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07/26/01  
Primary Area  
Parcel No. 3

**SUPPLEMENTAL DECLARATION OF  
COVENANTS AND RESTRICTIONS  
THE VILLAGE OF WESTCLAY**

200100050869  
Filed for Record in  
HAMILTON COUNTY, INDIANA  
MARY L. CLARK  
08-14-2001 09:45 am.  
DEC GOV RES 27.00

This Supplemental Declaration, dated as of the 3rd day of August,  
2001, by BRENWICK TND COMMUNITIES, LLC, an Indiana limited company,

**WITNESSES THAT:**

WHEREAS, the following facts are true:

- A. Declarant owns or has the right to acquire the real estate located in Hamilton County, Indiana, more particularly described in Exhibit A attached hereto and incorporated herein by this reference.
- B. This Declaration is a Supplemental Declaration as that term is defined in the Declaration of Covenants and Restrictions.
- C. Declarant intends to subdivide the Parcel into Lots upon each of which a Living Unit may be constructed.

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

1. Definitions. Words, phrases and terms that are defined in the Declaration of Covenants and Restrictions have the same meaning in this Supplemental Declaration except as herein otherwise provided. The following words, phrases and terms, as used in this Supplemental Declaration, unless the context clearly requires otherwise, mean the following:

"Accessory Dwelling" means a Living Unit which is attached to or located on the same Lot as a Principal Dwelling, has an independent means of access and is owned by the Owner of the Principal Dwelling but occupied by another.

"Board of Directors" means the Board of Directors of the Corporation.

"Declaration of Covenants and Restrictions" means the Declaration of Covenants and Restrictions of The Village of WestClay dated as of August 9, 1999 and recorded in the Office of the Recorder of Hamilton County, Indiana as Instrument Number 9946964, as amended from time to time.

"Designated Lot" means a Lot which is subject to a Supplemental Declaration which authorizes the use of such Lot for a use permitted by Section 5.1 of the Zoning Ordinance other than a use specified in Section 5.1A(1), (2), or (4).

"Home-Based Office" means an office incorporated in or attached to, or located on the same Lot as a single-family detached Living Unit from which a business activity is conducted on a substantially regular basis.

"Home-Based Office Area" means that part of the Parcel which is within the area denoted on the General Plan of Development as an area where Home-Based Offices may be located.

"Lot" means a numerically designated subdivided parcel of land depicted on a Plat.

"Owner" means any Person, including Declarant, who at any time owns the fee simple title to a Lot.

"Parcel" means that part of the real estate described in Exhibit A which is at any time subject to the covenants, restrictions, easements, charges and liens imposed by the Declaration of Covenants and Restrictions.

"Plat" means the secondary plat of a Section within the Parcel.

"Principal Dwelling" means a Living Unit (other than a Living Unit which is located in a Multi-family Structure or Multiuse Structure or is a Condominium) designed as the principal structure on the Lot.

"Section" means that part of the Parcel which is depicted on a Plat.

"Tract" means the real estate, including all or any part of the Parcel, that is subject to the covenants, restrictions, easements, charges and liens imposed by the Declaration of Covenants and Restrictions.

2. Declaration. Declarant hereby declares that, in addition to the covenants, restrictions, easements, charges and liens imposed by the Declaration of Covenants and Restrictions, the Parcel shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

3. Land Use. Except for Designated Lots which may be used for any use authorized by a Supplemental Declaration encumbering such Designated Lots, Lots may be used only for residential purposes as provided in Section 5.1A(1), (2) and (4) of the Zoning Ordinance and for Home-Based Offices accessory to residential use of Lots as provided in Paragraph 6 of this Supplemental Declaration. Not more than one (1) Principal Dwelling and not more than one (1) Accessory Dwelling may be located on a Lot which is not a Designated Lot, and no Accessory Dwelling may be located on a Lot unless a Principal Dwelling is also located thereon. No Accessory Dwelling may be erected in front of the Principal Dwelling or in the required front yard of a corner Lot unless the Accessory Dwelling is attached to the Principal Dwelling by a common wall. No home occupation shall be conducted or maintained on a Lot which is not a Designated Lot other than a home occupation which does not constitute a "special use" and is incidental to a business, profession or occupation of the Owner or Occupant of such Lot and which is generally or regularly conducted at another location which is away from such Lot. No signs of any nature, kind or description shall be erected, placed, or permitted to remain on any Lot advertising a permitted home occupation.

4. Construction of Living Units.

(a) Lot Development Plans. Except to the extent such requirement is waived by Declarant, prior to commencement of any Building Activity on a Lot, a Lot Development Plan shall be submitted to the Architectural Review Board in accordance with the requirements of Paragraph 20 of the Declaration of Covenants and Restrictions. The Architectural Review Board may require as a part of a Lot Development Plan a report of subsurface soils investigation of the Lot made by a qualified soils engineer, which report shall include recommendations for the foundations of the proposed improvements. Each Owner shall comply with the terms and provisions of Paragraph 20 of the Declaration of Covenants and Restrictions and the requirements of the Architectural Review Board established pursuant to the authority granted by the Declaration of Covenants and Restrictions.

(b) Size of Living Unit. No Principal Dwelling may be constructed on any Lot unless such Principal Dwelling, exclusive of open porches, attached garages and basements, shall have a gross floor area equal to or greater than the square footage specified in the Building Guidelines applicable to the Lot as of the date construction of the Principal Dwelling on the Lot commences. No Accessory Dwelling may contain more than eight hundred fifty (850) square feet of floor area unless otherwise permitted by the Building Guidelines.

(c) Building Guidelines. Each Owner shall at all times comply with the requirements of the Building Guidelines applicable to such Owner's Lot.

(d) Building Activity. All Building Activity shall be undertaken and completed strictly in accordance with the Building Guidelines and the Lot Development Plan approved by the Architectural Review Board. Unless a delay is caused by strikes, war, court injunction or acts of God, or is authorized in writing by Declarant, the Owner of any Lot which on the

date of purchase from Declarant is not improved with a Principal Dwelling shall commence construction of a Principal Dwelling upon the Lot within six (6) months from the date the Owner acquired title thereto and shall complete construction of such Principal Dwelling within one (1) year after the date of commencement of the building process, but in no event later than eighteen (18) months after the date the Owner acquired title to the Lot unless such Lot is adjacent to a Lot upon which the Owner has constructed a Principal Dwelling in which such Owner permanently resides. If the Owner fails to commence or complete construction of a Principal Dwelling within the time periods specified herein, or if the Owner should, without Declarant's written approval, sell, contract to sell, convey, or otherwise dispose of, or attempt to sell, convey or otherwise dispose of, the Lot before completion of construction of Principal Dwelling on the Lot, then, in any of such events, Declarant may:

- (i) re-enter the Lot and divest the Owner of title thereto by tendering to the Owner or to the Clerk of the Circuit Court of Hamilton County the lesser of (a) the same net dollar amount as was received by Declarant from such Owner as consideration for the conveyance by Declarant of the Lot, together with such actual costs if any, as the Owner may prove to have incurred in connection with the commencement of construction of a Principal Dwelling on the Lot and (b) the then fair market value of the Lot, as determined by averaging two (2) appraisals made by qualified appraisers appointed by the Judge of the Circuit or Superior Court of Hamilton County.
- (ii) obtain injunctive relief to force the Owner to proceed with construction of any Principal Dwelling, a Lot Development Plan for which has been approved by the Architectural Review Board upon application by such Owner; or
- (iii) pursue such other remedies at law or in equity as may be available to Declarant.

The failure of the Owner of a Lot to apply for approval of, or receive approval from, the Architectural Review Board of a Lot Development Plan shall not relieve such Owner from his obligation to complete construction of a Principal Dwelling upon the Lot within the time period specified herein. For the purposes of this subparagraph (d), construction of a Principal Dwelling will be deemed "completed" when the exterior of the Principal Dwelling (including but not limited to the foundation, walls, roof, windows, entry doors, gutters, downspouts, exterior trim, paved driveway, landscaping and yard light) has been completed in conformity with the Development Plan.

(e) Septic Systems. No septic tank, absorption field or any other on-site sewage disposal system (other than a lateral main connected to a sanitary sewerage collection system

operated by the Clay Township Regional Waste District or a successor public agency or public utility) shall be installed or maintained on any Lot.

(f) Water Systems. No private or semi-private water supply system may be located upon any Lot which is not in compliance with regulations or procedures adopted or established by the Indiana State Board of Health, or other civil authority having jurisdiction. To the extent that domestic water service is available from a water line located within 200 feet of the lot line maintained by a public or private utility company, each Owner shall connect to such water line to provide water for domestic use on the Lot and shall pay all connection, availability or other charges lawfully established with respect to connections thereto. Notwithstanding the foregoing, an Owner with the prior approval of the Architectural Review Board may establish maintain and use an irrigation water well on his Lot as long as the well does not adversely affect the normal pool level of the Lake or a Pond.

(g) Drainage. In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of such Lot to permit such drainage to continue, without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, although no specific drainage easement for such flow of water is provided on the Plat. To the extent not maintained by the Drainage Board, "Drainage Easements" reserved as drainage swales shall be maintained by the Owner of the Lot upon which such easements are located such that water from any adjacent Lot shall have adequate drainage along such swale. Lots within the Parcel may be included in a legal drain established by the Drainage Board. In such event, each Lot in the Parcel will be subject to assessment by the Drainage Board for the costs of maintenance of the portion of the Drainage System and/or the Lakes included in such legal drain, which assessment will be a lien against the Lot. The elevation of a Lot shall not be changed so as to affect materially the surface elevation or grade of surrounding Lots. Each Owner shall maintain the subsurface drains and tiles located on his Lot and shall be liable for the cost of all repairs thereto or replacements thereof.

(h) Geothermal Systems. No open loop geothermal heating and cooling system shall be installed on a Lot.

5. Maintenance of Lots.

(a) Vehicle Parking. No recreational vehicle, motor home, truck which exceeds ¾ ton in weight, trailer, boat or disabled vehicle may be parked or stored overnight or longer on any Lot in open public view.

(b) Signs. Except for such signs as Declarant may in its absolute discretion display in connection with the development of the Village of WestClay or the Parcel and the sale of Lots therein, such signs as may be located on the Community Area and such signs as may, with the consent of Declarant, be displayed by a Designated Builder to advertise the property during construction and sale of Living Units and the maintenance of model homes, no sign of any kind shall be displayed to the public view on any Lot without the prior

approval of the Architectural Review Board except that one sign of not more than four (4) square feet may be displayed at any time for the purpose of advertising the property for sale or for rent.

(c) Sight Lines. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between thirty (30) and seventy-two (72) inches above the street shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting points 25 feet from the intersection of said street lines, or in the case of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(d) Vegetation. An Owner shall not permit the growth of weeds and volunteer trees and bushes on his Lot, and shall keep his Lot reasonably clear from such unsightly growth at all times. If an Owner fails to comply with this Restriction, the Board of Directors shall cause the weeds to be cut and the Lot cleared of such growth at the expense of the Owner thereof and the Corporation shall have a lien against the cleared Lot for the expense thereof.

(e) Nuisances. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood. Barking dogs shall constitute a nuisance.

(f) Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers out of public view. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

(g) Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets designated by the Board of Directors may be kept provided that they are not kept, bred or maintained for any commercial purpose. The owners of such permitted pets shall confine them to their respective Lots such that they will not be a nuisance. Owners of dogs shall so control or confine them so as to avoid barking which will annoy or disturb adjoining Owners.

(h) Outside Burning. No trash, leaves, or other materials shall be burned upon a Lot if smoke therefrom would blow upon any other Lot and, then, only in acceptable incinerators and in compliance with all applicable legal requirements.

(i) Exterior Lights. Except for such alley lights as may be required by the Building Guidelines, no exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Lot.

(j) Electric Bug Killers. Electric bug killers "zappers" and other similar devices shall not be installed at a location or locations which will result in the operation thereof becoming a nuisance or annoyance to other Owners and shall only be operated when outside activities require the use thereof and not continuously.

(k) Air Conditioners. No room air conditioning unit shall be installed so as to protrude from any structure located on a Lot (including but not limited to the window of any Living Unit, garage or Home-based office) if the same would be visible from a public way, a Community Area or any other Lot; provided, however, that this Restriction shall not apply to central air conditioning units.

(l) Fences and Walls. No walls or fences shall be erected on any Lot without the prior approval of the Architectural Review Board. Each Owner shall maintain any approved wall or fence in good and sightly condition and in compliance with the requirements of the Building Guidelines.

(m) Swimming Pools. No above ground swimming pools, other than a children's wading pool, shall be installed or maintained on a Lot.

(n) Basketball Goals. No basketball goal shall be placed or maintained in the front driveway of a Lot or within the right-of-way of any street. Unless the Architectural Review Board establishes a policy establishing other specifications, backboards of all basketball goals shall be of a translucent material such as fiberglass or Lexan and attached to a block pole or a similar type of post. The location of a basketball goal on the Lot is subject to approval of the Architectural Review Board if it would be visible from a public right-of-way adjoining the Lot.

6. Home-Based Office. A Home-Based Office is permitted on a Lot within the Home-Based Office Area subject to the conditions that: (a) the proposed use of the Home-Based Office is approved by the Architectural Review Board in accordance with written standards for permitted uses not inconsistent with this Paragraph 6; (b) the Home-Based Office is not used as a medical, dental, or real estate office or for the retail sale of goods; (c) the Principal Dwelling to which the Home-Based Office is accessory to the principal place of residence of the Persons conducting the business in the Home-Based Office; (d) in addition to the Persons occupying the Principal Dwelling to which the use of the Home Based Office; (d) in addition to the Persons occupying the Principal Dwelling to which the use of the Home-Based Office is accessory, there are not more than three (3) outside employees in the Home-Based Office; (e) employees and clients of the business park in on-street curbside parking spaces or in a rear or side yard parking area and do not park in the driveway forward of the front facade of the Principal Dwelling; (f) signage is limited to one-wall mounted signed with a sign area not exceeding three (3) square feet approved by the Architectural Review Board in accordance with its Sign regulations; (g) the Home-Based Office does not exceed one thousand (1,000) square feet of thirty percent (30%) of the total square footage of the Principal Dwelling if attached to or incorporated in the Principal Dwelling, or, if located in an accessory building on the Lot, does not exceed six hundred (600) square feet; (h) there is no outside storage or

outside display, and (i) all exterior aspects of the Home-Based Office operation is consistent with the residential character of the Section in which the Lot is located.

7. General Community Rules. Each Lot shall be subject to the guidelines, rules, regulations and procedures adopted by Declarant, the Corporation and the Architectural Review Board pursuant to authority granted by the Declaration of Covenants and Restrictions and all Supplemental Declarations, and each Owner of a Lot shall at all times comply therewith.

8. Assessments. The Board of Directors may make Assessments to cover any costs incurred in enforcing these Restrictions or in undertaking any maintenance or other activity that is the responsibility of the Owner of a Lot hereunder but which such Owner has not undertaken as required hereunder. Any such Assessment shall be assessed only against those Owners whose failure to comply with the requirements of these covenants necessitated the action to enforce these covenants or the undertaking of the maintenance or other activity.

9. Electoral Parcel. The Parcel shall constitute an Electoral Parcel for the purpose of election of the Board of Directors.

10. Enforcement. The right to enforce each of the foregoing Restrictions by injunction, together with the right to cause the removal by due process of law of structures erected or maintained in violation thereof, is reserved to Declarant, the Corporation, the Architectural Review Board, the Owners of the Lots in the Parcel, their heirs and assigns, and to the Zoning Authority, their successors and assigns, who are entitled to such relief without being required to show any damage of any kind to Declarant, the Corporation, the Architectural Review Board, any Owner or Owners, or such Zoning Authority by or through any such violation or attempted violation. Under no circumstances shall Declarant, the Corporation or the Architectural Review Board be liable for damages of any kind to any Person for failure to abide by, enforce or carry out any provision or provisions of this Supplemental Declaration. There shall be no rights of reversion or forfeiture of title resulting from any violations.

11. Severability. Invalidation of any of these covenants and restrictions or any part thereof by judgment or court order shall not affect or render the remainder of said covenants and restrictions invalid or inoperative.

12. Non-Liability of Declarant. Declarant shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Declarant, and no duty of, or warranty by, Declarant shall be implied by or inferred from any term or provision of this Supplemental Declaration.

13. General Provisions. This Supplemental Declaration may be amended at any time in the manner provided in Paragraph 29 of the Declaration of Covenants and Restrictions except that no amendment adopted pursuant to Paragraph 29(a) of the Declaration of Covenants and Restrictions shall be effective as against a Mortgagee who subsequently acquires title to a Lot unless approved by at least two-thirds (2/3) of the Mortgagees who hold first mortgages on the Lots in the Parcel (based



on one vote for each first mortgage owned) or at least two-thirds (2/3) of the Owners of the Lots in the Parcel (excluding Declarant).

Except as the same may be amended from time to time, the foregoing restrictions will be in full force and effect until January 1, 2030, at which time they will be automatically extended for successive periods of ten (10) years, unless by a vote of the majority of the then Owners of Lots in the Parcel it is agreed that these Restrictions shall terminate in whole or in part.

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

BRENNICK TND COMMUNITIES, LLC  
By Tom Charles Huston  
Tom Charles Huston, Co-Manager

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HAMILTON )

Before me, a Notary Public in and for said County and State, personally appeared Tom Charles Huston, a Co-Manager of Brenwick TND Communities, LLC, an Indiana limited liability company, who acknowledged execution of the foregoing Supplemental Declaration of Covenants and Restrictions for and on behalf of said limited partnership.

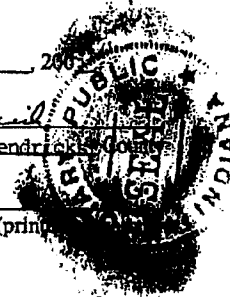
WITNESS my hand and Notarial Seal this 3rd day of August, 2007

My Commission Expires:

May 24, 2007

Marie M. Urick  
Notary Public Residing in Hendricks County

Marie M. Urick  
(print)



This instrument prepared by Tom Charles Huston, Attorney at Law, 12821 East New Market Street, Suite 200, Carmel, IN 46032.

EXHIBIT A

**BEST POSSIBLE IMAGE**

Real Estate Description

Village of WestClay Electoral Parcel P-3

A part of the Southwest Quarter of Section 28, Township 18 North, Range 3 East, of the Second Principal Meridian, Clay Township, Hamilton County, Indiana, being more particularly described as follows:

Commencing at the Southwest corner of said Quarter; thence North 00 degrees 11 minutes 59 seconds West along the West line thereof 1130.84 feet; thence North 89 degrees 48 minutes 01 seconds East perpendicular to the previously described course 55.89 feet to the Point of Beginning; thence South 45 degrees 08 minutes 09 seconds East 70.71 feet; thence North 89 degrees 51 minutes 51 seconds East 625.29 feet to the westerly boundary of the Village of WestClay Section 3004, Village Center, Part 1, the Secondary Plat of which is recorded as Instrument Number 199909965089, Plat Cabinet 2, Slide 345, in the Office of the Recorder of said County; (the following twelve courses are along the boundary thereof) (1) thence North 00 degrees 08 minutes 09 seconds West 311.21 feet; (2) thence North 45 degrees 08 minutes 09 seconds West 25.14 feet; (3) thence North 44 degrees 51 minutes 51 seconds East 50.00 feet; (4) thence South 45 degrees 08 minutes 09 seconds East 4.50 feet; (5) thence North 44 degrees 51 minutes 51 seconds East 238.20 feet; (6) thence North 45 degrees 08 minutes 09 seconds West 4.50 feet; (7) thence North 44 degrees 51 minutes 51 seconds East 52.00 feet; (8) thence South 45 degrees 08 minutes 09 seconds East 4.50 feet; (9) thence North 44 degrees 51 minutes 51 seconds East 250.21 feet to a curve to the left having a radius of 74.00 feet the radius point of which bears North 45 degrees 08 minutes 09 seconds West; (10) thence northeasterly along said curve an arc distance of 32.33 feet to a point which bears South 70 degrees 10 minutes 11 seconds East from said radius point; (11) thence South 70 degrees 10 minutes 11 seconds East 52.00 feet to a curve to the right having a radius of 126.00 feet the radius point of which bears North 70 degrees 10 minutes 11 seconds West; (12) thence southwesterly along said curve an arc distance of 6.49 feet to a point which bears South 67 degrees 13 minutes 13 seconds East from said radius point; thence North 89 degrees 51 minutes 51 seconds East along the boundary of said Section 3004 and along the boundary of the Village of WestClay Section 10005, the Secondary Plat of which is recorded as Instrument Number 199909946966, Plat Cabinet 2, Slide 297, in said Office 128.94 feet; (the following five courses are along the boundary thereof) (1) thence North 00 degrees 08 minutes 09 seconds West 399.00 feet; (2) thence South 89 degrees 51 minutes 51 seconds West 16.00 feet; (3) thence North 00 degrees 08 minutes 09 seconds West 50.00 feet; (4) thence North 89 degrees 51 minutes 51 seconds East 26.00 feet; (5) thence North 00 degrees 08 minutes 09 seconds West 317.46 feet to a point 45.00 feet southerly by perpendicular measure to the North line of said Quarter; thence South 89 degrees 14 minutes 59 seconds West parallel with the North line of said Quarter 1254.38 feet; thence South 44 degrees 33 minutes 47 seconds West 37.74 feet; thence South 00 degrees 08 minutes 09 seconds East 1422.75 feet to the Point of Beginning. Containing 35.609 acres, more or less.

