, whether as an owner or otherwise, is hereby notified, and by acquisition of such interest agrees, that any such liens which may exist upon said lot at the time of the acquisition of such interest are valid liens and shall be paid. Every person who shall become an owner of a lot in the Development is hereby notified that by the act of acquiring, making such purchase or acquiring such title, such person shall be conclusively held to have

covenanted to pay the Association all charges that the Association shall make pursuant to this subparagraph of the Restrictions.

G. Subordination of the Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof. Provided, however, the sale or transfer of any lot pursuant to the foreclosure of any first mortgage on such lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer.

H. Suspension of Privileges of Membership. Notwithstanding any other provision contained herein, the Board of Directors of the Association shall have the right to suspend the voting rights, if any, and the services to be provided by the Association together with the right to use the facilities of the Association, of any member (i) for any period during which any of the Association's charges or any fines assessed under these Restrictions owed by the member remains unpaid, (ii) during the period of any continuing violation of the restrictive covenants for the Development, after the existence of the violation shall have been declared by the Board of Directors of the Association; and (iii) during the period of any violation of the Articles of Incorporation, By-Laws or regulations of the Association.

### 13. REMEDIES.

A. In General. The Association or any party to whose benefit these Restrictions inure, including the Developer, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, but neither the Developer nor the Association shall be liable for damages of any kind to any person fore failing either to abide by, enforce or carry out any of these Restrictions.

B. Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of these Restrictions shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, reoccurrence or continuance of such violation or violations of these Restrictions.

### 14. EFFECT OF BECOMING AN OWNER.

The owners of any lot subject to these Restrictions by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from the Developer or a subsequent owner of such lot, shall accept such deed and execute such contract

subject to each and every Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the owner acknowledges the rights and powers of the Developer, Committee and of the Association with respect to these Restrictions, and also, for themselves, their heirs, personal representatives, successors and assigns, such owners covenant and agree and consent to and with the Developer, Committee and the Association and to and with the owners and subsequent owners of each of the lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreements.

15. TITLES.

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

16. DURATION.

The foregoing Covenants and Restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2081, at which time said Covenants and Restrictions shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part by vote of those persons who are then the owners of a majority of the numbered lots in the Development.

17. SEVERABILITY.

Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of an from every other one of the Restrictions, and of and from every combination of the Restrictions.

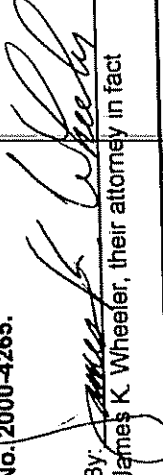
Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.

IN TESTIMONY WHEREOF, witness the signature of the Declarant this 17th  
day of February, 2000.

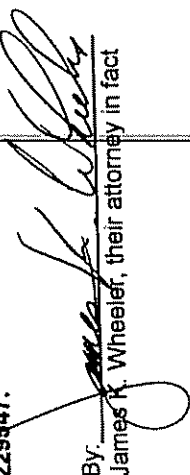
WHEELER DEVELOPMENT CORPORATION

BY   
James K. Wheeler, President

SCOTT A. SANNEMAN and WENDY BROWN  
SANNEMAN, owners of Lot #188 by Instrument  
No. 2000-4265.

By:   
James K. Wheeler, their attorney in fact

STEVEN H. COX and STACY G. COX,  
Owners of Lot # 189 by Instrument No. 99-  
229547.

By:   
James K. Wheeler, their attorney in fact

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF MARION    )

Before me, a Notary Public, in and for said County and State, personally appeared JAMES K. WHEELER, as President of Wheeler Development who, having first been duly sworn, stated that he has read the foregoing and that the facts and representations contained therein are true, and he also appears as attorney in fact for Scott A. Sanneman and Wendy Brown Sanneman and as attorney in fact for Steven H. Cox and Stacy G. Cox, and on their behalf agrees that the real estate described as lots No. 188 and 189 in the

recorded plat of Section 10, Franklin Parke Estates, shall also be bound by the above stated Declaration of Restrictions.

