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LOCKERBIE TOWNHOME COVENANTS AND EASEMENTS AGREEMENT

THIS AGREEMENT, made this 15 day of December, 1983, by and between MILICENT A. WRIGHT and MARIE T. WRIGHT ("Wrights"), BRUCE A. CORDINGLEY and ANTOINETTE A. CORDINGLEY, husband and wife ("Cordingleys"), GLADYS J. MILLER ("G. Miller"), and JOHN MORRIS and BARBARA MORRIS, husband and wife, ("Morrises"),

WITNESSETH THAT:

WHEREAS, Cordingleys are the owners of a certain parcel of real estate situated in Marion County, Indiana, which is described as "Site 4" on Exhibit A, attached hereto and made a part hereof (such parcel of real estate being hereinafter referred to as "Tract"); and

WHEREAS, Morrises are the owners of a certain parcel of real estate situated in Marion County, Indiana, which is described as "Site 5" on Exhibit A, attached hereto and made a part hereof (such parcel of real estate being hereinafter referred to as "Tract B"); and

WHEREAS, Wrights are the owners of a certain parcel of real estate situated in Marion County, Indiana, which is described as "Site 6" on Exhibit A, attached hereto and made a part hereof (such parcel of real estate being hereinafter referred to as "Tract C"); and

WHEREAS, G. Miller is the owner of a certain parcel of real estate situated in Marion County, Indiana, which is described as "Site 7" on Exhibit A, attached hereto and made a part hereof (such parcel of real estate hereinafter referred to as "Tract D"); and

WHEREAS, Tract A (commonly known as 332 North East Street, Indianapolis, Indiana), Tract B (commonly known as 330 North East Street, Indianapolis, Indiana), Tract C (commonly known as 328 North East Street, Indianapolis, Indiana) and Tract D (commonly known as 326 North East Street, Indianapolis, Indiana) (such Tracts being hereinafter referred to collectively as the "Initial Tracts" and individually as an "Initial Tract") are each developed with a three-story building containing a single family residence (such single family residences being hereinafter referred to collectively as the "Dwelling Units" and individually as a "Dwelling Unit"); and

WHEREAS, LOCKERBIE PARTNERSHIP, a partnership organized and existing under the laws of the State of Indiana ("Lockerbie") has an option to develop tracts similar to the Initial Tracts on certain real estate situated in Marion County, Indiana, which is described on Exhibit B, attached hereto and made a part hereof; and

WHEREAS, any one or more tracts which Lockerbie develops with one or more single family residences on the real estate described on Exhibit B that are substantially similar to the development on the Initial Tracts shall be subject to this Agreement; any one or more tracts which are developed by a developer other than Lockerbie, with one or more single family residences substantially similar to the Dwelling Units on the Initial Tracts, on the real estate described on Exhibit B may be subject to this Agreement (any real estate tracts developed in either of the above manners being hereinafter referred to collectively as "Proposed Tracts" and individually as "Proposed Tract", and any single family residences on a Proposed Tract shall be considered a Dwelling Unit); and

WHEREAS, the parties desire to make the various agreements contained herein relating to the Initial Tracts and the Proposed

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Tracts, if any (all references to "Tract", unless the context shall require otherwise, shall be to Initial Tracts and Proposed Tracts); and

WHEREAS, the Parties desire to make the agreements contained herein applicable to the owners of all Tracts so long as they own such Tracts (such owners being hereinafter referred to collectively as "Tract Owners" and individually as "Tract Owner").

NOW, THEREFORE, in consideration of the promises and their mutual undertaking, the parties agree as follows:

1. Party Walls and Party Fences Declaration. The dividing walls between the Dwelling Units and the dividing fences between the Tracts are declared to be Party Walls and Party Fences.