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date of purchase from Declarant is not improved with a Principal Dwelling shall commence construction of a Principal Dwelling upon the Lot within six (6) months from the date the Owner acquired title thereto and shall complete construction of such Principal Dwelling within one (1) year after the date of commencement of the building process, but in no event later than eighteen (18) months after the date the Owner acquired title to the Lot unless such Lot is adjacent to a Lot upon which the Owner has constructed a Principal Dwelling in which such Owner permanently resides. If the Owner fails to commence or complete construction of a Principal Dwelling within the time periods specified herein, or if the Owner should, without Declarant's written approval, sell, contract to sell, convey, or otherwise dispose of, or attempt to sell, convey or otherwise dispose of, the Lot before completion of construction of Principal Dwelling on the Lot, then, in any of such events, Declarant may:

- (i) re-enter the Lot and divest the Owner of title thereto by tendering to the Owner or to the Clerk of the Circuit Court of Hamilton County the lesser of (a) the same net dollar amount as was received by Declarant from such Owner as consideration for the conveyance by Declarant of the Lot, together with such actual costs if any, as the Owner may prove to have incurred in connection with the commencement of construction of a Principal Dwelling on the Lot and (b) the then fair market value of the Lot, as determined by averaging two (2) appraisals made by qualified appraisers appointed by the Judge of the Circuit or Superior Court of Hamilton County.
- (ii) obtain injunctive relief to force the Owner to proceed with construction of any Principal Dwelling, a Lot Development Plan for which has been approved by the Architectural Review Board upon application by such Owner; or
- (iii) pursue such other remedies at law or in equity as may be available to Declarant.

The failure of the Owner of a Lot to apply for approval of, or receive approval from, the Architectural Review Board of a Lot Development Plan shall not relieve such Owner from his obligation to complete construction of a Principal Dwelling upon the Lot within the time period specified herein. For the purposes of this subparagraph (d), construction of a Principal Dwelling will be deemed "completed" when the exterior of the Principal Dwelling (including but not limited to the foundation, walls, roof, windows, entry doors, gutters, downspouts, exterior trim, paved driveway, landscaping and yard light) has been completed in conformity with the Development Plan.

(e) Septic Systems. No septic tank, absorption field or any other on-site sewage disposal system (other than a lateral main connected to a sanitary sewerage collection system

operated by the Clay Township Regional Waste District or a successor public agency or public utility) shall be installed or maintained on any Lot.

(f) Water Systems. No private or semi-private water supply system may be located upon any Lot which is not in compliance with regulations or procedures adopted or established by the Indiana State Board of Health, or other civil authority having jurisdiction. To the extent that domestic water service is available from a water line located within 200 feet of the lot line maintained by a public or private utility company, each Owner shall connect to such water line to provide water for domestic use on the Lot and shall pay all connection, availability or other charges lawfully established with respect to connections thereto. Notwithstanding the foregoing, an Owner with the prior approval of the Architectural Review Board may establish maintain and use an irrigation water well on his Lot as long as the well does not adversely affect the normal pool level of the Lake or a Pond.

(g) Drainage. In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of such Lot to permit such drainage to continue, without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, although no specific drainage easement for such flow of water is provided on the Plat. To the extent not maintained by the Drainage Board, "Drainage Easements" reserved as drainage swales shall be maintained by the Owner of the Lot upon which such easements are located such that water from any adjacent Lot shall have adequate drainage along such swale. Lots within the Parcel may be included in a legal drain established by the Drainage Board. In such event, each Lot in the Parcel will be subject to assessment by the Drainage Board for the costs of maintenance of the portion of the Drainage System and/or the Lakes included in such legal drain, which assessment will be a lien against the Lot. The elevation of a Lot shall not be changed so as to affect materially the surface elevation or grade of surrounding Lots. Each Owner shall maintain the subsurface drains and tiles located on his Lot and shall be liable for the cost of all repairs thereto or replacements thereof.

(h) Geothermal Systems. No open loop geothermal heating and cooling system shall be installed on a Lot.

5. Maintenance of Lots.

(a) Vehicle Parking. No recreational vehicle, motor home, truck which exceeds  $\frac{3}{4}$  ton in weight, trailer, boat or disabled vehicle may be parked or stored overnight or longer on any Lot in open public view.

(b) Signs. Except for such signs as Declarant may in its absolute discretion display in connection with the development of the Village of WestClay or the Parcel and the sale of Lots therein, such signs as may be located on the Community Area and such signs as may, with the consent of Declarant, be displayed by a Designated Builder to advertise the property during construction and sale of Living Units and the maintenance of model homes, no sign of any kind shall be displayed to the public view on any Lot without the prior

approval of the Architectural Review Board except that one sign of not more than four (4) square feet may be displayed at any time for the purpose of advertising the property for sale or for rent.

(c) Sight Lines. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between thirty (30) and seventy-two (72) inches above the street shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting points 25 feet from the intersection of said street lines, or in the case of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(d) Vegetation. An Owner shall not permit the growth of weeds and volunteer trees and bushes on his Lot, and shall keep his Lot reasonably clear from such unsightly growth at all times. If an Owner fails to comply with this Restriction, the Board of Directors shall cause the weeds to be cut and the Lot cleared of such growth at the expense of the Owner thereof and the Corporation shall have a lien against the cleared Lot for the expense thereof.

(e) Nuisances. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood. Barking dogs shall constitute a nuisance.

(f) Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers out of public view. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

(g) Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets designated by the Board of Directors may be kept provided that they are not kept, bred or maintained for any commercial purpose. The owners of such permitted pets shall confine them to their respective Lots such that they will not be a nuisance. Owners of dogs shall so control or confine them so as to avoid barking which will annoy or disturb adjoining Owners.

(h) Outside Burning. No trash, leaves, or other materials shall be burned upon a Lot if smoke therefrom would blow upon any other Lot and, then, only in acceptable incinerators and in compliance with all applicable legal requirements.

(i) Exterior Lights. Except for such alley lights as may be required by the Building Guidelines, no exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Lot.



(j) Electric Bug Killers. Electric bug killers "zappers" and other similar devices shall not be installed at a location or locations which will result in the operation thereof becoming a nuisance or annoyance to other Owners and shall only be operated when outside activities require the use thereof and not continuously.

(k) Air Conditioners. No room air conditioning unit shall be installed so as to protrude from any structure located on a Lot (including but not limited to the window of any Living Unit, garage or Home-based office) if the same would be visible from a public way, a Community Area or any other Lot; provided, however, that this Restriction shall not apply to central air conditioning units.

(l) Fences and Walls. No walls or fences shall be erected on any Lot without the prior approval of the Architectural Review Board. Each Owner shall maintain any approved wall or fence in good and sightly condition and in compliance with the requirements of the Building Guidelines.

(m) Swimming Pools. No above ground swimming pools, other than a children's wading pool, shall be installed or maintained on a Lot.

(n) Basketball Goals. No basketball goal shall be placed or maintained in the front driveway of a Lot or within the right-of-way of any street. Unless the Architectural Review Board establishes a policy establishing other specifications, backboards of all basketball goals shall be of a translucent material such as fiberglass or Lexan and attached to a block pole or a similar type of post. The location of a basketball goal on the Lot is subject to approval of the Architectural Review Board if it would be visible from a public right-of-way adjoining the Lot.

6. Home-Based Office. A Home-Based Office is permitted on a Lot within the Home-Based Office Area subject to the conditions that: (a) the proposed use of the Home-Based Office is approved by the Architectural Review Board in accordance with written standards for permitted uses not inconsistent with this Paragraph 6; (b) the Home-Based Office is not used as a medical, dental, or real estate office or for the retail sale of goods; (c) the Principal Dwelling to which the Home-Based Office is accessory to the principal place of residence of the Persons conducting the business in the Home-Based Office; (d) in addition to the Persons occupying the Principal Dwelling to which the use of the Home Based Office; (d) in addition to the Persons occupying the Principal Dwelling to which the use of the Home-Based Office is accessory, there are not more than three (3) outside employees in the Home-Based Office; (e) employees and clients of the business park in on-street curbside parking spaces or in a rear or side yard parking area and do not park in the driveway forward of the front facade of the Principal Dwelling; (f) signage is limited to one-wall mounted signed with a sign area not exceeding three (3) square feet approved by the Architectural Review Board in accordance with its Sign regulations; (g) the Home-Based Office does not exceed one thousand (1,000) square feet of thirty percent (30%) of the total square footage of the Principal Dwelling if attached to or incorporated in the Principal Dwelling, or, if located in an accessory building on the Lot, does not exceed six hundred (600) square feet; (h) there is no outside storage or

outside display, and (i) all exterior aspects of the Home-Based Office operation is consistent with the residential character of the Section in which the Lot is located.

7. General Community Rules. Each Lot shall be subject to the guidelines, rules, regulations and procedures adopted by Declarant, the Corporation and the Architectural Review Board pursuant to authority granted by the Declaration of Covenants and Restrictions and all Supplemental Declarations, and each Owner of a Lot shall at all times comply therewith.

8. Assessments. The Board of Directors may make Assessments to cover any costs incurred in enforcing these Restrictions or in undertaking any maintenance or other activity that is the responsibility of the Owner of a Lot hereunder but which such Owner has not undertaken as required hereunder. Any such Assessment shall be assessed only against those Owners whose failure to comply with the requirements of these covenants necessitated the action to enforce these covenants or the undertaking of the maintenance or other activity.

9. Electoral Parcel. The Parcel shall constitute an Electoral Parcel for the purpose of election of the Board of Directors.

10. Enforcement. The right to enforce each of the foregoing Restrictions by injunction, together with the right to cause the removal by due process of law of structures erected or maintained in violation thereof, is reserved to Declarant, the Corporation, the Architectural Review Board, the Owners of the Lots in the Parcel, their heirs and assigns, and to the Zoning Authority, their successors and assigns, who are entitled to such relief without being required to show any damage of any kind to Declarant, the Corporation, the Architectural Review Board, any Owner or Owners, or such Zoning Authority by or through any such violation or attempted violation. Under no circumstances shall Declarant, the Corporation or the Architectural Review Board be liable for damages of any kind to any Person for failure to abide by, enforce or carry out any provision or provisions of this Supplemental Declaration. There shall be no rights of reversion or forfeiture of title resulting from any violations.

11. Severability. Invalidation of any of these covenants and restrictions or any part thereof by judgment or court order shall not affect or render the remainder of said covenants and restrictions invalid or inoperative.

12. Non-Liability of Declarant. Declarant shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Declarant, and no duty of, or warranty by, Declarant shall be implied by or inferred from any term or provision of this Supplemental Declaration.

13. General Provisions. This Supplemental Declaration may be amended at any time in the manner provided in Paragraph 29 of the Declaration of Covenants and Restrictions except that no amendment adopted pursuant to Paragraph 29(a) of the Declaration of Covenants and Restrictions shall be effective as against a Mortgagee who subsequently acquires title to a Lot unless approved by at least two-thirds (2/3) of the Mortgagees who hold first mortgages on the Lots in the Parcel (based

on one vote for each first mortgage owned) or at least two-thirds (2/3) of the Owners of the Lots in the Parcel (excluding Declarant).

Except as the same may be amended from time to time, the foregoing restrictions will be in full force and effect until January 1, 2030, at which time they will be automatically extended for successive periods of ten (10) years, unless by a vote of the majority of the then Owners of Lots in the Parcel it is agreed that these Restrictions shall terminate in whole or in part.

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

BRENNICK TND COMMUNITIES, LLC

By Tom Charles Huston  
Tom Charles Huston, Co-Manager

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HAMILTON )

Before me, a Notary Public in and for said County and State, personally appeared Tom Charles Huston, a Co-Manager of Brenwick TND Communities, LLC, an Indiana limited liability company, who acknowledged execution of the foregoing Supplemental Declaration of Covenants and Restrictions for and on behalf of said limited partnership.

WITNESS my hand and Notarial Seal this 3rd day of August, 2007

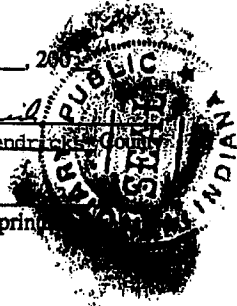
My Commission Expires:

May 24, 2007

Marie M. Urlick  
Notary Public Residing in Hendricks County

Marie M. Urlick

(print)



This instrument prepared by Tom Charles Huston, Attorney at Law, 12821 East New Market Street, Suite 200, Carmel, IN 46032.

EXHIBIT A

**BEST POSSIBLE IMAGE**

Real Estate Description

Village of WestClay Electoral Parcel P-3

A part of the Southwest Quarter of Section 28, Township 18 North, Range 3 East, of the Second Principal Meridian, Clay Township, Hamilton County, Indiana, being more particularly described as follows:

Commencing at the Southwest corner of said Quarter; thence North 00 degrees 11 minutes 59 seconds West along the West line thereof 1130.84 feet; thence North 89 degrees 48 minutes 01 seconds East perpendicular to the previously described course 55.89 feet to the Point of Beginning; thence South 45 degrees 08 minutes 09 seconds East 70.71 feet; thence North 89 degrees 51 minutes 51 seconds East 625.29 feet to the westerly boundary of the Village of WestClay Section 3004, Village Center, Part 1, the Secondary Plat of which is recorded as Instrument Number 199909965089, Plat Cabinet 2, Slide 345, in the Office of the Recorder of said County; (the following twelve courses are along the boundary thereof) (1) thence North 00 degrees 08 minutes 09 seconds West 311.21 feet; (2) thence North 45 degrees 08 minutes 09 seconds West 25.14 feet; (3) thence North 44 degrees 51 minutes 51 seconds East 50.00 feet; (4) thence South 45 degrees 08 minutes 09 seconds East 4.50 feet; (5) thence North 44 degrees 51 minutes 51 seconds East 238.20 feet; (6) thence North 45 degrees 08 minutes 09 seconds West 4.50 feet; (7) thence North 44 degrees 51 minutes 51 seconds East 52.00 feet; (8) thence South 45 degrees 08 minutes 09 seconds East 4.50 feet; (9) thence North 44 degrees 51 minutes 51 seconds East 250.21 feet to a curve to the left having a radius of 74.00 feet the radius point of which bears North 45 degrees 08 minutes 09 seconds West; (10) thence northeasterly along said curve an arc distance of 32.33 feet to a point which bears South 70 degrees 10 minutes 11 seconds East from said radius point; (11) thence South 70 degrees 10 minutes 11 seconds East 52.00 feet to a curve to the right having a radius of 126.00 feet the radius point of which bears North 70 degrees 10 minutes 11 seconds West; (12) thence southwesterly along said curve an arc distance of 6.49 feet to a point which bears South 67 degrees 13 minutes 13 seconds East from said radius point; thence North 89 degrees 51 minutes 51 seconds East along the boundary of said Section 3004 and along the boundary of the Village of WestClay Section 10005, the Secondary Plat of which is recorded as Instrument Number 199909946966, Plat Cabinet 2, Slide 297, in said Office 128.94 feet; (the following five courses are along the boundary thereof) (1) thence North 00 degrees 08 minutes 09 seconds West 399.00 feet; (2) thence South 89 degrees 51 minutes 51 seconds West 16.00 feet; (3) thence North 00 degrees 08 minutes 09 seconds West 50.00 feet; (4) thence North 89 degrees 51 minutes 51 seconds East 26.00 feet; (5) thence North 00 degrees 08 minutes 09 seconds West 317.46 feet to a point 45.00 feet southerly by perpendicular measure to the North line of said Quarter; thence South 89 degrees 14 minutes 59 seconds West parallel with the North line of said Quarter 1254.38 feet; thence South 44 degrees 33 minutes 47 seconds West 37.74 feet; thence South 00 degrees 08 minutes 09 seconds East 1422.75 feet to the Point of Beginning. Containing 35.609 acres, more or less.

J:\1238\001\DOCS\legals\electoral\P-3\_land description.doc  
07/20/01 ktk

44.00  
18

Cross Reference: 200100054091  
PC2 Slide 653

Townhomes  
(Block J)

**SUPPLEMENTAL DECLARATION OF  
COVENANTS AND RESTRICTIONS  
THE VILLAGE OF WESTCLAY**

200100059598  
Filed for Record in  
HAMILTON COUNTY, INDIANA  
MARY L CLARK  
09-20-2001 09:01 am.  
DEC COV RES 44.00

This Supplemental Declaration, dated as of the 29th day of August, 2001, by  
BRENWICK TND COMMUNITIES, LLC, an Indiana limited company,

**WITNESSES THAT:**

WHEREAS, the following facts are true:

- A. Declarant owns the real estate located in Hamilton County, Indiana, constituting the Section as particularly described in Paragraph 1 below.
- B. This instrument is a Supplemental Declaration as that term is defined in the Declaration of Covenants and Restrictions.
- C. Declarant intends to subdivide the Section into Block Lots upon each of which a Living Unit may be constructed.

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

- 1. Definitions. Words, phrases and terms that are defined in the Declaration of Covenants and Restrictions have the same meaning in this Supplemental Declaration except as herein otherwise provided. The following words, phrases and terms, as used in this Supplemental Declaration, unless the context clearly requires otherwise, mean the following:

Directors may designate for the custody and disposition, as herein provided, of insurance proceeds.

**"Majority of the Owners"** means the Owners of not less than 51% of the Block Lots.

**"Parcel"** means, for the purpose of Paragraph 16, the Section together with all other real estate designated by Declarant for development of townhomes which is subject to a Supplemental Declaration (Townhomes). For the purposes of Paragraph 12, the Section shall be deemed a Parcel within the contemplation of Paragraph 19(e) of the Declaration.

**"Primary Area Supplemental Declaration"** means the Supplemental Declaration for Parcel 1 of the Primary Area recorded in the Office of the Recorder of Hamilton County as Instrument Number 9967430.

**"Restoration"** means (re)construction or (re)building of Living Units to not less than the same condition as they existed immediately prior to any loss, damage or destruction with the same type of architecture and using, where appropriate, new materials of like kind and quality.

**"Section"** means Block "J" of The Village of WestClay, Section 3001-A, Village Center, Part 2, per plat thereof recorded as Instrument # 199909969687, Plat Cabinet 2, Slide 363, in the Office of the Recorder of Hamilton County, Indiana.

**"Section Assessment"** means the Parcel Assessment applicable to the Section pursuant to the provisions of Paragraph 12.

**"Structures"** means the foundations, exterior walls (exclusive of glass but inclusive of doors, door frames and window frames), balconies, porches, and roofs of Living Units.

2. **Declaration.** Declarant hereby declares that, in addition to the covenants, restrictions, easements, charges and liens imposed by the Declaration of Covenants and Restrictions and the Parcel Supplemental Declaration, the Section shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

3. **Description of Block Lots.** Declarant plans to subdivide the Section into ten (10) Blocks designated "1" through "10" containing not more than forty (40) Block Lots. The boundaries of each Block Lot shall be as shown on a Final Secondary Plat.

4. Land Use. No portion of any Block Lot may be sold or subdivided such that there will be thereby a greater number of Living Units in the Section than the number of original Block Lots shown on the Final Secondary Plats.

5. Party Walls.

(a) General Rules of Law to Apply. Each wall that is built as a part of the original construction of a Living Unit and placed on the dividing line between Block Lots shall constitute a party wall and, to the extent not inconsistent with the provisions of this Paragraph 5, the general rules of Indiana law regarding party walls shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of routine repair and maintenance of a party wall shall be shared equally by the Owners who make use of the wall.

(c) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other cause, and the affected Living Units are to be restored pursuant to the provisions of Paragraph 6, then the Corporation shall restore it. If the Corporation is not required to so restore the party wall, then either Owner who has used the wall may restore it, and if the other Owner thereafter makes use of the wall, he shall contribute equally to the cost of restoration thereof unless the restoring Owner has the right to call for a larger contribution from the subsequent user under a rule of law regarding liability for negligent or willful acts or omissions, in which event the subsequent user shall make such larger contribution as may be lawfully determined.

(d) Weatherproofing. An Owner who by his negligent or willful act or omission causes the party wall to be exposed to the elements shall furnish the necessary protection against such elements and shall bear the entire cost thereof.

(e) Rights and Duties Run with Land. The rights and duties of an Owner with respect to a party wall under this Paragraph 5 shall be appurtenant to such Owner's Block Lot and shall pass to the successor in title of such Owner.

6. Damage and Restoration. In the event of damage or destruction of a Living Unit by fire or other cause, the following provisions shall be applicable:

(a) Partial Destruction. In the event that less than all of the Living Units in a Block are completely destroyed by the occurrence of fire or other cause, then the Corporation shall cause

the damaged Living Units to be promptly repaired and restored as nearly as possible to the quality, utility, value, condition and character as existed prior to such damage. Such restoration shall conform to the Lot Development Plan originally approved for each damaged Living Unit except to the extent that deviations therefrom have been approved in writing by the Architectural Review Board. The proceeds of the insurance carried by the Corporation shall be applied to the cost of such Restoration. If the insurance proceeds are not adequate to cover the cost of Restoration, or in the event there are no proceeds, the cost for restoring the damage shall be paid by all of the Owners of the Living Units directly affected by the damage in the proportion that the gross area of each affected Living Unit bears to the gross area of all affected Living Units. Living Units shall be deemed to be directly affected if, and only if, such Living Unit is located within the Block in which the fire or other damage occurs. If any Owner refuses or fails to make the required payments, the other Owners shall (or the Corporation, if such other Owners fail to do so) complete the Restoration and pay the cost thereof, and the costs attributable to the Owner or Owners who refuse or fail to make such payments at the time required by the Board of Directors shall become a lien on such defaulting Owner's Living Unit and may be foreclosed in the same manner as provided for the lien for Assessments.

