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AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
BROOKFIELD PLACE

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**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

FOR BROOKFIELD PLACE

Table of Contents

Recitals:.....	1
Terms:.....	1
1. Definitions	2
A. "Access Entity".....	2
B. "Assessment".....	2
C. "Applicable Date".....	2
D. "ARC".....	2
E. "Association".....	2
F. "Board".....	2
G. "Cable Television Services".....	2
H. "Common Area(s)".....	2
I. "Common Expenses".....	3
J. "Common Services".....	3
K. "Common Services Easements and Restrictions".....	3
L. "Communication Services".....	3
M. "Community Technology Services".....	3
N. "Development Period".....	3
O. "Excluded Devices".....	3
P. "Facility" or "Facilities".....	4
Q. "Improvements".....	4
R. "In Gross Easement".....	4
SJ "Internet Bandwidth Access Services".....	4
T. "Lake" or "Lakes".....	4
U. "Lake Access Easement".....	4
V. "Lot" or "Lots".....	5
W. "Member".....	5
X. "Owner".....	5
Y. "Plat".....	5
Z. "Property".....	5
AA. "Quorum".....	5
BB. "Residence".....	5
CC. "Resident".....	5
DD. "Service Easement Area".....	5
EE. "Telephone Services (local)".....	5
FF. "Telephone Services (long distance)".....	5

GG.	“Utility Services”	6
HH.	“Video On Demand Services”	6
2.	Organization and Duties of Association	6
A.	Organization of Association	6
(i)	Membership	6
(ii)	Transfer	6
(iii)	Voting	7
a.	Class A	7
b.	Class B	7
(iv)	Suspension of Voting Rights	7
(v)	Board of Directors	8
(vi)	Proxies	8
(vii)	Actions	8
B.	General Duties of the Association	8
C.	Dedication	8
D.	Easements of Record	9
E.	Amendment of Declaration	9
F.	Insurance	9
G.	Condemnation, Destruction	10
H.	Mortgagee’s Rights	10
3.	Architectural Review Committee	10
A.	Members of ARC	10
B.	Review of Plans and Specifications	11
C.	Meetings of the ARC	13
D.	No Waiver of Future Approvals	13
E.	Compensation of Members	13
F.	Inspection of Work	13
(i)	Time Limit	13
(ii)	Remedy	13
G.	Scope of Review	14
H.	Variances	14
I.	Appeals	14
4.	Remedies	15
A.	In General	15
B.	Delay or Failure to Enforce	15
5.	Covenants for Maintenance Assessments	15
A.	Purpose of Assessments	15
B.	Liability for Assessment	15
C.	Pro-rata Share	16
D.	Basis of Annual Assessments	16
E.	Basis of Special Assessments	16

F.	Fiscal Year; Date of Commencement of Assessments; Due Dates.	16
G.	Start-Up Fund.....	17
H.	Duties of the Association.....	17
I.	Non-payment of Assessments, Remedies of Association.....	17
J.	Adjustments.....	18
6.	Effect of Becoming an Owner.....	18
7.	Control of the Common Areas.....	19
A.	Control by the Board.....	19
B.	Conditions.....	19
8.	The Lakes.....	19
9.	Restrictions, Covenants and Regulations.....	19
A.	Restrictions on Use.....	19
(i)	Use of Common Areas.....	20
(ii)	Nuisance.....	20
(iii)	Setback Lines.....	20
(iv)	Land Use and Building Type.....	21
(v)	Building Location.....	21
(vi)	Pools.....	21
(vii)	Temporary and Outbuilding Structures.....	21
(viii)	Livestock and Poultry.....	21
(ix)	Garbage and Refuse Disposal.....	21
(x)	Fences.....	21
(xi)	Signs.....	22
(xii)	Satellite Dishes/Antennae.....	22
(xiii)	Parking and Prohibited Vehicles.....	22
a.	Parking.....	22
b.	Prohibited Vehicles.....	22
(xiv)	Sight Distance.....	22
B1	Developer's Rights.....	23
C.	Granting of Permits, Licenses and Easements.....	23
D.	Reservation of Rights to the Use of the Property.....	23
(i)	Access Entity Communication Services and Utility Easements.....	23
(ii)	Plat Easements.....	24
a.	Drainage Easements.....	24
b.	Utility Easements.....	25
c.	Streets.....	25
d.	Landscape Easement. The "Landscape Easement".....	26
e.	Transportation Easement.....	26
E.	Non-applicability to Association.....	26
10.	Duration.....	26

11.	Amendment of Declaration	26
	A. Generally.....	26
	(i) Notice.....	26
	(ii) Resolution.....	27
	(iii) Meeting.....	27
	(iv) Adoption.....	27
	(v) Special Amendments.....	27
	(vi) Recording.....	27
	B. Amendments by Developer Alone.....	27
	C. Protection of Developer.....	28
12.	Severability	28
13.	Notices	28
14.	Withdrawal of Property	29
15.	Costs and Attorney Fees	29
16.	Rules and Regulations	29
17.	Complete Agreement	29
18.	Obligation of Good Faith	29

**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

FOR BROOKFIELD PLACE

THIS AMENDED AND RESTATED DECLARATION, dated May 17, 2002, is by Brookfield Development, Inc., an Indiana corporation ("Developer").

Recitals:

WHEREAS, Developer entered into a Declaration of Covenants, Conditions and Restrictions for Brookfield Place, dated November 30, 2001 (Declaration), that was recorded with the Recorder of Marion County, Indiana, on November 30, 2001 as Instrument #2001-0214851, and,

WHEREAS, Developer is the purchaser and owner of all of the lands contained in the area shown on Exhibit A, attached hereto and made a part hereof, which lands will be subdivided for development of Brookfield Place, a single family housing development in Marion County, Indiana (the "Development"), and will be more particularly described on the plats of the various sections thereof recorded and to be recorded in the Office of the Recorder of Marion County, Indiana (the "Plats"); and

WHEREAS, 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 contained herein and as set forth in the Plats (the "Declaration " or "Restrictions") under a general plan or scheme of improvement for the benefit and complement of the lots and lands in the Development and future owners thereof; and

WHEREAS, Developer desires to amend and restate the Declaration to provide for the preservation and enhancement of the values and amenities in the Development, including, without limitation, the technological infrastructure and devices in communications and utility services available to and within the Development, and

WHEREAS, Developer desires to subject the Development to certain easements and access restrictions to facilitate the obtaining and availability of enhanced technological capabilities.

Terms:

NOW, THEREFORE, Developer hereby declares that all of the platted lots and lands located within the Development are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the 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 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 the Restrictions, and shall inure to the benefit of Developer's successors in title to any real estate in the Development. Developer specifically reserves unto itself the right and privilege to exclude any real estate from the Development, or to include additional real estate in the Development including real estate adjacent to the Development.

1. **Definitions.**

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

A. "Access Entity" shall mean Brookfield Technologies, LLC, an Indiana limited liability company.

B. "Assessment" shall mean the share of the Common Expenses imposed on each Lot or other special assessments, as determined and levied pursuant to the provisions of Section 5 hereof.

C. "Applicable Date" shall mean the date upon which the Class B membership in the Association shall cease and terminate as provided in Section 2A(iii)(b) herein.

D. "ARC" shall mean the Architectural Review Committee as provided in Section 3 herein.

E. "Association" shall mean Brookfield Place Homeowners' Association, Inc., an Indiana nonprofit corporation formed or to be formed under the Indiana Nonprofit Corporation Act of 1991, as amended.

F. "Board" shall mean the Board of Directors of the Association.

G. "Cable Television Services" shall mean the one-way transmission to users of video programming or other programming services provided through any Facilities related to such services, together with such user interaction, if any, which is required for the selection or use of the video programming or other programming services.

H. "Common Area(s)" shall mean those areas and all improvements located thereon set aside for recreation areas, related facilities, theme structures or landscaped areas or mounds at street entrances, lights, park areas, street landscaping, the Lakes, and any other areas so designated on the Plats. The Common Areas shall include, but not be limited to, the walking paths and playground; provided, however, that all parts of the Development, including, without limitation, the Common Areas, shall be subject to the Common Services Easements and Restrictions and the Non-Exclusive License Agreement recorded prior hereto and that any

recreational uses of the Common Area shall not interfere with the Facilities or impair the use of the Facilities.

I. "Common Expenses" shall mean the actual and estimated cost to the Association of the costs for maintenance, management, operation, repair, improvement and replacement of the Common Areas, and any other cost or expense incurred by the Association for the benefit of the Common Areas or for the benefit of the Association, including but not limited to real estate taxes, and other municipal or governmental assessments.

J. "Common Services" shall mean any Communication Services and Utility Services.

K. "Common Services Easements and Restrictions" shall mean the Common Services Easements and Restrictions made and entered into by and between the Developer and the Access Entity, and recorded in the Office of the Recorder of Marion County as Instrument Number 2002 - 0082839, a copy of which is attached as Exhibit B.

L. "Communication Services" shall mean and refer to Cable Television Services, Community Technology Services, Internet Bandwidth Access Services, Telephone Services (local), Telephone Services (long distance), Video On Demand Services, any other cable or telephone services, any other communication, utility or common functional services together with the Facilities related to such services; provided, however, that the term or phrase "Communication Services" shall not include Excluded Devices.

M. "Community Technology Services" shall mean the construction, sale, installation, leasing, licensing, modification, supplementation, maintenance, repair, reconstruction or removal of any device (including, without limitation, any hardware or software device) principally used by individual users for Communication Services.

N. "Development Period" shall mean the period of time during which Developer owns at least one (1) Lot.

O. "Excluded Devices" shall mean any Communication Services device or Utility Services device which satisfies both of the following described characteristics:

- (i) The device is nonpermanent. By way of example and not limitation, any device which is affixed to real estate is a permanent device. A nonpermanent device must not, at any time, be affixed to real estate within the Combined Easement Area either by, for example and not limitation, submersion into the ground, screws, bolts, glue or wiring.
- (ii) Use of the device must occur primarily outside of the In Gross Easement Area, with use within the In Gross Easement Area being incidental or sporadic.

For example, mobile cellular telephones, pagers, car alarms and portable computer peripherals, which are used primarily outside of the In Gross Easement Area, will generally constitute Excluded Devices.

P. "Facility" or "Facilities" shall mean the construction, installation, modification, alteration, supplementation, repair, reconstruction or replacement of any and all necessary or desirable hardware or equipment of any type used to provide or otherwise make available any Common Services including, without limitation, cable, wire, fiber, main, pipe, boxes, conduit, manhole, transformers, pumps, amplifiers, dishes, antennae, microwave, satellite, pedestal, equipment enclosures, poles, wireless communication technology, or any other hardware or equipment of any type necessary or desirable to transfer or provide any Common Services, including, without limitation, communication, video, data, e-commerce, internet, intranet, security systems, communication utility services, information systems, cable television, as well as any other Communication Services or uses for which such hardware or equipment may be used, and further including, without limitation, electricity, water, waste water, gas and any other Utility Services for which such services may be used.

Q. "Improvements" shall mean all structures and appurtenances thereto of every type and kind, including but not limited to, buildings, walkways, sprinkler pipes, roads, driveways, fences, screening walls, block walls, retaining walls, awnings, patio covers, stairs, decks, landscaping, antennae, satellite dishes, solar equipment, hedges, windbreaks, pools, spas, recreational equipment, trampolines, entry gates, if any, planted trees and shrubs, poles, and signs.

R. "In Gross Easement" shall mean the In Gross Easement created for the exclusive use of the Grantor (as that term is defined in the Common Services Easements and Restrictions) pursuant to Section 2.01 of the Common Services Easements and Restrictions.

S. "Internet Bandwidth Access Services" shall mean any service that enables users to access content, information, electronic mail or other services offered over the internet, and may also include access to proprietary content, information and other services as part of a package of services offered to users and any Facilities related to such service; provided, however, that the term or phrase "Internet Bandwidth Access Services" shall not include Telephone Services (local) or Telephone Services (long distance).

T. "Lake" or "Lakes" shall mean and refer to the water detention pond(s) or lake(s) and common area portion of the shoreline area as shown on the Plats which serves or shall serve as part of the storm and surface water drainage system serving the Development, as such are or in the future shall be more particularly described on the Plats.

U. "Lake Access Easement" shall mean the area designated on the plat as a means of access to a Lake.

V. "Lot" or "Lots" shall mean any parcel(s) of real estate, whether residential or otherwise, described by the Plats.

W. "Member" shall mean any person or entity holding membership in the Association as provided in this Declaration.

X. "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 an obligation.

Y. "Plat" shall mean the recorded or unrecorded Plat for all or any portion of the property as may be amended from time to time.

Z. "Property" shall mean the real estate described in the attached Exhibit A.

AA. "Quorum" shall be defined in Article III, Section 2 of the Bylaws of the Association and may be amended by the Association from time to time. At the time of the execution of this Declaration, the term quorum is defined in the Bylaws as follows: The presence of Members or of proxies entitled to cast thirty percent (30%) of the total number of votes entitled to be cast (Class A and Class B votes combined). 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 of the required quorum for the preceding meeting.

BB. "Residence" shall mean a residential single family housing residence designed and intended as living quarters for one (1) family or housekeeping residence.

CC. "Resident" shall mean any person who is physically residing in a Residence, for so long as said person is so residing, including, but not limited to, an Owner or a tenant.

DD. "Service Easement Area" shall mean the Service Easement Area as defined in Section 2.02 of the Common Services Easement and Restrictions.

EE. "Telephone Services (local)" shall mean service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or comparable service provided through a system of switches, transmission equipment or any other Facilities (or any combination thereof) by which a user can originate and terminate a telecommunications service.

FF. "Telephone Services (long distance)" The term or phrase "Telephone Services (long distance)" shall mean and refer to telephone service between stations in different

exchange areas for which there is made a separate charge not included in contracts with users for exchange service and any Facilities related to such services.

GG. "Utility Services" shall mean and refer to any sewer, water, gas, electric, any other utility or common functional services provided to the residences and commercial structures (if any) within the Development together with any Facilities related to such services; provided, however, that the term or phrase "Utility Services" shall not mean or refer to or include any "Communication Services."

HH. "Video On Demand Services" shall mean the service of providing video programming to users over networks on an on demand, or interactive, point to point basis and any Facilities related to such services; provided, however the term or phrase "Video On Demand Services" shall not include services providing video programming prescheduled by the programming provider, such as Cable Television Services.

Other terms and words defined elsewhere in this Declaration shall have the meanings ascribed to them in such provision.

2. Organization and Duties of Association.

A. Organization of Association.

The Association is or shall be incorporated under the name of Brookfield Place Homeowners' Association, as a nonprofit corporation organized under the laws of the State of Indiana.

(i) Membership. Every Owner of a Lot, except as herein provided to the contrary, shall be entitled and required to be a member of the Association. If title to a Lot is held by more than one person, each of such persons shall be a member. An Owner of more than one Lot shall be entitled to, and there shall be required, one membership for each such lot. Each such membership shall be appurtenant to the Lot upon which it is based and shall transfer automatically by voluntary or involuntary conveyance of the title of that Lot. Except as herein otherwise expressly provided, no person or entity other than an Owner or Developer may be a member of the Association, and a membership in the Association may not be transferred except in connection with the transfer of title to a Lot.

(ii) Transfer. A membership in the Association shall not be transferred, pledged or alienated in any way, except upon the transfer of the record title of a Lot and then only to such transferee, by assignment, intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process. It shall be the responsibility of each Owner, upon becoming entitled to membership, to so notify the Association in writing, and until so notified, the Association may continue to carry the name of the former Owner as a member, in its sole discretion. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. In the event the Owner of any Lot

should fail or refuse to transfer the membership registered in his name to the transferee of title of such Lot, the Association may issue a new membership to the transferee, and thereupon the old membership outstanding in the name of the transferor shall be null and void as though the same had been surrendered.

(iii) Voting. The Association shall have two (2) classes of voting membership, as follows:

a. Class A. Class A members shall be all Owners of Lots, with the exception of the Developer prior to termination of Class B membership, and shall be entitled to one (1) vote for each lot owned with respect to each matter submitted to a vote of members upon which the Class A members are entitled to vote. When more than one person holds title to any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot. There can be no split vote. Prior to or at the time of any meeting at which a vote is to be taken, each co-Owner or other person entitled to a vote at such meeting shall file with the Secretary of the Association the name of the voting co-Owner or other person entitled to a vote at such meeting, unless such co-Owner or other persons have filed a general voting authority with the Secretary applicable to all votes until rescinded.

b. Class B. Class B members shall be the Developer and all successors and assigns of the Developer designated by the Developer as Class B members in a written notice mailed or delivered to the resident agent of the Association. Each class B member shall be entitled, on all matters requiring a vote of the membership of the Association, to five (5) votes for each Lot, platted or unplatted, owned by them or it and five (5) votes for each single numbered parcel of land shown upon and identified as a Lot on any recorded or unrecorded plat of the Development. The Class B membership shall cease and terminate upon the first to occur of (1) the date upon which the written resignation of the Class B members as such is delivered to the resident agent of the Association; (2) expiration of the Development Period; (3) ten (10) years after the date of recording of the first conveyance of a Lot to an Owner other than Developer. Developer shall each be entitled to one (1) Class A membership for each Lot of which it is the Owner on or after the termination of the Class B membership.

(iv) Suspension of Voting Rights. In the event any Owner shall be in arrears in the payment of any amount due under any of the provisions of this Declaration for a period of thirty (30) days, or shall be in default in the performance of any of the terms of this Declaration for a period of thirty (30) days, such Owner's right to vote as a member of the Association shall be suspended and shall remain suspended until all payments are brought current and all defaults remedied.

(v) Board of Directors. Following the Applicable Date, the Owners shall elect a Board of Directors of the Association as prescribed by the Association's Articles and Bylaws. The Board of Directors shall manage the affairs of the Association. Until the Applicable Date, the Board shall consist of not less than three (3) nor more than five (5) persons designated by Developer, as long as it shall own one or more lots. From and after the Applicable Date, the Board shall consist of five (5) persons elected by the Members.

(vi) Proxies. Every Member entitled to vote or execute statements of consent shall have the right to do so either in person or by an agent or agents authorized by a written proxy executed and dated by such Person or his duly authorized agent; provided, however, that the form of any proxy must be reviewed and approved by the Board prior to the meeting for which the proxy is being submitted; and provided further, that no such proxy shall be valid after the expiration of one (1) year from the date of its execution unless the proxy specifies a shorter term. A Member's proxy shall automatically terminate upon conveyance by that member of his fee title interest in all Lots owned by the Member. An Owner may revoke a proxy pursuant to this section only by actual notice of revocation to the person presiding over a meeting of the Association. Actual notice, in this provision, means a written statement signed by the Owner and delivered to Secretary prior to the meeting or attendance at the meeting by the Owner. A proxy is void if it is not dated or purports to be revocable without notice.

(vii) Actions. If a quorum is present, as set forth in the Bylaws, the affirmative vote on any matter of the majority of the votes represented at the meeting (or, in the case of elections in which there are more than two candidates, a plurality of the votes cast) shall be the act of the Members, unless the vote of a greater number is required by law or by the Restrictions.

B. General Duties of the Association. The Association is hereby authorized to act and shall act on behalf of, and in the name, place, and stead of, the individual Owners in all matters pertaining to the maintenance, repair, and replacement, of the Common Areas, the determination of Common Expenses, and the collection of annual and special Assessments; provided, however, the Association shall be under no obligation and shall not manage, repair, maintain, improve and operate any Facilities situated in the Common Area. The Association shall also have the right, but not the obligation to act on behalf of any Owner or Owners in seeking enforcement of the terms, covenants, conditions and restrictions contained in this Declaration. Neither the Association nor its officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color of authority of this Declaration, or for any failure to take any action called for by this Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct.

C. Dedication. The Association shall not have the right to dedicate or transfer all or any part of the Common Area to any governmental subdivision or public agency or utility, or to grant permits, licenses, or easements over the Common Area except for granting to the City

of Indianapolis the Street right-of-way (R/W) shown on the plats and plans and demarcated as being 50' across; provided, however, that any such dedication be fully consistent with Section 9(D)(ii)(c). The Access Entity may enter into agreements on behalf of the Members for the providing of services and utilities to the property and/or the Members including without limitation Internet Services, Phone (local and long distance), Cable Television and other services as may be available within the Development from time to time; provided, however, if the Access Entity fails to provide any of the services provided in this Section 2(C), the Association may enter into agreements on behalf of the Members for the provision of said services and utilities.

D. Easements of Record. The Development shall be subject to easements of record on the date the various portions thereof become subject to this Declaration, and to any easements in the Common Area which may be granted by Developer prior to the Applicable Date.

E. Amendment of Declaration. The Association shall have the right to amend this Declaration at any time, and from time to time, in accordance with Section 11 of this Declaration, provided that any such amendment does not prejudice the rights of the Access Entity or its designees, successors or assigns.

F. Insurance. The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury. The Association shall maintain in force adequate officers and directors insurance covering the officers and directors of the Association. If appropriate, the Association shall also maintain in force adequate fire and extended coverage insurance, insuring all Common Areas against fire, windstorm, vandalism, and such other hazards as may be insurable under standard "extended coverage" provisions, in an amount equal to the full insurable value of such improvements and property. The Association shall notify all mortgagees which have requested notice of any lapse, cancellation, or material modification of any insurance policy. All policies of insurance shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, Board members, the Developer, any property manager, their respective employees and agents, the Owners and occupants, and also waives any defenses based on co-insurance or on invalidity arising from acts of the insured, and shall cover claims of one or more parties against other insured parties.

The Association may maintain a fidelity bond indemnifying the Association, the Board and the Owners for loss of funds resulting from fraudulent or dishonest acts of any director, officer, employee or anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The fidelity bond should cover the maximum amount of funds which will be in the custody of the Association or its management agent at any time, but in no event shall such fidelity bond coverage be less than the sum of one (1) years' assessment on all Lots in the Development, plus the Association's reserve funds.

The Association shall cause all insurance policies and fidelity bonds to provide at least ten (10) days written notice to the Association, and all mortgagees who have requested such notice, before the insurance policies or fidelity bonds can be canceled or substantially modified for any reason.

G. Condemnation, Destruction. In the event that any of the Common Areas shall be condemned or taken by any competent public authority, or in the event the same shall be damaged or destroyed by any cause whatsoever, the Association shall represent the interests of the Owners in any proceedings, negotiations, insurance adjustments, settlements, or agreements in connection with such condemnation, damage, or destruction; provided, however, the Access Entity shall represent its own interests relating to any condemnation or taking of the Common Areas by any competent public authority, including, without limitation, any damages to the Facilities or losses incurred due to any condemnation or taking of any Facilities. Any sums recovered by the Association shall be applied, first, to the restoration and repair of any Common Areas condemned, damaged, or destroyed, to the extent such restoration or repair is practicable, and the balance of such sums shall either be held as a reserve for future maintenance of the Common Areas or turned over to the Owners prorata shares, whichever may be determined by a majority vote of the members of the Association. Each Owner shall be responsible for pursuing his own action for damages to his Lot, either by reason of direct damage thereto or by reason of an impairment of value due to damage to the Common Areas. The Association shall notify all Mortgagees of which it has notice of any condemnation, damage, or destruction of any Common Areas.

H. Mortgagee's Rights. Any mortgagees of any Owners shall have the right, at their option, jointly or severally, to pay taxes or other charges which are in default or which may or have become a charge against the Common Areas and to pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Common Areas, and mortgagees making such payment shall be owed immediate reimbursement therefor from the Association. In addition, neither the Owners nor the Association shall materially impair the right of any mortgagee holding, insuring, or guaranteeing any mortgage on all or any portion of the Real Estate.

3. Architectural Review Committee.

A. Members of ARC. The ARC shall be comprised of not less than three (3) nor more than five (5) members, the number of which may be increased by a majority vote of the Board. The initial members of the ARC shall be representatives of the Developer until three (3) years after the first Closing of the sale of a Lot ("Third Anniversary"). After the Third Anniversary the Board may appoint and/or remove one (1) member of the ARC, and Developer shall have the right and power at all times to appoint and remove a majority of the members of the ARC or to fill any vacancy of such majority, until the expiration of the Development Period, after which the Board shall have the power to appoint and remove all of the members of the ARC. The Developer may voluntarily surrender the right to appoint and

release members of the ARC before termination of the above referenced time period. In that event, the Developer may require, for the duration of the period, that specified actions of the ARC be approved by the Developer before they become effective. ARC members appointed by the Board shall be from the Membership of the Association, but ARC members appointed by Developer need not be Members of the Association. The ARC shall have the right and duty to promulgate reasonable standards against which to examine any request made pursuant to this Article, in order to ensure that the proposed plans conform harmoniously to the exterior design and existing materials of the buildings in the Development. Board members may also serve as ARC members.

B. Review of Plans and Specifications. The ARC shall consider and act upon any and all plans and specifications submitted for its approval under this Declaration and perform such other duties as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with plans approved by the ARC. No construction, alteration, removal, location, relocation, repainting, demolishing, addition, installation, modification, decoration, redecoration or reconstruction of Improvements, including landscaping, in the Development shall be commenced or maintained, until the plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location of the same shall have been submitted to the ARC and approved in writing by the ARC; provided, however, that any Improvement may be repainted without ARC approval so long as the Improvement is repainted the identical color which it was last painted. This provision applies to any Improvement, including furniture or furnishings, located on the exterior of the Lot.

It shall be the responsibility of the Owner to submit the written plans and specifications (the "Applicant") to an authorized agent of the ARC. Until changed by the Board, the address for the submission of such plans and specifications shall be the principal office of the Association. The ARC shall approve plans and specifications submitted for its approval only if it deems that the installation, construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area or the Development as a whole, that the appearance of any structure affected thereby will be in harmony with the surrounding structures, that the construction thereof will not detract from the beauty, wholeness and attractiveness of the Common Areas or the enjoyment thereof by the Members, and that the upkeep and maintenance thereof will not become a burden on the Association. Developer, and any person or entity to which Developer may assign all or a portion of its exemption hereunder, need not seek or obtain ARC approval of any Improvements constructed on the Development by Developer or such person or entity, as the case may be.

The ARC may condition its approval of proposals or plans and specifications for any Improvement (1) upon the Applicant's furnishing the Association with security acceptable to the Association against any mechanic's lien or other encumbrance which may be Recorded against the Development as a result of such work, (2) on such changes therein as it deems appropriate, (3) upon the Applicant's agreement to complete the proposed work within a stated period of

time, or (4) all of the above, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted. The ARC may also issue rules or guidelines setting forth procedures for the submission of plans for approval, requiring a fee to accompany each application for approval, or stating additional factors which it will take into consideration in reviewing submissions. The ARC may provide that the amount of the fee shall be uniform, or that it be determined in any other reasonable manner, such as by the reasonable cost of the construction, alterations or additions contemplated. All plans and specifications for any construction or other Improvement (other than walls, fences, curbs, asphalt or cement areas, landscaping and non-structural alterations, modifications or additions) shall be prepared by a designer or licensed architect and shall include a site development plan showing existing and proposed topographic elevations, the pattern of surface water drainage on and over the Lot, proposed construction staging areas, the location of the Improvements on the Lot (including proposed front, rear and side setback lines, relationship to other Improvements, the location thereof with reference to structures on adjoining Lots, the number and location of all driveways on the Lot and all exterior trash container areas to be utilized by the Residents on the Lot); a building floor plan; a building elevation and roof plan showing dimensions, exterior color scheme and specification of the principal exterior materials for all outside walls and the roof of the structure; a detailed landscape and exterior lighting plan, which shall include designation of the number, location, type, size and maturity level of all landscaping to be placed on the Lot; and a detailed description of the location of all utility lines and connections, as may be applicable to the proposed construction or Improvement.

Notwithstanding the foregoing provisions of this Section, Improvements which are damaged or destroyed may be repaired, restored, replaced and/or reconstructed in conformance with previously approved plans, specifications and materials without the necessity of submitting additional plans and specifications to the Board or obtaining the Board's approval.