WITNESS my hand and Notarial Seal this 17<sup>th</sup> day of February, 2000.

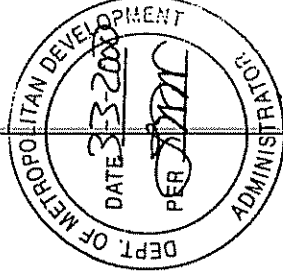
*Kathy L. Cover*  
Notary Public  
KATHY L. COVER  
Printed  
HAMILTON  
County of Residence

My Commission Expires:

*April 26, 2007*

This instrument prepared by James K. Wheeler, attorney at law.

C:\Wheeler Development Corporation\DECLARA.Franklin Trace.doc





MARTHA A. WOMACKS  
4500 W. 10th Ave., Unit 10  
**DECLARATION OF RESTRICTIONS**  
**Of Sections 9 & 11**  
**FOR FRANKLIN PARKE ESTATES**

FOR THE TOWNSHIP  
SUBJECT TO FINAL ACCEPTANCE  
FOR TRANSFER

*AK*

THIS DECLARATION, made this 8 day of December, 2000, by WHEELER DEVELOPMENT CORPORATION (hereinafter referred to as the "Developer").

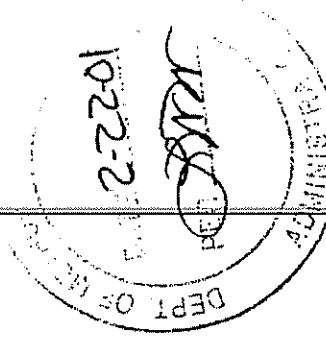
WITNESSETH

WHEREAS, the Developer is the owner of all the land contained in the area shown on Exhibit "A," attached hereto and made a part hereof, which lands have been subdivided as FRANKLIN PARKE ESTATES SECTIONS 9 & 11 (hereinafter referred to as the "Development"), as more particularly described on the plat thereof recorded in the office of the Recorder of Marion County, Indiana, as Instrument No. 2001-0026809; and 2001-0026810

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

NOW, THEREFORE, the Developer hereby declares that all of the platted lots and lands located within the Development as they become platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied, and improved, subject to the following Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said lots and lands in the Development, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Development as a whole and of each of said lots situated therein. All of the Restrictions shall run with the land and shall be binding upon the Developer and upon the parties having or acquiring any right, title, or interest, legal or equitable, in and to the real property in the Development or to any part or parts thereof, and shall inure to the benefit of the Developer and every one of the Developer's successors in title to any real property in the Development. The Developer specifically reserves unto itself the right and privilege, prior to the recording of the plat of a particular lot or tract within the Development as shown on Exhibit "A," to exclude any real estate so shown from the Development, or to include additional real estate.

**FILED**  
**FEB 22 2001**  
FRANKLIN TOWNSHIP  
ASSESSOR



1. DEFINITIONS. The following are the definitions of terms used in this Declaration:

A. "Committee" shall mean the FRANKLIN PARKE ESTATES Development Committee composed of three (3) members appointed by the Developer who shall be subject to removal by the Developer at any time. The Developer may, at its sole option, at any time hereafter, relinquish to the Association the power to appoint and remove one or more members of the Committee. The Committee shall terminate at such time as every lot in the Development is occupied by a dwelling house.

B. "Association" shall mean the FRANKLIN PARKE ESTATES Homeowners Association, Inc., a not-for-profit corporation.

C. "Lot" shall mean any parcel of residential real estate described by the plat of the Development, which is recorded in the office of the Recorder of Marion County, Indiana.

D. Approvals, determinations, permissions or consents required herein shall be deemed given if they are given in writing signed, with respect to the Developer of the Association, by the President or Vice-President thereof, and with respect to the committee, by two (2) members thereof.

E. "Owner" shall mean a person, partnership, trust or corporation who has or is acquiring any right, title or interest, legal or equitable, in and to a lot, but excluding those persons having such interest merely as security for the performance of an obligation.