(b) Restoration in the Event of Complete Destruction. In the event of complete destruction of all the Living Units in a Block, no Owner shall be required to rebuild his Living Unit, but he shall be required to remove in a timely manner all debris from the Block Lot and promptly landscape his Block Lot in accordance with a landscaping plan approved by the Architectural Review Board.

(c) Determination of Complete Destruction. It shall be conclusively presumed that complete destruction of all Living Units did not occur unless it is determined by vote of not less than ninety percent (90%) all Owners of Block Lots in the Section at a special meeting of such Owners held within one hundred twenty (120) days following the date of damage or destruction that all Living Units have been completely destroyed. In the event of a determination of complete destruction, insurance proceeds shall be payable in accordance with the terms of the insurance policy covering such loss.

7. Insurance.

(a) Coverage. The Board of Directors on behalf of the Owners and as a Common Expense shall cause to be obtained and



kept in full force and effect at all times casualty or physical damage insurance in an amount equal to the full replacement cost of the Living Units as initially constructed, without deduction or allowance for depreciation in excess of One Thousand Dollars (\$1,000.00), such coverage to be underwritten by a company or companies duly authorized to do business in Indiana and to afford protection against at least the following:

(i) loss of damage by fire or other hazards covered by the standard extended coverage endorsement; and

(ii) such other risks as are customarily covered with respect to projects similar in construction, location and use, as the Board may from time to time determine.

The provisions of this Paragraph 7 shall not be construed to limit the power or authority of the Board to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Board or a Majority of the Owners may deem appropriate from time to time.

As used in this subparagraph (a), the term "Living Units as initially constructed" means the Structures, and the standard partition walls, fixtures, pipes, wires, conduit and installations initially installed in Living Units by the original builder thereof, as shown on the Lot Development Plan as amended from time to time, and replacements thereof, but does not mean any fixtures, alterations, installations or additions in or to the Living Unit made by an individual Owner of that Living Unit or any personal property of such Owner.

(b) Form. Insurance shall be carried in a form or forms naming as the Insured the Board of Directors as trustee for all Owners and Mortgagees according to the loss or damage to their respective Living Units and payable in case of loss to the Insurance Trustee. Every such policy of insurance shall, if obtainable at a reasonable cost:

(i) provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim any right of set-off, counterclaim, apportionment, proration, or contribution by reason of any other insurance obtained by or for any Owner;

(ii) contain no provisions relieving the insurer from liability for loss occurring while the hazard to such building is increased, whether or not within the knowledge or control of the Board, or because of any breach of warranty or condition or any other act or neglect by the Board or any Owner or any other Person under either of them;

(iii) provide that such policy may not be canceled (whether or not requested by the Board) except by the insurer giving at least thirty (30) days' prior written notice thereof to the Board, all Owners, all Mortgagees and every other Person in interest who shall have requested such notice of the insurer;

(iv) contain a waiver by the insurer of any right of subrogation to any right of the Board or Owners against any of them or any other Person under them;

(v) provide that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Owners do not elect to restore pursuant to Paragraph 6 of this Supplemental Declaration;

(vi) contain a standard mortgagee clause which shall:

(A) provide that any reference to a mortgagee in such policy shall mean and include any Mortgagee, whether or not named therein;

(B) provide that such insurance as to the interest of any Mortgagee shall not be invalidated by any act or neglect of the Board or any Owner, or any Persons under any of them;

(C) waive any provision invalidating such mortgagee clauses by reason of the failure of any Mortgagee to notify the insurer of any hazardous

use or vacancy, and requirement that the Mortgagee pay any premium thereon, and any contribution clause; and

(D) provide that without affecting any protection afforded by such mortgagee clause, any proceeds payable under such policy shall be payable to the Insurance Trustee.

(c) Allocation of Insurance Proceeds. In the event of damage or destruction by fire or other cause to Living Units covered by insurance written in the name of the Board as trustee for Owners and their Mortgagees, proceeds on account of such damage to Living Units shall be allocated as follows:

(i) If the Living Unit is to be restored, insurance proceeds shall be allocated to such Living Unit in the proportion that the cost of Restoration of such Living Unit bears to the cost of Restoration of all damaged Living Units, such cost to be determined by the Board. In determining such cost, the Board shall not take into consideration the cost of repairing any items specifically excluded from insurance coverage pursuant to the provision of subparagraph (a).

(ii) If the Living Unit is not to be restored, insurance proceeds shall be allocated to such Living Unit in accordance with the terms of the policy insuring such loss.

(iii) In the event a mortgage endorsement has been issued with respect to a particular Living Unit, the amount of the insurance proceeds allocated to the Owner of such Living Unit shall be held in trust for the mortgagee and the Owner as their interests may appear; provided, however, that no mortgagee shall have the right to determine or participate in the determination as to whether or not any damaged property shall be restored or repaired, and no mortgagee shall have any right to apply or to have applied to the reduction of a mortgage debt any insurance proceeds except distributions thereof made to the Owner and mortgagee pursuant to the provisions of this Supplemental Declaration.

(d) Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the Owners and their mortgagees as their respective interests appear, in the following manner:

(i) Expense of Trust. All expenses of the Insurance Trustee shall be first paid or provision made therefore.

(ii) Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof pursuant to the provisions of Paragraph 8.

(iii) Failure to Reconstruct or Repair. If it is determined that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the Owners in the proportions that the proceeds were allocated to the Owners pursuant to Paragraph 8(c)(ii).

(iv) Certificate. In making distributions to Owners and their mortgagees, the Insurance Trustee may rely upon a certificate issued by the Board as to the names of the Owners and their respective shares of the distribution, and, with respect to the names of mortgagees, may rely upon a certificate from an attorney-at-law, or title insurance company, who has examined the Mortgage Records in the office of the Recorder of Hamilton County, Indiana, as to the names of the holders of mortgages of record.

(e) Corporation as Owner's Agent. The Corporation, acting by its Board of Directors, is hereby irrevocably appointed agent for each Owner and for each owner of a mortgage or other lien upon a Living Unit and for each owner of any other interest in a Living Unit to negotiate all claims arising under insurance policies purchased by the Board, and to execute and deliver releases upon the payment of claims.

(f) Individual Policies - Recommendation of Declarant. Any Owner or Mortgagee may obtain at his own expense additional insurance for improvements and betterments to a Living Unit made

or acquired at the expense of the Owner. The Board of Directors may require that such insurance provide that it shall be without contribution as against the insurance maintained by the Board of Directors. Such insurance shall contain the same waiver of subrogation provision as that set forth in subparagraph (b)(iv). If an insured loss is sustained to a Living Unit and the amount of insurance proceeds that would otherwise be payable to the Insurance Trustee is reduced due to proration of insurance purchased pursuant to this subparagraph, the Owner shall assign the proceeds of the personally purchased insurance, to the extent of the amount of the reduction, to the Insurance Trustee to be distributed as provided in subparagraph (d). The Declarant recommends that each Owner obtain, in addition to the insurance hereinabove provided to be obtained by the Board of Directors, a policy insuring against loss or damage to personal property used or incidental to the occupancy of the Living Unit and insuring the Owner against loss as a result of fire, extended coverage perils, vandalism or malicious mischief, theft, personal liability and the like. Such policy should also cover losses to improvements and betterments to the Living Unit made or acquired at the expense of the Owner.

8. Procedure for Restoration or Repair. If as a result of damage or destruction to a Living Unit by fire or other cause, Restoration or repair of the Living Unit is required or authorized pursuant to Paragraph 6, such Restoration or repair shall be undertaken in accordance with the following provisions:

(a) Estimate of Cost. Promptly after the occurrence of the damage or destruction to the Living Unit that the Corporation has the responsibility to restore or repair, the Board shall obtain reliable and detailed estimates of the cost to restore or repair. In the event of damage to any Living Units exceeding Fifty Thousand Dollars (\$50,000.00), the Board shall retain the services of an architect to supervise the Restoration or repair and the disbursement of the construction funds.

(b) Plans and Specifications. Any Restoration or repair must be either substantially in accordance with the original Lot Development Plan for the Living Unit or according to plans and specifications approved by the Architectural Review Board and by a Majority of the Owners of the Living Units in the Block, which approval shall not be unreasonably withheld.

(c) Sealed Bids. The Board shall advertise for sealed bids with licensed contractors, and then may negotiate with any contractor, who may be required to provide a full performance and

payment bond for the Restoration or repair of the damaged Living Units.

(d) Responsibility. If the damage is only to those parts of a Living Unit for which the responsibility of maintenance and repair is that of an Owner, then the Owner of the Living Unit shall be responsible for the cost of Restoration and repair. The Restoration or repair of a damaged Living Unit shall be subject to approval by the Architectural Review Board.

(e) Construction Funds. The funds for payment of the costs of Restoration or repair, which shall consist of the proceeds of insurance held by or payable to the Insurance Trustee, such amounts from the reserve for replacements as are authorized by the Board for the purpose of Restoration or repair, and the funds collected by the Board from any Special Assessments against Owners deemed necessary by the Board to satisfy its Restoration or repair obligations under this Supplemental Declaration, shall be deposited with the Insurance Trustee who shall disburse the same in payment of the costs of Restoration or repair as provided in this Paragraph 8.

(f) Certificates. The Insurance Trustee may rely upon a certificate from the Board to determine whether or not the damaged Living Unit is to be restored or repaired and upon a certificate from the architect employed by the Board to supervise the Restoration or repair with respect to the payments to be made to contractors undertaking the Restoration and/or repair.

(g) Insurance Trustee. The Insurance Trustee shall not be liable for payment of insurance premiums, the renewal or the sufficiency of insurance policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes herein stated, and for the benefit of the Owners and their Mortgagees as herein provided.

9. Advisory Committee. In order to assist the Board in establishing the budget for annual maintenance and repair of the Living Units, subsequent to the Applicable Date there shall be created an Advisory Committee consisting of three (3) Persons elected annually by the Owners of Living Units in the Section. The Owners of each Living Unit in the Section shall have one (1) vote and the three (3) Persons receiving the largest number of votes cast by Owners of Living Units in the Section shall be elected to the Advisory Committee. The members of the Advisory Committee shall elect from among their membership a President, a Secretary and such other officers as they may deem appropriate. The Advisory Committee shall perform such functions as

are specified herein and such other functions as are not in conflict with the terms of the Declaration of Covenants and Restrictions, the Primary Area Supplemental Declaration or this Supplemental Declaration, or in derogation of the rights of the Corporation, as they may by majority vote determine.

10. Maintenance, Repairs and Replacements.

(a) Living Unit Interiors. Each Owner shall, at his own expense, be responsible for all maintenance, repair, decoration and replacement within his own Living Unit, and each Owner shall promptly perform all maintenance and repair therein which, if neglected, might adversely affect the structural integrity of his Living Unit. In the event that the maintenance or repair of any Living Unit is reasonably necessary in the discretion of the Board of Directors to preserve the structural integrity of a Living Unit, or is otherwise necessary for the health and safety, or in the interest of general welfare, of the Owners of Block Lots in the Section, the Board of Directors shall have the power to undertake such maintenance or repair; provided that no such maintenance or repair shall be undertaken without a resolution of the Board of Directors and reasonable written notice to the Owner of the Living Unit proposed to be maintained and, provided further, that the cost thereof shall be assessed as a Special Assessment against the Living Unit on which such maintenance or repair is performed and, when so assessed, a statement for the amount thereof shall be rendered promptly to the then Owner of said Living Unit at which time the Assessment shall become due and payable and a continuing lien and obligation of said Owner in all respects as provided in Paragraph 9(l) of the Declaration of Covenants and Restrictions.

(b) Lawn Maintenance. At the request of an Owner, the Corporation may arrange for maintenance of the lawn of such Owner's Block Lot and assess the cost thereof directly to the Owner requesting such service.

(c) Structures. Each Owner shall, at his own expense, be responsible for all maintenance of and repairs to the Structures necessitated by his negligence, misuse or neglect except to the extent covered by insurance maintained by the Corporation pursuant to Paragraph 7. All other maintenance, repairs and replacements to the Structures shall be furnished by the Corporation and the cost thereof shall be a Common Expense. The Board of Directors may adopt rules and regulations concerning the maintenance, repair and replacement of the Structures and may

establish reserves with respect thereto as part of the Common Expenses for which Assessments shall be made against the Owners of Living Units as provided in Paragraph 12.

(d) Right of Entry. The Board of Directors, the Architectural Review Board, any managing agent employed by the Board of Directors, or any other Person authorized by the Board of Directors or such managing agent shall have the right, at reasonable times and upon reasonable prior notice (except in cases of emergency in which no notice shall be required), to enter upon the Block Lots and to have access to the Structures for the purposes of inspection thereof and replacement, repair and maintenance of the same.

11. Architectural Review Board. The Architectural Review Board shall have full power and authority to adopt and enforce rules and regulations appropriate to the Section. In addition, the Architectural Review Board shall have full power and authority to interpret, administer and enforce the Restrictions set forth in the Declaration of Covenants and Restrictions, as amended and supplemented. Nothing contained in this Supplementary Declaration is intended to, or shall be construed as, in any manner limiting the regulatory authority of the Architectural Review Board as that authority is set forth in the Declaration of Covenants and Restrictions.

12. Section Assessment.

(a) Purpose. The Annual Section Assessment shall be used exclusively for the improvement, maintenance, repair, replacement and operation of the Structures and the payment of Common Expenses and other costs and expenses incurred by the Corporation in performing its rights and duties hereunder.

(b) Preparation of Annual Budget. Each year prior to the Applicable Date Declarant, and subsequent to the Applicable Date the Advisory Committee, shall cause to be prepared an annual budget estimating the total amount of the Common Expenses for the ensuing fiscal year (including without limitation an amount for working capital, a general operating reserve, a reserve for replacements and the sums necessary to make up any deficit in the Common Expenses for any prior year). Not less than ten (10) days prior to the date of a meeting of the Board of Directors at which the annual budget of the Corporation will be adopted which occurs subsequent to the Applicable Date, the Advisory Committee shall hold a public hearing, after having given due notice, at which Owners may comment upon the proposed budget, a copy of which shall have been provided to each Owner at least five (5) days prior to such public hearing. Following such public hearing and prior to



the date of the budget meeting of the Board of Directors, the annual budget shall be approved by not less than a majority of the members of the Advisory Committee then serving for recommendation to the Board of Directors as the basis for the Annual Section Assessment for the ensuing assessment year.

(c) Basis for Assessment.

(i) Improved Block Lots. Each Block Lot upon which a Living Unit has been constructed shall be assessed at a rate which is uniform for the type of Living Unit located thereon, adjusted to reflect special services provided, if any, and differences in per Living Unit insurance premiums.

(ii) Unimproved Block Lots. A Block Lot upon which a Living Unit has not been constructed shall not be subject to assessment.

(d) Annual Section Assessments. The annual budget as determined by Declarant or, subsequent to the Applicable Date, recommended by the Advisory Committee shall, based on the estimated requirement for Common Expenses in the ensuing fiscal year as set forth in such budget, contain a proposed assessment against each Block Lot subject to assessment determined on the basis set forth in subparagraph (c). Immediately following the adoption of the budget by the Board of Directors pursuant to the provisions of subparagraph (e), the Secretary of the Corporation shall give each Owner written notice of the Annual Section Assessment against each Block Lot subject to assessment for the ensuing fiscal year of the Corporation. The Annual Section Assessment against each such Block Lot shall be paid in equal monthly installments commencing on the first day of the first calendar month of each assessment year and on the first day of each calendar month thereafter through and including the first day of the twelfth calendar month of such assessment year. Payment of the monthly installments of the Annual Section Assessment shall be made to the Corporation or otherwise as directed by the Board of Directors. The Annual Section Assessment for the assessment year shall become a lien on each Block Lot subject thereto as of the first day of the first calendar month of each assessment year.

(e) Adoption of Budget. Declarant or the Advisory Committee, as applicable, shall submit the annual budget to the Board of Directors for adoption. The Board of Directors shall review such budget and if a majority thereof determines that the

budget and the assessments proposed therein are sufficient to meet the obligations imposed by this Supplemental Declaration upon the Corporation, then the Board of Directors shall adopt such budget. If a majority does not so determine, then the budget shall either be returned to Declarant or the Advisory Committee, as applicable, for revision in accordance with the recommendations of the Board of Directors or the Board of Directors may, by a vote of not less than two-thirds of all members thereof then serving, amend the proposed budget and adopt it as thus amended. In the event the Advisory Committee fails to follow the procedures outlined in this Paragraph 12 for the preparation of a budget and the recommendation thereof to the Board of Directors, the Board of Directors shall by the vote of not less than two thirds of its members present and voting at a duly constituted meeting of the Board of Directors, adopt a budget and fix the amount of the Annual Section Assessment for the ensuing assessment year.

13. Encroachments. A perpetual easement is hereby created on each Block Lot or other parcel of land in the Section upon which an Encroachment exists for the benefit of Declarant, the Corporation and any Owner of a Block Lot containing an improvement which constitutes the Encroachment. In the event an encroaching Living Unit or other improvement shall be partially or totally destroyed as a result of fire or other casualty or as a result of the exercise of the power of eminent domain or a conveyance in anticipation thereof, and then rebuilt in its original configuration or substantially in accordance with a Lot Development Plan approved by the Architectural Review Board, any resulting Encroachment shall be permitted and a perpetual easement therefore is hereby created for the benefit of the Owner of the encroaching structure.

14. General Community Rules. Each Block Lot shall be subject to the guidelines, rules, regulations and procedures adopted by Declarant, the Corporation and the Architectural Review Board pursuant to authority granted by the Declaration of Covenants and Restrictions and all Supplemental Declarations, and each Owner of a Lot shall at all times comply therewith.

15. Section Specific Restrictions.

(a) Vehicles. No inoperable, junk, unregistered or unlicensed vehicle shall be kept on or adjacent to the Section. No portion of the Section shall be used for the repair of a vehicle.

(b) Commercial Vehicles. No commercial or industrial vehicle, such as but not limited to moving vans, trucks, tractors, trailers, vans, wreckers, tow trucks, hearses and buses, shall be regularly or habitually parked or parked overnight on or adjacent to

the Section except upon the prior written approval of the Board of Directors.

(c) Recreational Vehicles. No recreational vehicles or equipment, such as but not limited to boats, boating equipment, jet-skis, wave runners, travel trailers, camping vehicles or camping equipment shall be parked on or adjacent to the Section without the prior, written approval of the Architectural Review Board, as to location, size, screening and other relevant criteria. The Corporation shall not be required to provide a storage area for these vehicles.

(d) Towing. The Board of Directors shall have the right to tow any vehicle parked or kept in violation of the covenants contained in this Supplemental Declaration upon twenty-four (24) hours' notice and at the vehicle owner's sole expense.

(e) Garage Usage. Any conversion of any garage that will preclude the parking of vehicles within that garage is prohibited. Owners shall keep their garages at all times in a manner that will permit the usage of such garage for parking of passenger automobiles, vans and/or trucks.

(f) Rental Agreements. Any rental agreement for a Living Unit must be for an initial period of at least six (6) months, must be in writing and must be subject to the rules and regulations set forth in or adopted pursuant to the Declaration, this Supplemental Declaration, the Articles, the Bylaws, the Building Guidelines and all regulations adopted by the Board of Directors and the Architectural Review Board. Every such rental agreement must include a provision stating that any failure by the tenant, its household members or guests, to comply with the terms of document shall be a default under the rental agreement, and the Owner shall be responsible for enforcing that provision.

16. Electoral Parcel. The Parcel shall constitute an Electoral Parcel for the purpose of election of the Board of Directors.

17. Enforcement. The right to enforce each of the foregoing Restrictions by injunction, together with the right to cause the removal by due process of law of structures erected or maintained in violation thereof, is reserved to Declarant, the Corporation, the Architectural Review Board, the Owners of the Lots in the Section, their heirs and assigns, and to the Zoning Authority, their successors and assigns, who are entitled to such relief without being required to show any damage of any kind to Declarant, the Corporation, the Architectural Review Board, any Owner or Owners, or such Zoning Authority by or through any such violation or attempted violation. Under no

circumstances shall Declarant, the Corporation or the Architectural Review Board be liable for damages of any kind to any Person for failure to abide by, enforce or carry out any provision or provisions of this Supplemental Declaration. There shall be no rights of reversion or forfeiture of title resulting from any violations.

18. Severability. Invalidation of any of these covenants and restrictions or any part thereof by judgment or court order shall not affect or render the remainder of said covenants and restrictions invalid or inoperative.

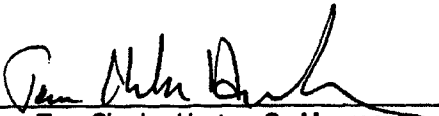
19. Non-Liability of Declarant. Declarant shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Declarant, and no duty of, or warranty by, Declarant shall be implied by or inferred from any term or provision of this Supplemental Declaration.