Until receipt by the ARC of any required plans and specifications, the ARC may postpone review of any plans submitted for approval. Decisions of the ARC and the reasons therefor shall be transmitted by the ARC to the Applicant at the address set forth in the application for approval within sixty (60) days after receipt by the ARC of all materials required by the ARC. Any application submitted pursuant to this Section 3(B) shall be deemed approved unless written disapproval or a request for additional information or materials by the ARC shall have been transmitted to the Applicant within sixty (60) days after the date of receipt by the ARC of all required materials. The Applicant shall meet any review or permit requirements of the ARC and the City or County prior to making any alterations or Improvements permitted hereunder. Applicant shall be required to send requests, information or materials to the ARC in compliance with Section 13 herein. Provided, however, regardless of how approval is obtained, the applicant shall be obligated to conform and abide by the architectural rules, standards, covenants and restrictions contained in this Declaration, and as amended and adopted by the ARC, from time to time.

C. Meetings of the ARC. The ARC shall meet from time to time as necessary to perform its duties hereunder. The Board may from time to time, by resolution unanimously adopted in writing, designate a ARC representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the ARC, except the granting of variances pursuant to Section 3(H). In the absence of such designation, the vote or written consent of a majority of the ARC shall constitute an act of the ARC.

D. No Waiver of Future Approvals. The approval of the ARC of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the ARC, shall not be deemed to constitute a waiver of any right to withhold approval or consent to any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval or consent.

E. Compensation of Members. The members of the ARC shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder.

F. Inspection of Work. The ARC or its duly authorized representative may at any time inspect any work for which approval of plans is required under this Section 3 ("Work"), which right to inspect shall include the right to require any Owner to take such action as may be necessary to remedy any noncompliance with the ARC-approved plans for the work or with the requirements of this Declaration ("Noncompliance").

(i) Time Limit. The ARC's right to inspect the Work and notify the responsible Owner of any Noncompliance shall terminate sixty (60) days after the latest to occur of the following events: (i) submittal of the plans for the Work to the ARC for its approval as provided in this Section 3; (ii) completion of the Work as provided in the ARC-approved plans; and (iii) written notice from the Owner to the ARC that the Work has been completed. This time limit for inspection and notification by the ARC shall be extended indefinitely if any of these conditions has not occurred. If the ARC fails to send a notice of Noncompliance to an Owner before this time limit expires, the Work shall be deemed to comply with the approved plans.

(ii) Remedy. If an Owner fails to remedy any Noncompliance within thirty (30) days from the date of notification from the ARC, the ARC shall notify the Board in writing of such failure. Upon Notice and Hearing, as provided in the Bylaws, the Board shall determine whether there is a Noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a Noncompliance exists, the Owner shall remedy or remove the same within a period of not more than thirty (30) days from the date that notice of the Board ruling is given to the Owner. If the Owner does not comply with the Board ruling within that period, the Board, at its option, may Record a Notice of

Noncompliance and commence a lawsuit for damages or injunctive relief, as appropriate, to remedy the Noncompliance.

G. Scope of Review. The ARC shall review and approve, conditionally approve or disapprove all plans submitted to it for any proposed Improvement, alteration or addition, solely on the basis of aesthetic considerations, consistency with this Declaration, and the overall benefit or detriment which would result to the immediate vicinity and the Development generally. The ARC shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features. The ARC's approval or disapproval shall be based solely on the considerations set forth in this Section 3, and the ARC shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes. The ARC may consider the impact of views from other Residences or Lots and reasonable privacy right claims as factors in reviewing, approving or disapproving any proposed landscaping, construction or other Improvement. However, Developer does not warrant any protected views within the Development and no Residence or Lot is guaranteed the existence or unobstructed continuation of any particular view.

H. Variances. The ARC may recommend and the Board may authorize variances from compliance with any of the architectural provisions of this Declaration, including without limitation restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be evidenced in writing, must be signed by a majority of the ARC, and shall become effective upon recordation. After Developer has lost the right to appoint a majority of the members of the ARC, the Board must approve any variance recommended by the ARC before any such variance shall become effective. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the use of his Residence.

I. Appeals. For so long as Developer has the right to appoint and remove a majority of the members of the ARC, decisions of the ARC shall be final, and there shall be no appeal to the Board. When Developer is no longer entitled to appoint and remove a majority of the members of the ARC the Board may, at its discretion, adopt policies and procedures for the appeal of ARC decisions for reconsideration by the Board. The Board shall have no obligation to adopt or implement any such appeal procedures, and in the absence of Board adoption of appeal procedures, all decisions of the ARC shall be final.

4. **Remedies.**

A. **In General.** Any party to whose benefit the Restrictions inure, including the Access Entity Developer, any Owner, the Association, or any applicable governmental authority, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, but the Access Entity, Developer or the Association shall not be liable for damages of any kind to any person for failing either to enforce or carry out any of the 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 the 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 the Restrictions.

5. **Covenants for Maintenance Assessments.**

A. **Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively for the purpose of preserving the values of the Lots within the Development and promoting the health, safety, and welfare of the Owners, users, and occupants of the Development and, in particular, for the Association's obligations relating to the improvement, repairing, operating, and maintenance of the Common Areas and contracting for services for the benefit of the Owners, including, but not limited to, the payment of taxes and insurance thereon, enforcement of the Restrictions, and for the cost of labor, equipment, material, and management furnished with respect to the Common Areas; provided that the Association shall not be responsible for the replacement, repair or maintenance of any Common Areas which are or hereafter may be dedicated to the public. Each Owner (except the Developer) hereby covenants and agrees to pay to the Association:

(i) A Pro-rata Share (as hereinafter defined) of the annual Assessment fixed, established, and determined from time to time, as hereinafter provided.

(ii) A Pro-rata Share (as hereinafter defined) of any special Assessments fixed, established, and determined from time to time, as hereinafter provided.

The Developer may, but is not obligated, to pay to the Association during the Development Period an amount equal to the difference, if any, between the expenditures of the Association made pursuant to this Section 5(A) and the aggregate amount of the annual Assessments collected by the Association.

B. **Liability for Assessment.** Each Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall be a charge on each Lot other than Lots owned by the Developer and shall constitute a lien from and after the due date thereof in favor of the Association upon each such Lot. Each such Assessment, together with

any interest thereon and any costs of collection thereof, including attorneys' fees, shall also be the personal obligation of the Owner of each such Lot at the time when the Assessment is due. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof, nor shall any sale or transfer relieve any Owner of the personal liability hereby imposed. The personal obligation for delinquent Assessments shall not pass to any successor in title unless such obligation is expressly assumed by such successor.

C. Pro-rata Share. The Pro-rata Share of each Owner for purposes of this Section 4 shall be the percentage obtained by dividing one by the total number of Lots shown on the Plats of the Development ("Pro-rata Share"), except, as provided in Sections 5(F) herein.

D. Basis of Annual Assessments. The Board shall establish an annual budget prior to the beginning of each fiscal year, setting forth estimates of all Common Expenses for the coming fiscal year, together with a reasonable allowance for contingencies and reserves of the Association. A copy of this budget shall be mailed or delivered to each Owner prior to the beginning of each fiscal year of the Association.

E. Basis of Special Assessments. Should the Board at any time during the fiscal year determine that the Assessment levied with respect to such year are insufficient to pay the Common Expenses for such year, the Board may, at any time, and from time to time levy such special Assessments as it may deem necessary for meeting the Common Expenses. In addition, the Board shall have the right to levy at any time, and from time to time, one or more special Assessments for the purpose of defraying, in whole, or in part, any unanticipated Common Expense not provided for by the annual Assessments.

F. Fiscal Year; Date of Commencement of Assessments; Due Dates. The fiscal year of the Association shall be established by the Association and may be changed from time to time by action of the Association. At the election of the Developer, the annual Assessments of each Lot in each section of the Development shall commence on the date upon which the Developer first conveys ownership of any Lot in such section to an Owner. The amount of the first annual Assessment due and payable for each Owner shall be prorated to the end of the assessment year from the date of the closing of the Owner's Lot and shall be paid at the time of the closing of the Owner's Lot. The first annual Assessment within each section of the Development shall be made for the balance of the Association's fiscal year in which such Assessment is made and shall become due and payable commencing on any date fixed by the Association. The annual Assessment for each year after the first assessment year shall be due and payable on the first day of each fiscal year of the Association. Annual Assessments shall be due and payable in full as of the above date, except that the Association may from time to time by resolution authorize the payment of such Assessments in installments.

G. Start-Up Fund. Upon the closing of the initial conveyance of each Lot to an Owner other than the Developer, the Purchaser of such Lot shall pay to the Association, in addition to any other amounts then owed or due to the Association, as a contribution to its start-up fund, an amount equal to one-sixth (1/6th) of the then current annual Assessment against such Lot, which payment shall be non-refundable and shall not be considered as an advance payment of any Assessment or other charge owed to the Association with respect to such Lot. In addition, each Owner shall pay upon the closing of a Lot, a fifty dollar (\$50.00) fee to fund the start-up of the management of the Association. The start-up fund shall be used by the Association for the payment of, or reimbursement to, Developer for advances to the Association and initial and set-up expenses of the Association.

H. Duties of the Association.

(i) The Board shall keep proper books and records of the levy and collection of each annual and special Assessment, including a roster setting forth the identification of each and every Lot and each Assessment applicable thereto, which books and records shall be kept by the Association and shall be available for the inspection and copying by each Owner (or duly authorized representative of any Owner) at all reasonable times during regular business hours of the Association. The Board shall cause written notice of all Assessments levied by the Association upon the Lots and upon the Owners to be mailed or delivered to the Owners or their designated representatives as promptly as practicable and in any event not less than thirty (30) days prior to the due date of such Assessment or any installment thereof. In the event such notice is mailed or delivered less than thirty (30) days prior to the due date of the Assessment to which such notice pertains, payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual mailing or delivery of such notice.

(ii) The Association shall promptly furnish to any Owner or any mortgagee of any Owner upon request a certificate in writing signed by an officer of the Association, setting forth the extent to which Assessments have been levied and paid with respect to such requesting Owner's or mortgagee's Lot. As to any person relying thereon, such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. The Association shall have the right, in its sole discretion, to charge a fee for the issuance of the certificate.

(iii) The Association shall notify any mortgagee from which it has received a request for notice of any default in the performance by any owner of any obligation under the By-laws or this Declaration which is not cured within sixty (60) days.

I. Non-payment of Assessments, Remedies of Association.

(i) If any Assessment is not paid on the date when due, then such Assessment shall be deemed delinquent and shall, together with any interest thereon and any cost

of collection thereof, including attorneys' fees, become a continuing lien on the Lot against which such Assessment was made, and such lien shall be binding upon and enforceable as a personal liability of the Owner of such Lot as of the date of levy of such Assessment, and shall be enforceable against the interest of such Owner and all future successors and assignees of such Owner in such Lot, and shall be collected in the same manner as the Assessments described in paragraph ii hereof, provided, however, that such lien shall be subordinate to any mortgage on such Lot recorded prior to the date on which such Assessment becomes due.

(ii) If any Assessment upon any Lot is not paid within thirty (30) days after the due date, the Owner shall pay a late charge in the amount of Twenty-five Dollars (\$25.00) for the first thirty (30) day period and an additional Twenty-five Dollars (\$25.00) for any subsequent thirty (30) day period. The Association may bring an action in any court having jurisdiction against the delinquent Owner to enforce payment of the same and/or to foreclose the lien against said Owner's Lot, and there shall be added to the amount of such Assessment all costs of such action, including the Association's attorneys fees, and in the event a judgment is obtained, such judgment shall include such interest, costs, and attorneys' fees.

J. Adjustments. In the event that the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for Assessments for the following fiscal year. Such deficit may be recouped either by inclusion in the budget for annual Assessments or by the making of one or more special Assessments for such purpose, at the option of the Association. In the event that the amounts budgeted and assessed for Common Expenses in any fiscal year exceed the amount actually expended by the Association for Common Expenses for that fiscal year, the Board, at its discretion, shall either retain the excess amount as a reserve for future expenditures or shall credit a Pro-Rata Share of such excess against the Assessment(s) due from each Owner for the next fiscal year(s).

6. Effect of Becoming an Owner. The Owners of any Lot subject to this Declaration, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Developer or a subsequent Owner of such Lot, shall accept such deed subject to all the terms, covenants, conditions, restrictions and provisions of this Declaration, the Common Services Easement and Restrictions and the Non-Exclusive License Agreement. By acceptance of such deed or execution of such contract, the new Owner acknowledges the rights and powers of Developer and the Access Entity with respect to this Declaration, the Common Services Easements and Restrictions and the Non-Exclusive License Agreement and also for themselves, their heirs, personal representatives, successors and assigns. Such Owners covenant and agree and consent to and with Developer, Access Entity and to and with the Owners and subsequent owners of each of the Lots affected by the Declaration, Common Services Easement and Restrictions and the Non-Exclusive License Agreement to

keep, observe, comply with the Declaration, Common Services Easement and Restrictions and the Non-Exclusive License Agreement.

7. **Control of the Common Areas.**

A. **Control by the Board.** The Board shall regulate the Common Areas and shall provide for the maintenance thereof in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures in the vicinity thereof and the natural or other vegetation and topography of the Common Areas; provided, however, the Board shall be under no obligation and shall not manage, repair, maintain, improve and operate any Facilities situated in the Common Areas.

B. **Conditions.** No improvements, excavation, changes in grade or other work shall be done upon the Common Areas by any Owner, nor shall the Common Areas be changed by any Owner from its natural or improved existing state, without the prior written approval of the Board.

8. **The Lakes.** Developer shall convey title to the Lakes to the Association. The Association shall be responsible for maintaining the Lakes. Maintenance costs of the Lakes shall be assessed as a general assessment against Lots subject to assessment. Each Owner of a Lot that abuts a Lake shall be responsible at all times for maintaining so much of the bank of the Lake above the Lake level as constitutes a part of, or abuts, its Lot and shall keep that portion of the Lake abutting his Lot free of debris and otherwise in reasonably clean condition.

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

9. **Restrictions, Covenants and Regulations.**

A. **Restrictions on Use.** The following covenants and restrictions on the use and enjoyment of the Lots and the Common Areas, and shall be in addition to any other covenants or restrictions contained herein or in the Plats. All such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and the Access Entity and shall run with the land and inure to the benefit of and be enforceable by any Owner, the Access Entity, or the Association. Present or future Owners or the Association or Access Entity shall

be entitled to injunctive relief against any violation or attempted violation of any of such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

(i) Use of Common Areas. No one other than the Access Entity or Owners who are Members in good standing with the Association, or such an Owner's occupant, tenants, guests or invitees, may use the Common Areas; provided, however, the Board shall not restrict the rights of the Access Entity provided for in this Declaration, the Common Services Easements and Restrictions and the Non-Exclusive License Agreement. All such persons shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Common Areas. No person shall be allowed to plant trees, landscape or do any gardening in any part of the Lakes, Landscape Easements, or the Common Areas, except with express permission from the Board. The Lakes and the Common Areas shall be used and enjoyed only for the purposes for which they are designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board. Without limiting the generality of the foregoing, the Lakes are and will be an integral part of the storm water drainage system serving the Development, and are intended to be used for such purpose and primarily as a visual and aesthetic amenity and not as a recreational amenity. Accordingly, no use shall be made of the Lakes which in any way interferes with their proper functioning as part of such storm water drainage system. No boating, swimming, diving, skiing, ice skating or other recreational activity shall be permitted in or on the Lakes. No sewage, garbage, refuse, or other solid, liquid, gaseous or other materials or items (other than storm and surface water drainage) shall be put into the Lakes, except the Association may take steps to clean and purify the waters thereof by the addition of chemicals or other substances commonly used for such purposes or by providing therein structures and equipment to aerate the same. Fishing from the shoreline area of the Lakes by an Owner, his occupants, his invited guests and family, shall be permitted subject to rules determined by the Association and abeyance and compliance with all applicable fishing and game laws, ordinances, rules and regulations. No Owner or other person shall take or remove any water from or out of the Lakes, or utilize the water contained therein for any purposes, including, without limitation, connection with any sprinkler or irrigation systems. No piers, docks, retaining walls, rafts or other improvements shall be built, constructed or located on any Lot or on the Properties, except by Developer and/or the Association, which extend into, or to within twenty-five (25) feet from the shoreline of the Lakes.

(ii) Nuisance. No nuisance shall be permitted to exist on any Lot and no waste shall be committed on any Lot which shall or might damage or cause injury to the Common Areas.

(iii) Setback Lines. Building setback lines shall be established on the Plat. The minimum setback lines shall be as follows:

a. The setback from street right of ways will be a minimum of twenty-five (25) feet or as shown on the Plat.

b. A minimum rear yard of twenty (20) feet will be provided for each Lot within the Development.

c. The minimum side yard setback within the Development will be no less than five (5) feet and an aggregate of ten (10) feet.

(iv) Land Use and Building Type. No Lot shall be used except for residential purposes, nor shall any Lot be subdivided. No buildings shall be erected, altered, placed or permitted to remain on any Lot other than one single family dwelling. All dwellings shall have and maintain house number identifications and mail boxes which are uniform throughout the Development.

(v) Building Location. No building shall be located on any Lot nearer to the front line, nor nearer to the side street lines than the minimum set back lines referenced herein. For the purpose of this covenant, eaves, steps and open porches shall not be considered a part of the building, provided that this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot.

(vi) Pools. No above-ground pools shall be permitted in the Development. In-ground swimming pools, hot tubs, spas or associated structures shall not be erected or placed on any Lot until the construction plans, including a plot plan, have been approved by the Committee.

(vii) Temporary and Outbuilding Structures. No structures of a temporary character, trailer, basement, tent, or garage, shall be used on any Lot as a residence, or for any other purpose, either temporarily or permanently. No outbuildings of any type, including mini-barns, sheds or barns, shall be located anywhere on a Lot. For the purpose of this covenant, structures needed and used by the Developer shall be allowed to remain during the Development Period and for a reasonable time thereafter.

(viii) Livestock and Poultry. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot except family pets, which may be kept, provided they are not kept, bred or maintained for commercial purposes and do not to create or constitute a nuisance, as determined in the sole discretion of the Board.

(ix) Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, garbage or other waste, and same shall not be kept except in sanitary containers.

(x) Fences. Ornamental fences or continuous shrub plantings which would in any way serve the purpose of a fence shall not be erected until approved by the Committee.

(xi) Signs. No sign of any kind shall be displayed to the public view on any Lot, except one sign of not more than five square feet, advertising the property for sale or for rent, or signs used by the Developer to advertise, market, sell, or otherwise in connection with the Development, the Lots or other related purposed during the Development Period.

(xii) Satellite Dishes/Antennae. No antennae, satellite dishes, or other signal receiving devices, shall be placed or erected on any Lot; provided, however, one (1) satellite dish with a diameter two (2) feet or less shall be permitted on a Lot if such is not visible from the street.

(xiii) Parking and Prohibited Vehicles.

a. Parking. Vehicles shall be parked only in the garages or on the driveways, if any, serving the Lots or in appropriate spaces or designated areas in which parking may be assigned and then subject to such reasonable rules and regulations as the Board may adopt. Garages shall be used for parking of vehicles and no other use or modification thereof shall be permitted which would reduce the number of vehicles which may be parked therein below the number for which the garage was originally designed. The Association may designate certain on-street parking areas for visitors or guests subject to reasonable rules.

No Owners or other occupants of any Lot shall repair or restore any vehicles of any kind upon or within any Lot or within any portion of the Common Areas, except (i) within enclosed garages or workshops, or (ii) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility.

b. Prohibited Vehicles. Commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, buses, school buses, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages or areas, if any, designated by the Board. Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted on the Development except within enclosed garages. Notwithstanding the foregoing, service and delivery vehicles may be parked in the Development during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Areas. Any vehicles parked in violation of this Section or parking rules promulgated by the Board may be towed.

(xiv) Sight Distance. No fence, wall, hedge, tree or shrub planting or other similar item which obstructs sight lines at elevation between 2.5 and 8 feet above the street, shall be permitted to remain on any corner Lot within the triangular area formed by the street right-of-way lines and a line connecting points 25 feet from the intersection of said street lines (25

feet for minor streets and 50 feet for arterial streets), or in the case of a rounded property corner, from the intersection of the street right-of-way lines extended. The same sight line limitations shall apply to any Lot within 10 feet from the intersection of a street right-of-way line with the edge of a driveway pavement or alley line.

B. Developer's Rights. Developer shall have the same rights as any other Owner as to Lots owned by it from time to time, except as otherwise specified herein. In addition, until the expiration of the Development Period, or until the Applicable Date (whichever event shall first occur), Developer shall have the right and easement over the Common Area for the completion of improvements and making repairs to improvements (whether on the Common Area, or upon unsold Lots, or upon other portions of the Real Estate and the right to maintain signs upon the Common Area and any other portions of the Development other than Lots owned by an Owner other than Developer) for the purpose of marketing homes, and to invite and escort the public thereon for such purpose.

C. Granting of Permits, Licenses and Easements. The Association is granted the authority to grant permits, licenses and easements over the Common Areas for roads, access and other purposes necessary for the proper operation of the Development as provided herein; provided, however, that the Association and each Owner shall be prohibited from granting permits, licenses and easements over any Lot, Common Area, or any other portion of the Development for any Communication Services or Utility Services without the prior written consent of the Access Entity, Developer, or the designees, successors or assigns thereof, which may be granted or withheld in their sole discretion. In no event shall the Association or an Owner impair or limit the Development's Common Services Easements and Restrictions (as defined in Section 9(D)(i) hereof) or the operations of the Community Intranet Services, Security Monitoring Services, any other Communication Services or Utility Services derived thereof.

The Developer shall retain and reserve and is hereby granted the authority to grant permanent easements for the use and enjoyment of the Common Area or portions thereof to any Owners, their families, tenants, guests, and homeowner associations and members of such homeowner associations of real estate adjacent or contiguous to the Property (collectively the "Adjacent Owners") and to provide for the cost of maintenance and operation thereof including payments of joint assessments by such Adjacent Owners upon terms and conditions the Developer deems appropriate ("Adjacent Owners Easement and Maintenance Agreement").

D. Reservation of Rights to the Use of the Property.

(i) Access Entity Communication Services and Utility Easements. The Developer has granted to the Access Entity the Common Services Easements and Restrictions attached hereto as Exhibit B and incorporated herein by this reference ("Common Services Easements and Restrictions"). The Access Entity has an exclusive perpetual easement over,

above, across, upon, along, in, through, and under the Development (i) for the purposes of owning, installing, maintaining, repairing, replacing, relocating, improving, expanding and otherwise servicing the Facilities of any type bringing any Communication Services and any Utility Services to each Lot and any improvements on the Common Area, (ii) to provide access, ingress and egress to, from, over, above, upon, along, in, through and under the Development, and (iii) to make improvements to and within the Development to provide for the rendering of public and quasi-public services to the Development (collectively referred to as the "Developer's General Easement"). The easements, rights and privileges conveyed to the Access Entity under the Common Services Easements and Restrictions is transferable by the Access Entity to any Person solely at the option and benefit of the Access Entity, its designees, successors or assigns without notice to or consent of the Association, the Owners or any other Person. The Access Entity may at any time and from time to time grant similar or lesser easements, rights, or privileges to other Persons. By way of example, but not in limitation of the generality of the foregoing, the Access Entity, and others to whom Access Entity may grant such similar or lesser easements, rights, or privileges, may so use any portion of the Service Easement Area to supply telecommunication services to each Residence and to permit public and quasi-public vehicles, including, without limitation, police, fire, and other emergency vehicles, trash and garbage collections, post office vehicles, and privately-owner delivery vehicles, and their personnel to enter upon and use the drives, streets and the Common Area of the Development in the performance of their duties. The Developer's General Easement was exclusively granted to the Access Entity, its designees, successor or assigns and may not be impaired, limited or transferred, sold or granted to any Person by the Association or the Owners.

(ii) Plat Easements. In addition to such other easements created in the Declaration or in a supplemental declaration, and as may be created by the Developer pursuant to other written instruments recorded in the Office of the Recorder of Marion County, Indiana, the Property shall be subject to drainage easements, sanitary sewer easements, utility easements, and dedicated street rights-of-way, either separately or in any combination thereof, shown on the plats for the Development which are reserved for the use of Developer, the Association, the Owners and public and quasi-public and governmental agencies, respectively, as follows:

a. Drainage Easements. (D.) are created for the limited purposes of providing paths and courses for area and local storm drainage, either over land or in an adequate underground conduit, to serve the needs of the Development and adjoining ground and/or public drainage systems, and it shall be the Association's responsibility to maintain the drainage across the Common Area in the Development. The Drainage Easements are marked, either separately or in combination, on the Plat as "Drainage Easement" or "D"). Said areas are subject to construction or reconstruction solely to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage on the Property, by Developer and by the Association; provided, however, such easement shall not confer in any way any obligation to

perform such construction or reconstruction upon the Developer or the Association. Under no circumstances shall said easement be blocked in any manner by the construction or reconstruction of any improvement. The Owner of any Lot subject to a Drainage Easement shall be required to keep the portion of said Drainage Easement on the Lot free from obstructions so that the surface water drainage will be unimpeded. The Drainage Easement is created and reserved (i) for the use of Developer during the Development Period for access to and installation, repair or removal of a drainage system, either by surface drainage or appropriate underground installations, for the Property and adjoining property, and (ii) for the use of the Association and for access to and maintenance, repair, and replacement of such drainage system. Drainage swales, (ditches) located within Drainage Easements shall not be altered, dug out, filled in, tiled in or otherwise changed without the written consent of the Marion County Drainage Board and/or any other governmental authority having jurisdiction over drainage on the Property (the "Drainage Board"). Owners must maintain these swales as sodded grass ways or other non-eroding surfaces. Owners violating the Drainage Easement will be subject to action by the Drainage Board which may include the Drainage Board restoring such swale to the proper state which cost shall be the responsibility of the Owner. There is a part of the Property on the Plat marked "Common Area." The Common Area shall be used (i) for storm water retention drainage purpose; (ii) for the aesthetic and visual enjoyment of the Owners of Lots and, (iii) following the end of the Development Period, for such purposes allowed herein.

b. Utility Easements (U.) - Are created (i) for the exclusive use of the local governmental agency having jurisdiction over the sanitary waste disposal system of said town, city and/or county designated to serve the Development for the sole purpose of installation and maintenance of sewers that are part of said system, (ii) exclusively for the provision of gas, electric, water and sanitary sewer utilities to the Development by a utility provider, and (iii) for the exclusive use of the Developer, its designees, successors or assigns, for the installation and maintenance of Communication Services and Utility Services as the Developer may deem necessary for the Development in its sole discretion. Each Owner of a Lot must connect with any public sanitary sewer available. No permanent structures shall be constructed within any such easement areas except as may be approved by Developer, its designees, successors or assigns; provided, however, such Utility Easements shall be subject to, without limitation, the Common Services Easements and Restrictions (as described in Section 9(D)(i) hereof).

c. Streets. The rights-of-way "R/W" (denoted on the plats and plans as drives, streets and courts and with the R/W being demarcated as being 50' across) (hereinafter referred to as the "Streets") as shown on the Plats and Plans shall be subject to a limited dedication to the public for only roadway purposes by specific notation on the plat or by separate instrument. Any dedicated Streets shall be subject

to, without limitation, the following: (i) The Common Services Easements and Restrictions as described in 9(D)(i), and (ii) The Non-Exclusive License Agreement recorded as Instrument Number 2002-0092940 in the Office of the Recorder of Marion County, Indiana. Without limiting the foregoing, no Communication Services or Utility Services shall be allowed to be installed in, over or under the Streets without the prior written consent of the Access Entity, or its designees, successors or assigns which may be granted or withheld in their sole discretion.

d. Landscape Easement. The "Landscape Easement" ("L.E.") shall only be used for landscaping purposes and the landscaping located within the easement may be maintained by the Association, and the Association shall have an easement of ingress and egress on and over such area for the purpose of maintenance. The landscaping and other improvements planted or installed by the Developer and/or the Association in this area may not be removed by an Owner, and no fence shall be placed in such area by an Owner, except as approved by the Association or the Developer.

e. Transportation Easement. The "Transportation Easement" ("T.E.") shall be used by the City of Indianapolis Department of Public Works solely and exclusively for the provision of transportation services, and for no other purposes whatsoever.