2. Maintenance of Party Walls and Party Fences. The cost of maintaining each Party Wall or Party Fence shall be borne independently by the Tract Owners on each side of the Party Wall or Party Fence. In the event of damage or destruction to a Party Wall or Party Fence from any cause other than negligence of either Tract Owner, the Tract Owners of each side of the Party Wall or Party Fence shall rebuilding the Party Wall or Party Fence, the negligent Tract Owner shall bear the entire costs of repair or reconstruction. If either Tract Owner shall neglect or refuse to pay his share, or all of the cost in the case of negligence, the other Tract Owner may have the Party Wall or Party Fence repaired or restored and shall have the right to a lien on the property of the party failing to pay, in the amount of the defaulting party's share of the repair or replacement cost. This lien shall be subordinate to any first mortgage, to a bank, savings and loan association, or insurance company on the Tract. In order to perfect the lien, the Tract Owner who repaired or replaced the Party Wall or Party Fence must file a sworn affidavit with the County Recorder within sixty (60) days after completion of the repair or replacement of the Party Wall or Party Fence. The affidavit shall set forth the facts giving rise to the lien and the amount thereof. Whenever a Party Wall or Party Fence, or any portion of a Party Wall or Party Fence, shall be rebuilt, it shall be erected at the same place as where it previously stood and be of the same size and structure as when originally erected.

3. Easements for Encroachments. It is acknowledged that each of the Dwelling Units include or may include eaves, roofs, gutters and downspouts which encroach on the adjoining Tracts. Each Tract Owner is hereby granted an express easement for such encroachments provided they are similar in scope to those presently on the Initial Tracts, and the right to enter the adjoining Tract for the limited purposes of repairing, cleaning and other maintenance of such encroachment.

4. Insurance. Each Tract Owner shall carry individual insurance for casualty loss to the improvements on his Tract.

5. Pets. Household pets, such as dogs or cats, are only permissible provided that the Tract Owner maintains the pet in such a manner so as not to allow any offensive odors, noise, or behavior to create a nuisance or disturbance to the other Tract Owners. Except as provided above, all animals are expressly prohibited.

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6. Appearance and Use. Each Tract Owner shall maintain the appearance of his property, so it conforms and harmonizes with the area. No noxious or offensive activity shall be carried upon any Tract, nor shall anything be done there which may be or may become an annoyance or nuisance to the other Tract Owners.

7. Building or Repair Plans. No building shall be erected, placed or altered on any Tract until the building, rebuilding, or repair plan, specifications and plot plan have been approved in writing by the Historical Preservation Commission (HPC). If the HPC no longer functions, the building or repair plan, specifications and plot plan must substantially conform and harmonize with the external design of the existing Dwelling Units.

8. Casualty. In the event of the damage or destruction of any Dwelling Unit, an easement is created for each adjoining Tract Owner to enter upon the Tract of the damaged or destroyed Dwelling Unit to shore up or otherwise take any and all actions reasonably necessary to preserve and protect, and prevent damage to the adjoining Dwelling Unit. These actions shall be completed at the adjoining Tract Owner's expenses. If a Dwelling Unit is destroyed, the affected Tract Owner shall remove all non-salvagable material from the Tract within six (6) months of the date of destruction. If the affected owner fails to do this, any other Tract Owner may remove material and shall have the right to a lien on the destroyed property in the amount of the expense. This lien shall be subordinate to any first mortgage to a bank, savings and loan association, or an insurance company on the Tract. In order to perfect the lien, the Tract Owner who removed the non-salvagable material must file a sworn affidavit with the County Recorder within thirty (30) days after removal of the non-salvagable material. The affidavit shall set forth the facts giving rise to the lien and the amount thereof.

If a Dwelling Unit is damaged or destroyed and the affected Tract Owner does not repair or rebuild or take any diligent action toward repairing or rebuilding within one (1) year of the date of damage or destruction or does not complete such repairs or rebuilding within two (2) years from such date of damage or destruction, other Tract Owners, either individually or jointly ("Interested Buyer or Buyers"), may buy the damaged or destroyed Dwelling Unit and the Tract upon which it is located. The Interested Buyer or Buyers must give written notice of their interest to all other Tract Owners, including the Tract Owner of the destroyed Dwelling Unit ("Notice of Interest"). This written notice creates no obligation to buy the destroyed Dwelling Unit and its Tract.