20. General Provisions. This Supplemental Declaration may be amended at any time in the manner provided in Paragraph 29 of the Declaration of Covenants and Restrictions except that no amendment adopted pursuant to Paragraph 29(a) of the Declaration of Covenants and Restrictions shall be effective as against a Mortgagee who subsequently acquires title to a Block Lot unless approved by at least two-thirds (2/3) of the Mortgagees who hold first mortgages on the Block Lots in the Section (based on one vote for each first mortgage owned) or at least two-thirds (2/3) of the Owners of the Block Lots in the Section (excluding Declarant).

Except as the same may be amended from time to time, the foregoing restrictions will be in full force and effect until January 1, 2030, at which time they will be automatically extended for successive periods of ten (10) years, unless by a vote of a Majority of the Owners it is agreed that these Restrictions shall terminate in whole or in part.

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

BRENNICK TND COMMUNITIES, LLC

By   
Tom Charles Huston, Co-Manager

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HAMILTON )

Before me, a Notary Public in and for said County and State, personally appeared Tom Charles Huston, the Co-Manager of Brenwick TND Communities, LLC, an Indiana limited liability company, who acknowledged execution of the foregoing Supplemental Declaration of Covenants and Restrictions for and on behalf of said limited partnership.

WITNESS my hand and Notarial Seal this 29th day of August, 2001.

Marie M. Urick  
Notary Public Residing in  
Newburgh County

My Commission Expires:

May 24, 2007

Marie M. Urick  
(printed signature)



This instrument prepared by Tom Charles Huston, Attorney at Law, 12821 East New Market Street, Suite 200, Carmel, Indiana 46032.

29.00  
⑪

200100077771  
Filed for Record in  
HAMILTON COUNTY, INDIANA  
MARY L CLARK  
11-29-2001 01:32 pm.  
DEC COV RES 29.00

07/26/01  
Primary Area  
Parcel No. 2

**SUPPLEMENTAL DECLARATION OF  
COVENANTS AND RESTRICTIONS  
THE VILLAGE OF WESTCLAY**

This Supplemental Declaration, dated as of the 26<sup>th</sup> day of November,  
2001, by BRENWICK TND COMMUNITIES, LLC, an Indiana limited company,

**WITNESSES THAT:**

WHEREAS, the following facts are true:

- A. Declarant owns or has the right to acquire the real estate located in Hamilton County, Indiana, more particularly described in Exhibit A attached hereto and incorporated herein by this reference.
- B. This Declaration is a Supplemental Declaration as that term is defined in the Declaration of Covenants and Restrictions.
- C. Declarant intends to subdivide the Parcel into Lots upon each of which a Living Unit may be constructed.

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

1. Definitions. Words, phrases and terms that are defined in the Declaration of Covenants and Restrictions have the same meaning in this Supplemental Declaration except as herein otherwise provided. The following words, phrases and terms, as used in this Supplemental Declaration, unless the context clearly requires otherwise, mean the following:

"Accessory Dwelling" means a Living Unit which is attached to or located on the same Lot as a Principal Dwelling, has an independent means of access and is owned by the Owner of the Principal Dwelling but occupied by another.

"Board of Directors" means the Board of Directors of the Corporation.

**"Declaration of Covenants and Restrictions"** means the Declaration of Covenants and Restrictions of The Village of WestClay dated as of August 9, 1999 and recorded in the Office of the Recorder of Hamilton County, Indiana as Instrument Number 9946964, as amended from time to time.

**"Designated Lot"** means a Lot which is subject to a Supplemental Declaration which authorizes the use of such Lot for a use permitted by Section 5.1 of the Zoning Ordinance other than a use specified in Section 5.1A(1), (2), or (4).

**"Home-Based Office"** means an office incorporated in or attached to, or located on the same Lot as a single-family detached Living Unit from which a business activity is conducted on a substantially regular basis.

**"Home-Based Office Area"** means that part of the Parcel which is within the area denoted on the General Plan of Development as an area where Home-Based Offices may be located.

**"Lot"** means a numerically designated subdivided parcel of land depicted on a Plat.

**"Owner"** means any Person, including Declarant, who at any time owns the fee simple title to a Lot.

**"Parcel"** means that part of the real estate described in Exhibit A which is at any time subject to the covenants, restrictions, easements, charges and liens imposed by the Declaration of Covenants and Restrictions.

**"Plat"** means the secondary plat of a Section within the Parcel.

**"Principal Dwelling"** means a Living Unit (other than a Living Unit which is located in a Multi-family Structure or Multiuse Structure or is a Condominium) designed as the principal structure on the Lot.

**"Section"** means that part of the Parcel which is depicted on a Plat.

**"Tract"** means the real estate, including all or any part of the Parcel, that is subject to the covenants, restrictions, easements, charges and liens imposed by the Declaration of Covenants and Restrictions.

2. **Declaration.** Declarant hereby declares that, in addition to the covenants, restrictions, easements, charges and liens imposed by the Declaration of Covenants and Restrictions, the Parcel shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

3. Land Use. Except for Designated Lots which may be used for any use authorized by a Supplemental Declaration encumbering such Designated Lots, Lots may be used only for residential purposes as provided in Section 5.1A(1), (2) and (4) of the Zoning Ordinance and for Home-Based Offices accessory to residential use of Lots as provided in Paragraph 6 of this Supplemental Declaration. Not more than one (1) Principal Dwelling and not more than one (1) Accessory Dwelling may be located on a Lot which is not a Designated Lot, and no Accessory Dwelling may be located on a Lot unless a Principal Dwelling is also located thereon. No Accessory Dwelling may be erected in front of the Principal Dwelling or in the required front yard of a corner Lot unless the Accessory Dwelling is attached to the Principal Dwelling by a common wall. No home occupation shall be conducted or maintained on a Lot which is not a Designated Lot other than a home occupation which does not constitute a "special use" and is incidental to a business, profession or occupation of the Owner or Occupant of such Lot and which is generally or regularly conducted at another location which is away from such Lot. No signs of any nature, kind or description shall be erected, placed, or permitted to remain on any Lot advertising a permitted home occupation.

4. Construction of Living Units.

(a) Lot Development Plans. Except to the extent such requirement is waived by Declarant, prior to commencement of any Building Activity on a Lot, a Lot Development Plan shall be submitted to the Architectural Review Board in accordance with the requirements of Paragraph 20 of the Declaration of Covenants and Restrictions. The Architectural Review Board may require as a part of a Lot Development Plan a report of subsurface soils investigation of the Lot made by a qualified soils engineer, which report shall include recommendations for the foundations of the proposed improvements. Each Owner shall comply with the terms and provisions of Paragraph 20 of the Declaration of Covenants and Restrictions and the requirements of the Architectural Review Board established pursuant to the authority granted by the Declaration of Covenants and Restrictions.

(b) Size of Living Unit. No Principal Dwelling may be constructed on any Lot unless such Principal Dwelling, exclusive of open porches, attached garages and basements, shall have a gross floor area equal to or greater than the square footage specified in the Building Guidelines applicable to the Lot as of the date construction of the Principal Dwelling on the Lot commences. No Accessory Dwelling may contain more than eight hundred fifty (850) square feet of floor area unless otherwise permitted by the Building Guidelines.

(c) Building Guidelines. Each Owner shall at all times comply with the requirements of the Building Guidelines applicable to such Owner's Lot.

(d) Building Activity. All Building Activity shall be undertaken and completed strictly in accordance with the Building Guidelines and the Lot Development Plan approved by the Architectural Review Board. Unless a delay is caused by strikes, war, court injunction or acts of God, or is authorized in writing by Declarant, the Owner of any Lot which on the



date of purchase from Declarant is not improved with a Principal Dwelling shall commence construction of a Principal Dwelling upon the Lot within six (6) months from the date the Owner acquired title thereto and shall complete construction of such Principal Dwelling within one (1) year after the date of commencement of the building process, but in no event later than eighteen (18) months after the date the Owner acquired title to the Lot unless such Lot is adjacent to a Lot upon which the Owner has constructed a Principal Dwelling in which such Owner permanently resides. If the Owner fails to commence or complete construction of a Principal Dwelling within the time periods specified herein, or if the Owner should, without Declarant's written approval, sell, contract to sell, convey, or otherwise dispose of, or attempt to sell, convey or otherwise dispose of, the Lot before completion of construction of Principal Dwelling on the Lot, then, in any of such events, Declarant may:

- (i) re-enter the Lot and divest the Owner of title thereto by tendering to the Owner or to the Clerk of the Circuit Court of Hamilton County the lesser of (a) the same net dollar amount as was received by Declarant from such Owner as consideration for the conveyance by Declarant of the Lot, together with such actual costs if any, as the Owner may prove to have incurred in connection with the commencement of construction of a Principal Dwelling on the Lot and (b) the then fair market value of the Lot, as determined by averaging two (2) appraisals made by qualified appraisers appointed by the Judge of the Circuit or Superior Court of Hamilton County.
- (ii) obtain injunctive relief to force the Owner to proceed with construction of any Principal Dwelling, a Lot Development Plan for which has been approved by the Architectural Review Board upon application by such Owner; or
- (iii) pursue such other remedies at law or in equity as may be available to Declarant.

The failure of the Owner of a Lot to apply for approval of, or receive approval from, the Architectural Review Board of a Lot Development Plan shall not relieve such Owner from his obligation to complete construction of a Principal Dwelling upon the Lot within the time period specified herein. For the purposes of this subparagraph (d), construction of a Principal Dwelling will be deemed "completed" when the exterior of the Principal Dwelling (including but not limited to the foundation, walls, roof, windows, entry doors, gutters, downspouts, exterior trim, paved driveway, landscaping and yard light) has been completed in conformity with the Development Plan.

(e) Septic Systems. No septic tank, absorption field or any other on-site sewage disposal system (other than a lateral main connected to a sanitary sewerage collection system

operated by the Clay Township Regional Waste District or a successor public agency or public utility) shall be installed or maintained on any Lot.

(f) Water Systems. No private or semi-private water supply system may be located upon any Lot which is not in compliance with regulations or procedures adopted or established by the Indiana State Board of Health, or other civil authority having jurisdiction. To the extent that domestic water service is available from a water line located within 200 feet of the lot line maintained by a public or private utility company, each Owner shall connect to such water line to provide water for domestic use on the Lot and shall pay all connection, availability or other charges lawfully established with respect to connections thereto. Notwithstanding the foregoing, an Owner with the prior approval of the Architectural Review Board may establish, maintain and use an irrigation water well on his Lot as long as the well does not adversely affect the normal pool level of the Lake or a Pond.

(g) Drainage. In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of such Lot to permit such drainage to continue, without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, although no specific drainage easement for such flow of water is provided on the Plat. To the extent not maintained by the Drainage Board, "Drainage Easements" reserved as drainage swales shall be maintained by the Owner of the Lot upon which such easements are located such that water from any adjacent Lot shall have adequate drainage along such swale. Lots within the Parcel may be included in a legal drain established by the Drainage Board. In such event, each Lot in the Parcel will be subject to assessment by the Drainage Board for the costs of maintenance of the portion of the Drainage System and/or the Lakes included in such legal drain, which assessment will be a lien against the Lot. The elevation of a Lot shall not be changed so as to affect materially the surface elevation or grade of surrounding Lots. Each Owner shall maintain the subsurface drains and tiles located on his Lot and shall be liable for the cost of all repairs thereto or replacements thereof.

(h) Geothermal Systems. No open loop geothermal heating and cooling system shall be installed on a Lot.

5. Maintenance of Lots.

(a) Vehicle Parking. No recreational vehicle, motor home, truck which exceeds ¾ ton in weight, trailer, boat or disabled vehicle may be parked or stored overnight or longer on any Lot in open public view.

(b) Signs. Except for such signs as Declarant may in its absolute discretion display in connection with the development of the Village of WestClay or the Parcel and the sale of Lots therein, such signs as may be located on the Community Area and such signs as may, with the consent of Declarant, be displayed by a Designated Builder to advertise the property during construction and sale of Living Units and the maintenance of model homes, no sign of any kind shall be displayed to the public view on any Lot without the prior

approval of the Architectural Review Board except that one sign of not more than four (4) square feet may be displayed at any time for the purpose of advertising the property for sale or for rent.

(c) Sight Lines. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between thirty (30) and seventy-two (72) inches above the street shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting points 25 feet from the intersection of said street lines, or in the case of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(d) Vegetation. An Owner shall not permit the growth of weeds and volunteer trees and bushes on his Lot, and shall keep his Lot reasonably clear from such unsightly growth at all times. If an Owner fails to comply with this Restriction, the Board of Directors shall cause the weeds to be cut and the Lot cleared of such growth at the expense of the Owner thereof and the Corporation shall have a lien against the cleared Lot for the expense thereof.

(e) Nuisances. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood. Barking dogs shall constitute a nuisance.

(f) Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers out of public view. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

(g) Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets designated by the Board of Directors may be kept provided that they are not kept, bred or maintained for any commercial purpose. The owners of such permitted pets shall confine them to their respective Lots such that they will not be a nuisance. Owners of dogs shall so control or confine them so as to avoid barking which will annoy or disturb adjoining Owners.

(h) Outside Burning. No trash, leaves, or other materials shall be burned upon a Lot if smoke therefrom would blow upon any other Lot and, then, only in acceptable incinerators and in compliance with all applicable legal requirements.

(i) Exterior Lights. Except for such alley lights as may be required by the Building Guidelines, no exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Lot.

(j) Electric Bug Killers. Electric bug killers "zappers" and other similar devices shall not be installed at a location or locations which will result in the operation thereof becoming a nuisance or annoyance to other Owners and shall only be operated when outside activities require the use thereof and not continuously.

(k) Air Conditioners. No room air conditioning unit shall be installed so as to protrude from any structure located on a Lot (including but not limited to the window of any Living Unit, garage or Home-based office) if the same would be visible from a public way, a Community Area or any other Lot; provided, however, that this Restriction shall not apply to central air conditioning units.

(l) Fences and Walls. No walls or fences shall be erected on any Lot without the prior approval of the Architectural Review Board. Each Owner shall maintain any approved wall or fence in good and sightly condition and in compliance with the requirements of the Building Guidelines.

(m) Swimming Pools. No above ground swimming pools, other than a children's wading pool, shall be installed or maintained on a Lot.

(n) Basketball Goals. No basketball goal shall be placed or maintained in the front driveway of a Lot or within the right-of-way of any street. Unless the Architectural Review Board establishes a policy establishing other specifications, backboards of all basketball goals shall be of a translucent material such as fiberglass or Lexan and attached to a block pole or a similar type of post. The location of a basketball goal on the Lot is subject to approval of the Architectural Review Board if it would be visible from a public right-of-way adjoining the Lot.

6. Home-Based Office. A Home-Based Office is permitted on a Lot within the Home-Based Office Area subject to the conditions that: (a) the proposed use of the Home-Based Office is approved by the Architectural Review Board in accordance with written standards for permitted uses not inconsistent with this Paragraph 6; (b) the Home-Based Office is not used as a medical, dental, or real estate office or for the retail sale of goods; (c) the Principal Dwelling to which the Home-Based Office is accessory to the principal place of residence of the Persons conducting the business in the Home-Based Office; (d) in addition to the Persons occupying the Principal Dwelling to which the use of the Home Based Office; (d) in addition to the Persons occupying the Principal Dwelling to which the use of the Home-Based Office is accessory, there are not more than three (3) outside employees in the Home-Based Office; (e) employees and clients of the business park in on-street curbside parking spaces or in a rear or side yard parking area and do not park in the driveway forward of the front facade of the Principal Dwelling; (f) signage is limited to one-wall mounted signed with a sign area not exceeding three (3) square feet approved by the Architectural Review Board in accordance with its Sign regulations; (g) the Home-Based Office does not exceed one thousand (1,000) square feet of thirty percent (30%) of the total square footage of the Principal Dwelling if attached to or incorporated in the Principal Dwelling, or, if located in an accessory building on the Lot, does not exceed six hundred (600) square feet; (h) there is no outside storage or

outside display, and (i) all exterior aspects of the Home-Based Office operation is consistent with the residential character of the Section in which the Lot is located.

7. General Community Rules. Each Lot shall be subject to the guidelines, rules, regulations and procedures adopted by Declarant, the Corporation and the Architectural Review Board pursuant to authority granted by the Declaration of Covenants and Restrictions and all Supplemental Declarations, and each Owner of a Lot shall at all times comply therewith.

8. Assessments. The Board of Directors may make Assessments to cover any costs incurred in enforcing these Restrictions or in undertaking any maintenance or other activity that is the responsibility of the Owner of a Lot hereunder but which such Owner has not undertaken as required hereunder. Any such Assessment shall be assessed only against those Owners whose failure to comply with the requirements of these covenants necessitated the action to enforce these covenants or the undertaking of the maintenance or other activity.

9. Electoral Parcel. The Parcel shall constitute an Electoral Parcel for the purpose of election of the Board of Directors.

10. Enforcement. The right to enforce each of the foregoing Restrictions by injunction, together with the right to cause the removal by due process of law of structures erected or maintained in violation thereof, is reserved to Declarant, the Corporation, the Architectural Review Board, the Owners of the Lots in the Parcel, their heirs and assigns, and to the Zoning Authority, their successors and assigns, who are entitled to such relief without being required to show any damage of any kind to Declarant, the Corporation, the Architectural Review Board, any Owner or Owners, or such Zoning Authority by or through any such violation or attempted violation. Under no circumstances shall Declarant, the Corporation or the Architectural Review Board be liable for damages of any kind to any Person for failure to abide by, enforce or carry out any provision or provisions of this Supplemental Declaration. There shall be no rights of reversion or forfeiture of title resulting from any violations.

11. Severability. Invalidation of any of these covenants and restrictions or any part thereof by judgment or court order shall not affect or render the remainder of said covenants and restrictions invalid or inoperative.

12. Non-Liability of Declarant. Declarant shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Declarant, and no duty of, or warranty by, Declarant shall be implied by or inferred from any term or provision of this Supplemental Declaration.

13. General Provisions. This Supplemental Declaration may be amended at any time in the manner provided in Paragraph 29 of the Declaration of Covenants and Restrictions except that no amendment adopted pursuant to Paragraph 29(a) of the Declaration of Covenants and Restrictions shall be effective as against a Mortgagee who subsequently acquires title to a Lot unless approved by at least two-thirds (2/3) of the Mortgagees who hold first mortgages on the Lots in the Parcel (based

on one vote for each first mortgage owned) or at least two-thirds (2/3) of the Owners of the Lots in the Parcel (excluding Declarant).

Except as the same may be amended from time to time, the foregoing restrictions will be in full force and effect until January 1, 2030, at which time they will be automatically extended for successive periods of ten (10) years, unless by a vote of the majority of the then Owners of Lots in the Parcel it is agreed that these Restrictions shall terminate in whole or in part.

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

BRENNICK TND COMMUNITIES, LLC

By Tom Charles Huston  
Tom Charles Huston, Co-Manager

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HAMILTON )

Before me, a Notary Public in and for said County and State, personally appeared Tom Charles Huston, a Co-Manager of Brenwick TND Communities, LLC, an Indiana limited liability company, who acknowledged execution of the foregoing Supplemental Declaration of Covenants and Restrictions for and on behalf of said limited partnership.

WITNESS my hand and Notarial Seal this 21st day of November, 2006.

My Commission Expires:

May 24, 2007

Maie M. Vayns  
Notary Public Residing in Hamilton County  
Maie M. Vayns  
(printed signature)

This instrument prepared by Tom Charles Huston, Attorney at Law, 12821 East New Market Street, Suite 200, Carmel, IN 46032.