E. Non-applicability to Association. Notwithstanding anything to the contrary contained herein, the covenants and restrictions set forth in subsection A of this Section 9 shall not apply to or be binding upon the Association in its management, administration, operation, maintenance, repair, replacement and upkeep of the Lakes and Common Areas to the extent the application thereof could or might hinder, delay or otherwise adversely affect the Association in the performance of its duties, obligations and responsibilities as to the Lakes Landscape Area and Common Areas.

10. Duration. The foregoing covenants, conditions and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them for a period commencing on the date this Declaration is recorded and expiring December 31, 2019, at which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years. Changes or amendments in these covenants, conditions and restrictions may be made by Owners in accordance with paragraph 11 hereof.

11. Amendment of Declaration.

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

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

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

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

(iv) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than seventy-five percent (75%) in the aggregate of the votes of all Owners; provided, however, that during the Development Period, any amendment to this Declaration shall require the prior written approval of Developer. In the event any Lot is subject to a first mortgage, the mortgagee thereunder shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the mortgagee has given prior written notice of its mortgage interest to the Association.

(v) Special Amendments. No amendment to this Declaration shall be adopted which changes the applicable share of an Owner's liability for assessments, or the method of determining the same, without, in each and any of such circumstances, the unanimous approval of all Owners and all mortgagees whose mortgage interests have been made known to the Association.

(vi) Recording. Each amendment to this Declaration shall be executed by the President and Secretary of the Association and shall be recorded in the office of the Recorder of Marion County, Indiana, and such amendment shall not become effective until so recorded.

B. Amendments by Developer Alone. Notwithstanding the foregoing or anything elsewhere contained herein, the Developer shall have and hereby reserves the right and power acting alone, and without the consent or approval of any other of the Owners, the Association, the Board of Directors, any mortgagees or any other person, except as provided below, to amend or supplement this Declaration at any time and from time to time if such amendment or supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots, (c) to bring this Declaration into compliance with any statutory requirements, (d) to comply with or satisfy the requirements of any insurance underwriters, insurance rating bureaus or organizations which perform (or may in the future perform) functions similar to those performed by such agencies or entities, (e) to annex additional real estate to the Development, (f) to correct clerical or typographical errors in this Declaration or

any Exhibit hereto or any supplement or amendment thereto or, (g) to provide for, and coordinate construction and maintenance and to enter into utility or ingress and egress easements with the adjacent The Village at Brookfield Place. In furtherance of the foregoing, a power coupled with an interest is hereby reserved by, and granted by each Owner to the Developer to vote in favor of, make, or consent to any amendments described in this subsection B on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Developer to vote in favor of, make, execute and record any such amendments. The right of the Developer to act pursuant to rights reserved or granted under this subsection B shall terminate upon the completion of the Development Period.

C. Protection of Developer. Until the expiration of the Development Period, or until the Applicable Date, whichever occurs first, the prior written approval of Developer, will be required before any amendment which would impair or diminish the rights of Developer to complete the Development or sell or lease Lots therein in accordance with this Declaration shall become effective; provided, however, no amendment may impair or diminish the rights of the Access Entity pursuant to this Declaration, the Common Services Easement and Restrictions or the Non-Exclusive License Agreement. Notwithstanding any other provisions of the Restrictions, until the expiration of the Development Period, the Association shall not take any action to significantly reduce the Association maintenance or other services without the prior written approval of the Developer.

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

13. Notices. Except as otherwise provided in this Declaration, notice to be given to an Owner shall be in writing and may be delivered personally to the Owner. Personal delivery of such notice to one (1) or more co-Owners of a Lot or to any general partner of a partnership owning a Lot shall be deemed delivery to all co-Owners or to the partnership, as the case may be. Personal delivery of such notice to any officer or agent for the service of process on a corporation shall be deemed delivery to the corporation. In lieu of the foregoing, such notice may be delivered by regular United States mail, postage prepaid, addressed to the Owner at the most recent address furnished by such Owner to the Association or, if no such address shall have been furnished, to the street address of such Owner's Lot. Such notice shall be deemed delivered three (3) business days after the time of such mailing, except for notice of a meeting of Members or of the Board in which case the notice provisions of the Bylaws shall control. Any notice or other delivery pursuant to Section 3 herein to be given to the Association shall be in writing and

shall be delivered in person or by overnight express carrier or by United States registered or certified mail with return receipt requested or by telecopy with confirmation of receipt.

14. **Withdrawal of Property.** Developer hereby reserves the right and option, to be exercised in its sole discretion and without further approval by any party, until the Applicable Date to withdraw and remove any portion of the Property from the control and provisions of this Declaration. Such removal by Developer shall be carried out generally by the execution and filing of a Supplemental Declaration or other document which may be filed in the public records of Johnson County, Indiana, together with a legal description of the Property being withdrawn.

15. **Costs and Attorney Fees.** In any proceeding arising because of failure of an Owner to make any payments required or to comply with any provision of this Declaration, the Articles of Incorporation, the Bylaws, of the rules and regulations adopted pursuant thereto, as each may be amended from time to time, the Association shall be entitled to recover its reasonable attorney fees incurred in connection with such default or failure.

16. **Rules and Regulations.** The Board shall have the right to promulgate and establish rules and regulations relating to the requirements for maintenance of the Common Area and the Lots and any other part of the Property; provided, however, no rules and regulations shall impair or diminish the rights of the Access Entity pursuant to this Declaration, the Common Services Easements and Restrictions and the Non-Exclusive License Agreement.

17. **Complete Agreement.** This Declaration, the schedules and exhibits hereto, together with all other agreements, documents, releases, schedules, exhibits and other writings incorporated into this Declaration shall constitute the complete and exclusive statement of agreement among the parties with respect to their subject matter.

18. **Obligation of Good Faith.** The parties shall, in the performance of all obligations under this Declaration be obligated to act in good faith with one another in the performance of their duties hereunder; provided, however, that this provision shall not be construed to limit or lessen any higher duties which may exist between the parties by contract, operation of law or otherwise, to the extent any such higher duties may exist.

1

IN WITNESS WHEREOF, the Developer has caused this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Brookfield Place to be executed as of the date written above.

**BROOKFIELD DEVELOPMENT, INC.,
an Indiana Corporation**

By: 

Donald N. Stafford, President

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

On this 17 day of May, 2002, personally appeared before me, a notary public, Donald N. Stafford, President of Brookfield Development, Inc., personally known (or proved) to me to be the person whose name is subscribed to the above instrument and acknowledged to me that he executed the above instrument.

WITNESS my hand and official seal.



Denise L. Kirby Notary Public

My Commission Expires:

County of Residence:

DENISE L. KIRBY
NOTARY PUBLIC STATE OF INDIANA
HENDRICKS COUNTY
MY COMMISSION EXP. NOV. 3, 2008

This Instrument was prepared by: Stephen A. Backer, Attorney, Backer & Backer, P.C., 8710 North Meridian Street, Indianapolis, IN 46260

LAND DESCRIPTION

Part of the southeast quarter and the southeast quarter of the northeast quarter of Section 24, Township 15 North, Range 4 East, and the west half of the northwest quarter of Section 19, Township 15 North, Range 5 East, of the Second Principal Meridian, Warren Township, Marion County, Indiana, described as follows:

Considering the east line of the northeast quarter of said Section 24 as bearing North 00 degrees 03 minutes 47 seconds West with all bearings contained herein being relative thereto.

BEGINNING at the east quarter corner of said Section 24; thence South 01 degree 10 minutes 22 seconds East (South 00 degrees 19 minutes 56 seconds West by deed) along the east line of the southeast quarter of said Section 24 a distance of 665.79 feet to a 5/8 inch rebar with cap stamped "BANNING ENG LS29800001" set (herein referred to as "rebar set") at the southeast corner of the land of Goins as described in Instrument No. 1993-29344 in the Office of the Recorder of said county; thence South 89 degrees 16 minutes 27 seconds West along the south line of said land 226.25 feet (South 89 degrees 51 minutes 19 seconds West 215.55 feet by deed) to a rebar set on the northeasterly right of way line of Interstate 74 with the following six (6) courses being along said right of way line; 1) thence North 56 degrees 24 minutes 57 seconds West 92.90 feet (North 56 degrees 01 minutes 25 seconds West 91.18 feet by deed) to a rebar set; 2) thence North 67 degrees 08 minutes 21 seconds West 102.41 feet (North 66 degrees 48 minutes 41 seconds West 101.49 feet by deed) to a rebar set at the beginning of a non-tangent curve to the left having a radius of 5835.00 feet, a central angle of 07 degrees 08 minutes 20 seconds, and a radial line passing through said point which bears North 27 degrees 57 minutes 52 seconds East; 3) thence northwesterly along the arc of said curve 727.03 feet to a rebar set at the southeast corner of the land of the State of Indiana as described in Instrument No. 1999-116264 in said county records; 4) thence North 62 degrees 18 minutes 53 seconds West along the northeasterly line thereof 101.17 feet (North 61 degrees 34 minutes 55 seconds West 101.33 feet by deed) to a rebar set; 5) thence North 67 degrees 16 minutes 16 seconds West along said northeasterly line 235.28 feet (North 67 degrees 16 minutes 09 seconds West by deed) to a rebar set at the beginning of a non-tangent curve to the left having a radius of 5864.51 feet (5864.10 feet by deed), a central angle of 04 degrees 18 minutes 03 seconds, and a radial line passing through said point which bears North 17 degrees 32 minutes 42 seconds East; 6) thence northwesterly along said northeasterly line and the arc of said curve 440.22 feet (446.54 feet by deed) to the south line of the southwest quarter of the northeast quarter of said Section 24; thence North 89 degrees 16 minutes 27 seconds East (North 89 degrees 51 minutes 19 seconds East and North 89 degrees 16 minutes 34 seconds East by deed) along said south line 446.32 feet to a rebar set at the southwest corner of the southeast quarter of said northeast quarter; thence North 00 degrees 05 minutes 50 seconds West along the west line thereof 1337.03 feet (North 00 degrees 18 minutes 19 seconds East 1332.69 feet by deed) to a 5/8 inch rebar with cap found at the northwest corner of said quarter quarter; thence North 89 degrees 30 minutes 07 seconds East along the north line thereof 1331.56 feet (North 89 degrees 53 minutes 46 seconds East 1331.70 feet by deed) to a 5/8 inch rebar found at the

Exhibit A

northeast corner of said quarter quarter; thence North 00 degrees 03 minutes 47 seconds West (North 00 degrees 19 minutes 56 seconds East by deed) along the east line of northeast quarter of the northeast quarter of said Section 24 a distance of 427.12 feet to a MAG nail found at the cusp of a non-tangent curve to the left having a radius of 250.00 feet, a central angle of 38 degrees 24 minutes 21 seconds, and a radial line passing through said point which bears South 89 degrees 56 minutes 13 seconds West, said point being on the center line of Franklin Road with the following four (4) courses being along said center line; 1) thence southerly and southeasterly along the arc of said curve 167.58 feet to a MAG nail found; 2) thence South 38 degrees 28 minutes 08 seconds East 136.96 feet to a MAG nail found; 3) thence South 41 degrees 38 minutes 39 seconds East 772.40 feet to a MAG nail found; 4) thence South 48 degrees 16 minutes 21 seconds East 567.17 feet to a road spike found on the east line of the west half of the northwest quarter said Section 19; thence South 00 degrees 01 minutes 01 seconds East (South 00 degrees 22 minutes 25 seconds West by deed) along said east line 367.82 feet to a 5/8 inch rebar with cap found at the southeast corner of said west half; thence South 89 degrees 58 minutes 01 seconds West along the south line of said west half 1074.38 feet (North 89 degrees 40 minutes 11 seconds West 1074.46 feet to a stone found at the southwest corner of said Section 19; thence South 00 degrees 03 minutes 47 seconds East 173.25 feet to the **POINT OF BEGINNING**, containing 76.784 acres, more or less, inclusive of the apparent 25' 1/2 right of way of Franklin Road (75.872 acres, more or less, excluding said right of way).

22

Cross Reference

This instrument burdens real estate located in Marion County, state of Indiana. The last deed conveying the burdened real estate was recorded in the office of the Recorder of Marion County as Instrument Number 2001-0007879.

COMMON SERVICES EASEMENTS AND RESTRICTIONS

"Effective Date": April 22, 2002

"Grantor": Brookfield, Inc.

Company Name: Brookfield, Inc
State of Organization: Indiana
Address: 320 N. Meridian
Indianapolis, IN 46201

"Grantee": Brookfield Technologies, LLC

Company Name: Brookfield Technologies, LLC
State of Organization: Indiana
Address: 6666 E. 75th Street, Suite 400
Indianapolis, IN 46250

SUBJECT TO FINAL ACTION FOR TRANSFER
MARTIN A. WPMACKS
MARION COUNTY RECORDER
5/19/03 11:17-28
67

THIS COMMON SERVICES EASEMENTS AND RESTRICTIONS (this "Easement") is made and entered into on the Effective Date by and between the Grantor and the Grantee. Capitalized terms not otherwise defined in this Easement shall have the meanings ascribed to them in Appendix A attached hereto and by this reference incorporated in this Easement. The terms or phrases "Effective Date", "Grantor" and "Grantee" shall have the meanings ascribed to them above.

It is the intention of these Common Services Easements and Restrictions to convey to Grantee the right to identify and contract for Facilities and Common Services within the In Gross Easement Area legally described on Exhibit B of Appendix A. This grant shall not entitle Grantee to install, repair or relocate Facilities within the In Gross Easement Area or Development, except in the Service Easement Area, which is designated as the Platted Easement Area in the Declarations.

ARTICLE I - RECITALS

Section 1.01. WHEREAS, Grantor is, and at all relevant times has been, the fee simple title owner of the Development.

Section 1.02. WHEREAS, Grantor wishes to grant to Grantee the perpetual and exclusive private easements set forth below, subject only to the terms and limitations of this Easement.

Section 1.03. WHEREAS, Grantor represents and warrants to the Grantee that Grantor is, and at all relevant times has been, the true and lawful owner of the Development; and, that Grantor has the full right and power to grant and convey the rights set forth in this Easement.

Section 1.04. WHEREAS, Grantee desires the private and personal grant of an In Gross Easement over and across the Development, privately and personally vesting in Grantee the exclusive and perpetual right to identify and privately contract with Common Service Providers for the use of the In Gross Easement Area.

05/02/02 02:54PM WANDA MARTIN MARION CTY RECORDER RLB 74.00 PAGES: 22

JAL-022502

Inst # 2002-0082839

CSER

Exhibit B

Section 1.05. WHEREAS, Grantee desires the private and personal grant of a Service Easement over and across designated portions of the Development, privately and personally vesting in Grantee the exclusive and perpetual right to privately contract for the establishment of Facilities within the Service Easement Area.

Section 1.06. WHEREAS, the Plats to be recorded by the Grantor with respect to the Development shall designate the Service Easement Area for the Service Easement as Drainage Utility and Sanitary Sewer Easements (D.U & S.S.E.).

Section 1.07. WHEREAS, Grantee shall cause, by virtue of private contracts, extensive improvements to be made to and within the Development for the Mandatory Common Service, which improvements shall be situated on, over, under and across the Service Easement Area and make available the Mandatory Common Services within the Development.

Section 1.08. WHEREAS, certain Common Service Providers have developed expertise in providing Common Services to their customers, which expertise are currently and on a continuing basis being employed to develop superior, novel and cost competitive Communication Services.

Section 1.09. WHEREAS, Grantor desires to have Advanced Telecommunications Capabilities, bundled services and billing, and, to the extent technologically feasible, Advanced Bundled Services available at the Development.

Section 1.10. WHEREAS, Grantor and Grantee anticipate continued deregulation of electricity, water and gas, as well as other utilities (such as those related to the Communication Services), which deregulation facilitates individual users having the ability to aggregate and negotiate discounted Communication Services and Utility Services charges.

THIS INDENTURE WITNESSETH, that in consideration of ten dollars (\$10.00), the mutual covenants contained in this Easement and other good and valuable consideration, the receipt and sufficiency of which are by this Easement acknowledged, the Parties to this Easement agree as follows:

ARTICLE II - EASEMENT

Section 2.01. **Grant of In Gross Easement.** Grantor hereby declares, creates, transfers, assigns, grants and conveys unto Grantee, its grantees, licensees, lessees, franchisees, successors and assigns, an exclusive and perpetual right, privilege and easement over, upon, under, in, through and across the In Gross Easement Area for the limited purpose of identifying and contracting, in Grantee's sole and complete discretion, with any and all of the Common Service Providers allowed to provide or otherwise make available Facilities and Common Services for the Development and within the In Gross Easement Area ("In Gross Easement"). The Grantee shall have the exclusive right to identify and contract with Common Service Providers to provide or make available Common Services to the Development within the In Gross Easement Area. This grant shall not entitle Grantee to install, repair or relocate Facilities within the In Gross Easement Area, except in the Service Easement Area. The Owners and the Association shall be entitled to construct or otherwise erect barriers or other temporary or permanent obstructions or structures as provided in Section 2.04 hereof. Grantor and its grantees, licensees, lessees, franchisees, successors and assigns agree that no barriers or competing Facilities or other obstructions, permanent or temporary, of any form shall be placed or erected or permitted within the In Gross Easement Area so as to impair or lessen or compromise, in any fashion, directly or indirectly, Grantee's exclusive and perpetual In Gross Easement and rights affiliated with such In Gross Easement. The In Gross Easement is intended, and shall be, for the exclusive, private and personal benefit of the Grantee and its grantees, licensees, lessees, franchisees, successors and assigns who have been identified by and contracted with the Grantee to provide Common Services within the Development pursuant to this Easement. The In Gross Easement may not and shall not be impaired, limited, lessened or transferred, sold or granted, in any fashion by Grantor or its grantees, licensees, lessees, franchisees, successors or assigns. Grantor

hereby relinquishes and is prohibited from, without limitation, granting any rights, permits, licenses, rights-of-way or easements over the In Gross Easement Area to any Person, directly or indirectly, or through an intermediary or series of intermediaries or third parties, which would permit or otherwise allow the establishment of any Common Services or Facilities for Common Services on, over, under or across the In Gross Easement Area (collectively, "Prohibited In Gross Easement Transfers"). The Grantor and its grantees, licensees, lessees, franchisees, successors and assigns shall be divested of any and all authority to declare, create, transfer, assign, grant or otherwise convey any Prohibited In Gross Easement Transfers, except as provided in Section 2.08, Section 2.09 and Section 2.10 hereof. The In Gross Easement is intended, and shall, "run with the land" and be binding upon the Grantor and its grantees, licensees, lessees, franchisees, successors, and assigns, including, without limitation, any Owner, the Association and their heirs, executors, administrators, legal representatives, grantees, licensees, lessees, franchisees, successors and assigns. Any title or interest in the In Gross Easement Area shall reflect this In Gross Easement.

Section 2.02.

Grant of Service Easement. Grantor hereby declares, creates, transfers, assigns, grants and conveys unto Grantee, its grantees, licensees, lessees, franchisees, successors and assigns, an exclusive and perpetual right, privilege and easement over, upon, under and across the Service Easement Area (a) to construct, lay, install, own, operate, lease, license, franchise, alienate, assign, modify, alter, supplement, inspect, maintain, repair, reconstruct, replace, remove, relocate, expand or otherwise service in the Service Easement Area any and all necessary or desirable Facilities of any type used to provide or make available any Common Services within the Development, (b) to excavate and perform any necessary or desirable work upon and under the surface of the Service Easement Area as and when required to make available Common Services or service the Facilities in the Development, and (c) to create and provide ingress and egress to and from the Service Easement Area at any time (collectively, (a), (b) and (c) shall constitute the "Service Easement"). The Service Easement is intended, and shall be, for the exclusive private and personal benefit of Grantee and its grantees, licensees, lessees, franchisees, successors and assigns who have been identified by and contracted with the Grantee to provide Common Services within the Development pursuant to this Easement. Grantor covenants and agrees that no barriers or competing Facilities or other obstructions, permanent or temporary, of any form shall be placed or erected or permitted within the Service Easement Area so as to impair or lessen or compromise, in any fashion, directly or indirectly, Grantee's exclusive and perpetual easement and private right to exclusively and perpetually identify, or contract with, third parties that shall own and operate Facilities on, over, under and across the Service Easement Area to provide Common Services within the Development, in Grantee's sole and absolute discretion. The Service Easement is intended, and shall be, for the exclusive, private and personal benefit of the Grantee and its grantees, licensees, lessees, franchisees, successors and assigns who have been identified by and contracted with the Grantee to provide Common Services within the Development pursuant to this Easement. The Service Easement may not and shall not be further impaired, limited, lessened or transferred, sold or granted, in any fashion, directly or indirectly, by Grantor or its grantees, licensees, lessees, franchisees, successors or assigns. Grantor and its grantees, licensees, lessees, franchisees, successors or assigns hereby relinquish and are prohibited from, without limitation, granting rights, permits, licenses, rights-of-way and easements over the Service Easement Area to any Person, directly or indirectly, or through an intermediary or series of intermediaries or third party(s), which would permit the establishment of any Common Services or Facilities for Common Services on, over, under or across the Service Easement Area (collectively "Prohibited Service Easement Transfers"). The Grantor and its grantees, licensees, lessees, franchisees, successors or assigns shall be divested of any and all authority to declare, create, transfer, assign, grant or convey any Prohibited Service Easement Transfers, except as provided in Section 2.08, Section 2.09 and Section 2.10 hereof. The Service Easement is intended, and shall, "run with the land" and be binding upon the Grantor and its grantees, licensees, lessees, franchisees, successors, and assigns, including, without limitation, any Owner, the Association and their heirs, executors, administrators, legal representatives, grantees, licensees, lessees, franchisees, mortgagees, successors and assigns. Any title or interest in the Service Easement Area shall reflect this Service Easement.

Section 2.03. Use of Easement. The Combined Easement shall be for the private, personal, exclusive and perpetual use and benefit of Grantee and its grantees, licensees, lessees, franchisees, successors and assigns who have been identified and contracted with Grantee to own, install, repair, relocate, expand, or otherwise service the Facilities used by Common Service Providers in providing Common Services to the Development in accordance with this Easement. Grantor agrees and stipulates that, due to the private, personal and exclusive nature of the grant conveyed in this Easement, no other Common Services use of the Combined Easement Area shall be made by any Person, including Grantor and its grantees, licensees, lessees, franchisees, successors or assigns

Section 2.04. Owner and Association Improvements. The Owners and their successors in interest shall be entitled to place such temporary or permanent barriers or other permanent obstructions and structures within the Owner Improvement Area as the Owner desires, from time to time, except as prohibited by this Easement and the Declarations. The Association and its successors in interest shall be entitled to construct or otherwise erect barriers or other temporary or permanent obstructions or structures in the Common Areas (as defined in the Declarations), except as prohibited by this Easement and the Declarations. The Owners or the Association shall place no barriers or other temporary or permanent obstructions or structures in the Service Easement Area.

Section 2.05. Reservation of Right to Use. Grantor hereby declares, creates, transfers, assigns, grants and conveys to Grantee and its grantees, licensees, lessees, franchisees the private, personal and exclusive right to use, temporarily, additional space within the In Gross Easement Area and outside of the Service Easement Area, when such additional space is reasonably available and necessary from time to time for ingress and egress across adjacent real estate outside of the Service Easement Area but within the In Gross Easement Area for the purposes of access to and use or improvement of the Service Easement Area, and for equipment and materials necessary for any repair, maintenance, or upgrade of the Service Easement Area and the Facilities situated on, over, under or across such area which right is for the private and personal benefit of Grantee and its grantees, licensees, lessees, franchisees, successors, and assigns who have been identified by and contracted with the Grantee to provide Common Services within the Development pursuant to this Easement.

Section 2.06. Reservation of Common Services Rights. Grantor hereby declares, creates, transfers, assigns, grants and conveys to Grantee the private, personal, exclusive and perpetual right to use the In Gross Easement Area, and any improvements located within the In Gross Easement Area, for any purpose which is not inconsistent with the rights granted to any Owner, the Association, or reserved in Grantor by this Easement or the Declarations; provided, further, that any such use be directed toward the protection of Grantee's exclusive rights to provide Common Services as set forth in this Easement. Grantor agrees and covenants that it will not make any use of the Combined Easement Area which is inconsistent with the uses or purposes for which either the In Gross Easement or the Service Easement has been granted to Grantee; provided, finally, that notwithstanding anything in this Easement to the contrary, Grantor expressly reserves unto itself, its grantees, licensees, lessees, franchisees, successors, assigns, the right to use the In Gross Easement Area which falls outside of the Service Easement Area in any manner not inconsistent with the grant to provide Common Services made to Grantee by this Easement and as contemplated in the Declarations.

Section 2.07. Non-Interference and Repair of Service Easement Area. Grantor covenants and agrees that no barriers or competing Facilities or other obstructions or structures shall be placed or erected, temporarily or permanently, so as to impair the use of any portion of the Service Easement Area for Common Services by Grantee or third parties identified or designated by Grantee. The Grantor shall not construct Facilities or any other Common Service Improvements in the Service Easement Area or change the finish grade of the Service Easement Area without the prior written consent of the

Grantee, which consent may be given or withheld in Grantee's sole and absolute discretion. Neither Grantee nor third parties identified or designated by Grantee shall do or permit anything to be done within or upon the Service Easement Area which will interfere with Grantor's use, maintenance, enjoyment or possession of the Service Easement, except as may be expressly provided otherwise in this Easement. Grantee shall be obligated to repair the Service Easement Area and for any damage(s) caused by Grantee, its agents or officers, or which shall include, without limitation, restoration of the Service Easement Area following installation or removal or maintenance or upgrade of any Facility to the same condition that such Service Easement Area existed prior to such installation or removal or maintenance and the granting of the Service Easement contemplated by this Easement. To the extent Grantee performs any such installation or removal or maintenance or upgrade of any Facility, which may be located, for whatever reason, outside of the Service Easement Area but within the In Gross Easement Area, then Grantee, shall have the same responsibilities as if such work had been performed within the Service Easement Area. Grantee shall have the right to remove or trim such trees and brush in and around the Service Easement as is deemed necessary by Grantee, in Grantee's sole and absolute discretion, to exercise or protect the rights conveyed to Grantee in this Easement.

Section 2.08. Termination of Exclusivity (Failure to Identify Provider). Grantee shall identify and provide access to a Mandatory Common Service Provider for each of the Mandatory Common Services. The initial Mandatory Common Service Providers are identified on Exhibit C of Appendix A hereto. Upon the written request of Grantor or any Owner, Grantee shall promptly provide a list of the current Mandatory Common Service Providers. If, at any time subsequent to the recording of this Easement, the Grantee fails or otherwise is unable to identify and provide access to a Mandatory Common Service Provider for any period in excess of fourteen (14) days, then the Grantor and Owners, each and all, shall have the right to (i) send written notice in accordance with Article IV of this Easement to Grantee indicating such failure, and (ii) in the event Grantee fails to correct such failure and identify and provide access to a Mandatory Common Service Provider within seven (7) days from the date of notice, Grantor and Owners, each and all, shall have the right to record in the Office of the Recorder of the county in the state wherein the Development is situated a written instrument setting forth (A) that notice was given to Grantee, and attaching a copy thereof, (B) the Mandatory Common Service not being identified and/or provided access, and (C) the identity of an alternate Mandatory Common Service Provider (the "Alternate Provider"). Any Alternate Provider shall agree, in writing, to provide such Mandatory Common Service in accordance with this document and all other easements, licenses and instruments of record. Any replacement Mandatory Common Service Provider identified in accordance with this Section 2.08 shall execute such documents and instruments as may be reasonable or necessary to fully carry out and effectuate the terms and Intent of this Easement and all documents and instruments executed contemporaneously herewith.