The Purchase Price of the Tract on which the damaged or destroyed Dwelling Unit is located shall be determined as follows:

A. By agreement of the Tract Owner on which the damaged or destroyed Dwelling Unit is located and the Interested Buyer or Buyers' or

B. In the event the parties are unable to agree upon a Purchase Price within one (1) month following receipt of the Notice of Interest, then by an appraisal ("Appraisal") of the fair market value of the Tract on which the damaged or destroyed Dwelling Unit is located. The procedure for obtaining the Appraisal shall be as follows:

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(1) Within two (2) months following receipt of the Notice of Interest, the Tract Owner on which the damaged or destroyed Dwelling Unit is located and the Interested Buyer or Buyers, jointly, shall select a real estate appraiser holding the MAI designation and shall notify the other party. If either party fails to select such an appraiser or notify the other party, then the appraiser who was selected and as to which notice was given shall be the sole appraiser and

his appraised amount shall be the Appraisal Value. Otherwise the parties shall proceed as follows:

(2) Within three (3) months following receipt of the Notice of Interest, the above two appraisers shall agree upon a third real estate appraiser holding the MAI designation.

(3) Each of the three appraisers shall be given written instructions to appraise the fair market value of said Tract including any value, if any, of the damaged Dwelling Unit.

(4) Within four (4) months following receipt of the Notice of Interest, each appraiser will submit a narrative appraisal to the Tract Owner on which the damaged or destroyed Dwelling Unit is located and Interested Buyer or Buyers indicating the appraiser's estimate of the fair market value of said Tract.

(5) The Appraisal Value of the damaged or destroyed Dwelling Unit and the Tract on which it is located shall be the amount set by the appraiser that is neither the highest nor the lowest as indicated by the three (3) appraisals, and this Appraisal Value shall become the Purchase Price if all or less than all of the Interested Buyers decide to buy ("Buyer or Buyers"). Determining the Appraisal Value creates no obligation on an Interested Buyer to buy the damaged or destroyed Tract.

(6) All expenses of determining the Appraisal Value shall be borne equally by the Tract Owner on which the damaged or destroyed Dwelling Unit is located, and by the Interested Buyer or Buyers.

If all or less than all of the Interested Buyers decide to purchase, the Buyer or Buyers must give written notice within thirty (30) days of determination of the Purchase Price to the Tract Owner upon which the damaged or destroyed Dwelling Unit is located of their intent to purchase said Tract. The closing date shall be set for thirty (30) days after such written notice. Upon closing, the Tract Owner upon which the damaged or destroyed Dwelling Unit is located ("Seller") shall deliver to the Interested Buyer or Buyers the appropriate Deed, Vendor's Affidavit, and a Title Commitment in the amount of the Purchase Price that will insure marketable title in the Interested Buyer or Buyers after delivery of the Deed. Upon closing, Seller shall pay all real estate taxes due and payable, and Buyer or Buyers shall pay all taxes due and payable thereafter. The Seller is responsible for any risk of loss until closing.

If one or more Tract Owners buy the damaged or destroyed Dwelling Unit and the Tract upon which it is located, and do not repair or rebuild or take any purposeful action toward rebuilding within one (1) year of their purchase or complete such work within two (2) years of such purchase, then, other Tract Owners may then buy such Dwelling Unit and its Tract using the above procedure.

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9. Binding Effect. The benefits and obligations of the agreements contained herein shall be perpetual and be construed as running with the land and shall bind the parties, and their respective heirs, executors, administrators, legal representatives, successors and assigns but there shall be no personal liability of any party after he ceases to be a Tract Owner. Each and every person accepting a deed to any Tract to which this Agreement applies shall be deemed to accept the deed with

the understanding that each and every other Tract Owner is also bound by the provisions contained herein, and each and every Tract Owner, by accepting a deed to any lot shall thereby consent to be bound by the agreements contained herein so long as he is a Tract Owner to the same extent as though he had signed this Agreement. Provided, however, that as to the Proposed Tracts the benefits and burdens of the agreements contained herein shall only be applicable if the first deed from a developer or builder to the Proposed Tract Owner indicated that such conveyance is subject to this Agreement.

10. Enforcement of Agreement. As a part of the general plan of restriction, each and every Tract Owner is given the right to enforce by any legal means, excluding forfeitures, the performance of the agreements contained herein by each and every other Tract Owner, their successors and assigns.