2. CHARACTER OF THE DEVELOPMENT.

A. In General. Every numbered lot platted as part of the Development is for residential purposes. No structure shall be erected, placed or permitted to remain upon any of said residential lots except a single-family dwelling house. No double occupancy dwelling shall be permitted on any part of the Development. All tracts of land located within the Development, which have not been designated by numbering as residential building lots in the recorded Plat shall be used in a manner generally consistent with the zoning and use designed in the plan filed by the Developer in a rezoning proceeding before the Metropolitan Development Commission of Marion County, Indiana, under Docket No. 89-Z-125. However, the Developer reserves unto itself the right to change the character of such designated use at any time in the future by applying to the Metropolitan Development Commission and its staff for modifications of the plan, and, where necessary, to apply to any other necessary governmental body for such reclassification, rezoning or variance of use needed to accommodate the Developer's planned use.

B. Prohibited Improvements. No sheds, outbuildings, above ground pools, antennae, satellite disks, lawn ornaments in side or front yards, nor clothes lines shall be erected or placed on any lot.

C. Occupancy or Residential Use of Partially Completed Dwelling House Prohibited. No dwelling house constructed on any of the residential lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed.

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

A. Minimum Living Space Areas. The minimum square footage of living space of dwelling constructed on various residential lots in the Development, exclusive of porches, terraces, garages or basements, or portions thereof, or similar facilities not modeled and decorated for regular and continuous habitation, shall be designated on the recorded plat within the Development, but shall in no case contain less than one thousand six hundred (1,600) square feet of living area for a one-story ranch or for more than one story, one thousand two hundred (1,200) square feet for the first floor and six hundred (600) square feet for the second floor.

B. Residential Setback Requirements.

(i) Front Setbacks. Unless otherwise provided in these Restrictions or on the recorded plat, all dwelling houses and above-grade structures shall be constructed or placed on residential lots in the Development so as to comply with the setback lines, as established on the plat of the Development.

(ii) Side Yards. The aggregate side yard setbacks shall total not less than nineteen (19) feet, and the minimum side yard setback shall be seven (7) feet.

(iii) Rear Yards. The rear setback line shall be at least twenty-five (25) feet from the rear lot line.

C. Fences and Tree Preservation. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Development, any fence or post lamp must be approved by the Committee as to size, location, height, and composition before it may be installed. No live tree with a trunk diameter of four (4) inches or more when measured four (4) feet above the ground or any community planting installed by the Developer may be removed without the prior written consent of the Committee.

D. Landscaping. Each lot shall have a planting and mulching plan approved by the Committee prior to development. Such plan shall include a minimum of six (6) shrubs, with at least one (1) being an ornamental shrub of twenty-four (24) inches or more in size and all other shrubs being a minimum of eighteen (18) inches; and a minimum of two (2) trees, with shade trees at least two and one-quarter (2 1/4) inches in caliper and ornamental trees at least

six (6) feet in height. The front and side yard plans for each lot shall include sod and the rear yard plans shall include grass seed.

E. Exterior Construction. The finished exterior of every building constructed or placed on any lot in the Development shall be of brick or stone to eave height of first floor and balance of exterior may be solid wood siding. Efflorescent brick shall not be used, nor shall irregular brick patterns be used. No plywood, aluminum, vinyl or composition siding will be permitted. No house shall have metal prefabricated flues that extend above the highest roof-line. All driveways must be paved with concrete. The minimum roof pitch shall be 6/12. There shall be a separation of two (2) lots before a house type and elevation or color shall be repeated. The same house type and elevation or color cannot be located directly across the street from one another.

F. Committee Approval. All houses in the Development shall be first approved by the Committee. Prior to construction, the builder or owner shall submit to the Committee plans and specifications and a plan showing the location of the structure with all existing trees identified, and the elevations. All fences, awnings, lawn ornaments and other improvements shall be approved by the Committee prior to erection.