EXHIBIT AReal Estate Description

## Village of Westclay – Electoral Parcel P-2

A part of the Southwest Quarter and the Southeast Quarter of Section 28, Township 18 North, Range 3 East, of the Second Principal Meridian, Clay Township, Hamilton County, Indiana, being more particularly described as follows:

Commencing at the northeast corner of said Southwest Quarter; thence South 89 degrees 14 minutes 59 seconds West (assumed bearing) along the north line thereof 940.18 feet to the northwesterly corner of the Village of WestClay Section 10006, the Secondary Plat of which is recorded as Instrument Number 199909949853, Plat Cabinet 2, Slide 304, as recorded in the Office of Recorder of said County and the northeasterly corner of the Village of WestClay Section 10005, the Secondary Plat of Which is recorded as Instrument Number 199909946966, Plat Cabinet 2, Slide 297; (the following twelve courses being along the boundary of said Section 10006) (1) thence South 00 degrees 08 minutes 09 seconds East along the boundary between the two aforementioned sections 676.76 feet to the Point of Beginning; (2) thence South 82 degrees 47 minutes 45 seconds East 96.19 feet; (3) thence South 69 degrees 03 minutes 22 seconds East 91.36 feet; (4) thence South 55 degrees 40 minutes 21 seconds East 91.36 feet; (5) thence South 42 degrees 17 minutes 19 seconds East 91.36 feet; (6) thence South 28 degrees 54 minutes 18 seconds East 91.36 feet; (7) thence South 86 degrees 03 minutes 47 seconds East 60.02 feet; (8) thence North 32 degrees 16 minutes 02 seconds East 114.16 feet; (9) thence North 66 degrees 57 minutes 46 seconds East 174.90 feet; (10) thence South 40 degrees 43 minutes 49 seconds East 181.14 feet; (11) thence South 33 degrees 11 minutes 44 seconds East 20.52 feet; (12) thence North 49 degrees 25 minutes 40 seconds East 242.64 feet to the boundary of the Village of WestClay Section 10009, the Secondary Plat of which is recorded as Instrument Number 199909971387, Plat Cabinet 2, Slide 371; (the following thirteen courses being along said boundary) (1) thence South 51 degrees 58 minutes 07 seconds East 91.47 feet to the point of curvature of a curve to the right having a radius of 25.00 feet, the radius point of which bears South 38 degrees 01 minutes 53 seconds West; (2) thence southeasterly along said curve an arc distance of 40.90 feet to a point which bears South 48 degrees 14 minutes 39 seconds East from said radius point; (3) thence South 48 degrees 14 minutes 39 seconds East 52.00 feet to a non-tangent curve to the left, having a radius of 1026.00 feet, the radius point of which bears North 48 degrees 14 minutes 39 seconds West; (4) thence northeasterly along said curve an arc distance of 6.48 feet to a point of reverse curvature and a curve to the right having a radius of 25.00 feet, the radius point of which bears South 48 degrees 36 minutes 22 seconds East; (5) thence northeasterly along said curve an arc distance of 37.80 feet to a point which bears North 38 degrees 01 minutes 53 seconds East from said radius point; (6) thence South 51 degrees 58 minutes 07 seconds East 1.81 feet; (7) thence North 38 degrees 01 minutes 53 seconds East 50.00 feet to a non-tangent curve to the right, having a radius of 25.00 feet, the radius point of which bears North 38 degrees 01 minutes 53 seconds East; (8) thence northwesterly along said curve an arc distance of 39.27 feet to a point which bears North 51 degrees 57 minutes 55 seconds West from said radius point; (9) thence North 38 degrees 02 minutes 05 seconds East 1.52 feet to the point of curvature of a curve to the right having a radius of 299.00 feet, the radius point of which bears South 51 degrees 57 minutes 55 seconds East; (10) thence northeasterly along said curve an arc distance of 482.58 feet to a point of compound curvature and a curve to the right having a radius of 25.00 feet, the radius point of which bears South 40 degrees 30 minutes 33 seconds West; (11) thence southeasterly along said curve an arc distance of 35.61 feet to a point of reverse curvature and a curve to the left having a radius of 216.00 feet, the radius point of which bears South 57 degrees 52 minutes 53 seconds East; (12) thence southeasterly along said curve an arc distance of 242.70 feet to a point of reverse curvature and a curve to the right having a radius of 25.00 feet, the radius point of which bears South 57 degrees 44 minutes 26 seconds West; (13) thence southwesterly along said curve an arc distance of 35.13 feet to a point of compound curvature and a curve to the right having a radius of 1974.00 feet, said point

being a corner of the Village of WestClay Section 3004, Village Center, Part 1, the Secondary Plat of which is recorded as Instrument Number 199909965089, Plat Cabinet 2, Slide 345, the radius point of which bears North 41 degrees 44 minutes 11 seconds West; (the following nineteen courses being along the boundary thereof ) (1) thence southwesterly along said curve an arc distance of 227.54 feet to a point which bears South 35 degrees 07 minutes 55 seconds East from said radius point; (2) thence South 54 degrees 52 minutes 05 seconds West 424.82 feet to the point of curvature of a curve to the right having a radius of 1324.00 feet, the radius point of which bears North 35 degrees 07 minutes 55 seconds West; (3) thence southwesterly along said curve an arc distance of 165.41 feet to a point which bears South 27 degrees 58 minutes 26 seconds East from said radius point; (4) thence North 21 degrees 55 minutes 19 seconds West 5.51 feet; (5) thence South 68 degrees 04 minutes 41 seconds West 50.00 feet; (6) thence South 21 degrees 55 minutes 19 seconds East 9.86 feet to a non-tangent curve to the right, having a radius of 1324.00 feet, the radius point of which bears North 25 degrees 48 minutes 07 seconds West; (7) thence southwesterly along said curve an arc distance of 144.08 feet to a point which bears South 19 degrees 34 minutes 01 seconds East from said radius point; (8) thence North 21 degrees 55 minutes 19 seconds West 8.38 feet; (9) thence South 68 degrees 04 minutes 41 seconds West 50.00 feet; (10) thence South 21 degrees 55 minutes 19 seconds East 5.37 feet to a non-tangent curve to the right, having a radius of 1324.00 feet, the radius point of which bears North 17 degrees 23 minutes 57 seconds West; (11) thence southwesterly along said curve an arc distance of 281.19 feet to a point of compound curvature and a curve to the right having a radius of 20.00 feet, the radius point of which bears North 05 degrees 13 minutes 51 seconds West; (12) thence northwesterly along said curve an arc distance of 33.19 feet to a point which bears South 89 degrees 51 minutes 51 seconds West from said radius point; (13) thence North 00 degrees 08 minutes 09 seconds West 430.32 feet to a non-tangent curve to the left, having a radius of 1026.00 feet, the radius point of which bears North 04 degrees 06 minutes 39 seconds West; (14) thence northeasterly along said curve an arc distance of 13.78 feet to a point which bears South 04 degrees 52 minutes 49 seconds East from said radius point; (15) thence North 04 degrees 52 minutes 49 seconds West 52.00 feet to a non-tangent curve to the right, having a radius of 974.00 feet, the radius point of which bears North 04 degrees 52 minutes 49 seconds West; (16) thence southwesterly along said curve an arc distance of 80.65 feet to a point which bears South 00 degrees 08 minutes 09 seconds East from said radius point; (17) thence South 89 degrees 51 minutes 51 seconds West 56.17 feet; (18) thence North 00 degrees 08 minutes 09 seconds West 106.36 feet to the point of curvature of a curve to the left, having a radius of 253.00 feet, the radius point of which bears South 89 degrees 51 minutes 51 seconds West; (19) thence northwesterly along said curve an arc distance of 378.67 feet to a corner of the aforesaid Section 10005 which bears North 04 degrees 06 minutes 30 seconds East from said radius point; (the following two courses are along the boundary thereof) (1) thence continuing northwesterly along said curve an arc distance of 16.74 feet to a point which bears North 00 degrees 19 minutes 01 seconds East from said radius point; (2) thence North 00 degrees 08 minutes 09 seconds West 139.00 feet to the Point of Beginning. Containing 19.520 acres, more or less.



200200020321  
Filed for Record in  
HAMILTON COUNTY, INDIANA  
HARRY L. CLARK  
03-13-2002 02:46 pm.  
DEC COV RES 21.00

2100  
②

**SUPPLEMENTAL DECLARATION OF  
COVENANTS AND RESTRICTIONS  
THE VILLAGE OF WESTCLAY**

**BLOCKS "A" and "B"**

This Supplemental Declaration, dated as of the 13<sup>th</sup> day of March, 2002, by BRENWICK TND COMMUNITIES, LLC, an Indiana limited liability company,

**WITNESSES THAT:**

WHEREAS, the following facts are true:

A. Declarant is the owner of the fee simple title to the real estate located in Hamilton County, Indiana, more particularly described in Exhibit A attached hereto and incorporated herein by this reference.

B. This instrument is a Supplemental Declaration as that term is defined in the Declaration of Covenants and Restrictions.

C. Declarant intends to cause the Parcel to be developed with Multifamily Structures.

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

1. Definitions. Words, phrases and terms that are defined in the Declaration of Covenants and Restrictions have the same meaning in this Supplemental Declaration except as herein otherwise provided. The following words, phrases and terms, as used in this Supplemental Declaration, unless the context clearly requires otherwise, mean the following:

"Association" means WestClay Village Center Owners Association, Inc., an Indiana nonprofit corporation.

"Board of Directors", "Board", and "Directors" each means the Board of Directors of the Corporation.

"Corporation" means the Village of WestClay Owners Association, Inc., an Indiana nonprofit corporation.

"Declaration of Covenants and Restrictions" or "Declaration" means the Declaration of Covenants and Restrictions of The Village of WestClay dated as of August 9, 1999 and recorded in the Office of the Recorder of Hamilton County, Indiana as Instrument Number 9946964, as amended from time to time.

"Design Review Board" means that entity established pursuant to Paragraph 6 of the Village Center Supplemental Declaration.

"Lot" means, prior to any authorized subdivision thereof (including establishment of a Horizontal Property Regime), each of Block "A" and Block "B"; otherwise, "Lot" has the meaning set forth in the Declaration.

"Members" means members of the Association.

"Owner" means any Person, including Declarant, who at any time owns the fee simple title to a Lot.

"Parcel" means Blocks "A" and "B" in Section 3004 Village Center, Part 1, per the plat thereof recorded as Instrument Number 9965089 in the Office of the Recorder of Hamilton County, Indiana.

"Plans" means the plans and specifications for the Project approved by the Design Review Board, as the same may be supplemented and/or revised from time to time with the written approval of the Design Review Board.

"Plat" means the secondary plat of Section 3004 Village Center, Part 1.

"Project" means the apartment project to be developed in accordance with the Plans.

"Tract" means the real estate, including all or any part of the Parcel, that is subject to the covenants, restrictions easements, charges and liens imposed by the Declaration.

"Village Center" means the real estate described in Exhibit A to the Village Center Supplemental Declaration.

"Village Center Supplemental Declaration" means the Supplemental Declaration dated November 22, 1999 and recorded December 3, 1999, as Instrument No. 9969688 in the Office of the Recorder of Hamilton County.

2. Declaration. Declarant hereby declares that, in addition to the covenants, restrictions, easements, charges and liens imposed by the Declaration and the Village Center Supplemental Declaration, the Parcel shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

3. Use. For a period of twenty (20) years subsequent to the date of recordation of this Supplemental Declaration, the Parcel shall, unless a Horizontal Property Regime is established thereon as permitted by this Supplemental Declaration, be used exclusively for the construction, operation, maintenance, repair and replacement of Multifamily Structures containing Living Units for rent, together with structures and improvements incidental to an apartment community, and for no other use or purpose without the prior written consent of Declarant, which consent may be conditioned or denied in the unfettered discretion of Declarant. Not more than 186 Living Units shall be located on the Parcel and each Living Unit located therein shall contain not less than 750 gross square feet of living area. Subsequent to September 30, 2003, a residential Horizontal Property Regime may be located on the Parcel, but at no time may any Lot be subdivided except in connection with establishment of a residential Horizontal Property Regime. If a residential Horizontal Property Regime is established on the Parcel, then such regime shall extend to the entire Parcel and include the entire Project (For purposes of the Supplemental Declaration of Covenants and Restrictions for Primary Area Parcel No. 1, as amended, the Parcel is a Designated Lot which may be used for the use permitted by Section 5.1A(3) of the Zoning Ordinance.)

4. Development.

(a) Construction. The Parcel shall be developed strictly in accordance with the Plans. Construction of the Project shall commence on or before April 1, 2002, and shall be diligently prosecuted to completion without interruption or delay subject only to delays caused by conditions beyond the control of the Owner. All construction shall be performed in a good, workmanlike and first class manner and in conformity with The Village of WestClay Building Guidelines and Requirements.

(b) Build-to Line. The build-to line for each of Block "A" and Block "B" is established at a point ten (10) feet distant from and parallel to the property line of such Blocks.

(c) Threshold Elements. A drainage, utility and sewer easement having a width of five feet has been created on the Plat along the perimeter of each of Block "A" and Block "B". Development of the Parcel does not require use of such Plat easement, such easement is not currently being used for any purpose for which it was created, and no such use is contemplated in the future. Accordingly, threshold elements may encroach on such Plat easement and no such encroachment shall be deemed violative of any provision of Paragraph 23 of the Declaration. As used herein, "threshold elements" means porches, stoops, stairs, balconies, eaves, cornices, loggias, arcades, chimneys, awnings, doors and windows which are placed at or near the build-to line, a side yard

5. Flags and Banners. Except to the extent otherwise authorized by the Design Review Board, no flags, flag poles, or banners shall be located on the Parcel except for such United States Flags as may be tastefully displayed on recognized public holidays.

6. Maintenance, Repairs and Replacements.

(a) Buildings. Each Owner shall, at his own expense, be responsible for the maintenance, repair, decoration and replacement of the Multifamily Structures and other structures and improvements owned by him, and each Owner shall promptly perform all maintenance and repair which, if neglected, might adversely affect the structural integrity or the exterior, appearance thereof, including but not limited to painting of exterior wood surfaces and repainting on a regular basis of all other exterior painted surfaces so as to maintain all painted surfaces in first-class condition and appearance with no flaking, cracked or worn surfaces. In the event that the maintenance or repair of any Multifamily Structure or other structure or improvement is reasonably necessary in the discretion of the Board of Directors to preserve the structural integrity or sightlines thereof, or is otherwise necessary for the health and safety, or in the interest of the general welfare, of the owners of lots the Tract, the Board of Directors shall have the power to seek injunctive relief to compel compliance with this Restriction or the Board may undertake such maintenance or repair; provided that no such maintenance or repair shall be undertaken without a resolution of the Board of Directors and reasonable written notice to the Owner and, provided further, that the cost thereof shall be assessed against the Lot on which such maintenance or repair is performed and, when so assessed, a statement for the amount thereof shall be rendered promptly to the then Owner of said Lot at which time the Assessment shall become due and payable and a continuing lien and obligation of said Owner in all respects as provided in Paragraph 19(i) of the Declaration.

(b) Grounds. The Owner of each Lot shall at his expense properly irrigate and keep the grass, trees, shrubs and other plantings located thereon or in a tree lawn adjacent thereto nourished and neatly cut, cultivated or trimmed as reasonably necessary to maintain the same at all times in a good and sightly condition appropriate to a first-class residential community and, if such Owner fails to do so, the Corporation may undertake such maintenance and assess the Maintenance Costs thereof as a Special Assessment against the Lot, or the Corporation may seek injunctive relief to compel compliance with this Restriction.

(c) Damage or Destruction. If the improvements located on a Lot are damaged or destroyed as a consequence of fire, storm or other event ("Casualty") to the extent that the cost of restoration or replacement thereof is less than the fair market value of all improvements located on the Lot prior to the Casualty, then the Owner thereof shall promptly restore, repair, replace and rebuild the portion of the Project so damaged or destroyed as nearly as possible to its quality, utility, value, condition and character immediately prior to such Casualty. Such restoration shall conform to the Plans except to the extent that deviations therefrom have been approved in writing by the Design Review Board. If the cost of restoration or replacement exceeds the fair market value of all improvements located on the Lot prior to the Casualty, then the Owner shall not be required to repair or restore (but if it elects to so repair or restore, it shall do so in accordance with the Paragraph 6(c), and in the event the Owner elects not to repair or restore the improvements, it shall, as soon as practical

after such Casualty, remove all debris from the Lot and take such actions as are necessary to make the undamaged portion of the Project into a functional economic unit insofar as it is possible under the circumstances. Areas of the Lot previously occupied by improvements damaged by Casualty and not restored shall be promptly landscaped in accordance with a landscaping plan approved by the Design Review Board.

7. Amendments.

(a) Generally. This Supplemental Declaration may, with the consent of all Owners of Lots in the Parcel, be amended at any time by an instrument signed by (i) such Owners, (ii) the appropriate officers of the Association acting pursuant to authority granted by (A)(i) if prior to the Applicable Date, by Declarant or (ii) if subsequent to the Applicable Date, by not less than two-thirds (2/3) of the votes of the Members cast at a meeting duly called for the purpose of amending this Supplemental Declaration and (B) by a majority of the Directors of the Corporation and (iii) to the extent required by Paragraph 27 of the Declaration, Declarant.

(b) By Declarant. This Supplemental Declaration may, with the consent of all Owners of Lots in the Parcel, be amended at any time prior to the Applicable Date by Declarant as provided in Paragraph 29(b) of the Declaration.

(c) Limitations on Amendments. The right to amend this Supplemental Declaration is subject to the provisions of subparagraphs (c) and (d) of Paragraph 29 of the Declaration.

8. Enforcement. The right to enforce each of the foregoing Restrictions by injunction, together with the right to cause the removal by due process of law of structures erected or maintained in violation thereof, is reserved to Declarant, the Corporation, the Association, the Design Review Board, the Owners of the Lots in the Parcel, their heirs and assigns, and to the Zoning Authority, their successors and assigns, who are entitled to such relief without being required to show any damage of any kind to Declarant, the Corporation, the Association, the Design Review Board, any Owner or Owners, or such Zoning Authority by or through any such violation or attempted violation. Under no circumstances shall Declarant, the Corporation, the Association or the Design Review Board be liable for damages of any kind to any Person for failure to abide by, enforce or carry out any provision or provisions of this Supplemental Declaration. There shall be no rights of reversion or forfeiture of title resulting from any violations.

9. Severability. Invalidation of any of these covenants and restrictions or any part thereof by judgment or court order shall not affect or render the remainder of said covenants and restrictions invalid or inoperative.

10. Non-Liability of Declarant. Declarant shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Declarant, and no duty of, or warranty by,



**EXHIBIT A**

**Legal Description**

Block "A" and Block "B" in The Village of WestClay, Section 3004 Village Center, Part 1, the plat of which is recorded as Instrument Number 199909965069, Plat Cabinet 2, Slide 345, in the Office of the Recorder of Hamilton County, Indiana.

Cross Reference: 2002  
PC 3 Slide 40

Townhomes  
(Block C)

44.00  
18

**SUPPLEMENTAL DECLARATION OF  
COVENANTS AND RESTRICTIONS  
THE VILLAGE OF WESTCLAY**

200200066955  
Filed for Record in  
HAMILTON COUNTY, INDIANA  
MARY L CLARK  
09-16-2002 12:16 pm.  
DEC COV RES 44.00

This Supplemental Declaration, dated as of the 10th day of September, 2002, by  
BRENWICK TND COMMUNITIES, LLC, an Indiana limited company,

**WITNESSES THAT:**

WHEREAS, the following facts are true:

- A. Declarant owns the real estate located in Hamilton County, Indiana, constituting the Section as particularly described in Paragraph 1 below.
- B. This instrument is a Supplemental Declaration as that term is defined in the Declaration of Covenants and Restrictions.
- C. Declarant intends to subdivide the Section into Block Lots upon each of which a Living Unit may be constructed.

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

- 1. Definitions. Words, phrases and terms that are defined in the Declaration of Covenants and Restrictions have the same meaning in this Supplemental Declaration except as herein otherwise provided. The following words, phrases and terms, as used in this Supplemental Declaration, unless the context clearly requires otherwise, mean the following:



"Board of Directors" or "Board" means the board of directors of the Corporation.

"Block" means each of Blocks Nos. 11 through 21 as depicted on the Conditional Secondary Plat.

"Block Lot" means any Lot located on a Block, as depicted on the Final Secondary Plat.

"Owner" means any Person who at any time owns the fee simple title to a Block Lot.

"Conditional Secondary Plat" means the plat depicting the subdivision of the Section into Blocks recorded in the Office of the Recorder of Hamilton County as Instrument Number 200200062158.

"Common Expenses" means expenses for the improvement, maintenance, repair, replacement and operation of the Structures and all sums lawfully assessed against the Owners by the Corporation or as declared by this Supplemental Declaration, including but not limited to premiums on insurance maintained by the Board pursuant to Paragraph 7.

"Declaration of Covenants and Restrictions or "Declaration" means the Declaration of Covenants and Restrictions of The Village of WestClay dated as of August 9, 1999 and recorded in the Office of the Recorder of Hamilton County, Indiana as Instrument Number 9946964, as amended from time to time.

"Encroachment" means the encroachment upon a Block Lot, public right-of-way, Common Parking Lot or Community Area by any Living Unit or any stoop, porch, steps, arcade, overhang or other structure or improvement constituting a part thereof or an appurtenance thereto as a result of the construction of a Living Unit substantially in accordance with a Lot Development Plan approved by the Architectural Review Board, or as a result of the settling or shifting thereof.

"Final Secondary Plat" means a plat depicting the subdivision of one or more Blocks into Block Lots recorded in the Office of the Recorder of Hamilton County.

"Insurance Trustee" means such bank with trust powers authorized to do business in Hamilton or Marion Counties, Indiana, as the Board of Directors may designate for the custody and disposition, as herein provided, of insurance proceeds.

**"Majority of the Owners"** means the Owners of not less than 51% of the Block Lots.

**"Parcel"** means, for the purpose of Paragraph 16, the Section together with all other real estate designated by Declarant for development of townhomes which is subject to a Supplemental Declaration (Townhomes). For the purposes of Paragraph 12, the Section shall be deemed a Parcel within the contemplation of Paragraph 19(e) of the Declaration.

**"Primary Area Supplemental Declaration"** means the Supplemental Declaration for Parcel 2 of the Primary Area recorded in the Office of the Recorder of Hamilton County as Instrument Number 200100077771.

**"Restoration"** means (re)construction or (re)building of Living Units to not less than the same condition as they existed immediately prior to any loss, damage or destruction with the same type of architecture and using, where appropriate, new materials of like kind and quality.

**"Section"** means Block "C" of The Village of WestClay, Section 3004-A, Village Center, Part 1, per plat thereof recorded as Instrument # 199909965089, Plat Cabinet 2, Slide 345, in the Office of the Recorder of Hamilton County, Indiana.