11. Term. These covenants and easements may be modified by the agreement of three-fourths (3/4) of the Tract Owner and the holders of three-fourths (3/4) of the first mortgage holders on the tracts at any time after twenty (20) years from the date hereof, provided that the rights regarding encroachments, Party Walls or Party Fences shall not be significantly affected. In all events these covenants and easements shall expire fifty (50) years from the date hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

John K. Morris  
John Morris

Marie T. Wright  
Marie T. Wright

Barbara Morris  
Barbara Morris

Millicent A. Wright  
Millicent A. Wright

Bruce A. Cordingley  
Bruce A. Cordingley

Antoinette A. Cordingley  
Antoinette A. Cordingley

Gladys J. Miller  
Gladys J. Miller

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Marie T. Wright and Millicent A. Wright, who acknowledged the execution of the foregoing Agreement.

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Witness my hand and Notarial Seal this 22<sup>nd</sup> day of December, 1983.

My Commission Expires: 10-4-86

Wanda S.M. Walker  
Notary Public

County of Residence: Marion

Printed: WANDA M. WALKER

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Bruce A. Cordingley and Antoinette A. Cordingley, and acknowledged the execution of the foregoing Agreement.

Witness my hand and Notarial Seal this 21<sup>st</sup> day of December, 1983.

My Commission Expires: July 12, 1985

Patricia D. Murphy  
Notary Public

County of Residence: Johnson

Printed: Patricia A. Murphy

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF Marion

Before me, a Notary Public in and for said County and State, personally appeared John Morris and Barbara Morris, and acknowledged the execution of the foregoing Agreement.

Witness my hand and Notarial Seal this 22<sup>nd</sup> day of December, 1983.

My Commission Expires: 10-4-86

Wanda S.M. Walker  
Notary Public

County of Residence: Marion

Printed: WANDA M. WALKER

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MARION

Before me, a Notary Public in and for said County and State, personally appeared Gladys J. Miller and acknowledged the execution of the foregoing Agreement.

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Witness my hand and Notarial Seal this 22<sup>nd</sup> day of  
December, 1983.

My Commission Expires:

10-4-86

Wanda M Walker  
Notary Public

County of Residence:

Marion

Printed: WANDA M. WALKER

This instrument prepared by Bruce A. Cordingley, Attorney at Law, ICE MILLER DONADIO & RYAN, One American Square, Box 82001, Indianapolis, Indiana 46282.

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EXHIBIT "A"

TRACT A

SITE 4 - LOCKERBIE TOWN HOMES (AS-BUILT)

Parts of Lots 10 and 11 in Vajen's Subdivision of Lots 1, 2, 3, 4, 5 and 6 in Square 21 of the Donation Lands to the City of Indianapolis, the plat of which is recorded in Plat Book 2, page 7, in the Office of the Recorder of Marion County, Indiana, more particularly described as follows:

Commencing at a rebar set at the northeast corner of Lot 12 in said Vajen's Subdivision, said rebar being set as shown on a survey by Mid-States Engineering Co., Inc. dated September 27, 1979 (Job No. 793-258); thence South 00°00'00" West (assumed bearing) along the east lines of said Lots 12 and 11 a distance of 63.250 feet to the point of beginning of the herein described tract; thence North 89°58'06" West parallel with the north line of said Lot 10 a distance of 52.000 feet; thence South 00°01'54" West a distance of 2.969 feet to said north line; thence North 89°58'06" West along said north line 68.279 feet to the west line of said Lot 10; thence South 00°00'34" East along said west line 22.171 feet; thence South 89°46'44" East along a wall common to two dwelling units 120.276 feet to the east line of said Lot 10; thence North 00°00'00" East along said east line 25.537 feet to the point of beginning, containing 2845 square feet, or 0.0653 acres; subject to highways, rights-of-way and easements.