G. Garages Required. All residential dwellings in the Development shall include a minimum enclosed, two (2) car garage.

H. Heating Plants. Every house in the Development must contain a heating plant installed in compliance with the required codes and capable of providing adequate heat and cooling for year-round human habitation of the house.

I. Diligence in Construction. Every building whose construction or placement on any residential lot in the Development is begun shall be completed within six (6) months after the beginning of such construction or placement. No improvement which has partially or totally been destroyed by fire or otherwise shall be allowed to remain in such state for more than sixty (60) days from the time of such destruction or damage.

J. Sidewalks Required. Each lot shall have a sidewalk parallel to the street, or streets in the case of corner lots, on which the lot fronts. The sidewalk shall meet Indianapolis Department of Transportation Standards 14-03. Sidewalks must be completed by the owner of a lot at the time the driveway on the lot is constructed, but in no case later than eighteen (18) months after the lot is first conveyed by Developer.

K. Prohibition of Used Structures. All structures constructed or placed on any numbered lot in the Development shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such lot.

L. Maintenance of Lots and Improvements. The owner of any lot in the Development

shall at all times maintain the lot and any improvements situated thereon in such a manner as to prevent the lot or improvements from becoming unsightly; and, specifically, such owner shall:

- (i) Mow the lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds with a four (4) inch maximum height.
- (ii) Remove all debris or rubbish.
- (iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development.
- (iv) Cut down and remove dead trees.
- (v) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.
- (vi) Continue all construction activity and materials to the lot being improved; and at no time shall the street or adjacent lots (including drainage easements) be used for the delivery or storage of construction materials or construction debris.

M. Association's Right to Perform Certain Maintenance. In the event that the owner of any lot in the Development shall fail to maintain his lot and any improvements situated thereon in accordance with the provisions of these Restrictions, the Association shall have the right, by and through its agents or employees or contractors, to enter upon said lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such lot and improvements situated thereon, if any, conform to the requirements of the Restrictions. The cost therefore to the Association shall be added to and become a part of the annual charge to which said lot is subject, and may be collected in any manner in which such annual charge may be collected. Neither the Association nor any of its agents, employees or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

N. Mailboxes and Address Blocks. All mailboxes shall be of a uniform design as furnished by the Committee. All homes in the Development shall have an 8" by 16" limestone address block on the front-side (sample - Riverside Stone).

O. Solar Panel Installation. Solar panel installation shall be allowed only when the location, type, and size have been approved by the Committee.

P. Sight Line Obstructions at Street Intersections. No fence, wall, hedge, shrub planting or other object which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or be 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. No tree shall be permitted to remain within such instances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight line.

4. PROVISIONS RESPECTING DISPOSAL OF SANITARY WASTE.

A. Outside Toilets. No outside toilets shall be permitted on any lot in the Development (except during a period of construction).

B. Construction of Sewage Lines. All sanitary sewage lines on the residential building lots shall be designed and constructed in accordance with the provisions and requirements of the Marion County Board of Health. No storm water (subsurface or surface) shall be discharged into sanitary sewers.

5. GENERAL PROHIBITIONS.

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

B. Signs. No signs or advertisements shall be displayed or placed on any lot or structures in the Development, except entry signs and home or lot sales signs.

C. Animals. No animals shall be kept or maintained on any lot in the Development except the usual household pets, and, in such case, such household pets shall be kept reasonably confined so as not to become a nuisance.

D. Vehicle Parking. No trucks, campers, trailers, boats or similar vehicles shall be parked on any street or on any lot in the Development, except for the parking of such vehicle by a visiting house guest for a period not to exceed one (1) week; or the parking of such vehicle for a period not to exceed twenty-four (24) hours while it is being loaded, unloaded or prepared for use by the owner.

E. Garbage and Other Refuse. No owner of a lot or builder on a lot in the Development shall burn or permit the burning out of doors of garbage or other refuse, including building materials, nor shall any such owner accumulate or permit the accumulation out of doors of such refuse on his lot, except as may be permitted in subparagraph "F" below. All houses built in the Development shall be equipped with a garbage disposal unit.