Section 2.09. Termination of Exclusivity (Inadequate or Costly Service). The Mandatory Common Services to be furnished by each Mandatory Common Service Provider shall be reasonably adequate based upon like services available to the general area around the Development from third party Common Service Provider(s). The charges made by the Mandatory Common Service Provider for such Mandatory Common Services shall be reasonable and just. A charge, which is equal to, or less than, the standard, nonpromotional charge for like services, shall be conclusively presumed reasonable and just. For purposes of identifying third party Common Service Provider for Telephone Services (Local), telephone services and charges shall be compared to corresponding telephone services and charges of Ameritech, or its successor, and a Common Service Provider for Cable Television Services, cable services or charges shall be compared to corresponding Cable Television Services and charges of Comcast, or its successor. It is the intent of the parties to this Easement to evaluate all services and charges against those existing and available to the Development on a consistent basis, from time to time for Mandatory Common Services. Upon a final, non-appealable determination by the appropriate authority (a) that the Mandatory Common Services being furnished by a Mandatory Common Service Provider to the Development are not reasonably adequate based upon like services available to the Development from a third party Mandatory Common Service

Provider, or (b) that the charges made by Mandatory Common Service Provider(s) for such Mandatory Common Services are not reasonable and just; then, the exclusivity within the Combined Easement with respect to each Mandatory Common Service subject to such determination shall terminate. Upon such determination and termination, the Grantee shall have the right to identify and grant access to another Mandatory Common Service Provider to provide the same Mandatory Common Service subject to such determination ("Subsequent Mandatory Alternative Service"); provided, however, such new Mandatory Common Service Provider providing the Subsequent Mandatory Alternative Service shall be granted access subject to and in accordance with this Easement and the Declarations.

Section 2.10. **Grantee's Consent; Approval of Declarations and Plats.** Notwithstanding any other provision in this Easement, the Grantor may grant or convey rights, permits, licenses, right-of-way and easements which are expressly prohibited in this Easement, including, without limitation, Prohibited In Gross Easement Transfers and Prohibited Service Easement Transfers upon the prior written consent of Grantee, which consent may be given or withheld in the Grantee's sole and absolute discretion. For example, it is contemplated herein that the Grantor shall declare and create the Declarations and Plats which shall be reviewed and approved by the Grantee in writing prior to the recording of such Declarations and Plats in accordance with this Section 2.10.

Section 2.11. **Private Grant.** The Parties do, understand, and intend to, privately declare, create, and grant the Combined Easement set forth in this Easement in order to allow the Grantee, its grantees, licensees, lessees, franchisees, successors and assigns only and exclusively the limited rights and privileges set forth in this Easement. The Combined Easement is not declared, created, or granted for public or general utility use, and shall not be so construed.

Section 2.12. **Construction and Usage of "exclusivity" term.** Reference to the term "exclusive" or "exclusivity" shall mean and refer to the right of Grantee to provide Common Services and to use the Combined Easement Area for such use. The term shall not be construed as prohibiting Grantor from permitting other uses or easements upon the Development or Combined Easement Area, which do not involve the provision of Common Services or any interference with the rights of Grantee to provide Common Services under this Easement. For example, it is contemplated that the Grantor shall declare and create a utility easement for the sanitary waste disposal system and drainage system in the Development.

ARTICLE III - INDEMNIFICATION AND RIGHT TO DEFEND

Section 3.01. **Indemnification.** Grantee agrees to indemnify, defend and hold harmless the Grantor and the heirs, executors, administrators, legal representatives, successors, licensee, and assigns of the Grantor, including, but not limited to, the Owners, the Association, and their successors in interest ("Indemnitees") from and against any and all losses, claims, damages and liabilities, joint or several (including reasonable investigation fees, attorneys' fees, accountant's fees, expert witness fees, and other related expenses incurred in connection with any action, suit or proceeding or any claim asserted), to which the Indemnitees may become subject as a result of this Easement, and/or the enforcement of the rights of Grantee under this Easement; provided, however, that Grantee shall not be required to indemnify, defend or hold harmless Indemnitees from Indemnitees' own negligence, or any act or omission which is wrongful on Indemnitees part.

Section 3.02. **Right to Defend.** Grantee has the right of notice and to defend any controversy or claim arising out of or relating to this Easement, any alleged breach, any question as to the validity of its terms or conditions or legal effect, the construction of its terms or conditions or legal effect, and the interpretation of the rights and duties of the Parties under this Easement. The Grantor and its grantees, licensees, lessees, franchisees, successors and assigns, including, without limitation, any owner, the Association and their heirs, executors, administrators, legal representatives, grantees, licensees, lessees, franchisees, successors, and assigns shall notify Grantee of any claim, suit, administrative proceeding (including regulatory proceedings), or any other action or threatened

action which may, either presently or at a future date, give rise to Grantee's duty to indemnify or Grantee's right to defend, which notice shall be in writing and provided to Grantee promptly but in no event more than fifteen (15) business days from the date that Grantor or the Grantor's successors in interest, becomes aware of such claim, suit or proceeding, or potential claim, suit or proceeding.

ARTICLE IV - NOTICES

Section 4.01. Form and Delivery. Any and all notices, demands or other communications required or desired to be given hereunder by either party shall be in writing. A notice will be validly given or made to another party if (i) if served personally, (ii) deposited in the United State mail, certified or registered, postage prepaid, (iii) transmitted by telegraph, telecopy or other electronic written transmission device, or (iv) if sent by overnight courier service.

Section 4.02. Receipt of Notice. If any notice, demand or other communication is served personally (methods (i) and (iv) of Section 4.01, above), service will be conclusively deemed made at the time of such personal service. If such notice, demand or other communication is given by mail (method (ii) of Section 4.01, above), service will be conclusively deemed given three (3) business days after the deposit thereof in the United State mail. If such notice, demand or other communication is given by electronic transmission (method (iii) of Section 4.01, above), service will be conclusively deemed made at the time of confirmation of delivery.

Section 4.03. Delivery Information. The information for notice to the Grantor and Grantee is set forth above (at the beginning of this Agreement)

Section 4.04. Change of Address. Any party may change its address to another address (or facsimile number to another facsimile number), to another address within the continental United States, by giving notice in the aforementioned manner to the other parties.

IN WITNESS WHEREOF, the Parties have executed this Easement as of the date first above written.

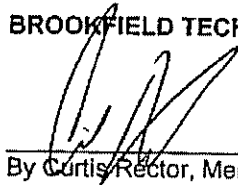
GRANTOR

GRANTEE

BROOKFIELD, INC

BROOKFIELD TECHNOLOGIES, LLC


By: Don Stafford, President


By Curtis Rector, Member

STATE OF INDIANA)
)
COUNTY OF MARION) SS:

Before me, a Notary Public in and for said County and State this 24 day of April 2002, personally appeared the Grantee together with Grantor who each acknowledged the execution of the foregoing instrument on behalf of such entity and by its authority for the purposes set forth therein.

Witness my hand and Notarial Seal this 24 day of April 2002.

My Commission Expires:

My County of Residence:

Tracy Ann Smikle
Notary Public



Printed
TRACY ANN SMIKLE
NOTARY PUBLIC, STATE OF INDIANA
RESIDENT OF HAMILTON COUNTY
MY COMMISSION EXPIRES: 6/21/2007

THIS INSTRUMENT PREPARED BY: Frank A. Hoffman, Esq.
Joseph J. Montel, Esq.
Krieg DeVault Alexander & Capehart, LLP
One Indiana Square, Suite 2800
Indianapolis, Indiana 46204-2079
(317) 636-4341

APPENDIX A

Definitions and Interpretations

ARTICLE I - DEFINITIONS

Section 1.01 **Access Entity.** The term or phrase "Access Entity" shall mean and refer to Access Communication Services, an Indiana limited liability company.

Section 1.02 **Advanced Bundled Services.** The term or phrase "Advanced Bundled Services" shall mean and refer to the provision of (i) Telephone Services (local), (ii) Cable Television Services, (iii) Internet Bandwidth Access Services, (iv) Security Monitoring Services, (v) single bill (*i.e.*, bundled) billing for all Communication Services and Utility Services provided, and (vi) Premium Advanced Telecommunication Capabilities.

Section 1.03 **Advanced Telecommunications Capability.** The term or phrase "Advanced Telecommunications Capability" or "ATC" shall mean and refer to high speed, broadband telecommunications capability that enables users to originate and receive high quality voice, data, graphics and video telecommunications over lines or wireless channels with information carrying capability in excess of 200 Kbps (Kilobits per seconds) per user in both directions simultaneously, including, without limitation, Internet Bandwidth Access Services based upon industry average concentration levels.

Section 1.04 **Affiliate.** The term "Affiliate" shall mean and refer to with respect to any Person (i) any Person directly or indirectly controlling, controlled by or under common control with such Person; (ii) any Person owning, or controlling five percent (5%) or more of the voting securities or voting control of such Person; or, (iii) any Person who is an officer, director, manager, general partner, trustee or holder of five percent (5%) or more of the voting securities or voting control of any Person described in clauses (i) or (ii).

Section 1.05 **Association.** The term "Association" shall mean and refer to the Association as defined in the Declarations.

Section 1.06 **Cable Television Services.** The term or phrase "Cable Television Services" shall mean and refer to the one-way transmission to users of video programming or other programming services provided through any Facilities related to such services, together with such user interaction, if any, which is required for the selection or use of the video programming or other programming services.

Section 1.07 **Combined Easement Area.** The term or phrase "Combined Easement Area" shall mean and refer to the In Gross Easement and the Service Easement, collectively.

Section 1.08 **Common Service Provider.** The term or phrase "Common Service Provider" shall mean and refer to any third party provider of one or more Common Services, which may include a combination of persons, such that one (1) or more of Common Services are available within the Development.

Section 1.09 **Common Services.** The term "Common Services" shall mean and refer to any one or more of the Communication Services and Utility Services.

Section 1.10 **Communication Services.** The term or phrase "Communication Services" shall mean and refer to Cable Television Services, Internet Bandwidth Access Services, Telephone Services

(local), Telephone Services (long distance), Video On Demand Services, Security Monitoring Services, any other cable or telephone services, any other communication, utility or common functional services together with the Facilities related to such services; provided, however, that the term or phrase "Communication Services" shall not include Excluded Devices

Section 1.11 **Declarations.** The term "Declarations" shall mean and refer to the Declarations of Covenants, Conditions, Easements and Restrictions for the Development as, or to be, recorded in the office of the recorder of the county in which the Development is located and which burden the Development, as such Declarations are amended from time to time

Section 1.12 **Developer.** The term "Developer" shall mean and refer to the declarant under the Declarations.

Section 1.13 **Development.** The term "Development" shall mean and refer to the entire parcel of real estate the legal description of which is attached hereto as Exhibit A, and by this reference is incorporated in this License. To the extent development of additional real estate is or may be contemplated by the Declarations, then Development shall be liberally construed to include such real estate when and as identifiable; and, this Appendix A shall be supplemented by adding such legal description as Exhibit A - Supplement.

Section 1.14 **Excluded Devices** The term of phrase "Excluded Devices" shall mean and refer to any Security Monitoring Services device, or any other Communication Services device, or Utility Services device, which satisfies both of the following described characteristics:

- (a) The device is nonpermanent. By way of example and not limitation, any device which is affixed to real estate is a permanent device. A nonpermanent device must not, at any time, be affixed to real estate within the Combined Easement Area either by, for example and not limitation, submersion into the ground, screws, bolts, glue or wiring.
- (b) Use of the device must occur primarily outside of the In Gross Easement Area, with use within the In Gross Easement Area being incidental or sporadic.

For example, mobile cellular telephones, pagers, car alarms and portable computer peripherals, which are used primarily outside of the In Gross Easement Area, will generally constitute Excluded Devices. A satellite dish or other means of receiving the transfer of wireless technology used primarily in the In Gross Easement Area will be an Excluded Device only to the extent required by law to be permitted (E.g. Section 207 of the Telecommunications Act of 1996 and 47 C.F.R. 1 4000) or to the extent authorized by the Declarations. Wireless signals, of any nature, which are not received by any Owners, or on behalf of any Owners or at the request of any Owner(s), within the In Gross Easement Area, shall constitute Excluded Devices.

Section 1.15 **Facility or Facilities.** The term or terms "Facility" or "Facilities" shall mean and refer to the construction, installation, modification, alteration, supplementation, repair, reconstruction or replacement of any and all necessary or desirable hardware or equipment of any type used to provide or otherwise make available any Common Services including, without limitation, cable, wire, fiber, main, pipe, boxes, conduit, manhole, transformers, pumps, amplifiers, dishes, antennae, microwave, satellite, pedestal, equipment enclosures, poles, wireless communication technology, or any other hardware or equipment of any type necessary or desirable to transfer or provide any Common Services, including, without limitation, communication, video, data, e-commerce, internet, intranet, security systems, communication utility services, information systems, cable television, as well as any other Communication Services or uses for which such hardware or equipment may be used, and further including, without limitation, electricity, water, waste water, gas and any other Utility Services for which such services may be used.

- Section 1.16** **GAAP.** The term "GAAP" shall mean and refer to United States generally accepted accounting principles applied on a consistent basis and as in effect from time to time.
- Section 1.17** **General Easements.** The term or phrase "General Easements" shall mean the Declarant's Communication Services and Utility Easements created for the exclusive use of the Grantor (as that term is defined in the Common Services Easements and Restrictions) pursuant to the Declarations.
- Section 1.18** **In Gross Easement.** The term or phrase "In Gross Easement" shall mean the In Gross Easement created for the exclusive use of the Grantor (as that term is defined in the Common Services Easements and Restrictions) pursuant to Section 2.01 of the Common Services Easements and Restrictions.
- Section 1.19** **In Gross Easement Area.** The term or phrase "In Gross Easement Area" shall mean and refer to that certain area of real estate the legal description of which is attached hereto as Exhibit B.
- Section 1.20** **Internet Bandwidth Access Services.** The term or phrase "Internet Bandwidth Access Services" shall mean and refer to any service that enables users to access content, information, electronic mail or other services offered over the internet, and may also include access to proprietary content, information and other services as part of a package of services offered to users and any Facilities related to such service; provided, however, that the term or phrase "Internet Bandwidth Access Services" shall not include E-commerce Transaction Services, Telephone Services (local) or Telephone Services (long distance).
- Section 1.21** **Mandatory Common Service Provider.** The term or phrase "Mandatory Common Service Provider" shall mean and refer to a Common Service Provider that provides one (1) or more of the Mandatory Common Services. The Mandatory Common Service Providers shall be listed on Exhibit C attached hereto.
- Section 1.22** **Mandatory Common Services.** The term or phrase "Mandatory Common Services" shall mean and refer to the Common Services set forth on Exhibit C attached hereto.
- Section 1.23** **Non-Affiliate.** The term or phrase "Non-Affiliate" shall mean and refer to any Person who does not qualify as an Affiliate.
- Section 1.24** **Owner.** The term "Owner" shall mean the individual lot owners, or their lessee, tenants or any other successors in interest, of those lots set forth in the Plats.
- Section 1.25** **Owner Access Area.** The term or phrase "Owner Access Area" shall mean and refer to the area reasonably necessary for Common Service Providers to establish Common Services to an Owner's individual residential structure situated upon the Owner Improvement Area, which area shall commence at the Platted Easement Area and proceed as directly as reasonably practicable to the individual residential structure and upon and within the structure as contemplated by the Owner's contract with the builder.
- Section 1.26** **Owner Improvement Area.** The term or phrase "Owner Improvement Area" shall mean and refer to that area within the In Gross Easement Area which is not common area, duly deeded and titled to the Owner, or his or her successor in interest, upon which the Owner shall be entitled to construct or otherwise erect such temporary or permanent barriers or other temporary or permanent obstructions or structures as the Owner shall desire, so long as such barriers or other obstructions or structures are in conformity with the Declarations; and, further, so long as such barriers or obstructions or structures shall not be situated upon or within the Service Easement Area.

- Section 1.27** **Party.** The term "Party" or "Parties" shall mean and refer to the Persons referenced in the introductory paragraph of any agreement which incorporates this Appendix A, as well as any other Person made a Party to any such agreement either at the time of execution thereof or subsequent thereto.
- Section 1.28** **Person.** The term "Person" shall mean and refer to any individual, corporation, company, business trust, association, partnership, limited liability company, joint venture, governmental authority, or any other individual or entity, including subsidiaries, Affiliates, and controlled entities.
- Section 1.29** **Plats.** The term "Plats" shall mean and refer collectively to all of the Plats that subdivide the Development as amended from time to time.
- Section 1.30** **Plat Utility Easement.** The term or phrase "Plat Utility Easement" shall mean the exclusive Communication Services and Utility Services Easements created pursuant to the Declarations and designated on the Plat as Utility Easement (U.E.).
- Section 1.31** **Platted Easement Area.** The term or phrase "Platted Easement Area" shall mean and refer to all of the drainage, utility and sanitary sewer easement area designated as D.U. & S.S.E. on the Plats, together with the streets designated on the Plats.
- Section 1.32** **Premium Advanced Telecommunication Capability.** The term or phrase "Premium Advanced Telecommunication Capability" or "PATC" shall mean and refer to Advanced Telecommunication Capability within the Development, except that the carrying capability exceeds 600 Kbps in both directions simultaneously.
- Section 1.33** **Reserved Rights.** The term or phrase "Reserved Rights" shall mean and refer to the rights set forth in Section 2.05 and Section 2.06 of the Common Services Easements and Restrictions.
- Section 1.34** **Security Monitoring Services.** The term or phrase "Security Monitoring Services" shall mean and refer to the provision of systems, hardware's, devices and wiring within the residences, commercial structures (if any) and the Development which enable the monitoring for security purposes of such residences, commercial structures (if any) and Development; provided, however, that the term or phrase "Security Monitoring Services" expressly contemplates that a Common Service Provider may enter into a third party contract (e.g., a monitoring contract) with a security monitoring company.
- Section 1.35** **Service Easement.** The term or phrase "Service Easement" shall mean the Service Easement created for the exclusive use of the Grantor (as that term is defined in the Common Services Easements and Restrictions) pursuant to Section 2.02 of the Common Services Easements and Restrictions.
- Section 1.36** **Service Easement Area.** The term or phrase "Service Easement Area" shall mean and refer to each and all of the following areas, individually and collectively, as the context requires or as is permitted by law, *to wit*:
- (a) All of the Platted Easement Area.
 - (b) All of the Owner Access Area.
 - (c) Those portions of the common areas identified on the Plats to the extent reasonably necessary for the establishment of Common Services and Facilities to serve the Owners.

Section 1.37 **Technology Services Group** The term or phrase "Technology Services Group" or "TSG" shall mean and refer to First Mile Services, LLC, an Indiana limited liability company, E.Com Technologies, LLC, an Indiana limited liability company, First Mile Entertainment, LLC, an Indiana limited liability company, and GoTown.net, LLC, an Indiana limited liability company, collectively or singularly as the case may require, and their respective successors and assigns or any other Person so designated by the Access Entity.

Section 1.38 **Telephone Services (local)**. The term or phrase "Telephone Services (local)" shall mean and refer to service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or comparable service provided through a system of switches, transmission equipment or any other Facilities (or any combination thereof) by which a user can originate and terminate a telecommunications service.

Section 1.39 **Telephone Services (long distance)**. The term or phrase "Telephone Services (long distance)" shall mean and refer to telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with users for exchange service and any Facilities related to such services.

Section 1.40 **User**. The term "User" shall mean and refer to any tenant or commercial user that receives Telephone Service (local), Cable Television Service and Internet Bandwidth Services from the Technology Services Group. A "User" shall be determined on a per unit or commercial space basis; and, specifically, not based on a per subscriber or per invoice basis. Finally, to qualify as a "User" the tenant or commercial user must qualify as such for not less than six (6) complete months during the year in which the closing on the home or commercial space initially occurred, and not less than ten (10) complete months for any subsequent year. In no event shall any home or commercial space have more than one (1) User per calendar year.

Section 1.41 **Utility Services**. The term or phrase "Utility Services" shall mean and refer to any sewer, water, gas, electric, any other utility or common functional services provided to the residences and commercial structures (if any) within the Development together with any Facilities related to such services; provided, however, that the term or phrase "Utility Services" shall not mean or refer to or include any "Communication Services."

ARTICLE II – MISCELLANEOUS AND CONSTRUCTION

Section 2.01 **Complete Agreement**. Any agreement which incorporates this Appendix A, together with the schedules, appendices and exhibits thereto, and all other agreements, certificates, documents, schedules, appendices, exhibits and other writings executed at or in connection with the signing of such agreement (collectively, the "Definitive Documents"), constitute the complete and exclusive statement of agreement among the Parties with respect to the covered subject matter. The Definitive Documents replace and supercede all prior agreements by and among the Parties. The Definitive Documents supercede all prior written and oral statements and no other representation, statement, condition or warranty not contained in the Definitive Documents will be binding upon the Parties, or have any force or effect whatsoever. Any prior agreements, promises, negotiations, or representations concerning the subject matter of the Definitive Documents which are not expressly set forth herein or therein are of no force or effect.

Section 2.02 **Amendment or Alteration**. The agreement which incorporates this Appendix A may be altered or amended in whole or in part, at any time. Amendments or alterations must take the form of a written instrument setting forth the amendments or alterations, which written instrument must be signed by all Parties thereto.

Section 2.03 **Severability.** If any covenant, agreement, term or provision of any agreement which incorporates this Appendix A is held to be illegal, invalid, unreasonable, or unenforceable under the present or future laws effective during the term thereof, such covenant, agreement, term or provision shall be fully severable. The agreement shall be construed and enforced as if such illegal, invalid, unreasonable, or unenforceable covenant, agreement, term or provision had never comprised a part thereof and, the remainder shall remain in full force and effect and shall not be affected by such illegal, invalid, unreasonable, or enforceable covenant, agreement, term or provision or by its severance there from. Furthermore, in lieu of the illegal, invalid, unreasonable, or unenforceable covenant, agreement, term or provision, there shall be added automatically a provision as similar in terms to such illegal, invalid, unreasonable, or unenforceable covenant, agreement, term or provision as may be possible and be legal, valid, reasonable, and enforceable.

Section 2.04 **Waiver.** No delay or failure by any Party in exercising any rights under any agreement which incorporates this Appendix A, and no partial or simple exercise of such rights, shall constitute a waiver of that or any other right.

Section 2.05 **Governing Law.** (i) Except as provided in Section 2.05(ii) below, any agreement which incorporates this Appendix A, including, without limitation, any controversy or claim arising out of or relating to the agreement which incorporates this Appendix A, or its breach, the construction of its terms, or the interpretation of the rights and duties of the Parties, shall be construed and governed exclusively according to the internal laws of the State of Indiana, without regard to that jurisdiction's law regarding conflicts of law. Except as provided in Section 2.05(ii) below, any agreement which incorporates this Appendix A shall be subject to the exclusive jurisdiction of Indiana state courts and of the federal courts with jurisdiction over Hamilton County, State of Indiana, regardless of the residence or situs of the Parties, to which jurisdiction of the court the Parties expressly submit, and waive objection thereto. Except as provided in Section 2.05(ii) below, any agreement which incorporates this Appendix A shall be subject to, and litigated in, the exclusive and preferred venue of Indiana state courts located in Hamilton County, State of Indiana or of the federal courts with jurisdiction over Hamilton County, State of Indiana. (ii) To the extent any state or federal law or regulation prohibits or restricts the provisions set forth in Section 2.05(i) above; then, the State of Indiana will be automatically replaced with the state wherein any real estate which is subject to any agreement which incorporates this Appendix A is situated, and Hamilton County will be automatically replaced with the county wherein any real estate which is subject to any agreement which incorporates this Appendix A is situated.

Section 2.06 **Headings: Interpretation.** All headings are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision hereof. The singular shall include the plural, and the masculine gender shall include the feminine and neuter, and *vice versa*, as the context requires. The term "including" shall mean "including, without limitation" or its equivalent whenever used herein and shall not limit the generality of any description preceding such term. The introductory paragraph and recitals set forth at the commencement of any agreement which incorporates this Appendix A shall form a part thereof. Reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by the agreement which incorporates this Appendix A. Reference to any agreement, document or instrument means such agreement, document or instrument, as amended, supplemented or modified and in effect from time to time in accordance with the terms thereof. Reference in any agreement which incorporates this Appendix A to any article, section, appendix, schedule or exhibit means such article or section thereof or appendix or schedule or exhibit thereto. The term "or" is not exclusive. Terms such as "hereunder," "hereof," "hereto" and words of similar import shall be deemed references to the agreement which incorporates this Appendix A, together with all incorporated reference in such agreement and this Appendix A as a whole, and not to any particular, article, section, paragraph or other provision of any specific document.

- Section 2.07** **Multiple Counterparts.** Any agreement which incorporates this Appendix A may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. In making proof with respect thereto, it shall be necessary to produce only one copy thereof signed by the Party to be charged.
- Section 2.08** **Additional Documents and Acts.** The Parties each agree to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out, and perform all of the terms, provisions, and conditions of any agreement which incorporates this Appendix A.
- Section 2.09** **Further Assurances.** At any time, and from time to time, each Party shall execute such additional instruments and take such additional actions as may be reasonably requested by the other Party to confirm or otherwise carry out the intent and purpose of any agreement which incorporates this Appendix A.
- Section 2.10** **Enforceability Certificate.** Each of the Parties to any agreement which incorporates this Appendix A shall, without charge, at any time and from time to time, within seven (7) days following a written request by the other party, deliver a written instrument to the requesting party or to any other Person specified by such requesting party, duly executed, certifying: (i) that the agreement which incorporates this Appendix A is unmodified, or that the agreement has been modified and setting forth the specific modification; (ii) that the Term of the agreement is continuing, or the exact date [day, month and year] that the Term expired; and, (iii) any other matters relating to compliance with the agreement.
- Section 2.11** **Drafter of the Agreement.** For purposes of construing any agreement which incorporates this Appendix A, the Parties agree that each (and, as applicable, its counsel) has reviewed and revised the agreement, and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the agreement which incorporates this Appendix A, or of this Appendix A, or any amendments, schedules or exhibits thereto or hereto.
- Section 2.12** **Successors.** Any agreement which incorporates this Appendix A shall be binding upon and inure to the benefit of, and be enforceable by, the Parties and their respective successors and assigns.
- Section 2.13** **Time.** Time shall be of the essence with regard to any agreement which incorporates this Appendix A.
- Section 2.14** **Time Periods.** All references to "days" shall mean and refer to calendar days. In the event the date for performance of any obligation under any agreement which incorporates this Appendix A shall fall on a Saturday, Sunday or day when the Hamilton County Circuit Court, State of Indiana, is closed, then that obligation shall be performed on the next following regular business day.
- Section 2.15** **Obligation of Good Faith.** The Parties shall, in the performance of all obligations under any agreement which incorporates this Appendix A, be obligated to act in good faith with one another in the performance thereof and hereunder.
- Section 2.16** **Not a Partnership.** Nothing herein contained shall be construed to create a partnership or joint venture as between the Parties.
- Section 2.17** **Exhibits, Appendices and Schedules.** All exhibits, appendices and schedules referred to herein are intended to be, and are hereby, made specifically a part hereof and incorporated herein.

EXHIBIT A

Legal Description of Development

Part of the southeast quarter and the southeast quarter of the northeast quarter of Section 24, Township 15 North, Range 4 East, and the west half of the northwest quarter of Section 19, Township 15 North, Range 5 East, of the Second Principal Meridian, Warren Township, Marion County, Indiana, described as follows:

Considering the east line of the northeast quarter of said Section 24 as bearing North 00 degrees 03 minutes 47 seconds West with all bearings contained herein being relative thereto.