**"Section Assessment"** means the Parcel Assessment applicable to the Section pursuant to the provisions of Paragraph 12.

**"Structures"** means the foundations, exterior walls (exclusive of glass but inclusive of doors, door frames and window frames), balconies, porches, and roofs of Living Units.

2. **Declaration.** Declarant hereby declares that, in addition to the covenants, restrictions, easements, charges and liens imposed by the Declaration of Covenants and Restrictions and the Primary Area Supplemental Declaration, the Section shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

3. **Description of Block Lots.** Declarant plans to subdivide the Section into eleven (11) Blocks designated "11" through "21" containing not more than forty (40) Block Lots. The boundaries of each Block Lot shall be as shown on a Final Secondary Plat.

4. **Land Use.** No portion of any Block Lot may be sold or subdivided such that there will be thereby a greater number of Living Units in the Section than the number of original Block Lots shown on the Final Secondary Plats.

5. Party Walls.

(a) General Rules of Law to Apply. Each wall that is built as a part of the original construction of a Living Unit and placed on the dividing line between Block Lots shall constitute a party wall and, to the extent not inconsistent with the provisions of this Paragraph 5, the general rules of Indiana law regarding party walls shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of routine repair and maintenance of a party wall shall be shared equally by the Owners who make use of the wall.

(c) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other cause, and the affected Living Units are to be restored pursuant to the provisions of Paragraph 6, then the Corporation shall restore it. If the Corporation is not required to so restore the party wall, then either Owner who has used the wall may restore it, and if the other Owner thereafter makes use of the wall, he shall contribute equally to the cost of restoration thereof unless the restoring Owner has the right to call for a larger contribution from the subsequent user under a rule of law regarding liability for negligent or willful acts or omissions, in which event the subsequent user shall make such larger contribution as may be lawfully determined.

(d) Weatherproofing. An Owner who by his negligent or willful act or omission causes the party wall to be exposed to the elements shall furnish the necessary protection against such elements and shall bear the entire cost thereof.

(e) Rights and Duties Run with Land. The rights and duties of an Owner with respect to a party wall under this Paragraph 5 shall be appurtenant to such Owner's Block Lot and shall pass to the successor in title of such Owner.

6. Damage and Restoration. In the event of damage or destruction of a Living Unit by fire or other cause, the following provisions shall be applicable:

(a) Partial Destruction. In the event that less than all of the Living Units in a Block are completely destroyed by the occurrence of fire or other cause, then the Corporation shall cause the damaged Living Units to be promptly repaired and restored as nearly as possible to the quality, utility, value, condition and character as existed prior to such damage. Such restoration shall conform to the Lot Development Plan originally approved for each

damaged Living Unit except to the extent that deviations therefrom have been approved in writing by the Architectural Review Board. The proceeds of the insurance carried by the Corporation shall be applied to the cost of such Restoration. If the insurance proceeds are not adequate to cover the cost of Restoration, or in the event there are no proceeds, the cost for restoring the damage shall be paid by all of the Owners of the Living Units directly affected by the damage in the proportion that the gross area of each affected Living Unit bears to the gross area of all affected Living Units. Living Units shall be deemed to be directly affected if, and only if, such Living Unit is located within the Block in which the fire or other damage occurs. If any Owner refuses or fails to make the required payments, the other Owners shall (or the Corporation, if such other Owners fail to do so) complete the Restoration and pay the cost thereof, and the costs attributable to the Owner or Owners who refuse or fail to make such payments at the time required by the Board of Directors shall become a lien on such defaulting Owner's Living Unit and may be foreclosed in the same manner as provided for the lien for Assessments.

(b) Restoration in the Event of Complete Destruction. In the event of complete destruction of all the Living Units in a Block, no Owner shall be required to rebuild his Living Unit, but he shall be required to remove in a timely manner all debris from the Block Lot and promptly landscape his Block Lot in accordance with a landscaping plan approved by the Architectural Review Board.

(c) Determination of Complete Destruction. It shall be conclusively presumed that complete destruction of all Living Units did not occur unless it is determined by vote of not less than ninety percent (90%) all Owners of Block Lots in the Section at a special meeting of such Owners held within one hundred twenty (120) days following the date of damage or destruction that all Living Units have been completely destroyed. In the event of a determination of complete destruction, insurance proceeds shall be payable in accordance with the terms of the insurance policy covering such loss.

7. Insurance.

(a) Coverage. The Board of Directors on behalf of the Owners and as a Common Expense shall cause to be obtained and kept in full force and effect at all times casualty or physical damage insurance in an amount equal to the full replacement cost of the Living Units as initially constructed, without deduction or allowance for depreciation in excess of One Thousand Dollars (\$1,000.00),

such coverage to be underwritten by a company or companies duly authorized to do business in Indiana and to afford protection against at least the following:

- (i) loss of damage by fire or other hazards covered by the standard extended coverage endorsement; and
- (ii) such other risks as are customarily covered with respect to projects similar in construction, location and use, as the Board may from time to time determine.

The provisions of this Paragraph 7 shall not be construed to limit the power or authority of the Board to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Board or a Majority of the Owners may deem appropriate from time to time.

As used in this subparagraph (a), the term "Living Units as initially constructed" means the Structures, and the standard partition walls, fixtures, pipes, wires, conduit and installations initially installed in Living Units by the original builder thereof, as shown on the Lot Development Plan as amended from time to time, and replacements thereof, but does not mean any fixtures, alterations, installations or additions in or to the Living Unit made by an individual Owner of that Living Unit or any personal property of such Owner.

(b) Form. Insurance shall be carried in a form or forms naming as the insured the Board of Directors as trustee for all Owners and Mortgagees according to the loss or damage to their respective Living Units and payable in case of loss to the Insurance Trustee. Every such policy of insurance shall, if obtainable at a reasonable cost:

- (i) provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim any right of set-off, counterclaim, apportionment, proration, or contribution by reason of any other insurance obtained by or for any Owner;
- (ii) contain no provisions relieving the insurer from liability for loss occurring while the hazard to such building is increased, whether or not

within the knowledge or control of the Board, or because of any breach of warranty or condition or any other act or neglect by the Board or any Owner or any other Person under either of them;

(iii) provide that such policy may not be canceled (whether or not requested by the Board) except by the insurer giving at least thirty (30) days' prior written notice thereof to the Board, all Owners, all Mortgagees and every other Person in interest who shall have requested such notice of the insurer;

(iv) contain a waiver by the insurer of any right of subrogation to any right of the Board or Owners against any of them or any other Person under them;

(v) provide that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Owners do not elect to restore pursuant to Paragraph 6 of this Supplemental Declaration;

(vi) contain a standard mortgagee clause which shall:

(A) provide that any reference to a mortgagee in such policy shall mean and include any Mortgagee, whether or not named therein;

(B) provide that such insurance as to the interest of any Mortgagee shall not be invalidated by any act or neglect of the Board or any Owner, or any Persons under any of them;

(C) waive any provision invalidating such mortgagee clauses by reason of the failure of any Mortgagee to notify the insurer of any hazardous use or vacancy, and requirement that the Mortgagee pay any premium

thereon, and any contribution clause;  
and

(D) provide that without affecting any protection afforded by such mortgagee clause, any proceeds payable under such policy shall be payable to the Insurance Trustee.

(c) Allocation of Insurance Proceeds. In the event of damage or destruction by fire or other cause to Living Units covered by insurance written in the name of the Board as trustee for Owners and their Mortgagees, proceeds on account of such damage to Living Units shall be allocated as follows:

(i) If the Living Unit is to be restored, insurance proceeds shall be allocated to such Living Unit in the proportion that the cost of Restoration of such Living Unit bears to the cost of Restoration of all damaged Living Units, such cost to be determined by the Board. In determining such cost, the Board shall not take into consideration the cost of repairing any items specifically excluded from insurance coverage pursuant to the provision of subparagraph (a).

(ii) If the Living Unit is not to be restored, insurance proceeds shall be allocated to such Living Unit in accordance with the terms of the policy insuring such loss.

(iii) In the event a mortgage endorsement has been issued with respect to a particular Living Unit, the amount of the insurance proceeds allocated to the Owner of such Living Unit shall be held in trust for the mortgagee and the Owner as their interests may appear; provided, however, that no mortgagee shall have the right to determine or participate in the determination as to whether or not any damaged property shall be restored or repaired, and no mortgagee shall have any right to apply or to have applied to the reduction of a mortgage debt any insurance proceeds except distributions thereof made to the Owner and mortgagee pursuant to the provisions of this Supplemental Declaration.

(d) Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the Owners and their mortgagees as their respective interests appear, in the following manner:

(i) Expense of Trust. All expenses of the Insurance Trustee shall be first paid or provision made therefore.

(ii) Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof pursuant to the provisions of Paragraph 8.

(iii) Failure to Reconstruct or Repair. If it is determined that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the Owners in the proportions that the proceeds were allocated to the Owners pursuant to Paragraph 8(c)(ii).

(iv) Certificate. In making distributions to Owners and their mortgagees, the Insurance Trustee may rely upon a certificate issued by the Board as to the names of the Owners and their respective shares of the distribution, and, with respect to the names of mortgagees, may rely upon a certificate from an attorney-at-law, or title insurance company, who has examined the Mortgage Records in the office of the Recorder of Hamilton County, Indiana, as to the names of the holders of mortgages of record.

(e) Corporation as Owner's Agent. The Corporation, acting by its Board of Directors, is hereby irrevocably appointed agent for each Owner and for each owner of a mortgage or other lien upon a Living Unit and for each owner of any other interest in a Living Unit to negotiate all claims arising under insurance policies purchased by the Board, and to execute and deliver releases upon the payment of claims.

(f) Individual Policies - Recommendation of Declarant. Any Owner or Mortgagee may obtain at his own expense additional insurance for improvements and betterments to a Living Unit made or acquired at the expense of the Owner. The Board of Directors



may require that such insurance provide that it shall be without contribution as against the insurance maintained by the Board of Directors. Such insurance shall contain the same waiver of subrogation provision as that set forth in subparagraph (b)(iv). If an insured loss is sustained to a Living Unit and the amount of insurance proceeds that would otherwise be payable to the Insurance Trustee is reduced due to proration of insurance purchased pursuant to this subparagraph, the Owner shall assign the proceeds of the personally purchased insurance, to the extent of the amount of the reduction, to the Insurance Trustee to be distributed as provided in subparagraph (d). The Declarant recommends that each Owner obtain, in addition to the insurance hereinabove provided to be obtained by the Board of Directors, a policy insuring against loss or damage to personal property used or incidental to the occupancy of the Living Unit and insuring the Owner against loss as a result of fire, extended coverage perils, vandalism or malicious mischief, theft, personal liability and the like. Such policy should also cover losses to improvements and betterments to the Living Unit made or acquired at the expense of the Owner.

8. Procedure for Restoration or Repair. If as a result of damage or destruction to a Living Unit by fire or other cause, Restoration or repair of the Living Unit is required or authorized pursuant to Paragraph 6, such Restoration or repair shall be undertaken in accordance with the following provisions:

(a) Estimate of Cost. Promptly after the occurrence of the damage or destruction to the Living Unit that the Corporation has the responsibility to restore or repair, the Board shall obtain reliable and detailed estimates of the cost to restore or repair. In the event of damage to any Living Units exceeding Fifty Thousand Dollars (\$50,000.00), the Board shall retain the services of an architect to supervise the Restoration or repair and the disbursement of the construction funds.

(b) Plans and Specifications. Any Restoration or repair must be either substantially in accordance with the original Lot Development Plan for the Living Unit or according to plans and specifications approved by the Architectural Review Board and by a Majority of the Owners of the Living Units in the Block, which approval shall not be unreasonably withheld.

(c) Sealed Bids. The Board shall advertise for sealed bids with licensed contractors, and then may negotiate with any contractor, who may be required to provide a full performance and

payment bond for the Restoration or repair of the damaged Living Units.

(d) Responsibility. If the damage is only to those parts of a Living Unit for which the responsibility of maintenance and repair is that of an Owner, then the Owner of the Living Unit shall be responsible for the cost of Restoration and repair. The Restoration or repair of a damaged Living Unit shall be subject to approval by the Architectural Review Board.

(e) Construction Funds. The funds for payment of the costs of Restoration or repair, which shall consist of the proceeds of insurance held by or payable to the Insurance Trustee, such amounts from the reserve for replacements as are authorized by the Board for the purpose of Restoration or repair, and the funds collected by the Board from any Special Assessments against Owners deemed necessary by the Board to satisfy its Restoration or repair obligations under this Supplemental Declaration, shall be deposited with the Insurance Trustee who shall disburse the same in payment of the costs of Restoration or repair as provided in this Paragraph 8.

(f) Certificates. The Insurance Trustee may rely upon a certificate from the Board to determine whether or not the damaged Living Unit is to be restored or repaired and upon a certificate from the architect employed by the Board to supervise the Restoration or repair with respect to the payments to be made to contractors undertaking the Restoration and/or repair.

(g) Insurance Trustee. The Insurance Trustee shall not be liable for payment of insurance premiums, the renewal or the sufficiency of insurance policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes herein stated, and for the benefit of the Owners and their Mortgagees as herein provided.

9. Advisory Committee. In order to assist the Board in establishing the budget for annual maintenance and repair of the Living Units, subsequent to the Applicable Date there shall be created an Advisory Committee consisting of three (3) Persons elected annually by the Owners of Living Units in the Section. The Owners of each Living Unit in the Section shall have one (1) vote and the three (3) Persons receiving the largest number of votes cast by Owners of Living Units in the Section shall be elected to the Advisory Committee. The members of the Advisory Committee shall elect from among their membership a President, a Secretary and such other officers as they may deem appropriate. The Advisory Committee shall perform such functions as

are specified herein and such other functions as are not in conflict with the terms of the Declaration of Covenants and Restrictions, the Primary Area Supplemental Declaration or this Supplemental Declaration, or in derogation of the rights of the Corporation, as they may by majority vote determine.

10. Maintenance, Repairs and Replacements.

(a) Living Unit Interiors. Each Owner shall, at his own expense, be responsible for all maintenance, repair, decoration and replacement within his own Living Unit, and each Owner shall promptly perform all maintenance and repair therein which, if neglected, might adversely affect the structural integrity of his Living Unit. In the event that the maintenance or repair of any Living Unit is reasonably necessary in the discretion of the Board of Directors to preserve the structural integrity of a Living Unit, or is otherwise necessary for the health and safety, or in the interest of general welfare, of the Owners of Block Lots in the Section, the Board of Directors shall have the power to undertake such maintenance or repair; provided that no such maintenance or repair shall be undertaken without a resolution of the Board of Directors and reasonable written notice to the Owner of the Living Unit proposed to be maintained and, provided further, that the cost thereof shall be assessed as a Special Assessment against the Living Unit on which such maintenance or repair is performed and, when so assessed, a statement for the amount thereof shall be rendered promptly to the then Owner of said Living Unit at which time the Assessment shall become due and payable and a continuing lien and obligation of said Owner in all respects as provided in Paragraph 9(i) of the Declaration of Covenants and Restrictions.

(b) Lawn Maintenance. At the request of an Owner, the Corporation may arrange for maintenance of the lawn of such Owner's Block Lot and assess the cost thereof directly to the Owner requesting such service.

(c) Structures. Each Owner shall, at his own expense, be responsible for all maintenance of and repairs to the Structures necessitated by his negligence, misuse or neglect except to the extent covered by insurance maintained by the Corporation pursuant to Paragraph 7. All other maintenance, repairs and replacements to the Structures shall be furnished by the Corporation and the cost thereof shall be a Common Expense. The Board of Directors may adopt rules and regulations concerning the maintenance, repair and replacement of the Structures and may

establish reserves with respect thereto as part of the Common Expenses for which Assessments shall be made against the Owners of Living Units as provided in Paragraph 12.

(d) Right of Entry. The Board of Directors, the Architectural Review Board, any managing agent employed by the Board of Directors, or any other Person authorized by the Board of Directors or such managing agent shall have the right, at reasonable times and upon reasonable prior notice (except in cases of emergency in which no notice shall be required), to enter upon the Block Lots and to have access to the Structures for the purposes of inspection thereof and replacement, repair and maintenance of the same.

11. Architectural Review Board. The Architectural Review Board shall have full power and authority to adopt and enforce rules and regulations appropriate to the Section. In addition, the Architectural Review Board shall have full power and authority to interpret, administer and enforce the Restrictions set forth in the Declaration of Covenants and Restrictions, as amended and supplemented. Nothing contained in this Supplementary Declaration is intended to, or shall be construed as, in any manner limiting the regulatory authority of the Architectural Review Board as that authority is set forth in the Declaration of Covenants and Restrictions.

12. Section Assessment.

(a) Purpose. The Annual Section Assessment shall be used exclusively for the improvement, maintenance, repair, replacement and operation of the Structures and the payment of Common Expenses and other costs and expenses incurred by the Corporation in performing its rights and duties hereunder.

(b) Preparation of Annual Budget. Each year prior to the Applicable Date Declarant, and subsequent to the Applicable Date the Advisory Committee, shall cause to be prepared an annual budget estimating the total amount of the Common Expenses for the ensuing fiscal year (including without limitation an amount for working capital, a general operating reserve, a reserve for replacements and the sums necessary to make up any deficit in the Common Expenses for any prior year). Not less than ten (10) days prior to the date of a meeting of the Board of Directors at which the annual budget of the Corporation will be adopted which occurs subsequent to the Applicable Date, the Advisory Committee shall hold a public hearing, after having given due notice, at which Owners may comment upon the proposed budget, a copy of which shall have been provided to each Owner at least five (5) days prior to such public hearing. Following such public hearing and prior to

the date of the budget meeting of the Board of Directors, the annual budget shall be approved by not less than a majority of the members of the Advisory Committee then serving for recommendation to the Board of Directors as the basis for the Annual Section Assessment for the ensuing assessment year.

(c) Basis for Assessment.

(i) Improved Block Lots. Each Block Lot upon which a Living Unit has been constructed shall be assessed at a rate which is uniform for the type of Living Unit located thereon, adjusted to reflect special services provided, if any, and differences in per Living Unit insurance premiums.

(ii) Unimproved Block Lots. A Block Lot upon which a Living Unit has not been constructed shall not be subject to assessment.

(d) Annual Section Assessments. The annual budget as determined by Declarant or, subsequent to the Applicable Date, recommended by the Advisory Committee shall, based on the estimated requirement for Common Expenses in the ensuing fiscal year as set forth in such budget, contain a proposed assessment against each Block Lot subject to assessment determined on the basis set forth in subparagraph (c). Immediately following the adoption of the budget by the Board of Directors pursuant to the provisions of subparagraph (e), the Secretary of the Corporation shall give each Owner written notice of the Annual Section Assessment against each Block Lot subject to assessment for the ensuing fiscal year of the Corporation. The Annual Section Assessment against each such Block Lot shall be paid in equal monthly installments commencing on the first day of the first calendar month of each assessment year and on the first day of each calendar month thereafter through and including the first day of the twelfth calendar month of such assessment year. Payment of the monthly installments of the Annual Section Assessment shall be made to the Corporation or otherwise as directed by the Board of Directors. The Annual Section Assessment for the assessment year shall become a lien on each Block Lot subject thereto as of the first day of the first calendar month of each assessment year.

(e) Adoption of Budget. Declarant or the Advisory Committee, as applicable, shall submit the annual budget to the Board of Directors for adoption. The Board of Directors shall review such budget and if a majority thereof determines that the

budget and the assessments proposed therein are sufficient to meet the obligations imposed by this Supplemental Declaration upon the Corporation, then the Board of Directors shall adopt such budget. If a majority does not so determine, then the budget shall either be returned to Declarant or the Advisory Committee, as applicable, for revision in accordance with the recommendations of the Board of Directors or the Board of Directors may, by a vote of not less than two-thirds of all members thereof then serving, amend the proposed budget and adopt it as thus amended. In the event the Advisory Committee fails to follow the procedures outlined in this Paragraph 12 for the preparation of a budget and the recommendation thereof to the Board of Directors, the Board of Directors shall by the vote of not less than two thirds of its members present and voting at a duly constituted meeting of the Board of Directors, adopt a budget and fix the amount of the Annual Section Assessment for the ensuing assessment year.

13. Encroachments. A perpetual easement is hereby created on each Block Lot or other parcel of land in the Section upon which an Encroachment exists for the benefit of Declarant, the Corporation and any Owner of a Block Lot containing an improvement which constitutes the Encroachment. In the event an encroaching Living Unit or other improvement shall be partially or totally destroyed as a result of fire or other casualty or as a result of the exercise of the power of eminent domain or a conveyance in anticipation thereof, and then rebuilt in its original configuration or substantially in accordance with a Lot Development Plan approved by the Architectural Review Board, any resulting Encroachment shall be permitted and a perpetual easement therefore is hereby created for the benefit of the Owner of the encroaching structure.

14. General Community Rules. Each Block Lot shall be subject to the guidelines, rules, regulations and procedures adopted by Declarant, the Corporation and the Architectural Review Board pursuant to authority granted by the Declaration of Covenants and Restrictions and all Supplemental Declarations, and each Owner of a Lot shall at all times comply therewith.

15. Section Specific Restrictions.

(a) Vehicles. No inoperable, junk, unregistered or unlicensed vehicle shall be kept on or adjacent to the Section. No portion of the Section shall be used for the repair of a vehicle.