F. Fuel Storage Tanks and Trash Receptacles. No tank for the storage of fuel or oil

shall be allowed on any lot. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be installed underground or shall be so placed and kept as not to be visible from any street within the Development at any time, except at the times when refuse collections are being made.

G. Model Homes. No owner of any lot in the Development shall build or permit the building upon said lot any dwelling house that is to be used as a model home or exhibit house without permission to do so from the Developer.

H. Temporary Structures. No temporary house, trailer, tent, garage or other outbuilding shall be placed or erected on any lot.

I. Utility Services. No utility services shall be installed under finished streets, except by jacking, drilling or boring.

J. Wells and Septic Tanks. No water wells for domestic consumption shall be drilled on any of the lots; nor shall any septic tanks be installed on any of the lots in the Development, unless public sewer tap-in is unavailable. Wells for irrigation or for the operation of geo-thermal heating and cooling systems shall be allowed only upon approval of the Committee.

K. Preservation of Field Tile. Any field tile or underground drain which is encountered in construction of any improvements within this subdivision will be preserved, and all owners of lots in this subdivision and their successors will comply with the Indiana Drainage Code 1965 and all amendments thereto.

6. UTILITY AND DRAINAGE EASEMENTS. There are areas of ground on the plat of the Developer marked "Drainage Easements" and "Utility Easements" (D. & U.E.), and Sanitary Sewer Easements (S.S.E.) either separately or in combination. The Utility Easements are hereby created and reserved for the use of all public utility companies (not including transportation companies) and governmental agencies for access to and installation, maintenance, repair or removal of poles, mains, ducts, sanitary sewers, storm sewers, drainage swales, lines, wires, cables and other equipment and facilities for the furnishing of utility services, including cable television services and fountains in the ponds.

The Drainage Easements are hereby created and reserved: (i) for the use of Developer during the development of the Subdivision for access to and for the installation, repair or removal of a drainage system, either by surface drainage or appropriate underground installations, for the Development and adjoining property and (ii) for the Department of Public Works of the City of Indianapolis for access to maintenance, repair and replacement of such drainage system, provided, however, that the owner of any lot in this Subdivision subject to a Drainage Easement shall be required to keep the portion of said Drainage Easement on his lot free from obstructions so that the surface water drainage will be unimpeded.

The delineation of the Drainage Easement and Utility Easement areas on this 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. No permanent structures or fences shall be erected or maintained upon said easements. The owners of lots in this Subdivision shall take and hold title to the lots subject to the Drainage Easements and Utility Easements herein created and reserved.

It shall be the responsibility of the owner of any lot or parcel of land within the area of this plat to comply at all times with the provisions of the drainage plan as approved for this plat by the Department of Public Works of the City of Indianapolis and requirements of all drainage permits for this plat issued by said Department.

It shall be the responsibility of every owner of every lot in the Development on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon his lot continuously unobstructed and in good repair.

7. DEDICATION OF STREETS. The rights-of-way of the streets as shown on this plat, if not heretofore dedicated to the public, are hereby dedicated to the public for use as a public right-of-way, subject, however, to a reservation of ingress-egress for the maintenance of medians, if any, in any entranceways to the Subdivision.

8. OWNERSHIP, USE AND ENJOYMENT OF COMMON FACILITIES. Common Facilities, if any, depicted on the recorded plat of the Development, shall remain private, and neither the Developer's execution or recording of the plat nor the doing of any other act by the Developer is, or is intended to be, or shall be construed as, a dedication to the public of the common facilities. Ownership of the common facilities shall be conveyed in fee simple title, free of financial encumbrances to the Association upon their completion as provided in the Declaration of Covenants, Conditions and Restrictions of FRANKLIN PARKE ESTATES. Such conveyance shall be subject to easements and restrictions of record, and such other conditions, as the Developer may at the time of such conveyance deem appropriate. Such conveyance shall be deemed to have been accepted by the Association and those persons who shall from time to time be members thereof upon the recording of a deed or deeds conveying such common facilities to the Association.