BEGINNING at the east quarter corner of said Section 24; thence South 01 degree 10 minutes 22 seconds East (South 00 degrees 19 minutes 56 seconds West by deed) along the east line of the southeast quarter of said Section 24 a distance of 665.79 feet to a 5/8 inch rebar with cap stamped "BANNING ENG LS29800001" set (herein referred to as "rebar set") at the southeast corner of the land of Goins as described in Instrument No. 1993-29344 in the Office of the Recorder of said county; thence South 89 degrees 16 minutes 27 seconds West along the south line of said land 226.25 feet (South 89 degrees 51 minutes 19 seconds West 215.55 feet by deed) to a rebar set on the northeasterly right of way line of Interstate 74 with the following six (6) courses being along said right of way line; 1) thence North 56 degrees 24 minutes 57 seconds West 92.90 feet (North 56 degrees 01 minutes 25 seconds West 91.18 feet by deed) to a rebar set; 2) thence North 67 degrees 08 minutes 21 seconds West 102.41 feet (North 66 degrees 48 minutes 41 seconds West 101.49 feet by deed) to a rebar set at the beginning of a non-tangent curve to the left having a radius of 5835.00 feet, a central angle of 07 degrees 08 minutes 20 seconds, and a radial line passing through said point which bears North 27 degrees 57 minutes 52 seconds East; 3) thence northwesterly along the arc of said curve 727.03 feet to a rebar set at the southeast corner of the land of the State of Indiana as described in Instrument No. 1999-116264 in said county records; 4) thence North 62 degrees 18 minutes 53 seconds West along the northeasterly line thereof 101.17 feet (North 61 degrees 34 minutes 55 seconds West 101.33 feet by deed) to a rebar set; 5) thence North 67 degrees 16 minutes 16 seconds West along said northeasterly line 235.28 feet (North 67 degrees 16 minutes 09 seconds West by deed) to a rebar set at the beginning of a non-tangent curve to the left having a radius of 5864.51 feet (5864.10 feet by deed), a central angle of 04 degrees 18 minutes 03 seconds, and a radial line passing through said point which bears North 17 degrees 32 minutes 42 seconds East; 6) thence northwesterly along said northeasterly line and the arc of said curve 440.22 feet (446.54 feet by deed) to the south line of the southwest quarter of the northeast quarter of said Section 24; thence North 89 degrees 16 minutes 27 seconds East (North 89 degrees 51 minutes 19 seconds East and North 89 degrees 16 minutes 34 seconds East by deed) along said south line 446.32 feet to a rebar set at the southwest corner of the southeast quarter of said northeast quarter; thence North 00 degrees 05 minutes 50 seconds West along the west line thereof 1337.03 feet (North 00 degrees 18 minutes 19 seconds East 1332.69 feet by deed) to a 5/8 inch rebar with cap found at the northwest corner of said quarter quarter; thence North 89 degrees 30 minutes 07 seconds East along the north line thereof 1331.56 feet (North 89 degrees 53 minutes 46 seconds East 1331.70 feet by deed) to a 5/8 inch rebar found at the northeast corner of said quarter quarter; thence North 00 degrees 03 minutes 47 seconds West (North 00 degrees 19 minutes 56 seconds East by deed) along the east line of northeast quarter of the northeast quarter of said Section 24 a distance of 427.12 feet to a MAG nail found at the cusp of a non-tangent curve to the left having a radius of 250.00 feet, a central angle of 38 degrees 24 minutes 21 seconds, and

a radial line passing through said point which bears South 89 degrees 56 minutes 13 seconds West, said point being on the center line of Franklin Road with the following four (4) courses being along said center line; 1) thence southerly and southeasterly along the arc of said curve 167.58 feet to a MAG nail found; 2) thence South 38 degrees 28 minutes 08 seconds East 136.96 feet to a MAG nail found; 3) thence South 41 degrees 38 minutes 39 seconds East 772.40 feet to a MAG nail found; 4) thence South 48 degrees 16 minutes 21 seconds East 567.17 feet to a road spike found on the east line of the west half of the northwest quarter said Section 19; thence South 00 degrees 01 minutes 01 seconds East (South 00 degrees 22 minutes 25 seconds West by deed) along said east line 367.82 feet to a 5/8 inch rebar with cap found at the southeast corner of said west half; thence South 89 degrees 58 minutes 01 seconds West along the south line of said west half 1074.38 feet (North 89 degrees 40 minutes 11 seconds West 1074.46 feet to a stone found at the southwest corner of said Section 19; thence South 00 degrees 03 minutes 47 seconds East 173.25 feet to the **POINT OF BEGINNING**, containing 76.784 acres, more or less, inclusive of the apparent 25' 1/2 right of way of Franklin Road (75.872 acres, more or less, excluding said right of way).

LESS (EXCLUDING) THE FOLLOWING:

Part of the southeast quarter of the northeast quarter of Section 24, Township 15 North, Range 4 East, and the west half of the northwest quarter of Section 19, Township 15 North, Range 5 East, of the Second Principal Meridian, Warren Township, Marion County, Indiana, described as follows:

Considering the east line of the northeast quarter of said Section 24 as bearing North 00 degrees 03 minutes 47 seconds West with all bearings contained herein being relative thereto.

Commencing at the east quarter corner of said Section 24; thence South 89 degree 16 minutes 27 seconds West along the south line of the southeast quarter of the north east quarter of said Section 24 a distance of 1330.81 feet to the southwest corner of said quarter quarter section; thence North 00 degrees 05 minutes 50 seconds West along the west line thereof 650.00 feet to the **POINT OF BEGINNING**; thence continue North 00 degrees 05 minutes 50 seconds West along said west line 687.03 feet to the northwest corner of said quarter quarter section; thence North 89 degrees 30 minutes 07 seconds East along the north line thereof 1331.56 feet to the northeast corner of said quarter quarter; thence North 00 degrees 03 minutes 47 seconds West along the east line of northeast quarter of the northeast quarter of said Section 24 a distance of 427.12 feet to the cusp of a non-tangent curve to the left having a radius of 250.00 feet, a central angle of 38 degrees 24 minutes 21 seconds, and a radial line passing through said point which bears South 89 degrees 56 minutes 13 seconds West, said point being on the center line of Franklin Road with the following three (3) courses being along said center line; 1) thence southerly and southeasterly along the arc of said curve of 167.58 feet; 2) thence South 38 degrees 28 minutes 08 seconds East 136.96 feet; 3) thence South 41 degrees 38 minutes 39 seconds East 772.40 feet; thence South 89 degrees 29 minutes 02 seconds West 430.97 feet; thence North 75 degrees 17 minutes 16 seconds West 318.89 feet; thence North 00 degrees 29 minutes 53 seconds West 44.69 feet; thence South 89 degrees 30 minutes 07 seconds West parallel with the north line of said southeast quarter quarter section 580.00 feet; thence South 00 degrees 29 minutes 53 seconds East 344.33 feet; thence South 89 degrees 16 minutes 27 seconds West 15.72 feet; South 00 degrees 43 minutes 33 seconds East 120.00 feet; thence South 89 degrees 16 minutes 27 seconds West 360.00 feet; thence North 00 degrees 43 minutes 33 seconds West 20.00 feet; thence South 89 degrees 54 minutes 10 seconds West 171.33 feet; thence North 00 degrees 05 minutes 50 seconds West parallel with the west line of said quarter quarter

section 36.90 feet to the beginning of a tangent curve to the right having a radius of 325.00 degrees and a central angle of 01 degrees 44 minutes 21 seconds; thence northerly along the arc of said curve 9.87 feet; thence South 89 degrees 54 minutes 10 seconds West 120.15 feet to the **POINT OF BEGINNING**, containing 21.204 acres, more or less.

EXHIBIT B

Legal Description of In Gross Easement Area

Part of the southeast quarter and the southeast quarter of the northeast quarter of Section 24, Township 15 North, Range 4 East, and the west half of the northwest quarter of Section 19, Township 15 North, Range 5 East, of the Second Principal Meridian, Warren Township, Marion County, Indiana, described as follows:

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curve to the left having a radius of 250.00 feet, a central angle of 38 degrees 24 minutes 21 seconds, and a radial line passing through said point which bears South 89 degrees 56 minutes 13 seconds West, said point being on the center line of Franklin Road with the following four (4) courses being along said center line; 1) thence southerly and southeasterly along the arc of said curve 167.58 feet to a MAG nail found; 2) thence South 38 degrees 28 minutes 08 seconds East 136.96 feet to a MAG nail found; 3) thence South 41 degrees 38 minutes 39 seconds East 772.40 feet to a MAG nail found; 4) thence South 48 degrees 16 minutes 21 seconds East 567.17 feet to a road spike found on the east line of the west half of the northwest quarter said Section 19; thence South 00 degrees 01 minutes 01 seconds East (South 00 degrees 22 minutes 25 seconds West by deed) along said east line 367.82 feet to a 5/8 inch rebar with cap found at the southeast corner of said west half; thence South 89 degrees 58 minutes 01 seconds West along the south line of said west half 1074.38 feet (North 89 degrees 40 minutes 11 seconds West 1074.46 feet to a stone found at the southwest corner of said Section 19; thence South 00 degrees 03 minutes 47 seconds East 173.25 feet to the **POINT OF BEGINNING**, containing 76.784 acres, more or less, inclusive of the apparent 25' 1/2 right of way of Franklin Road (75.872 acres, more or less, excluding said right of way).

LESS (EXCLUDING) THE FOLLOWING:

Part of the southeast quarter of the northeast quarter of Section 24, Township 15 North, Range 4 East, and the west half of the northwest quarter of Section 19, Township 15 North, Range 5 East, of the Second Principal Meridian, Warren Township, Marion County, Indiana, described as follows:

Considering the east line of the northeast quarter of said Section 24 as bearing North 00 degrees 03 minutes 47 seconds West with all bearings contained herein being relative thereto.

Commencing at the east quarter corner of said Section 24; thence South 89 degree 16 minutes 27 seconds West along the south line of the southeast quarter of the north east quarter of said Section 24 a distance of 1330.81 feet to the southwest corner of said quarter quarter section; thence North 00 degrees 05 minutes 50 seconds West along the west line thereof 650.00 feet to the **POINT OF BEGINNING**; thence continue North 00 degrees 05 minutes 50 seconds West along said west line 687.03 feet to the northwest corner of said quarter quarter section; thence North 89 degrees 30 minutes 07 seconds East along the north line thereof 1331.56 feet to the northeast corner of said quarter quarter; thence North 00 degrees 03 minutes 47 seconds West along the east line of northeast quarter of the northeast quarter of said Section 24 a distance of 427.12 feet to the cusp of a non-tangent curve to the left having a radius of 250.00 feet, a central angle of 38 degrees 24 minutes 21 seconds, and a radial line passing through said point which bears South 89 degrees 56 minutes 13 seconds West, said point being on the center line of Franklin Road with the following three (3) courses being along said center line; 1) thence southerly and southeasterly along the arc of said curve of 167.58 feet; 2) thence South 38 degrees 28 minutes 08 seconds East 136.96 feet; 3) thence South 41 degrees 38 minutes 39 seconds East 772.40 feet; thence South 89 degrees 29 minutes 02 seconds West 430.97 feet; thence North 75 degrees 17 minutes 16 seconds West 318.89 feet; thence North 00 degrees 29 minutes 53 seconds West 44.69 feet; thence South 89 degrees 30 minutes 07 seconds West parallel with the north line of said southeast quarter quarter section 580.00 feet; thence South 00 degrees 29 minutes 53 seconds East 344.33 feet; thence South 89 degrees 16 minutes 27 seconds West 15.72 feet; South 00 degrees 43 minutes 33 seconds East 120.00 feet; thence South 89 degrees 16 minutes 27 seconds West 360.00 feet; thence North 00 degrees 43 minutes 33 seconds West 20.00 feet; thence South 89 degrees 54 minutes 10 seconds West 171.33 feet;

thence North 00 degrees 05 minutes 50 seconds West parallel with the west line of said quarter quarter section 36.90 feet to the beginning of a tangent curve to the right having a radius of 325.00 degrees and a central angle of 01 degrees 44 minutes 21 seconds; thence northerly along the arc of said curve 9.87 feet; thence South 89 degrees 54 minutes 10 seconds West 120.15 feet to the **POINT OF BEGINNING**, containing 21.204 acres, more or less.

EXHIBIT C

Mandatory Common Service Providers

	<u>Mandatory Common Services</u>	<u>Provider Name and Address</u>
1.	Sewer	Indianapolis Water Company
2.	Water	Indianapolis Water Company
3.	Electric	IPL
4.	Gas	Vectren
5.	Telephone Service (local)	Ameritech

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TW

**FIRST AMENDMENT TO THE AMENDED AND RESTATED
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR BROOKFIELD PLACE**

This **FIRST AMENDMENT TO THE AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
BROOKFIELD PLACE** ("Amendment") is made this 10th day of December 2002 by
BROOKFIELD DEVELOPMENT, INC., an Indiana corporation ("Developer").

Recitals:

A. Developer executed and recorded that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions dated May 17, 2002, and recorded on May 23, 2002 in the Office of the Recorder of Marion County, Indiana as Instrument No. 2002-0097887 ("Declaration").

B. Developer has incorporated a storm water management practice system into the Development and as a result is required to incorporate certain procedures into the Declaration.

Terms:

NOW, THEREFORE, Developer is hereby entering to this Amendment as follows:

1. A new Section 19 shall be added to the Declaration and shall read as follows:

Paragraph 19 Storm Water Quality Management Practices.

The Development has been designed to include a storm water quality best management practice ("BMP") that must be maintained by the Developer and Owners. The BMP is currently maintained by the Developer; however, upon the activation of the Association the Operations Maintenance Manual for the BMP shall become the responsibility of the Association subject to all fees and other City of Indianapolis requirements. The BMP shall be managed in accordance with the Water Quality Facilities Operation, Maintenance, and Management Manual attached hereto as Exhibit "A".

MARTHA A. WOMACKS
MARION COUNTY RECORDER

458364 FEB 10 8

RECEIVED FOR TAXATION
SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER

IN WITNESS WHEREOF, Developer has executed this Amendment as of the date and year first written above.

BROOKFIELD DEVELOPMENT, INC.,
an Indiana corporation

By *Douglas Stafford*

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared *Douglas Stafford* of Brookfield Development, Inc., an Indiana corporation, who acknowledged the execution of the foregoing First Amendment to the Amended and Restated Declaration of Covenants, Conditions and Restrictions, acting for and behalf of the corporation.

Witness my hand and Notarial Seal this 10th day of December 2002.

Carol L. Swartz
Notary Public

CAROL L. SWARTZ
(Printed Name)

My Commission Expires: CAROL L. SWARTZ
Notary Public, State of Indiana
County of Marion
County of Residence: My Commission Expires Sep. 8, 2010

This instrument prepared by: Stephen A. Backer, Esq., BACKER & BACKER, P.C.,
8710 North Meridian Street, Indianapolis, Indiana 46260

Exhibit "A"

**Water Quality Facilities Operation,
Maintenance, and Management
Manual**

Prepared for:

**Stafford Development
320 North Meridian Street, Suite 700
Indianapolis, Indiana 46204
(317) 264-9400**

**May 20, 2002
Revised: June 18, 2002
Revised: August 21, 2002**

I. Site Location & Description

- A. This project is located at 2430 South Franklin Road. The parcel contains approximately 18.9 acres more or less and is located approximately 1/4 mile South of East Raymond Street along South Franklin Road. The parcel consists of an abandoned farm field surrounded by proposed and future subdivisions and bordered by Interstate 74 on its South side. The proposal for this project is to construct 71 single-family residential lots, which will outlet into a water quality Wet Extended Detention Pond in conformance with the City of Indianapolis Drainage Ordinance to accommodate the storm run-off for the new development.

II. Definitions

- A. BMP – Best management practices can refer to structural measures (wetlands, ponds, sand filters, etc.) or non-structural measures (restrictive zoning, reduced impervious areas, etc.). BMPs are designed for the benefit of water quality and quantity.
- B. BMP owner – The owner of the BMP, typically the property owner. The BMP owner may also be the leasee of property in the case of long term leases of commercial or industrial zoned properties. The leasee is considered the BMP owner only if the lease specifically states that construction “by the leasee must meet applicable local codes and regulations.”
- C. Impervious area – Areas where the land surface has been altered to decrease the amount of rainwater infiltration. Impervious surfaces include paved roads, concrete driveways and rooftops.

III. Attachments and Procedures

- A. The City should be notified of any change in Ownership for the property in which the BMP is located.
- B. The City shall make annual inspections of the BMP and reserve the right to enter the property for said inspections. The owner shall be responsible for performing maintenance and the associated costs for said maintenance specified by the City as a result of these inspections.
- C. Reduced scale plans are attached and shall be made a part of this manual.
- D. An inspection checklist is attached and shall be made a part of this manual. The owner shall use this checklist when making inspections.
- E. The owner of the BMP shall perform maintenance as recommended in the Operation and Maintenance section of this manual.
- F. It is suggested that the owner of the BMP maintain records of the inspections performed.
- G. City Inspection Fees
 1. \$450 paid the first year in one lump sum for the first 3 years of inspections for the BMP.
 2. \$150 annual fee after 3 years.
 3. \$150 per hour for inspections required due to maintenance issues.

IV. Wet Extended Detention Basin Operation and Maintenance

A. Debris Cleanout

1. Inspect monthly and after major storm events for the following:
 - a. Trash - ensure trash and debris is cleaned within the contributing drainage area of the BMP.
 - b. Animal burrows or nests – prevent animals and/or waterfowl from inhibiting the BMP from functioning properly.

B. Vegetation

1. Inspect monthly and after major storm events for the following:
 - a. Vegetation – ensure vegetation remains established and is mowed or trimmed at or before a maximum height of 6” is reached.
 - b. Erosion – ensure erosion on vegetated banks is prevented, if erosion occurs, provide treatment with an erosion blanket, riprap or other equal approved measure.

C. Principal Spillway

1. Inspect bi-annually and after major storm events for the following:
 - a. Low flow pipe outlet (6” pvc) – ensure pipe is free of debris, sediment, undamaged, and flowing freely.
 - b. Trash rack – ensure openings between steel bars are clear of debris, undamaged, and flowing freely.
 - c. Erosion – ensure erosion is minimized around outlet structure, if erosion occurs, provide treatment such as riprap.

D. Sediment Forebay

1. Inspect bi-annually and after major storm events for the following:
 - a. Undesirable vegetative growth – prohibit vegetative growth such as cattails within the forebay area.
 - b. Floatable debris – remove trash and other floatable objects within the forebay.
 - c. Visible pollution – check for signs of excessive build-ups of oils, grease, and, etc., contact a licensed removal company for suggestions and/or removal.
 - d. Sedimentation build-up – remove sedimentation build-up when the forebay marker indicates sediment build-up is 50% full. Refer to the forebay marker detail within this manual.

V. Temporary Sediment Basin Operation and Maintenance

A. Debris Cleanout

1. Inspect monthly and after major storm events for the following:
 - a. Trash - ensure trash and debris is cleaned within the contributing drainage area.
 - b. Animal burrows or nests – prevent animals and/or waterfowl from inhibiting the Sediment Basin from functioning properly.

B. Vegetation

1. Inspect monthly and after major storm events for the following:
 - a. Vegetation – ensure vegetation remains established and is mowed or trimmed at or before a maximum height of 6” is reached.
 - b. Erosion – ensure erosion on vegetated banks is prevented, if erosion occurs, provide treatment with an erosion blanket, riprap or other equal approved measure.

C. Principal Spillway

1. Inspect bi-annually and after major storm events for the following:
 - a. Erosion – ensure erosion is minimized around outlet structure, if erosion occurs, provide treatment such as additional riprap.

D. Sediment Trap

1. Inspect bi-annually and after major storm events for the following:
 - a. Undesirable vegetative growth - prohibit vegetative growth such as cattails within the Sediment Basin area.
 - b. Floatable debris - remove trash and other floatable objects within the Sediment Basin.
 - c. Visible pollution - check for signs of excessive build-ups of oils, grease, and, etc., contact a licensed removal company for suggestions and/or removal.
 - d. Sedimentation build-up - remove sedimentation build-up when the sediment build-up is at a level reaching 50% of the Sediment Traps capacity.

VI. Grass Filter Strip

A. Debris Cleanout

1. Inspect monthly and after major storm events for the following:
 - a. Trash - ensure trash and debris is cleaned within the contributing drainage area of the BMP.

B. Vegetation

1. Inspect monthly and after major storm events for the following:
 - a. Vegetation - ensure vegetation remains established and is mowed or trimmed at or before a maximum height of 6" is reached.
 - b. Erosion - ensure erosion on vegetated banks is prevented, if erosion occurs, provide treatment with an erosion blanket, riprap or other equal approved measure.

Don Stafford
Don Stafford
Stafford Development

State of Indiana)
County of Marion) SS:

Denise L Kirby
Notary Public Signature

DENISE L. KIRBY
NOTARY PUBLIC STATE OF INDIANA
HENDRICKS COUNTY
MY COMMISSION EXP. NOV. 3, 2008

Notary Public Printed

My Commission Expires: _____

County of Residence: _____



Stormwater Pond Operation, Maintenance, and Management Inspection Checklist for BMP Owners

Project: _____ Owner Change since last inspection? Y N

Owner Name, Address, Phone _____

Number _____

Location: _____

Site Status: _____

Date: _____

Time: _____

Inspector: _____

Maintenance Item	Satisfactory Unsatisfactory	Comments
Embankment and Emergency Spillway (Inspect annually and after major storms)		
1. Vegetation		
2. Erosion on embankment		
3. Animal burrows		
4. Cracking, bulging or sliding of dam		
A. Location:		
B. Describe		
5. Drains clear and functioning		
6. Leaks or seeps on embankment		
A. Location		
B. Describe		
7. Slope protection failure		
8. Emergency spillway clear of obstructions		
9. Other (describe)		

Maintenance Item	Satisfactory/ Unsatisfactory	Comments
Riser and Principal spillway (Inspect annually)		
Circle Type: Reinforced concrete, corrugated pipe, masonry		
1. Low flow orifice blocked		
2. Trash rack		
A. debris removal needed		
B. corrosion noted		
3. Excessive sediment buildup in riser		
4. Concrete/Masonry condition		
A. cracks or displacement		
B. spalling		
5. Metal pipe condition		
6. Control Valve operational		
7. Pond drain valve operational		
8. Outfall channels functioning		
9. Other (describe)		
Permanent Pool (Inspect monthly)		
1. Undesirable vegetative growth		
2. Floatable debris removal needed		
3. Visible pollution		
4. Shoreline problem		
5. Other (describe)		

Maintenance/Item	Satisfactory/ Unsatisfactory	Comments
Sediment Forebays		
1. Sedimentation noted		
2. Sediment cleanout needed (over 50% full)		
Other (Inspect monthly)		
1. Erosion at outfalls into pond		
2. Headwalls and endwalls		
3. Encroachment into pond or easement area		
4. Complaints from residents		
5. Public hazards (describe)		

Additional Comments

Actions to be taken:

Timeframe:

Biofilter and Buffer Operation, Maintenance, and Management Inspection Checklist for BMP Owners

Site Name: _____ Owner changed since last inspection? Y N

Owner name, address and phone number: _____

Location: _____

Date: _____

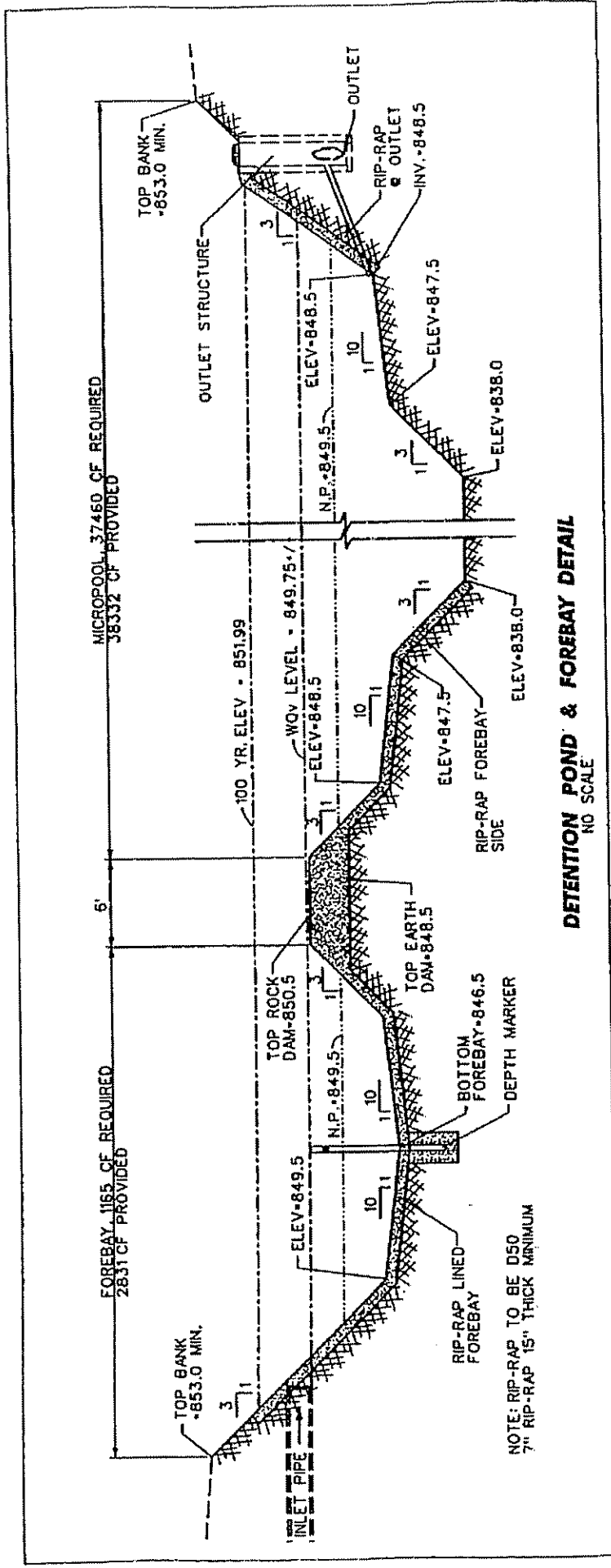
Time: _____

Inspector Name: _____

Maintenance Item	Satisfactory/Unsatisfactory	Comments
Vegetation (Inspect monthly)		
1. Plant composition according to approved plan		
2. Vegetation is healthy		
3. Grass height not more than 6 inches		
4. No evidence of erosion		
Level spreader (Inspect monthly)		
1. Vegetation is healthy		
2. Lip of spreader showing no signs of erosion		
3. Sediment noted in spreader?		