(b) Commercial Vehicles. No commercial or industrial vehicle, such as but not limited to moving vans, trucks, tractors, trailers, vans, wreckers, tow trucks, hearses and buses, shall be regularly or habitually parked or parked overnight on or adjacent to

the Section except upon the prior written approval of the Board of Directors.

(c) Recreational Vehicles. No recreational vehicles or equipment, such as but not limited to boats, boating equipment, jet-skis, wave runners, travel trailers, camping vehicles or camping equipment shall be parked on or adjacent to the Section without the prior, written approval of the Architectural Review Board, as to location, size, screening and other relevant criteria. The Corporation shall not be required to provide a storage area for these vehicles.

(d) Towing. The Board of Directors shall have the right to tow any vehicle parked or kept in violation of the covenants contained in this Supplemental Declaration upon twenty-four (24) hours' notice and at the vehicle owner's sole expense.

(e) Garage Usage. Any conversion of any garage that will preclude the parking of vehicles within that garage is prohibited. Owners shall keep their garages at all times in a manner that will permit the usage of such garage for parking of passenger automobiles, vans and/or trucks.

(f) Rental Agreements. Any rental agreement for a Living Unit must be for an initial period of at least six (6) months, must be in writing and must be subject to the rules and regulations set forth in or adopted pursuant to the Declaration, this Supplemental Declaration, the Articles, the Bylaws, the Building Guidelines and all regulations adopted by the Board of Directors and the Architectural Review Board. Every such rental agreement must include a provision stating that any failure by the tenant, its household members or guests, to comply with the terms of document shall be a default under the rental agreement, and the Owner shall be responsible for enforcing that provision.

16. Electoral Parcel. The Parcel shall constitute an Electoral Parcel for the purpose of election of the Board of Directors.

17. Enforcement. The right to enforce each of the foregoing Restrictions by injunction, together with the right to cause the removal by due process of law of structures erected or maintained in violation thereof, is reserved to Declarant, the Corporation, the Architectural Review Board, the Owners of the Lots in the Section, their heirs and assigns, and to the Zoning Authority, their successors and assigns, who are entitled to such relief without being required to show any damage of any kind to Declarant, the Corporation, the Architectural Review Board, any Owner or Owners, or such Zoning Authority by or through any such violation or attempted violation. Under no

circumstances shall Declarant, the Corporation or the Architectural Review Board be liable for damages of any kind to any Person for failure to abide by, enforce or carry out any provision or provisions of this Supplemental Declaration. There shall be no rights of reversion or forfeiture of title resulting from any violations.

18. Severability. Invalidation of any of these covenants and restrictions or any part thereof by judgment or court order shall not affect or render the remainder of said covenants and restrictions invalid or inoperative.


19. Non-Liability of Declarant. Declarant shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Declarant, and no duty of, or warranty by, Declarant shall be implied by or inferred from any term or provision of this Supplemental Declaration.

20. General Provisions. This Supplemental Declaration may be amended at any time in the manner provided in Paragraph 29 of the Declaration of Covenants and Restrictions except that no amendment adopted pursuant to Paragraph 29(a) of the Declaration of Covenants and Restrictions shall be effective as against a Mortgagee who subsequently acquires title to a Block Lot unless approved by at least two-thirds (2/3) of the Mortgagees who hold first mortgages on the Block Lots in the Section (based on one vote for each first mortgage owned) or at least two-thirds (2/3) of the Owners of the Block Lots in the Section (excluding Declarant).

Except as the same may be amended from time to time, the foregoing restrictions will be in full force and effect until January 1, 2030, at which time they will be automatically extended for successive periods of ten (10) years, unless by a vote of a Majority of the Owners it is agreed that these Restrictions shall terminate in whole or in part.

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

BRENNICK TND COMMUNITIES, LLC

By   
Tom Charles Huston, Co-Manager



STATE OF INDIANA )  
 ) SS:  
COUNTY OF HAMILTON )

Before me, a Notary Public in and for said County and State, personally appeared Tom Charles Huston, the Co-Manager of Brenwick TND Communities, LLC, an Indiana limited liability company, who acknowledged execution of the foregoing Supplemental Declaration of Covenants and Restrictions for and on behalf of said limited partnership.

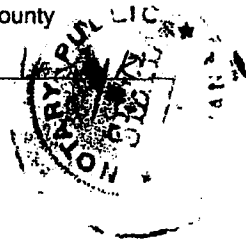
WITNESS my hand and Notarial Seal this 10th day of September, 2002.

Marie M. Jussif  
Notary Public Residing in  
Hendricks County

My Commission Expires:

May 24, 2007

Marie M. Jussif  
(printed signature)



This instrument prepared by Tom Charles Huston, Attorney at Law, 12821 East New Market Street, Suite 200, Carmel, Indiana 46032.

1600  
④ 100  
none

200200052496  
Filed for Record in  
HAMILTON COUNTY, INDIANA  
MARY L CLARK  
07-25-2002 10:58 am.  
AMEND DECL 16.00

**FIRST AMENDMENT**  
**TO**  
**THE SUPPLEMENTAL DECLARATION OF COVENANTS AND RESTRICTIONS**  
**FOR THE VILLAGE CENTER**  
**THE VILLAGE OF WESTCLAY**

THIS FIRST AMENDMENT to that certain Supplemental Declaration of Covenants and Restrictions for the Village Center of The Village of WestClay dated as of November 22, 1999, (the "Supplemental Declaration"), is executed as of the 30th day of April, 2002, by Brenwick TND Communities, LLC, ("Declarant"), who by the execution hereof, hereby declares that:

1. **Recitals.** The following facts are true:
  - (a) The Supplemental Declaration was recorded in the Office of the Recorder of Hamilton County, Indiana, on December 3, 1999, as Instrument No. 9969688.
  - (b) Declarant has the right unilaterally to amend and revise the Supplemental Declaration pursuant to the provisions of Paragraph 29 of the Supplemental Declaration.
  
2. **Amendments.** The Supplemental Declaration is amended as follows:
  - (a) Paragraph 8 is amended by the addition thereto of the following subparagraph (d):
    - (d) **Outside Dining.** Outside dining shall be permitted subject to the following conditions:
      - (i) Chairs, tables and other equipment, fixtures and items to be located outside the Building ("Fixtures") shall be so located and maintained so that they comply with all applicable fire and life safety requirements, do not impair pedestrian circulation through the outside dining area and do not impede access to any entrance to the Building.
      - (ii) All food, trash, dishes, glass, cups, utensils and other serving items shall be promptly removed from the outside dining area, and table tops promptly wiped and ash trays emptied, in the ordinary course of maintaining the appearance of a

first-class food service establishment. Trash receptacles shall not be permitted to overflow and shall be emptied regularly. No trash shall be permitted to remain in the outside dining area overnight.

(iii) The grounds in the outside dining area shall be maintained at all times clear of trash and in a clean, orderly and first-class condition.

(iv) No advertising or other signage shall be maintained in the outside dining area except such as may be approved by the Design Review Board.

(v) No music or amplified sound shall be permitted in the outside dining area without the prior approval of the boards of directors of the Association and the Corporation.

(vi) The Owner of any Lot on which outside dining activity occurs shall be deemed to have agreed to hold Declarant, the Association and the Corporation harmless and indemnified from and against any loss, cost, expense or liability (including all expenses and attorney's fees incurred by or imposed on Declarant, the Association or the Corporation in connection therewith) arising from or relating to the use or occupancy of an outside dining area, including but not limited to injury or death to any person, property damage or any other liability whether in contract or in tort.

(vii) Any outside dining area shall be used and maintained in such a manner as to afford no reasonable cause for objection by Declarant, the Board of Directors or the board of directors of the Corporation.

In the event of violation by any Owner or Occupant of the provisions of this subparagraph (d), Declarant, the Association or the Corporation may enforce the restrictions herein contained by injunctive action or other appropriate means.

The provisions of this subparagraph 8(d) shall not apply to any authorized activity in a Community Area.

(b) Subparagraphs (g) and (h) of Paragraph 4 are amended by deleting the word "Corporation" where it appears and substituting therefor the word "Association".

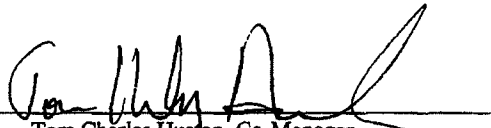
(c) Paragraph 4(g) is amended by adding the following:

Subsequent to the Applicable Date, no judicial or administrative proceedings may be commenced or prosecuted by the Association unless authorized by the affirmative vote of not less than seventy-five percent (75%) of the Members at a meeting of the Members called and convened in accordance with the requirements of the Association's By-Laws; provided, however, that the foregoing shall not apply to (i) actions brought by the Association to enforce a Restriction (including without limitation an action to enforce payment of Assessments or to foreclose a lien for unpaid Assessments) or (ii) counterclaims brought by the Association in proceedings instituted against it.

3. **Effective Date.** The foregoing amendment shall be effective as of the date this First Amendment is recorded in the Office of the Recorder of Hamilton County, Indiana.

IN WITNESS WHEREOF, this First Amendment has been executed as of the date first above written.

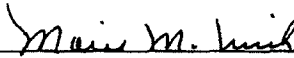
BREWICK TND COMMUNITIES, LLC

By:   
Tom Charles Huston, Co-Manager

STATE OF INDIANA            )  
  ) SS:  
COUNTY OF HAMILTON        )

Before me, a Notary Public in and for said County and State, personally appeared Tom Charles Huston, a Co-Manager of Brenwick TND Communities, LLC, an Indiana limited liability company, who acknowledged the execution of the foregoing "First Amendment to Supplemental Declaration of Covenants and Restrictions" for and on behalf of said limited liability company.

WITNESS my hand and Notarial Seal this 30th day of April, 2002.

  
Marie M. Urick, Notary Public  
Residing in Hendricks County



My commission expires: May 24, 2007

This instrument prepared by (and should be returned to) Tom Charles Huston, 12821 East New Market Street, Suite 200, Carmel, Indiana 46032.

1600  
100  
none

**SIXTH AMENDMENT**  
**TO**  
**DECLARATION OF COVENANTS AND RESTRICTIONS**  
**OF**  
**THE VILLAGE OF WESTCLAY**

THIS SIXTH AMENDMENT to that certain Declaration of Covenants and Restrictions of The Village of WestClay dated as of August 9, 1999 (the "Declaration"), is executed as of the 30th day of April, 2002, by Brenwick TND Communities, LLC, ("Declarant"), who by the execution hereof, hereby declares that:

1. **Recitals.** The following facts are true:

(a) The Declaration was recorded in the Office of the Recorder of Hamilton County, Indiana, on August 9, 1999, as Instrument No. 9946964.

(b) Declarant has the right unilaterally to amend and revise the Declaration pursuant to the provisions of Paragraph 29(b) of the Declaration.

2. **Amendments.** The Declaration is amended as follows:

(a) Subparagraph (c) of Paragraph 4 and subparagraph (c) of Paragraph 5 are amended by inserting the words "design, depth, pool level, water quality or" before the word "use" in the last sentence of each of such subparagraphs.

(b) Subparagraph (h) of Paragraph 18 is amended by inserting the words "is a Designated Builder or" following the word "Owner" where it first appears in the last sentence of such subparagraph.

(c) Subclauses (C) and (D) of Paragraph 19(b)(ii) (2) are deleted and the following substituted therefor:

(C) The General Assessment for each Commercial Lot upon which one or more Commercial Units have been constructed shall, with respect to such Commercial Units, be assessed at a rate equal to the product of (i) the result obtained by dividing the gross square footage of the Commercial Unit by two thousand five

200200052497  
Filed for Record in  
HAMILTON COUNTY, INDIANA  
MARY L CLARK  
07-25-2002 10:58 am.  
AMEND DECL 16.00

hundred (2,500) and (ii) the amount of the General Assessment established for Residential Lots on the basis set forth in Clause (1) above.

(D) Each Commercial Lot improved with a Multiuse Structure shall be assessed as follows: with respect to that part of the Multiuse Structure that consists of one or more Commercial Units, in the same manner as specified in subclause (C) above; and with respect to that part of the Multiuse Structure that consists of one or more Living Units, in the same manner as specified in Clause (1) above.

(d) Subclauses (F) and (G) of Paragraph 19(b)(ii) (2) are deleted.

(e) Clause (iii) of subparagraph (c) of Paragraph 21 is amended by deleting "sixty (60) days" and substituting therefor "one hundred eighty (180) days".

(f) Subparagraph (b) of Paragraph 24 is deleted in its entirety and the following is substituted therefor:

(b) By Builders. Notwithstanding any provisions to the contrary contained herein, a Designated Builder and, with the consent of the Board of Directors, any other builder who has constructed a Living Unit in WestClay may use such Living Unit as a "model" home and may hold such home open to the public, either individually or as part of a "home show" approved by the Board of Directors. With the approval of Declarant, visitors to such model home may use Lots owned by Declarant or the builder that are adjacent to or in proximity to such model home for parking.

(g) Paragraph 26 is amended by inserting the following between the first and second sentences of said paragraph:

Subsequent to the Applicable Date, no judicial or administrative proceedings may be commenced or prosecuted by the Corporation unless authorized by the affirmative vote of not less than seventy-five percent (75%) of the Members at a meeting of the Members called and convened in accordance with the requirements of the By-Laws; provided, however, that the foregoing shall not apply to (i) actions brought by the Corporation to enforce a Restriction (including without limitation an action to enforce payment of Assessments or to foreclose a lien for unpaid Assessments) or (ii) counterclaims brought by the Corporation in proceedings instituted against it.

(h) Paragraph 27 is amended by inserting the words "the initiation by the Corporation or the Association of any judicial or administrative proceedings" after the word "Assessment" and before the word "and" in the last line of such paragraph.

(i) Paragraph 33 is amended by (i) inserting the words "any Lake or Pond (as provided in subparagraphs (c) of Paragraphs 4 and 5) or any" before the word "drainage" in the first sentence and (ii) adding the following sentence at the conclusion of such paragraph: "Any Owner or other person or entity asserting a claim against Declarant with respect to any matter (i) as to which Declarant has herein or in any Supplemental Declaration disclaimed liability or (ii) which by the terms of this Declaration or any Supplemental Declaration Declarant has no liability shall be personally liable to Declarant for all costs and expenses incurred by Declarant in defending against such claim, including attorney's fees, paralegal fees and all court costs, including on appeal.

3. **Effective Date.** The foregoing amendment shall be effective as of the date this Sixth Amendment is recorded in the Office of the Recorder of Hamilton County, Indiana.



IN WITNESS WHEREOF, this Sixth Amendment has been executed as of the date first above written.

BRENNICK TND COMMUNITIES. LLC.

By: *Tom Charles Huston*  
Tom Charles Huston, Co-Manager

STATE OF INDIANA            )  
  ) SS:  
COUNTY OF HAMILTON        )

Before me, a Notary Public in and for said County and State, personally appeared Tom Charles Huston, the Assistant General Manager of Brenwick TND Communities, LLC, an Indiana limited company, who acknowledged the execution of the foregoing "Sixth Amendment to Declaration of Covenants and Restrictions: for and on behalf of said limited liability company.

WITNESS my hand and Notarial Seal this 30~~4~~ day of April, 2002.

*Marie M. Urick*  
Marie M. Urick, Notary Public Residing in  
Hendricks County



My Commission Expires: May 24, 2007

This instrument prepared by (and should be returned to) Tom Charles Huston, Attorney at Law, 12821 East New Market Street, Suite 200, Carmel, Indiana 46032.

07/13/99  
Secondary Area  
Parcel No. 2

29.00  
⑪  
2.00  
M.C.

**SUPPLEMENTAL DECLARATION OF  
COVENANTS AND RESTRICTIONS  
THE VILLAGE OF WESTCLAY**

199909971384  
Filed for Record in  
HAMILTON COUNTY, INDIANA  
MARY L CLARK  
On 12-13-1999 At 03:24 pm.  
DEC COV RES 29.00

This Supplemental Declaration, dated as of the 10th day of December, 1999, by  
BRENWICK TND COMMUNITIES, LLC, an Indiana limited company,

**WITNESSES THAT:**

WHEREAS, the following facts are true:

- A. Declarant owns or has the right to acquire the real estate located in Hamilton County, Indiana, more particularly described in Exhibit A attached hereto and incorporated herein by this reference.
- B. This Declaration is a Supplemental Declaration as that term is defined in the Declaration of Covenants and Restrictions.
- C. Declarant intends to subdivide the Parcel into Lots upon each of which a Living Unit may be constructed.

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

1. Definitions. Words, phrases and terms that are defined in the Declaration of Covenants and Restrictions have the same meaning in this Supplemental Declaration except as herein otherwise provided. The following words, phrases and terms, as used in this Supplemental Declaration, unless the context clearly requires otherwise, mean the following:

"Accessory Dwelling" means a Living Unit which is attached to or located on the same Lot as a Principal Dwelling, has an independent means of access and is owned by the Owner of the Principal Dwelling but occupied by another.

"Board of Directors" means the Board of Directors of the Corporation.

"Declaration of Covenants and Restrictions" means the Declaration of Covenants and Restrictions of The Village of WestClay dated as of August 9, 1999

and recorded in the Office of the Recorder of Hamilton County, Indiana as Instrument Number 9946964, as amended from time to time.

"Lot" means a numerically designated subdivided parcel of land depicted on a Plat.

"Owner" means any Person, including Declarant, who at any time owns the fee simple title to a Lot.

"Parcel" means that part of the real estate described in Exhibit A which is at any time subject to the covenants, restrictions, easements, charges and liens imposed by the Declaration of Covenants and Restrictions.

"Plat" means the secondary plat of a Section within the Parcel.

"Principal Dwelling" means a Living Unit designed as the principal structure on the Lot.

"Section" means that part of the Parcel which is depicted on a Plat.

"Tract" means the real estate, including all or any part of the Parcel, that is subject to the covenants, restrictions, easements, charges and liens imposed by the Declaration of Covenants and Restrictions.

2. Declaration. Declarant hereby declares that, in addition to the covenants, restrictions, easements, charges and liens imposed by the Declaration of Covenants and Restrictions, the Parcel shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

3. Land Use. Lots may be used only for residential purposes as provided in Section 5.2 of the Zoning Ordinance. No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of Principal Dwellings in a Section than the number of original Lots shown on a Plat of such Section. Not more than one (1) Principal Dwelling and not more than one (1) Accessory Dwelling may be located on a Lot and no Accessory Dwelling may be located on a Lot unless a Principal Dwelling is also located thereon. Notwithstanding any provision in the Zoning Ordinance to the contrary, no Lot may be used for any "Special Use" that is not clearly incidental and necessary to single family dwellings. No home occupation shall be conducted or maintained on any Lot other than one which does not constitute a "special use" and is incidental to a business, profession or occupation of the Owner or Occupant of such Lot and which is generally or regularly conducted at another location which is away from such Lot. No signs of any nature, kind or description shall be erected, placed, or permitted to remain on any Lot advertising a permitted home occupation.

4. Construction of Living Units.

(a) Lot Development Plans. Except to the extent such requirement is waived by Declarant, prior to commencement of any Building Activity on a Lot, a Lot Development Plan shall be submitted to the Architectural Review Board in accordance with the requirements of Paragraph 20 of the Declaration of Covenants and Restrictions. The Architectural Review Board may require as part of a Lot Development Plan a report of subsurface soils investigation of the Lot made by a qualified soils engineer, which report shall include recommendations for the foundations of the proposed improvements. Each Owner shall comply with the terms and provisions of Paragraph 20 of the Declaration of Covenants and Restrictions and the requirements of the Architectural Review Board established pursuant to the authority granted by the Declaration of Covenants and Restrictions.

(b) Size of Living Unit. No Principal Dwelling may be constructed on any Lot unless such Principal Dwelling, exclusive of open porches, attached garages and basements, shall have a gross floor area equal to or greater than the square footage specified in the Building Guidelines applicable to the Lot as of the date construction of the Principal Dwelling on the Lot commences. No Accessory Dwelling may contain more than eight hundred fifty (850) square feet of floor area.

(c) Building Guidelines. Each Owner shall at all times comply with the requirements of the Building Guidelines applicable to such Owner's Lot.

(d) Building Activity. All Building Activity shall be undertaken and completed strictly in accordance with the Building Guidelines and the Lot Development Plan approved by the Architectural Review Board. Unless a delay is caused by strikes, war, court injunction or acts of God, the Owner of any Lot which on the date of purchase from Declarant is not improved with a Principal Dwelling shall commence construction of a Principal Dwelling upon the Lot within six (6) months from the date the Owner acquired title thereto and shall complete construction of such Principal Dwelling within one (1) year after the date of commencement of the building process, but in no event later than eighteen (18) months after the date the Owner acquired title to the Lot unless such Lot is adjacent to a Lot upon which the Owner has constructed a Principal Dwelling in which such Owner permanently resides. If the Owner fails to commence or complete construction of a Principal Dwelling within the time periods specified herein, or if the Owner should, without Declarant's written approval, sell, contract to sell, convey, or otherwise dispose of, or attempt to sell, convey or otherwise dispose of, the Lot before completion of construction of a Principal Dwelling on the Lot, then, in any of such events, Declarant may:

- (i) re-enter the Lot and divest the Owner of title thereto by tendering to the Owner or to the Clerk of the Circuit Court of Hamilton County the lesser of (a) the same net dollar amount as was received by Declarant from such Owner as consideration for the conveyance by Declarant of the Lot, together with such actual costs, if any, as the Owner may prove to have incurred in connection with the commencement of construction of a Principal Dwelling on the Lot and (b) the then fair market value of the Lot, as determined by averaging two (2) appraisals made by qualified appraisers appointed by the Judge of the Circuit or Superior Court of Hamilton County;
- (ii) obtain injunctive relief to force the Owner to proceed with construction of any Principal Dwelling, a Lot Development Plan for which has been approved by the Architectural Review Board upon application by such Owner; or
- (iii) pursue such other remedies at law or in equity as may be available to Declarant.