9. REMEDIES.

A. In General. The Association or any party to whose benefit these Restrictions inure, including the Developer, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, but neither the Developer nor the Association shall be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any of these Restrictions.



B. Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of these Restrictions shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, recurrence or continuation of such violation or violations of these Restrictions.

C. Enforcement by Metropolitan Development Commission. The Metropolitan Development Commission, its successors and assigns, shall have no right, power or authority to enforce any covenants, commitments, or limitations contained in this plat other than those covenants, commitments, or limitations that expressly run in favor of the Metropolitan Development Commission; provided further, nothing herein shall be construed to prevent the Metropolitan Development Commission from enforcing any provisions of the subdivision control ordinance, 58-AO-3, as amended, or any conditions attached to approval of this plat by the Plat Committee.

10. EFFECT OF BECOMING AN OWNER. The owners of any lot subject to these Restrictions, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from the Developer or a subsequent owner of such lot, shall accept such deed and execute such contract subject to each and every Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the owner acknowledges the rights and powers of the Developer and of the Association with respect to these Restrictions, and also, for themselves, their heirs, personal representatives, successors and assigns, such owners covenant, agree and consent to and with the Developer, the Association and to and with the owners and subsequent owners of each of the lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreements.

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

12. DURATION. These covenants shall run with the land and shall be binding on all persons or entitles from time to time having any right, title or interest in the Real Estate, or any part thereof, and on all persons or entitles claiming under them, until twenty (20) years after the date of recording hereof. In the last fifteen (15) years thereof seventy percent (70%) of the lot owners may amend these covenants in whole or in part. After said twenty (20) years, said covenants shall be automatically extended for successive periods of ten (10) years each, unless prior to the commencement of any such extension period, by a vote of a majority of the then owners of the lots in the Subdivision it is agreed that said covenants shall terminate in whole or in part; provided, however, that no termination of said covenants shall affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall consent thereto. Any such

amendment or termination shall be evidenced by a written instrument, signed and acknowledged by the lot 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.

13. AMENDMENT. This Declaration may be amended at any time by an instrument recorded in the Office of the Recorder of Marion County, Indiana, executed by the Association and at least seventy-five percent (75%) of the lot owners.

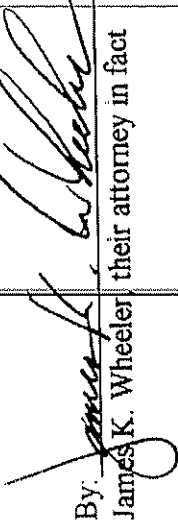
14. SEVERABILITY Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of any from every other one of the Restrictions, and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be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

IN TESTIMONY WHEREOF, witness the signature of the Declarant this 8<sup>th</sup> day of December, 2000.

WHEELER DEVELOPMENT CORP.

By:   
James K. Wheeler, President

DANIEL A. RUSHING AND KATHRYN R.  
RUSHING, owners of Lot #207  
by Instrument No. 2000-\_\_\_\_\_.