Additional Comments and Actions to be Taken:	Timeframe:
_____	_____
_____	_____
_____	_____
_____	_____

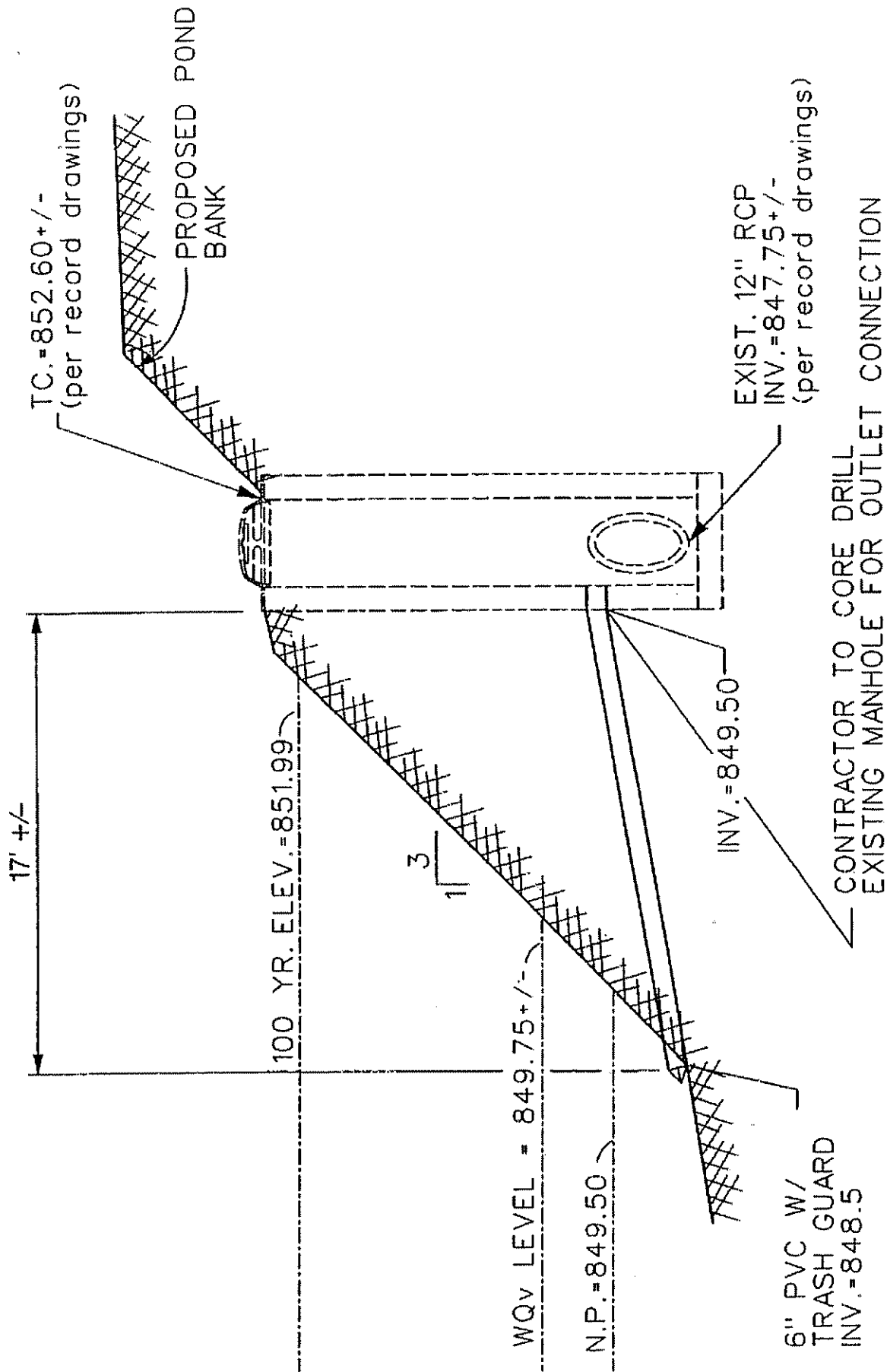
BMP Details



DETENTION POND & FOREBAY DETAIL
NO SCALE

NOTE: RIP-RAP TO BE D50
7" RIP-RAP 15" THICK MINIMUM

11/17/2011 10:22:14 AM



OUTLET STRUCTURE DETAIL
NO SCALE

PVC CAP TOP
@ 850.5

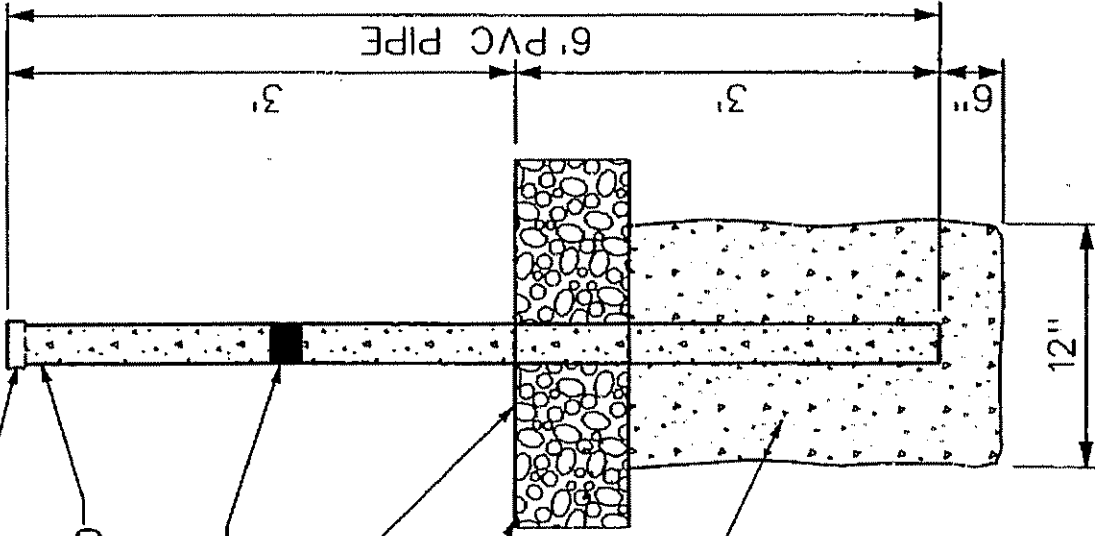
4" DIAM. STANDARD
PVC PIPE FILLED
W/CONCRETE

PAINTED 2" WIDE
STRIPE (FOREBAY
50% FULL MARK)
ELEV = 848.0

RIP-RAP LINED
FOREBAY

BOTTOM OF FOREBAY
ELEV = 846.5

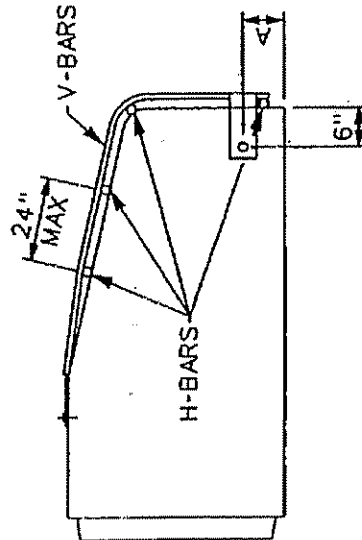
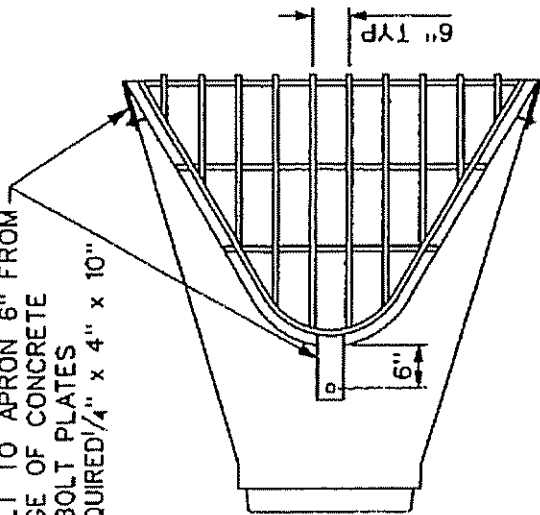
ENCASE IN 12"
CONC. MIN.



FOREBAY DEPTH MARKER

NO SCALE

BOLT TO APRON 6" FROM
EDGE OF CONCRETE
3 BOLT PLATES
REQUIRED 1/4" x 4" x 10"

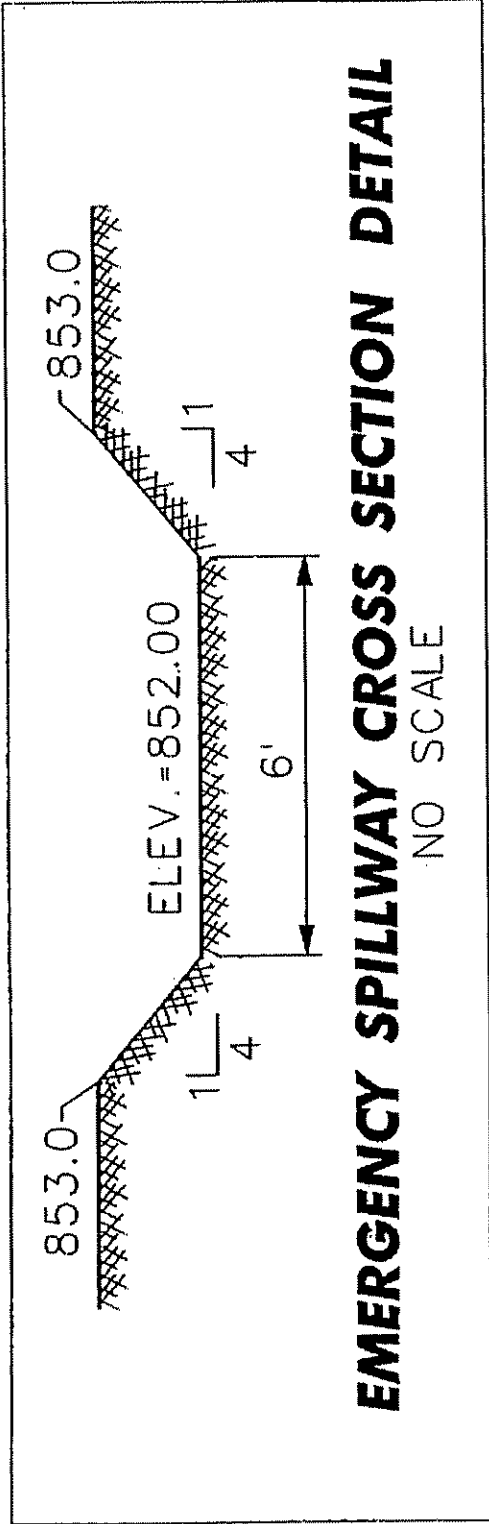


APRON SIZE	V-BAR SIZE INCHES	H-BAR SIZE	NO. OF H-BARS REQ'D	"A"	
				BOLL DIA	DIM INCHES
18	1/2 DIA	5/8 DIA	3	1/2	5
24	5/8 DIA	3/4 DIA	4	1/2	7
30	5/8 DIA	3/4 DIA	4	1/2	7 1/2
36	3/4 DIA	1 DIA	4	1/2	10 1/2
42	3/4 DIA	1 DIA	4	3/4	11
48	3/4 DIA	1 1/2 PIPE	4	3/4	12
54	3/4 DIA	1 1/2 PIPE	4	3/4	12
60	3/4 DIA	1 1/2 PIPE	5	3/4	14
72	3/4 DIA	1 1/2 PIPE	5	3/4	14
84	3/4 DIA	1 1/2 PIPE	6	3/4	15
ARCH PIPE APRONS					
12	1/2 DIA	5/8 DIA	3	1/2	4
15	1/2 DIA	5/8 DIA	3	1/2	4 1/2
18	1/2 DIA	5/8 DIA	4	1/2	4 1/2
21	1/2 DIA	5/8 DIA	4	1/2	5
24	5/8 DIA	3/4 DIA	4	1/2	5
27	5/8 DIA	3/4 DIA	4	1/2	5 1/2
30	5/8 DIA	3/4 DIA	4	1/2	5 1/2
36	3/4 DIA	1 DIA	4	3/4	8
42	3/4 DIA	1 DIA	4	3/4	8
48	3/4 DIA	1 DIA	5	3/4	8
54	3/4 DIA	1 1/2 PIPE	5	3/4	8
60	3/4 DIA	1 1/2 PIPE	5	3/4	8
66	3/4 DIA	1 1/2 PIPE	6	3/4	8
72	3/4 DIA	1 1/2 PIPE	6	3/4	9
84	3/4 DIA	1 1/2 PIPE	7	3/4	10
90	3/4 DIA	1 1/2 PIPE	7	3/4	14
ROUND PIPE APRONS					

NOTES:

1. BARS & PLATES ARE HOT-ROLLED STEEL
2. BARS, PLATES, & PIPES ARE FINISHED WITH 2 COATS OF ALUMINUM PAINT
3. BOLTS ARE GALVANIZED

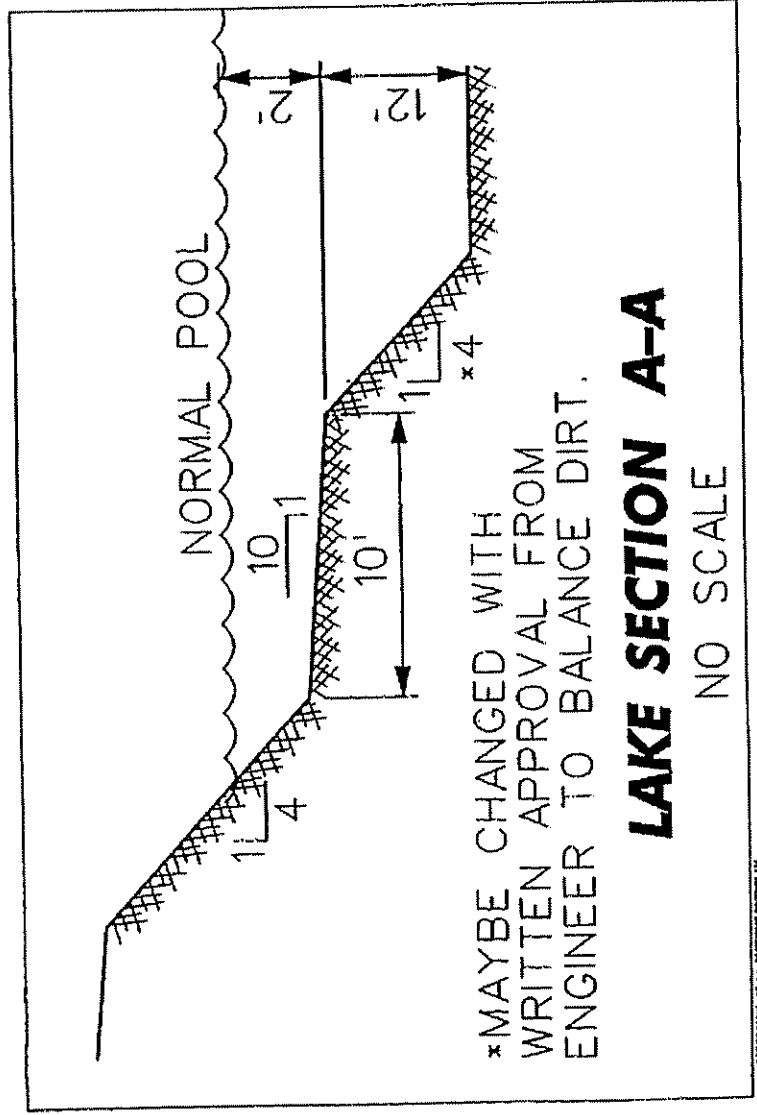
ANIMAL GUARD
NO SCALE

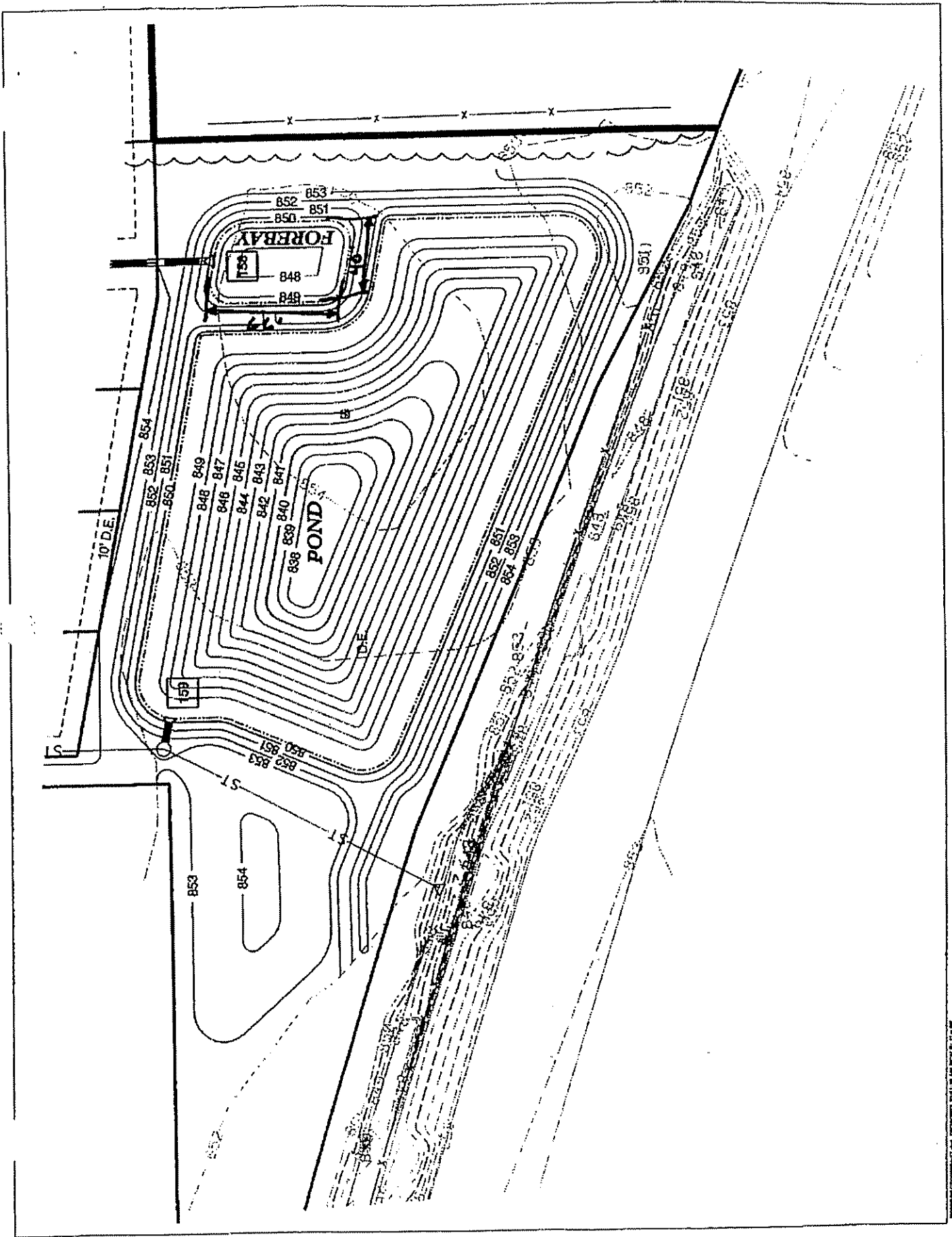


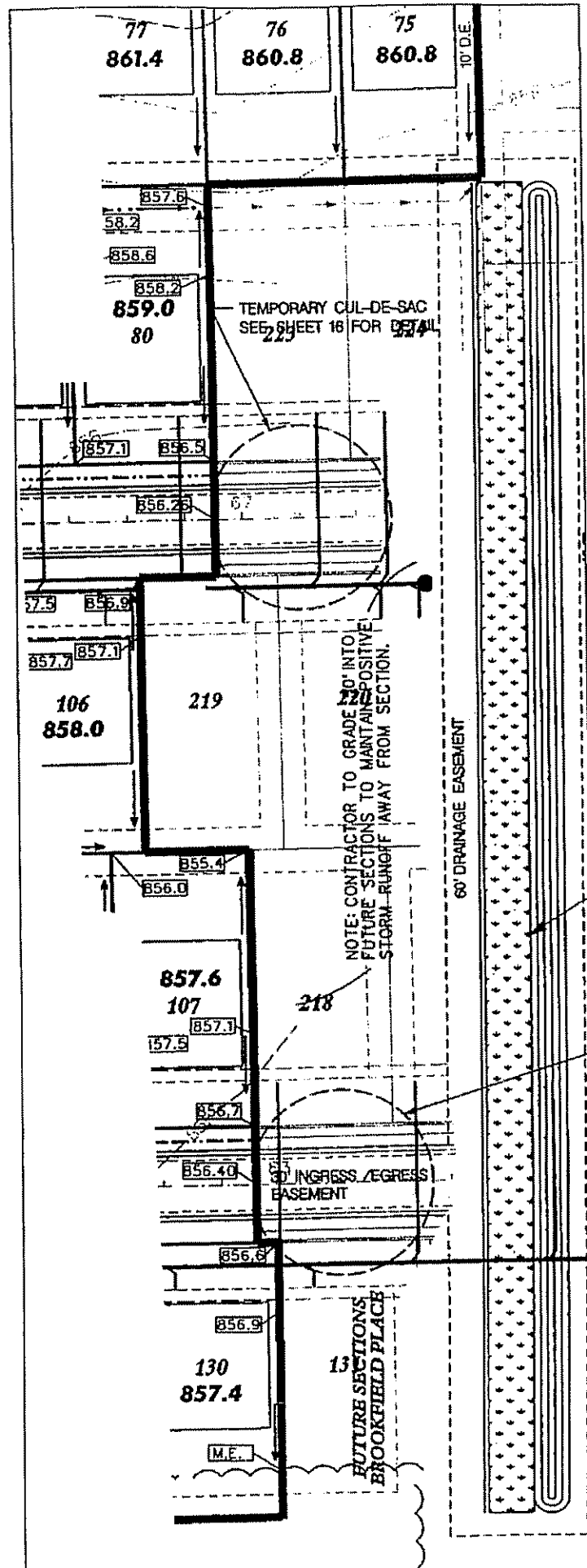
EMERGENCY SPILLWAY CROSS SECTION DETAIL

NO SCALE

AS PREPARED BY: [Illegible]



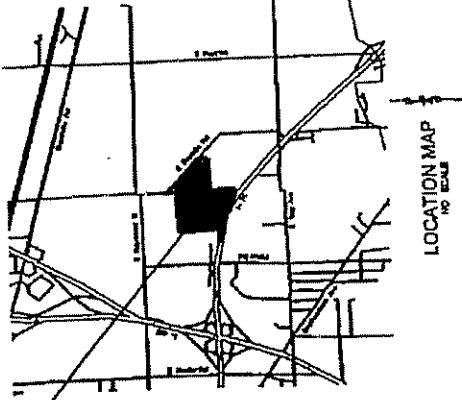




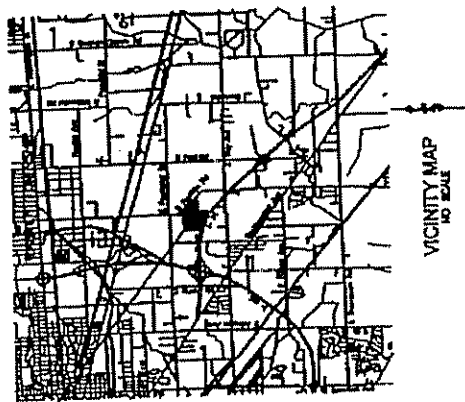
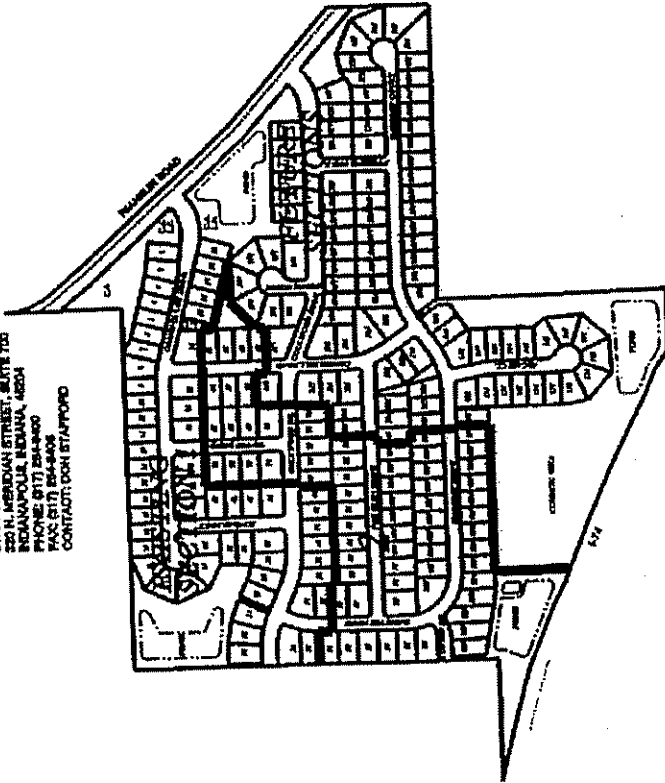
Construction Plans

BROOKFIELD PLACE SECTION TWO

PROJECT'S PLACE SECTION TWO PROJECT NO. 84-099



MANE PREPARED FOR:
STAFFORD DEVELOPMENT
250 N. JEFFERSON AVENUE, SUITE 110
INDIANAPOLIS, INDIANA 46204
PROJECT ADDRESS: 2435 SOUTH TRANSMISSION ROAD
CONTRACT: DON STAFFORD



OPERATING AUTHORITIES

INDIANAPOLIS PLANNING & ZONING DEPARTMENT
100 N. MARKET STREET, SUITE 100
INDIANAPOLIS, INDIANA 46202
(317) 327-2400

INDIANAPOLIS PLANNING & ZONING DEPARTMENT
100 N. MARKET STREET, SUITE 100
INDIANAPOLIS, INDIANA 46202
(317) 327-2400

SUBMITTAL PROCEDURES

FOR ALL PROJECTS, CONTACT THE PLANNING & ZONING DEPARTMENT AT (317) 327-2400.