TRACT B

SITE 5 - LOCKERBIE TOWN HOMES (AS-BUILT)

Parts of Lots 9 and 10 in Vajen's Subdivision of Lots 1, 2, 3, 4, 5 and 6 in Square 21 of the Donation Lands to the City of Indianapolis, the plat of which is recorded in Plat Book 2, page 7, in the Office of the Recorder of Marion County, Indiana, more particularly described as follows:

Commencing at a rebar set at the northeast corner of Lot 12 in said Vajen's Subdivision, said rebar being set as shown on a survey by Mid-States Engineering Co., Inc. dated September 27, 1979 (Job No. 793-258); thence South 00°00'00" West (assumed bearing) along the east lines of Lots 12, 11 and 10 in said Vajen's Subdivision a distance of 88.787 feet to the point of beginning of the herein described tract; thence North 89°46'44" West along a wall common to two dwelling units a distance of 120.276 feet to the west line of said Lot 10; thence South 00°00'34" East along the west line of said Lots 10 and 9 a distance of 20.216 feet; thence South 89°55'11" East along a wall common to two dwelling units a distance of 120.272 feet to the east line of said Lot 9; thence North 00°00'00" East along the east line of said Lots 9 and 10 a distance of 19.920 feet to the point of beginning, containing 2414 square feet, or 0.0554 acres; subject to highways, rights-of-way and easements.

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TRACT C

SITE 6 - LOCKERBIE TOWN HOMES (AS-BUILT)

A part of Lot 9 in Vajen's Subdivision of Lots 1, 2, 3, 4, 5 and 6 in Square 21 of the Donation Lands to the City of Indianapolis, the plat of which is recorded in Plat Book 2, page 7, in the Office of the Recorder of Marion County, Indiana, more particularly described as follows:

Commencing at a rebar set at the northeast corner of Lot 12 in said Vajen's Subdivision, said rebar being set as shown on a survey by Mid-States Engineering Co., Inc. dated September 27, 1979 (Job No. 793-258); thence South  $00^{\circ}00'00''$  West (assumed bearing) along the east lines of Lots 12, 11, 10 and 9 in said Vajen's Subdivision a distance of 108.708 feet to the point of beginning of the herein described tract; thence North  $89^{\circ}55'11''$  West along a wall common to two dwelling units a distance of 120.272 feet to the west line of said Lot 9; thence South  $00^{\circ}00'34''$  East along the west line of said Lot 9 a distance of 19.983 feet; thence South  $89^{\circ}53'26''$  East along a wall common to two dwelling units a distance of 120.269 feet to the east line of said Lot 9; thence North  $00^{\circ}00'09''$  East along the east line of said Lot 9 a distance of 20.044 feet to the point of beginning, containing 2407 square feet, or 0.0553 acres; subject to highways, rights-of-way and easements.

TRACT D

SITE 7 - LOCKERBIE TOWN HOMES (AS-BUILT)

Parts of Lots 8 and 9 in Vajen's Subdivision of Lots 1, 2, 3, 4, 5 and 6 in Square 21 of the Donation Lands to the City of Indianapolis, the plat of which is recorded in Plat Book 2, page 7, in the Office of the Recorder of Marion County, Indiana, more particularly described as follows:

Commencing at a rebar set at the northeast corner of Lot 12 in said Vajen's Subdivision, said rebar being set as shown on a survey by Mid-States Engineering Co., Inc. dated September 27, 1979 (Job No. 793-258); thence South 00°00'00" West (assumed bearing) along the east lines of Lots 12, 11, 10 and 9 in said Vajen's Subdivision a distance of 128.752 feet to the point of beginning of the herein described tract; thence North 89°53'26" West along a wall common to two dwelling units a distance of 120.269 feet to the west line of said Lot 9; thence South 00°00'34" East along the west line of said Lots 9 and 8 a distance of 19.744 feet; thence South 89°46'20" East along a wall common to two dwelling units a distance of 120.266 feet to the east line of said Lot 8; thence North 00°00'00" East along the east line of said Lots 8 and 9 a distance of 19.993 feet to the point of beginning, containing 2389 square feet, or 0.0549 acres; subject to highways, rights-of-way and easements.

EXHIBIT "D"

The real estate lying between the western right-of-way line and N. East Street and the eastern right-of-way line of the first north-south alley west of N. East Street, extending from the southern property line of Site 7, as described in the Lockerbie Townhomes Covenants and Easements Agreement, to the northern property line of the real estate presently owned by Wilbur and Rinnie Carson.