By:   
James K. Wheeler, their attorney in fact

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

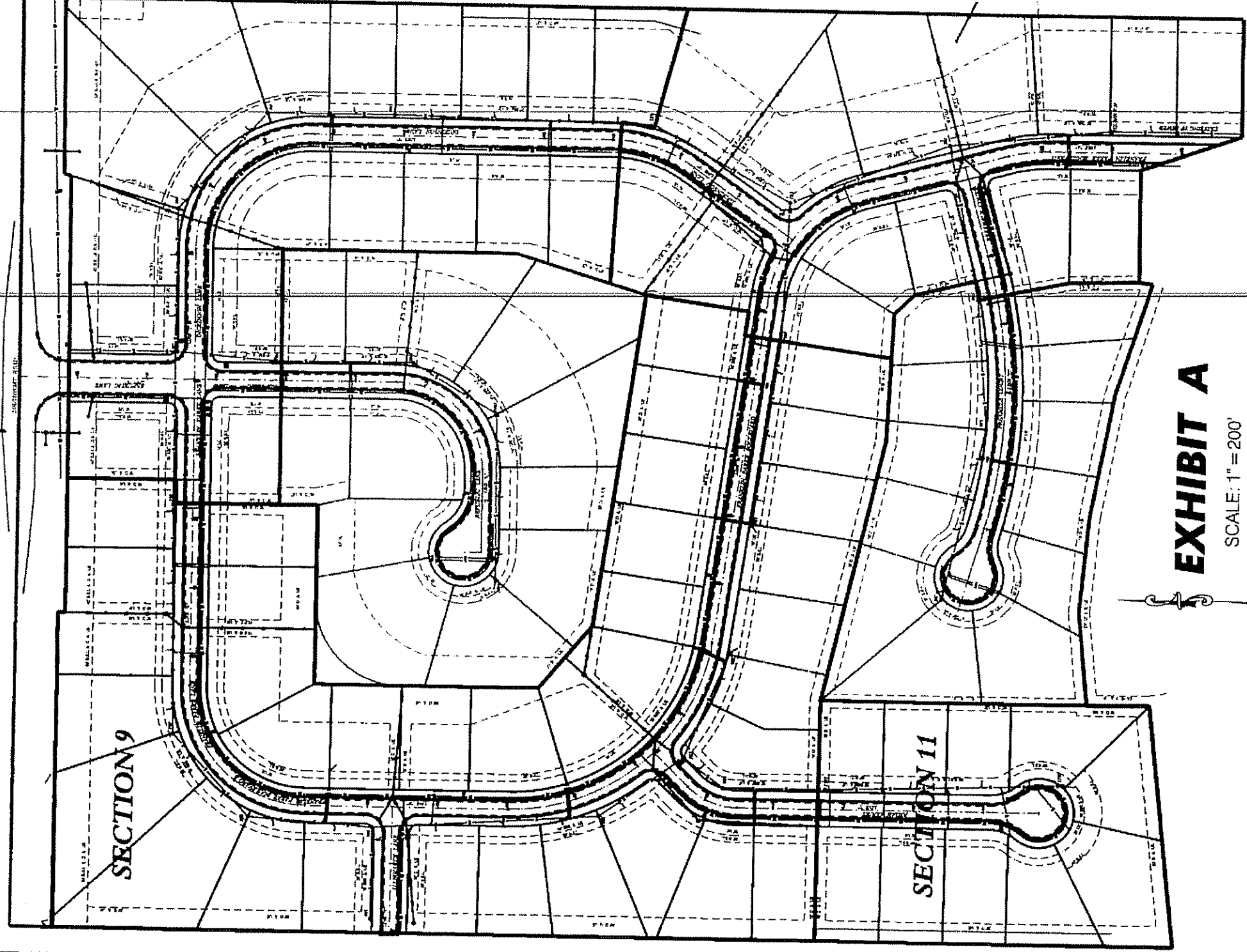
Before me, a Notary Public, in and for said County and State, personally appeared JAMES K. WHEELER, as President of Wheeler Development who, having first been duly sworn, stated that he has read the foregoing and that the facts and representations contained therein are true, and he also appears as attorney in fact for Daniel A. Rushing and Kathryn R. Rushing, and on their behalf agrees that the real estate described as lot No. 207 in the recorded plat of Section 9, Franklin Parke Estates, shall also be bound by the above stated Declaration of Restrictions.

WITNESS my hand and Notarial Seal this 8<sup>th</sup> day of December, 2000.

Wanda Jo Switzer  
Notary Public  
DIANA Jo SWITZER  
Printed  
Hamilton  
County of Residence

My Commission Expires:  
01-08-2001

M:\JKW\FRANKPA.WPD\



SECTION 9

SECTION 11

**EXHIBIT A**

SCALE: 1" = 200'