MANE PREPARED BY:
BANNING ENGINEERING
200 N. MARKET STREET, SUITE 100
INDIANAPOLIS, INDIANA 46202
PROJECT ADDRESS: 2435 SOUTH TRANSMISSION ROAD
CONTRACT: LANCE G. FERRELL

CONSTRUCTION DOCUMENTS

PROJECT NO. 84-099
SECTION TWO
DATE: _____

CERTIFIED BY: _____ DATE: _____

PHIT INDEX

SHEET NO.	TITLE	DATE
1	PHIT INDEX	10/1/00
2	PHIT INDEX	10/1/00
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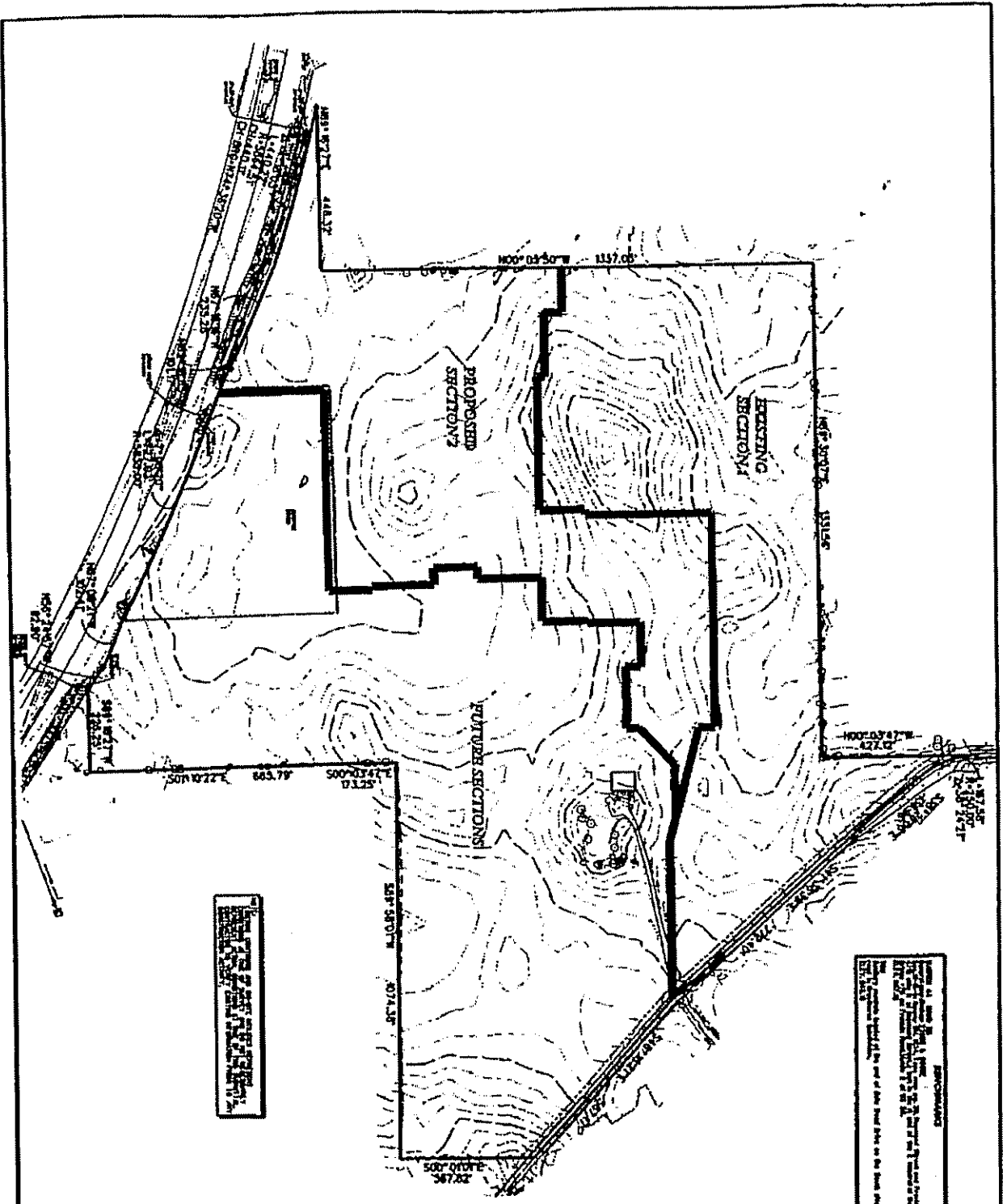
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ATTORNEY

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1-800-382-3344
CALL BEFORE YOU BUY



SECTION 1
SECTION 2
SECTION 3

DATE: 11/11/11
 DRAWN BY: J. BANNING
 CHECKED BY: J. BANNING
 PROJECT: EXISTING TOPOGRAPHY
 LOCATION: BROOKFIELD PLACE, SECTION TWO
 MARION COUNTY, INDIANAPOLIS, INDIANA
 SCALE: AS SHOWN
 SHEET NO. 2 OF 2

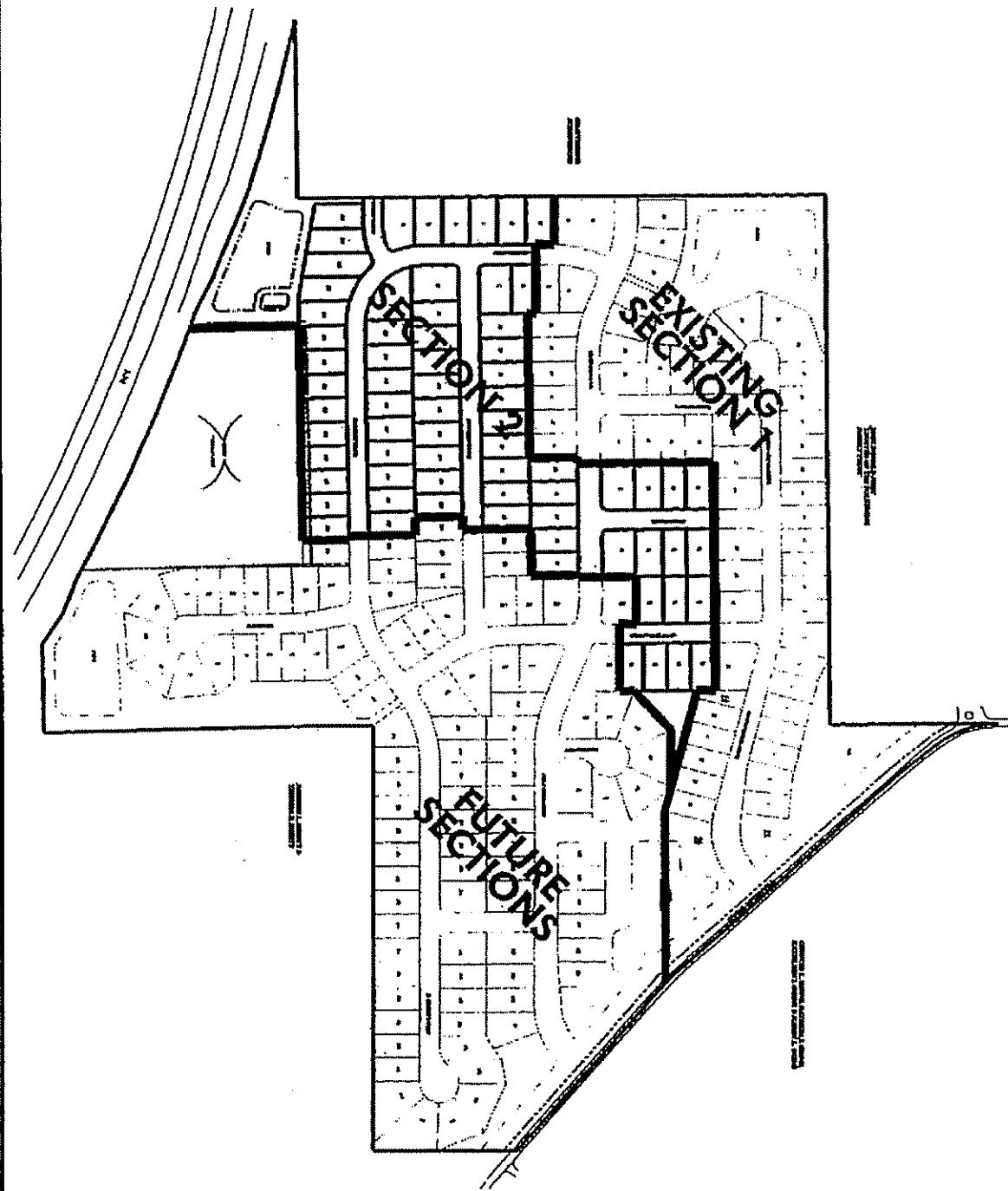
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 488 TOWER ROAD, SUITE #100
 PLAINFIELD, IN 46188
 BUS. (317) 839-3381, FAX (317) 839-3171
 E-MAIL: banneng@banning-eng.com

EXISTING TOPOGRAPHY
 BROOKFIELD PLACE, SECTION TWO
 MARION COUNTY
 INDIANAPOLIS, INDIANA

NO.	DATE	REVISION	BY

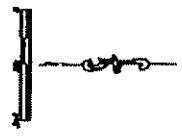
BROOKFIELD PLACE SUBDIVISION





 1-800-382-5544

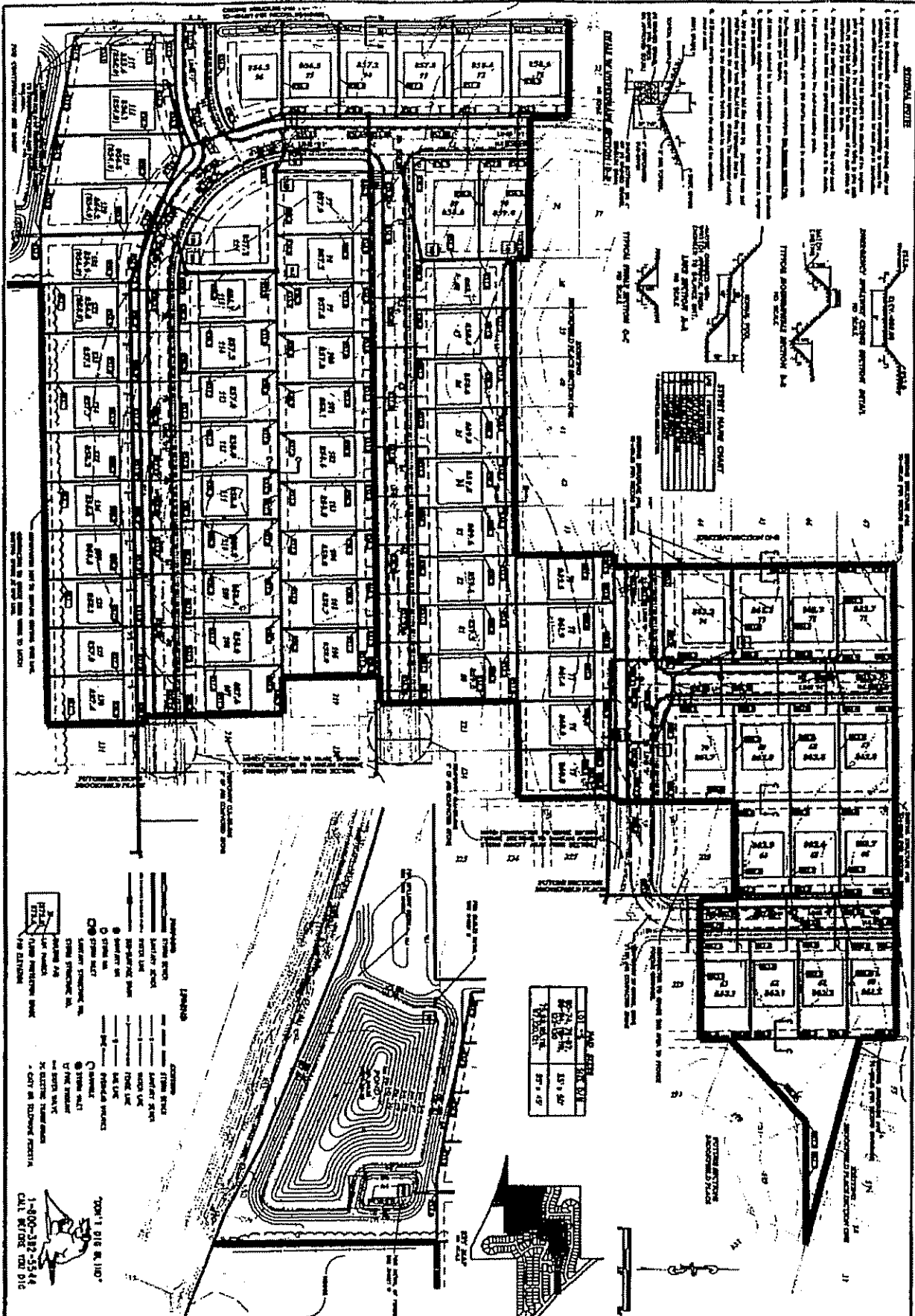
 CALL BEFORE YOU BLD



BANNING
 ENGINEERING
 688 TOWER ROAD, SUITE #100
 PLAZEFIELD, IN 46168
 P.O. BOX 1177 838-2381, FAX (317) 838-0177
 E-MAIL banning@banning-eng.com

OVERALL PLAN
 BROOKFIELD PLACE, SECTION TWO
 MARION COUNTY
 INDIANAPOLIS, INDIANA

Revised	By	Checked	Date



BANNING ENGINEERING
 638 TOWER ROAD, SUITE #700
 PLAINFIELD, IN 46164
 BUS. (317) 833-3381, FAX (317) 838-8171
 E-MAIL: banning@banning-eng.com

GRADING & DRAINAGE PLAN
 BROOKFIELD PLACE, SECTION TWO
 MARION COUNTY
 INDIANAPOLIS, INDIANA

NO.	REVISION	DATE

1540 RECORDS

SECTION 1, TOWNSHIP 15 N, RANGE 4 E, MARION COUNTY, INDIANA
PART OF THE SE 1/4, NE 1/4 SEC. 24-15N-R4E
PART OF THE W 1/2, NW 1/4 SEC. 19-15N-R4E
WARREN TOWNSHIP, MARION COUNTY, INDIANA
SHEET 1 OF 1

SECTION 1, TOWNSHIP 15 N, RANGE 4 E, MARION COUNTY, INDIANA
PART OF THE SE 1/4, NE 1/4 SEC. 24-15N-R4E
PART OF THE W 1/2, NW 1/4 SEC. 19-15N-R4E
WARREN TOWNSHIP, MARION COUNTY, INDIANA
SHEET 1 OF 1



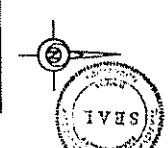
1) From a plat of the same property in the name of the State of Indiana
2) From a plat of the same property in the name of the State of Indiana
3) From a plat of the same property in the name of the State of Indiana
4) From a plat of the same property in the name of the State of Indiana
5) From a plat of the same property in the name of the State of Indiana

SECTION 1, TOWNSHIP 15 N, RANGE 4 E, MARION COUNTY, INDIANA
PART OF THE SE 1/4, NE 1/4 SEC. 24-15N-R4E
PART OF THE W 1/2, NW 1/4 SEC. 19-15N-R4E
WARREN TOWNSHIP, MARION COUNTY, INDIANA
SHEET 1 OF 1

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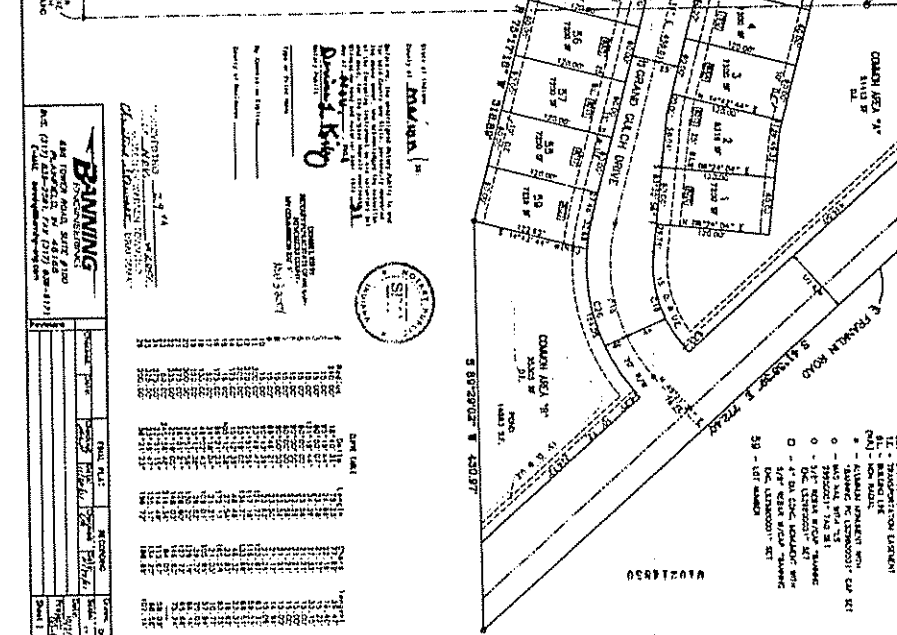
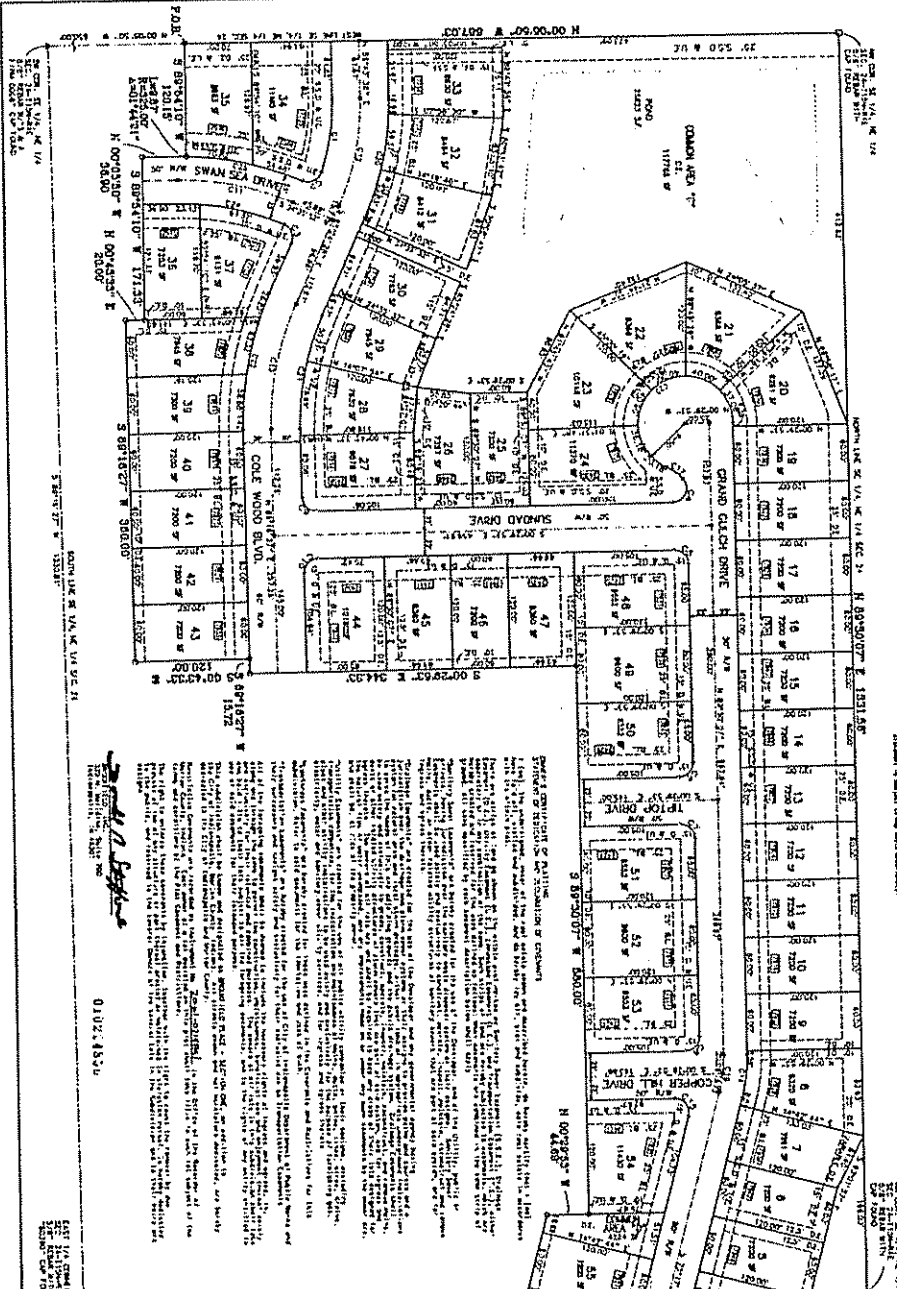
BROOKFIELD PLACE - SECTION ONE

PART OF THE SE 1/4, NE 1/4 SEC. 24-15N-R4E
PART OF THE W 1/2, NW 1/4 SEC. 19-15N-R4E
WARREN TOWNSHIP, MARION COUNTY, INDIANA
SHEET 1 OF 1



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- 1. - 15N-R4E
2. - 15N-R4E
3. - 15N-R4E
4. - 15N-R4E
5. - 15N-R4E



BANNING
441 NORTH STATE ST. #100
INDIANAPOLIS, IN 46204
TEL: 317-633-1111
FAX: 317-633-1112
WWW.BANNING.COM

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(2)

MARTHA A. WOMACKS
MARION COUNTY, INDIANA

410939 MAR-6 2002

CERTIFICATE OF CORRECTION

SUBJECT TO FINAL RECEIPT
FOR TRANSFER

THIS CERTIFICATE OF CORRECTION is executed this 27th day of February, 2002, by Brian L. Haggard, Registered Land Surveyor No. LS29800001, with Banning Engineering, P C , an Indiana corporation (herein referred to as "Surveyor"), and Brookfield Development, Inc.

WITNESSES:

WHEREAS, Surveyor is the surveyor for Brookfield Development, Inc. and Brookfield Development, Inc. was the declarant referred to on the Plat of Brookfield Place, Section One, final plat recorded November 30, 2001, as Instrument No. 2001-0214850, in the Office of the Recorder of Marion County, Indiana (the "Plat");

WHEREAS, the Surveyor has reported that the Plat contains a scrivener's error along the south lines of Lots 27 and 28 and the common line between said Lots, which also affected the square footage for Lot 27. The error occurred as a result of a computational error with the right of way curve labeled C21.

NOW, THEREFORE, the Plat is hereby revised and corrected as shown on the attached Exhibit "A".

IN WITNESS WHEREOF, this Certificate of Correction has been executed on the day, month, and year first above written

Brian L. Haggard
Brian L. Haggard

Registered Land Surveyor No. LS29800001
Banning Engineering, P.C.



STATE OF INDIANA)

) SS:

COUNTY OF HENDRICKS)

Before me, a Notary Public in and for said County and State personally appeared Brian L. Haggard, Registered Land Surveyor No. LS29800001, who acknowledged the execution of the foregoing Certificate of Correction and who, having been duly sworn upon his oath, stated that the representations contained herein are true.

WITNESS my hand and Notarial Seal this 27th day of February, 2002.

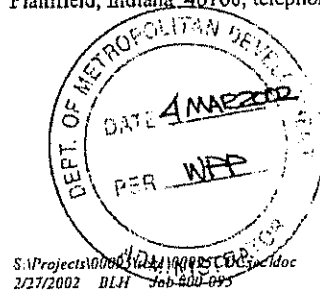


Amy M. Elsenbroek
Signature

Amy M. Elsenbroek
Printed Name of Notary Public

My commission expires 11/15/06
Resident of Hendricks County

This instrument was prepared by Brian L. Haggard, Banning Engineering, P C , 698 Tower Road, Suite 100, Plainfield, Indiana 46168, telephone (317) 839-2581

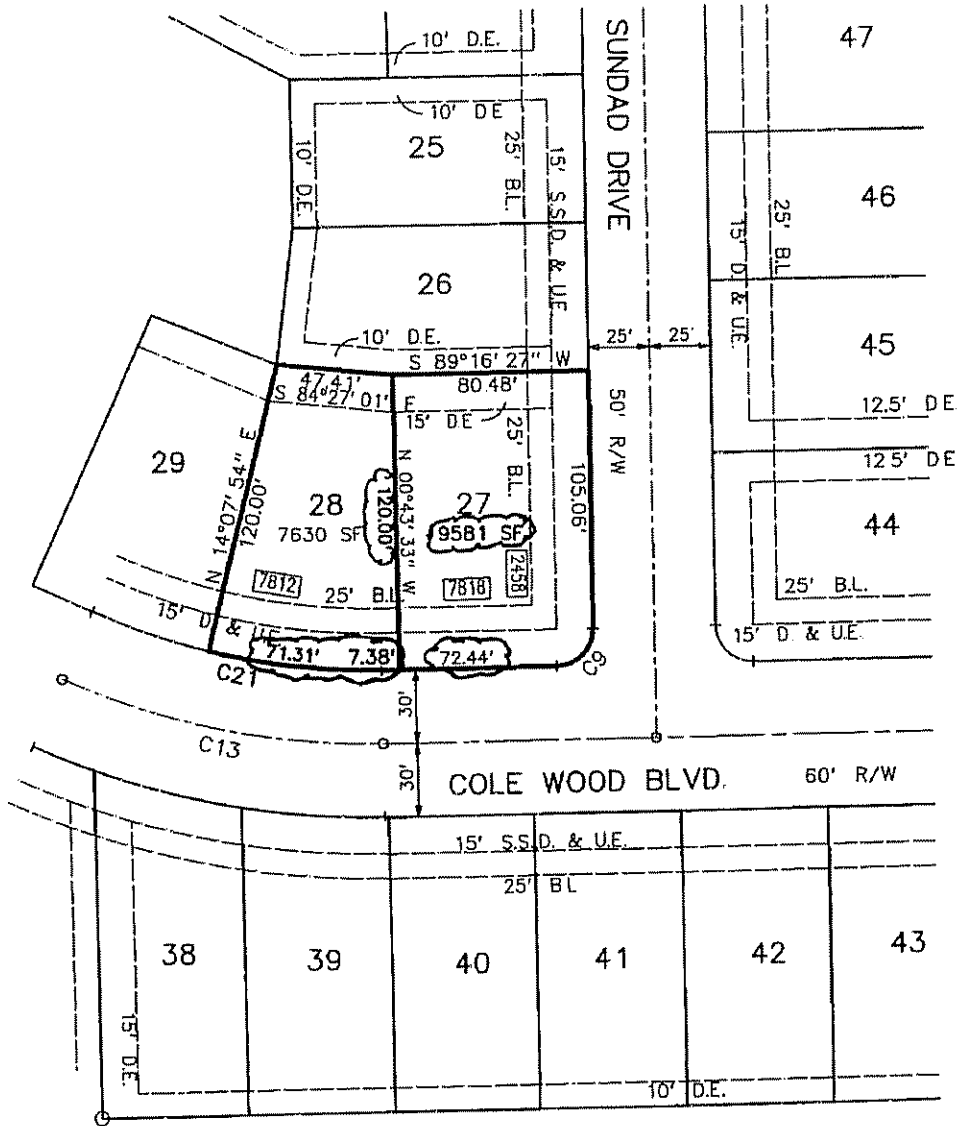


SA Projects 0000...
2/27/2002 DLH Job 200-095

03/06/02 03:38PM WANDA MARTIN MARION CTY RECORDER JWV 12.00 PAGE: 2
Inst # 2002-0044559

APPROVED THIS 28th
DAY OF FEB 2002
CHRISTIAN STEWART
RECORDING CLERK

EXHIBIT "A"



CURVE TABLE

21	275.00'	25°19'05"	121.52'	120.53'	61.77'
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BROOKFIELD PLACE - SECTION TWO
 PART OF THE SE 1/4 NE 1/4 SEC24-T15N-R4E &
 PART OF THE W 1/2 NW 1/4 SEC19-T15N-R5E
 WARREN TOWNSHIP, MARION COUNTY, INDIANA
 SHEET 1 OF 1

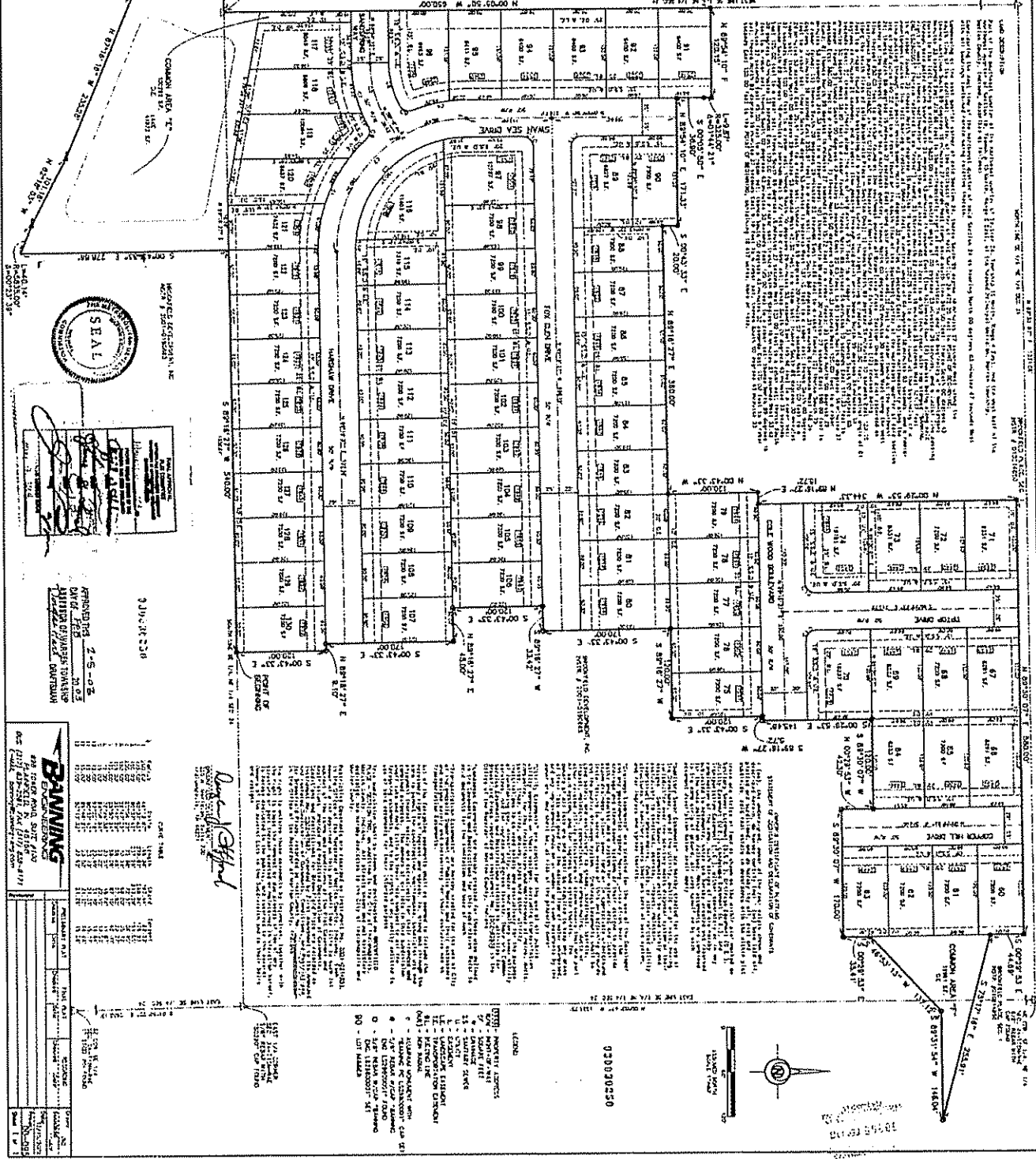
03090250



THESE PLANS AND SPECIFICATIONS SHALL BE KEPT ON FILE IN THE OFFICE OF THE ENGINEER FOR A PERIOD OF FIVE (5) YEARS FROM THE DATE OF THE ISSUANCE OF THESE PLANS. THE ENGINEER SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED TO HIM BY THE CLIENT AND FOR THE CORRECTNESS OF THE PLANS AND SPECIFICATIONS. THE ENGINEER SHALL NOT BE RESPONSIBLE FOR THE CONSTRUCTION OF THE PROJECT OR FOR THE SAFETY OF THE PROJECT. THE ENGINEER SHALL NOT BE RESPONSIBLE FOR THE DESIGN OF THE PROJECT OR FOR THE SAFETY OF THE PROJECT. THE ENGINEER SHALL NOT BE RESPONSIBLE FOR THE DESIGN OF THE PROJECT OR FOR THE SAFETY OF THE PROJECT.

1. THE ENGINEER HAS REVIEWED THE RECORD PLANS AND SPECIFICATIONS FOR THE PROJECT AND HAS FOUND THEM TO BE IN ACCORDANCE WITH THE REQUIREMENTS OF THE INDIANA ENGINEERING ACT AND THE INDIANA ENGINEERING BOARD. THE ENGINEER HAS REVIEWED THE RECORD PLANS AND SPECIFICATIONS FOR THE PROJECT AND HAS FOUND THEM TO BE IN ACCORDANCE WITH THE REQUIREMENTS OF THE INDIANA ENGINEERING ACT AND THE INDIANA ENGINEERING BOARD. THE ENGINEER HAS REVIEWED THE RECORD PLANS AND SPECIFICATIONS FOR THE PROJECT AND HAS FOUND THEM TO BE IN ACCORDANCE WITH THE REQUIREMENTS OF THE INDIANA ENGINEERING ACT AND THE INDIANA ENGINEERING BOARD.

DATE OF ISSUE: 11/15/2010
 DRAWN BY: [Signature]
 CHECKED BY: [Signature]
 LANCE L. STEWART
 ENGINEER
 1000 W. 12th St., Suite 100
 Marion, IN 46953
 Phone: 317-252-1111
 Fax: 317-252-1112
 Email: l.stewart@lls-engineering.com



REVISIONS:
 1. 11/15/2010
 2. 11/15/2010
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BRAWING
 ENGINEERING
 800 SOUTH AVENUE, SUITE 100
 MARION, INDIANA 46953
 PHONE: 317-252-1111
 FAX: 317-252-1112
 EMAIL: brawing@brawing.com

NO.	DATE	DESCRIPTION
1	11/15/2010	ISSUED FOR PERMIT
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100	11/15/2010	REVISIONS

2

MARTHA A. WOMACKS
MARION COUNTY AUDITOR

463066 MAR 17 8

DATE FOR TAXATION
SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER

APR 17 2003
OFFICE OF
METROPOLITAN DEVELOPMENT
LAND DESIGN
COMMISSION

DATE: 3/10/03

Donna Rice
SUBDIVISION ADMINISTRATOR

CERTIFICATE OF CORRECTION

THIS CERTIFICATE OF CORRECTION is executed this 10th day of March, 2003, by Brian L. Haggard, Registered Land Surveyor No. LS29800001, with Banning Engineering, P.C., an Indiana corporation (herein referred to as "Surveyor"), and Brookfield Development, Inc.

WITNESSES:

WHEREAS, Surveyor is the surveyor for Brookfield Development, Inc. and Brookfield Development, Inc. was the declarant referred to on the Plat of Brookfield Place, Section Two, final plat recorded February 10, 2003, as Instrument No. 2003-0030250, in the Office of the Recorder of Marion County, Indiana (the "Plat");

WHEREAS, the Surveyor has reported that the Plat contains a street named "Sandspring Way" near the southwest corner where it abuts another subdivision to the west. The name of this street needs to be changed to "Thorney Wood Drive" to match the street in the adjacent subdivision, which was recorded prior to the Plat.

NOW, THEREFORE, the Plat is hereby revised and corrected as shown on the attached Exhibit "A".

IN WITNESS WHEREOF, this Certificate of Correction has been executed on the day, month, and year first above written.

Brian L. Haggard
 Brian L. Haggard
 Registered Land Surveyor No. LS29800001
 Banning Engineering, P.C.

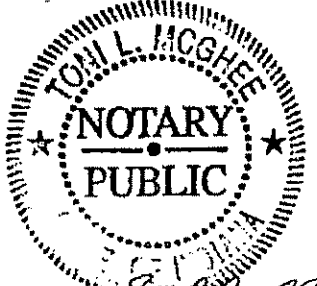


APPROVED THIS 11th DAY OF MARCH 2003
 ASSESSOR OF WARREN TOWNSHIP
Christine Stewart-Draftsman

STATE OF INDIANA }
) SS:
 COUNTY OF HENDRICKS }

Before me, a Notary Public in and for said County and State personally appeared Brian L. Haggard, Registered Land Surveyor No. LS29800001, who acknowledged the execution of the foregoing Certificate of Correction and who, having been duly sworn upon his oath, stated that the representations contained herein are true.

WITNESS my hand and Notarial Seal this 10 day of March, 2003.



Toni L. McGhee
 Signature

Toni L. McGhee
 Printed Name of Notary Public

My commission expires: 8-22-08
 Resident of Hendricks County

INST # 2003-0055081
 03/17/03 10:29AM WANDA MARTIN MARION CTY RECORDER CSM 14:00 PAGE: 2

* This instrument was prepared by Brian L. Haggard, Banning Engineering, P.C., 698 Tower Road, Suite 100, Plainfield, Indiana 46168, telephone (317) 839-2581.

EXHIBIT "A"

...oved by the Department of
 or this plan issued by said
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 duly recorded, shall run
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 id right-of-way, when

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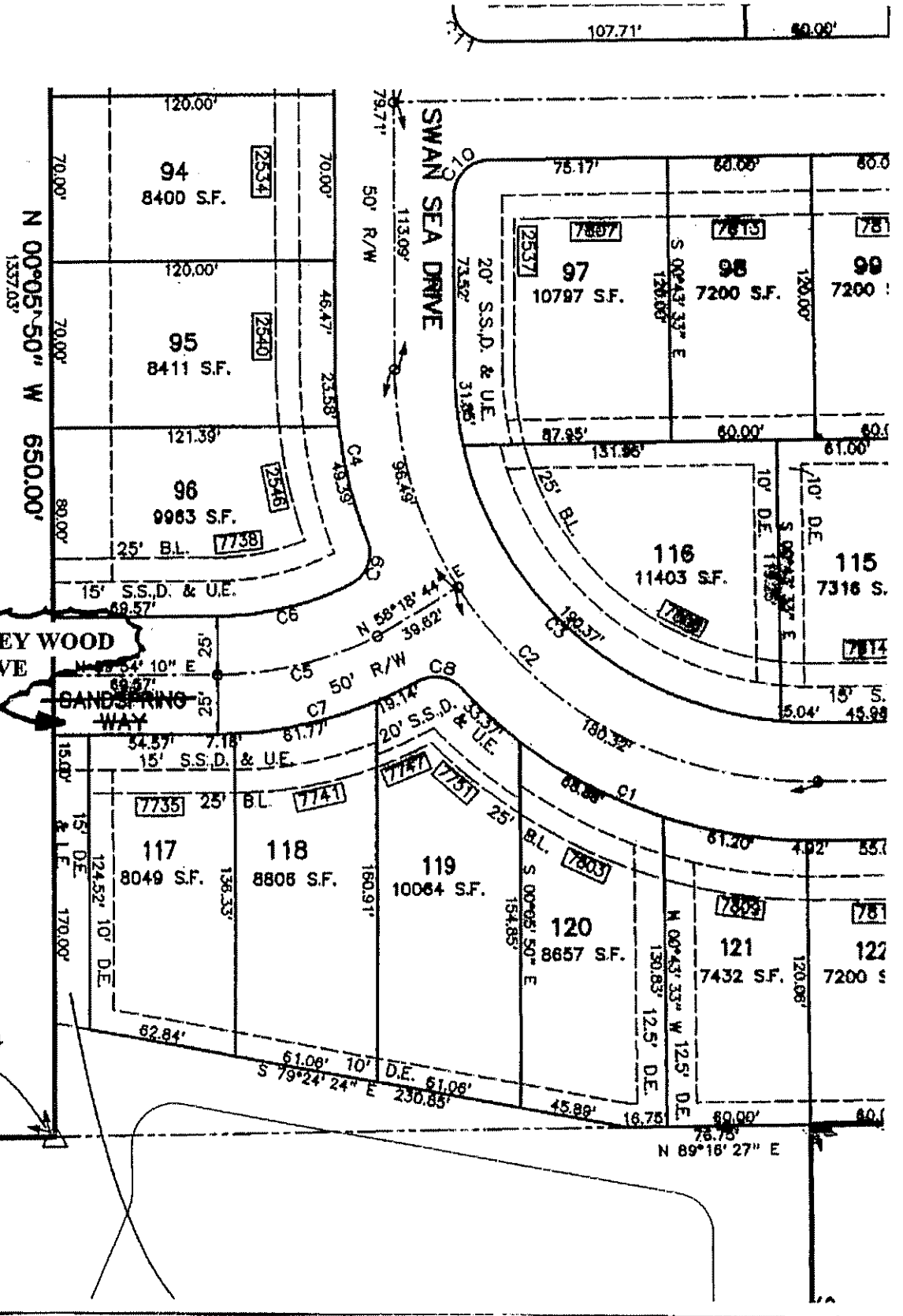
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gram.
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IS HOMES, LLC.
 R. # 1998-159504

SW COR. SE 1/4, NE 1/4
 SEC. 24-T15N-R4E
 5/8" REBAR W/"S & A
 FIRM 0008" CAP FOUND

SEC. 24



2006-0080936

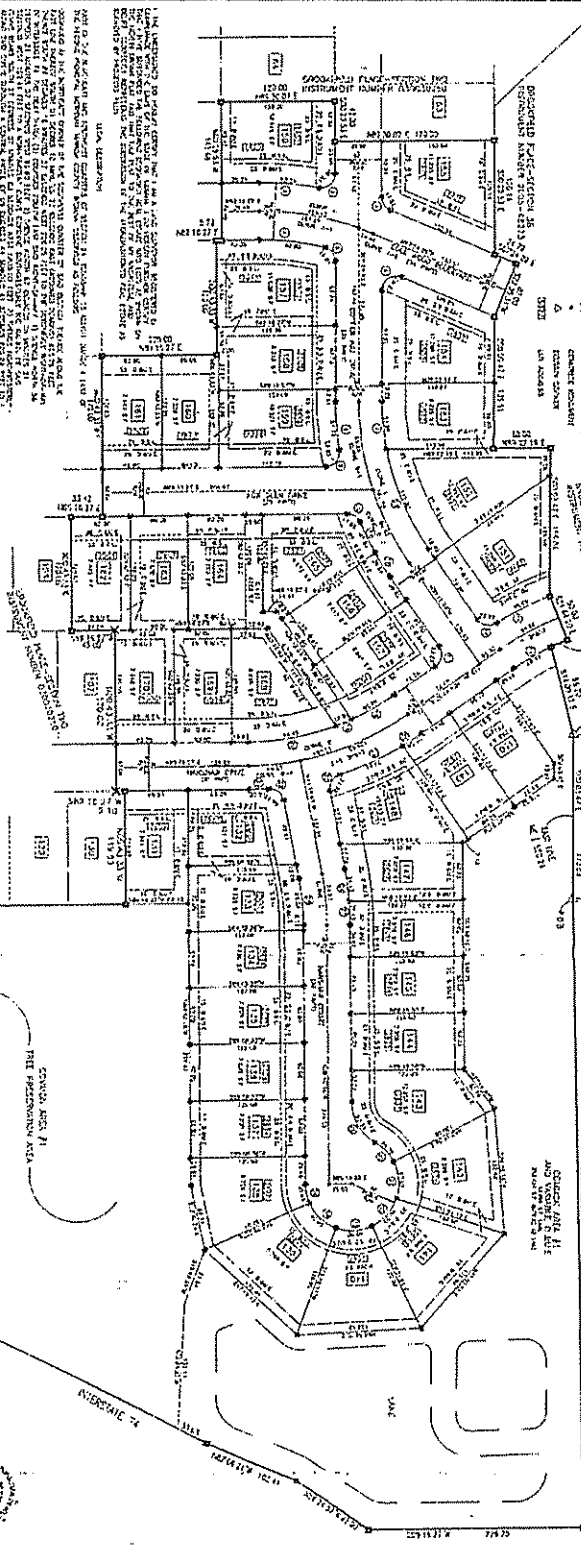


FINAL PLAT
BROOKFIELD PLACE - SECTION 3A
WARREN TOWNSHIP, MARION COUNTY, INDIANA
ZONING: D-3 (CLUSTER)

JEANNE P. DUBIN
314,369 1-1-12
314,369 1-1-12

LEGEND

(1)	LOT NUMBER
(2)	1/4 AC. ZONING
(3)	1/2 AC. ZONING
(4)	3/4 AC. ZONING
(5)	1 AC. ZONING
(6)	2 AC. ZONING
(7)	3 AC. ZONING
(8)	4 AC. ZONING
(9)	5 AC. ZONING
(10)	6 AC. ZONING
(11)	7 AC. ZONING
(12)	8 AC. ZONING
(13)	9 AC. ZONING
(14)	10 AC. ZONING
(15)	11 AC. ZONING
(16)	12 AC. ZONING
(17)	13 AC. ZONING
(18)	14 AC. ZONING
(19)	15 AC. ZONING
(20)	16 AC. ZONING



THE UNDERSIGNED, JOHN L. HARTZEL, COUNTY CLERK, MARION COUNTY, INDIANA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE ORIGINAL AS FILED IN MY OFFICE THIS 11TH DAY OF FEBRUARY, 2006.

JOHN L. HARTZEL
COUNTY CLERK
MARION COUNTY, INDIANA

RECORDED IN MARION COUNTY, INDIANA
BOOK OF RECORDS PAGE 2000069
FEBRUARY 11, 2006

THE PLAT HEREIN IS NOT VALID UNLESS IT IS ACCOMPANIED BY THE FOLLOWING:
1. A COPY OF THE ZONING ORDINANCE OF MARION COUNTY, INDIANA, AS AMENDED TO DATE OF THIS PLAT.
2. A COPY OF THE ZONING MAP OF MARION COUNTY, INDIANA, AS AMENDED TO DATE OF THIS PLAT.
3. A COPY OF THE ZONING BOARD RESOLUTION NUMBER [] WHICH AUTHORIZES THIS PLAT.

LOT #	AREA
1	0.12
2	0.12
3	0.12
4	0.12
5	0.12
6	0.12
7	0.12
8	0.12
9	0.12
10	0.12
11	0.12
12	0.12
13	0.12
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15	0.12
16	0.12
17	0.12
18	0.12
19	0.12
20	0.12

APPROVED: 31, 2006
DIRECTOR OF WARREN TOWNSHIP
WARREN TOWNSHIP, INDIANA

314,369 1-1-12
314,369 1-1-12

307,187

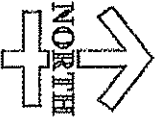
NOTICE
This plat is for the purpose of subdividing land into lots, as shown on the attached map, and for the purpose of establishing the boundaries of the lots shown on the map. The plat is subject to the zoning ordinance of Marion County, Indiana, and to the zoning map of Marion County, Indiana, as amended to date of this plat. The zoning board resolution number [] which authorizes this plat is attached hereto. The plat is subject to the zoning ordinance of Marion County, Indiana, and to the zoning map of Marion County, Indiana, as amended to date of this plat. The zoning board resolution number [] which authorizes this plat is attached hereto.

[Signatures and Seals]

WARREN TOWNSHIP, INDIANA

2005-48273

BROOKFIELD PLACE - SECTION 3B WARREN TOWNSHIP, MARION COUNTY, INDIANA ZONING: D-3 CLUSTER

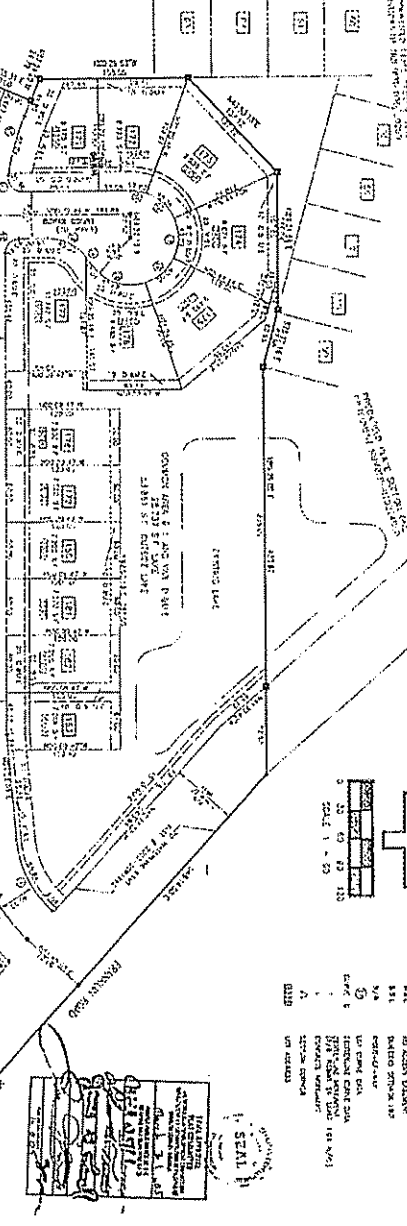


LEGEND

121	Water
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141	Water
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148	Water
149	Water
150	Water

Table 1: Lot Data

Lot No.	Area (sq. ft.)	Area (sq. yds.)
1	10,000	0.23
2	10,000	0.23
3	10,000	0.23
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97	10,000	0.23
98	10,000	0.23
99	10,000	0.23
100	10,000	0.23



PLAT DESCRIPTION: This plat shows the subdivision of the land described in the following: Section 3B, Warren Township, Marion County, Indiana, containing 40.00 acres, more or less, as shown on the plat of the same, recorded in the Public Records of Marion County, Indiana, in Volume 100, Page 100. The land is being subdivided into 100 lots, more or less, as shown on this plat. The lots are numbered 1 through 100. The area shown on this plat is the same as the area shown on the plat of the same, recorded in the Public Records of Marion County, Indiana, in Volume 100, Page 100. The area shown on this plat is the same as the area shown on the plat of the same, recorded in the Public Records of Marion County, Indiana, in Volume 100, Page 100.

PROPOSED LOTS - LISTED: 1. 10,000 sq. ft. 2. 10,000 sq. ft. 3. 10,000 sq. ft. 4. 10,000 sq. ft. 5. 10,000 sq. ft. 6. 10,000 sq. ft. 7. 10,000 sq. ft. 8. 10,000 sq. ft. 9. 10,000 sq. ft. 10. 10,000 sq. ft. 11. 10,000 sq. ft. 12. 10,000 sq. ft. 13. 10,000 sq. ft. 14. 10,000 sq. ft. 15. 10,000 sq. ft. 16. 10,000 sq. ft. 17. 10,000 sq. ft. 18. 10,000 sq. ft. 19. 10,000 sq. ft. 20. 10,000 sq. ft. 21. 10,000 sq. ft. 22. 10,000 sq. ft. 23. 10,000 sq. ft. 24. 10,000 sq. ft. 25. 10,000 sq. ft. 26. 10,000 sq. ft. 27. 10,000 sq. ft. 28. 10,000 sq. ft. 29. 10,000 sq. ft. 30. 10,000 sq. ft. 31. 10,000 sq. ft. 32. 10,000 sq. ft. 33. 10,000 sq. ft. 34. 10,000 sq. ft. 35. 10,000 sq. ft. 36. 10,000 sq. ft. 37. 10,000 sq. ft. 38. 10,000 sq. ft. 39. 10,000 sq. ft. 40. 10,000 sq. ft. 41. 10,000 sq. ft. 42. 10,000 sq. ft. 43. 10,000 sq. ft. 44. 10,000 sq. ft. 45. 10,000 sq. ft. 46. 10,000 sq. ft. 47. 10,000 sq. ft. 48. 10,000 sq. ft. 49. 10,000 sq. ft. 50. 10,000 sq. ft. 51. 10,000 sq. ft. 52. 10,000 sq. ft. 53. 10,000 sq. ft. 54. 10,000 sq. ft. 55. 10,000 sq. ft. 56. 10,000 sq. ft. 57. 10,000 sq. ft. 58. 10,000 sq. ft. 59. 10,000 sq. ft. 60. 10,000 sq. ft. 61. 10,000 sq. ft. 62. 10,000 sq. ft. 63. 10,000 sq. ft. 64. 10,000 sq. ft. 65. 10,000 sq. ft. 66. 10,000 sq. ft. 67. 10,000 sq. ft. 68. 10,000 sq. ft. 69. 10,000 sq. ft. 70. 10,000 sq. ft. 71. 10,000 sq. ft. 72. 10,000 sq. ft. 73. 10,000 sq. ft. 74. 10,000 sq. ft. 75. 10,000 sq. ft. 76. 10,000 sq. ft. 77. 10,000 sq. ft. 78. 10,000 sq. ft. 79. 10,000 sq. ft. 80. 10,000 sq. ft. 81. 10,000 sq. ft. 82. 10,000 sq. ft. 83. 10,000 sq. ft. 84. 10,000 sq. ft. 85. 10,000 sq. ft. 86. 10,000 sq. ft. 87. 10,000 sq. ft. 88. 10,000 sq. ft. 89. 10,000 sq. ft. 90. 10,000 sq. ft. 91. 10,000 sq. ft. 92. 10,000 sq. ft. 93. 10,000 sq. ft. 94. 10,000 sq. ft. 95. 10,000 sq. ft. 96. 10,000 sq. ft. 97. 10,000 sq. ft. 98. 10,000 sq. ft. 99. 10,000 sq. ft. 100. 10,000 sq. ft.

Approved

APPROVED: [Signature] **PLAT:** [Signature]
WARREN TOWNSHIP: [Signature]
MARION COUNTY: [Signature]
DATE: [Date]

RECORDER: [Signature]
DATE: [Date]
WARREN TOWNSHIP: [Signature]
MARION COUNTY: [Signature]

WARREN TOWNSHIP
 2000069
MARION COUNTY
 2005-48273
PLAT: [Signature]
DATE: [Date]

LEGAL DESCRIPTION: This plat shows the subdivision of the land described in the following: Section 3B, Warren Township, Marion County, Indiana, containing 40.00 acres, more or less, as shown on the plat of the same, recorded in the Public Records of Marion County, Indiana, in Volume 100, Page 100. The land is being subdivided into 100 lots, more or less, as shown on this plat. The lots are numbered 1 through 100. The area shown on this plat is the same as the area shown on the plat of the same, recorded in the Public Records of Marion County, Indiana, in Volume 100, Page 100.

MONUMENTATION AFFIDAVIT

BROOKFIELD PLACE - SECTION 3B

(19) *ML*

THE FOLLOWING IS A LIST OF MONUMENTATION FOUND OR SET FOR BROOKFIELD PLACE-SECTION 3B. THE PLAT OF WHICH IS RECORDED AS INSTRUMENT NUMBER 2005-48273 IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA, AND TO THE BEST OF MY KNOWLEDGE AND BELIEF THE INFORMATION CONTAINED IN THE AFFIDAVIT IS TRUE AND CORRECT.

MONUMENTATION OF LOT CORNERS FOR BROOKFIELD PLACE-SECTION 3B BEGAN JANUARY 1, 2006 AND WAS COMPLETED FEBRUARY 9, 2006. UNLESS OTHERWISE NOTED A 5/8" BY 24" REBAR WITH A YELLOW CAP STAMPED "PROJECTS PLUS 0029" WAS PLACED AT ALL LOT CORNERS.

- A 5/8" BY 24" REBAR WITH A YELLOW CAP STAMPED "PROJECTS PLUS 0029" IN SET CONCRETE WAS SET AT THE FOLLOWING CORNERS: SOUTHWEST LOT 220, ALL WESTERLY CORNERS OF LOTS 229 AND THE ANGLE POINT OF LOT 229, SOUTHWEST CORNER LOT 197, SOUTHEAST, SOUTHWEST AND NORTHWEST CORNERS LOT 196, ANGLE POINT ALONG SOUTH LINE OF LOT 171, SOUTHWEST CORNER LOT 171, ANGLE POINT ALONG WEST LINE LOT 172, NORTHWEST CORNER LOT 172, SOUTHWEST CORNER LOT 173, NORTHEAST CORNER LOT 173, NORTHWEST CORNER LOT 174.

- THE NORTHWEST CORNER OF LOT 183 WAS NOT SET BECAUSE IT FELL ON A STORM END SECTION.

Inst # 2006-0024895
 02/23/06 01:40PM MANDA MARTIN MARION CTY RECORDER LHM 13.00 PAGES: 2

Jeffrey D. Knarr

 JEFFREY D. KNARR
 PROFESSIONAL LAND SURVEYOR
 #20100069
 STATE OF INDIANA



SUBSCRIBED AND SWORN TO
 BEFORE THIS
 13th DAY OF FEBRUARY, 2006

RESIDING COUNTY: HANCOCK
 MY COMMISSION EXPIRES:
 7/20/2009

Myla S. Scott

 NOTARY PUBLIC
 MYLA S. SCOTT



MARTHA A. WOODRICKS
 MARION COUNTY RECORDER
 20272 FEB 29 2006
 ONLY SIGNED BY THE RECORDER
 SUBJECT TO FINANCIAL PLAN
 FOR TRANSFER

PROJECTS plus
 GREENWOOD SURVEYING COMPANY

CIVIL ENGINEERING - LAND SURVEYING
 LAND PLANNING - CONSTRUCTION MANAGEMENT
 2555 Fairview Plaza Suite A - Greenwood, Indiana 46142
 (317)-882-5003

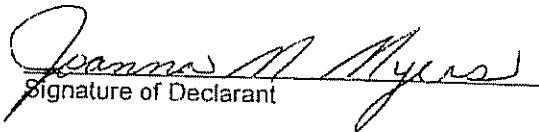
Declaration

This form is to be signed by the preparer of a document and recorded with each document in accordance with IC 36-2-7.5-5(a).

I, the undersigned preparer of the attached document, in accordance with IC 36-2-7.5, do hereby affirm under the penalties of perjury:

1. I have reviewed the attached document for the purpose of identifying and, to the extent permitted by law, redacting all Social Security numbers;
2. I have redacted, to the extent permitted by law, each Social Security number in the attached document.

I, the undersigned, affirm under the penalties of perjury, that the foregoing declarations are true.


Signature of Declarant

Joanna M. Myers
Printed Name of Declarant