The failure of the Owner of a Lot to apply for approval of, or receive approval from, the Architectural Review Board of a Lot Development Plan shall not relieve such Owner from his obligation to complete construction of a Principal Dwelling upon the Lot within the time period specified herein. For the purposes of this subparagraph (d), construction of a Principal Dwelling will be deemed "completed" when the exterior of the Principal Dwelling (including but not limited to the foundation, walls, roof, windows, entry doors, gutters, downspouts, exterior trim, paved driveway, landscaping and yard light) has been completed in conformity with the Lot Development Plan.

(e) Septic Systems. No septic tank, absorption field or any other on-site sewage disposal system (other than a lateral main connected to a sanitary sewerage collection system operated by the Clay Township Regional Waste District or a successor public agency or public utility) shall be installed or maintained on any Lot.

(f) Water Systems. No private or semi-private water supply system may be located upon any Lot which is not in compliance with regulations or procedures adopted or established by the Indiana State Board of Health, or other civil authority having jurisdiction. To the extent that domestic water service is available from a water line located within 200 feet of the lot line maintained by a public or private

utility company, each Owner shall connect to such water line to provide water for domestic use on the Lot and shall pay all connection, availability or other charges lawfully established with respect to connections thereto. Notwithstanding the foregoing, an Owner may establish, maintain and use an irrigation water well on his Lot as long as the well does not adversely affect the normal pool level of the Lake or a Pond.

(g) Drainage. In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of such Lot to permit such drainage to continue, without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, although no specific drainage easement for such flow of water is provided on the Plat. To the extent not maintained by the Drainage Board, "Drainage Easements" reserved as drainage swales shall be maintained by the Owner of the Lot upon which such easements are located such that water from any adjacent Lot shall have adequate drainage along such swale. Lots within the Parcel may be included in a legal drain established by the Drainage Board. In such event, each Lot in the Parcel will be subject to assessment by the Drainage Board for the costs of maintenance of the portion of the Drainage System and/or the Lakes included in such legal drain, which assessment will be a lien against the Lot. The elevation of a Lot shall not be changed so as to affect materially the surface elevation or grade of surrounding Lots. Each Owner shall maintain the subsurface drains and tiles located on his Lot and shall be liable for the cost of all repairs thereto or replacements thereof.

(h) Geothermal Systems. No open loop geothermal heating and cooling system shall be installed on a Lot.

5. Maintenance of Lots.

(a) Vehicle Parking. No recreational vehicle, motor home, truck which exceeds ¼ ton in weight, trailer, boat or disabled vehicle may be parked or stored overnight or longer on any Lot in open public view.

(b) Signs. Except for such signs as Declarant may in its absolute discretion display in connection with the development of the Village of WestClay or the Parcel and the sale of Lots therein, such signs as may be located on the Community Area and such signs as may, with the consent of Declarant, be displayed by a Designated Builder to advertise the property during construction and sale of Living Units and the maintenance of model homes, no sign of any kind shall be displayed to the public view on any Lot without the prior approval of the Architectural Review Board except that one sign of not more than four (4) square feet may be displayed at any time for the purpose of advertising the property for sale or for rent.

(c) Sight Lines. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between thirty (30) and seventy-two (72) inches above the street shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting points 25 feet from the intersection of said street lines, or in the case of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(d) Vegetation. An Owner shall not permit the growth of weeds and volunteer trees and bushes on his Lot, and shall keep his Lot reasonably clear from such unsightly growth at all times. If an Owner fails to comply with this Restriction, the Board of Directors shall cause the weeds to be cut and the Lot cleared of such growth at the expense of the Owner thereof and the Corporation shall have a lien against the cleared Lot for the expense thereof.

(e) Nuisances. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood. Barking dogs shall constitute a nuisance.

(f) Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers out of public view. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

(g) Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets designated by the Board of Directors may be kept provided that they are not kept, bred or maintained for any commercial purpose. The owners of such permitted pets shall confine them to their respective Lots such that they will not be a nuisance. Owners of dogs shall so control or confine them so as to avoid barking which will annoy or disturb adjoining Owners.

(h) Outside Burning. No trash, leaves, or other materials shall be burned upon a Lot if smoke therefrom would blow upon any other Lot and, then, only in acceptable incinerators and in compliance with all applicable legal requirements.

(i) Exterior Lights. Except for such alley lights as may be required by the Building Guidelines, no exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Lot.

(j) Electric Bug Killers. Electric bug killers, "zappers" and other similar devices shall not be installed at a location or locations which will result in the operation thereof becoming a nuisance or annoyance to other Owners and shall only be operated when outside activities require the use thereof and not continuously.

(k) Air Conditioners. No room air conditioning unit shall be installed so as to protrude from any structure located on a Lot (including but not limited to the window of any Living Unit or garage) if the same would be visible from a public way, a Community Area or any other Lot; provided, however, that this Restriction shall not apply to central air conditioning units.

(l) Fences and Walls. No walls or fences shall be erected on any Lot without the prior approval of the Architectural Review Board. Each Owner shall maintain any approved wall or fence in good and slightly condition and in compliance with the requirements of the Building Guidelines.

(m) Swimming Pools. No above ground swimming pools, other than a children's wading pool, shall be installed or maintained on a Lot.

(n) Basketball Goals. No basketball goal shall be placed or maintained in the front driveway of a Lot or within the right-of-way of any street. Unless the Architectural Review Board establishes a policy establishing other specifications, backboards of all basketball goals shall be of a translucent material such as fiberglass or Lexan and attached to a black pole or a similar type of post. The location of a basketball goal on the Lot is subject to approval of the Architectural Review Board if it would be visible from a public right-of-way adjoining the Lot.

6. General Community Rules. Each Lot shall be subject to the guidelines, rules, regulations and procedures adopted by Declarant, the Corporation and the Architectural Review Board pursuant to authority granted by the Declaration of Covenants and Restrictions and all Supplemental Declarations, and each Owner of a Lot shall at all times comply therewith.

7. Assessments. The Board of Directors may make Assessments to cover any costs incurred in enforcing these Restrictions or in undertaking any maintenance or other activity that is the responsibility of the Owner of a Lot hereunder but which such Owner has not undertaken as required hereunder. Any such Assessment shall be assessed only against those Owners whose failure to comply with the requirements of these covenants necessitated the action to enforce these covenants or the undertaking of the maintenance or other activity.

8. Electoral Parcel. The Parcel shall constitute an Electoral Parcel for the purpose of election of the Board of Directors.



9. Enforcement. The right to enforce each of the foregoing Restrictions by injunction, together with the right to cause the removal by due process of law of structures erected or maintained in violation thereof, is reserved to Declarant, the Corporation, the Architectural Review Board, the Owners of the Lots in the Parcel, their heirs and assigns, and to the Zoning Authority, their successors and assigns, who are entitled to such relief without being required to show any damage of any kind to Declarant, the Corporation, the Architectural Review Board, any Owner or Owners, or such Zoning Authority by or through any such violation or attempted violation. Under no circumstances shall Declarant, the Corporation or the Architectural Review Board be liable for damages of any kind to any Person for failure to abide by, enforce or carry out any provision or provisions of this Supplemental Declaration. There shall be no rights of reversion or forfeiture of title resulting from any violations.

10. Severability. Invalidation of any of these covenants and restrictions or any part thereof by judgment or court order shall not affect or render the remainder of said covenants and restrictions invalid or inoperative.

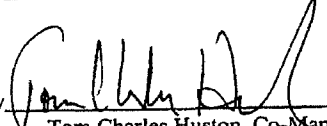
11. Non-Liability of Declarant. Declarant shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Declarant, and no duty of, or warranty by, Declarant shall be implied by or inferred from any term or provision of this Supplemental Declaration.

12. General Provisions. This Supplemental Declaration may be amended at any time in the manner provided in Paragraph 29 of the Declaration of Covenants and Restrictions except that no amendment adopted pursuant to Paragraph 29(a) of the Declaration of Covenants and Restrictions shall be effective as against a Mortgagee who subsequently acquires title to a Lot unless approved by at least two-thirds (2/3) of the Mortgagees who hold first mortgages on the Lots in the Parcel (based on one vote for each first mortgage owned) or at least two-thirds (2/3) of the Owners of the Lots in the Parcel (excluding Declarant).

Except as the same may be amended from time to time, the foregoing restrictions will be in full force and effect until January 1, 2030, at which time they will be automatically extended for successive periods of ten (10) years, unless by a vote of the majority of the then Owners of Lots in the Parcel it is agreed that these Restrictions shall terminate in whole or in part.

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

BRENNICK TND COMMUNITIES, LLC

By   
Tom Charles Huston, Co-Manager

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HAMILTON )

Before me, a Notary Public in and for said County and State, personally appeared Tom Charles Huston, the Co-Manager of Brenwick TND Communities, LLC, an Indiana limited liability company, who acknowledged execution of the foregoing Supplemental Declaration of Covenants and Restrictions for and on behalf of said limited partnership.

WITNESS my hand and Notarial Seal this 10th day of December, 1999.

Marie M. Urick  
Notary Public Residing in Hendricks County

My Commission Expires:

May 24, 2007

Marie M. Urick  
(printed signature)



This instrument prepared by Tom Charles Huston, Attorney at Law, 1313 Merchants Bank Building, 11 South Meridian Street, Indianapolis, Indiana 46204.

INDS01 TCH 116583

EXHIBIT AReal Estate Description

A part of the Southeast Quarter and the Southwest Quarter of Section 28, Township 18 North, Range 3 East along with a part of the Northwest Quarter of Section 33, Township 18 North, Range 3 East in Hamilton County, Indiana, described as follows:

Beginning at the Southeast corner of said Southeast Quarter; thence North 00 degrees 07 minutes 17 seconds East along the East line of said Southeast Quarter 1366.21 feet; thence South 89 degrees 23 minutes 24 seconds West 233.83 feet; thence South 57 degrees 32 minutes 42 seconds West 117.40 feet; thence South 87 degrees 59 minutes 00 seconds West 113.97 feet; thence South 76 degrees 37 minutes 49 seconds West 65.20 feet; thence South 57 degrees 12 minutes 48 seconds West 63.49 feet; thence South 18 degrees 36 minutes 11 seconds East 200.22 feet; thence South 66 degrees 04 minutes 45 seconds West 87.99 feet to the point of curvature of a curve to the right having a radius of 475.00 feet, the radius point which bears North 23 degrees 55 minutes 15 seconds West; thence westerly along said curve 471.99 feet to a point which bears South 33 degrees 00 minutes 41 seconds West from said radius point; thence North 56 degrees 59 minutes 19 seconds West 278.42 feet to the point of curvature of a curve to the left having a radius of 575.00 feet, the radius point which bears South 33 degrees 00 minutes 41 seconds West; thence Northwesterly along said curve 413.88 feet to a point which bears North 08 degrees 13 minutes 46 seconds West from said radius point; thence South 81 degrees 46 minutes 14 seconds West 149.04 feet to the point of curvature of a curve to the left having a radius of 175.00 feet, the radius point which bears South 08 degrees 13 minutes 46 seconds East; thence southwesterly along said curve 126.72 feet to a point which bears North 49 degrees 43 minutes 02 seconds West from said radius point; thence South 40 degrees 16 minutes 58 seconds West 223.56 feet to the point of curvature of a curve to the right having a radius of 725.00 feet, the radius point which bears North 49 degrees 42 minutes 02 seconds West; thence southwesterly along said curve 571.95 feet to a point which bears South 04 degrees 31 minutes 02 seconds East from said radius point; thence South 85 degrees 28 minutes 58 seconds West 166.70 feet; thence South 85 degrees 09 minutes 54 seconds West 51.14 feet; thence South 83 degrees 00 minutes 19 seconds West 107.19 feet; thence South 21 degrees 30 minutes 37 seconds West 126.27 feet; thence South 19 degrees 50 minutes 00 seconds East 352.19 feet to a non-tangent curve to the left having a radius of 725.00 feet, the radius point which bears South 29 degrees 46 minutes 49 seconds East; thence southwesterly along said curve 85.60 feet to a point which bears North 36 degrees 32 minutes 43 seconds West from said radius point; thence North 46 degrees 29 minutes 32 seconds West 339.40 feet; thence South 69 degrees 37 minutes 04 seconds West 66.74 feet to a non-tangent curve to the left having a radius of 120.97 feet, the radius point which bears South 71 degrees 16 minutes 32 seconds West; thence northerly along said curve 1.59 feet to a point on a southeasterly line of the platted subdivision Village of Westclay, Section 3001-A, Village Center, Part 2, recorded as Instrument number 19990996987 (P.C. 2, Slide 363) in the Office of the Hamilton County Recorder, which point bears North 70 degrees 31 minutes 23 seconds East from said radius point (the next six courses lying

along said subdivision) ; thence South 70 degrees 31 minutes 23 seconds West 50.00 feet to a non-tangent curve to the left having a radius of 70.97 feet, the radius point which bears South 70 degrees 31 minutes 23 seconds West; thence northerly along said curve 5.16 feet to a point which bears North 66 degrees 21 minutes 15 seconds East from said radius point; thence South 44 degrees 51 minutes 41 seconds West 132.08 feet to a non-tangent curve to the left having a radius of 70.97 feet, the radius point which bears North 23 degrees 22 minutes 27 seconds East; thence southeasterly along said curve 5.16 feet to a point which bears South 19 degrees 12 minutes 19 seconds West from said radius point; thence South 19 degrees 12 minutes 19 seconds West 50.00 feet to a non-tangent curve to the right having a radius of 120.97 feet, the radius point which bears North 19 degrees 12 minutes 19 seconds East; thence westerly along said curve 6.14 feet to a point which bears South 22 degrees 06 minutes 41 seconds West from said radius point, said point being a northeasterly corner of the Plat of Village of Westclay Provost Park as recorded as Instrument number 199909969686 (P.C. 2, Slide 362) in the Office of the Hamilton County Recorder (the following seven courses are along the northerly line of Provost Park); thence South 23 degrees 46 minutes 13 seconds West 66.74 feet; thence South 40 degrees 07 minutes 12 seconds East 199.18 feet; thence South 09 degrees 30 minutes 30 seconds West 119.92 feet; thence South 43 degrees 18 minutes 22 seconds East 153.76 feet; thence South 88 degrees 18 minutes 22 seconds East 299.55 feet; thence North 46 degrees 41 minutes 38 seconds East 139.62; thence North 87 degrees 01 minutes 41 seconds East 84.72 feet to the Southwest corner of the Southeast Quarter of said Section 28; thence North 89 degrees 23 minutes 24 seconds East along the south line of said Southeast Quarter 2672.37 feet to the Point of Beginning. Containing 78.480 acres, more or less.

J:\1238\001\legals\electoral\5-2 LAND DESCRIPTION.DOC

199909971388  
Filed for Record in  
HAMILTON COUNTY, INDIANA  
MARY L CLARK  
On 12-13-1999 At 03:24 pm.  
DEC COV RES 41.00

41.00  
17

Townhomes

**SUPPLEMENTAL DECLARATION OF  
COVENANTS AND RESTRICTIONS  
THE VILLAGE OF WESTCLAY**

This Supplemental Declaration, dated as of the 10th day of December, 1999, by BRENWICK TND COMMUNITIES, LLC, an Indiana limited company,

**WITNESSES THAT:**

WHEREAS, the following facts are true:

- A. Declarant owns the real estate located in Hamilton County, Indiana, more particularly described in Exhibit A attached hereto and incorporated herein by this reference.
- B. This instrument is a Supplemental Declaration as that term is defined in the Declaration of Covenants and Restrictions.
- C. Declarant intends to subdivide the Section into Block Lots upon each of which a Living Unit may be constructed.

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

- 1. Definitions. Words, phrases and terms that are defined in the Declaration of Covenants and Restrictions have the same meaning in this Supplemental Declaration except as herein otherwise provided. The following words, phrases and terms, as used in this Supplemental Declaration, unless the context clearly requires otherwise, mean the following:

"Board of Directors" or "Board" means the board of directors of the Corporation.

"Block" means each of Blocks A, B, C, D, E and F as depicted on the Conditional Secondary Plat.

"Block Lot" means any Lot located on a Block, as depicted on the Final Secondary Plat.

"Owner" means any Person who at any time owns the fee simple title to a Block Lot.

"Conditional Secondary Plat" means the plat depicting the subdivision of the Section into Blocks recorded in the Office of the Recorder of Hamilton County as Instrument Number ~~9971383~~ 9971383

"Common Expenses" means expenses for the improvement, maintenance, repair, replacement and operation of the Structures and all sums lawfully assessed against the Owners by the Corporation or as declared by this Supplemental Declaration, including but not limited to premiums on insurance maintained by the Board pursuant to Paragraph 7.

"Declaration of Covenants and Restrictions" or "Declaration" means the Declaration of Covenants and Restrictions of The Village of WestClay dated as of August 9, 1999 and recorded in the Office of the Recorder of Hamilton County, Indiana as Instrument Number 9946964, as amended from time to time.

"Encroachment" means the encroachment upon a Block Lot, public right-of-way, Common Parking Lot or Community Area by any Living Unit or any stoop, porch, steps, arcade, overhang or other structure or improvement constituting a part thereof or an appurtenance thereto as a result of the construction of a Living Unit substantially in accordance with a Lot Development Plan approved by the Architectural Review Board, or as a result of the settling or shifting thereof.

"Final Secondary Plat" means a plat depicting the subdivision of one or more Blocks into Block Lots recorded in the Office of the Recorder of Hamilton County.

"Insurance Trustee" means such bank with trust powers authorized to do business in Hamilton or Marion Counties, Indiana, as the Board of Directors may designate for the custody and disposition, as herein provided, of insurance proceeds.

"Majority of the Owners" means the Owners of not less than 51% of the Block Lots.

"Parcel" means, for the purpose of Paragraph 15, the real estate described in Exhibit A together with such additional real estate as is designated by Declarant for development of

(b) Sharing of Repair and Maintenance. The cost of routine repair and maintenance of a party wall shall be shared equally by the Owners who make use of the wall.

(c) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other cause, and the affected Living Units are to be restored pursuant to the provisions of Paragraph 6, then the Corporation shall restore it. If the Corporation is not required to so restore the party wall, then either Owner who has used the wall may restore it, and if the other Owner thereafter makes use of the wall, he shall contribute equally to the cost of restoration thereof unless the restoring Owner has the right to call for a larger contribution from the subsequent user under a rule of law regarding liability for negligent or willful acts or omissions, in which event the subsequent user shall make such larger contribution as may be lawfully determined.

(d) Weatherproofing. An Owner who by his negligent or willful act or omission causes the party wall to be exposed to the elements shall furnish the necessary protection against such elements and shall bear the entire cost thereof.

(e) Rights and Duties Run with Land. The rights and duties of an Owner with respect to a party wall under this Paragraph 5 shall be appurtenant to such Owner's Block Lot and shall pass to the successor in title of such Owner.

6. Damage and Restoration. In the event of damage or destruction of a Living Unit by fire or other cause, the following provisions shall be applicable:

(a) Partial Destruction. In the event that less than all of the Living Units in a Block are completely destroyed by the occurrence of fire or other cause, then the Corporation shall cause the damaged Living Units to be promptly repaired and restored as nearly as possible to the quality, utility, value, condition and character as existed prior to such damage. Such restoration shall conform to the Lot Development Plan originally approved for each damaged Living Unit except to the extent that deviations therefrom have been approved in writing by the Architectural Review Board. The proceeds of the insurance carried by the Corporation shall be applied to the cost of such Restoration. If the insurance proceeds are not adequate to cover the cost of Restoration, or in the event there are no proceeds, the cost for restoring the damage shall be paid by all of the Owners of the Living Units directly affected by the damage in the proportion that the gross area of each affected Living Unit bears to the gross area of all affected Living Units. Living Units shall be deemed to be directly affected if, and only if, such Living Unit is located within the Block in which the fire or other damage occurs. If any Owner refuses or fails to make the required payments, the other Owners shall (or the Corporation, if such other Owners fail to do so) complete the Restoration and pay the cost thereof, and the costs

attributable to the Owner or Owners who refuse or fail to make such payments at the time required by the Board of Directors shall become a lien on such defaulting Owner's Living Unit and may be foreclosed in the same manner as provided for the lien for Assessments.

(b) Restoration in the Event of Complete Destruction. In the event of complete destruction of all the Living Units in a Block, no Owner shall be required to rebuild his Living Unit, but he shall be required to remove in a timely manner all debris from the Block Lot and promptly landscape his Block Lot in accordance with a landscaping plan approved by the Architectural Review Board.

(c) Determination of Complete Destruction. It shall be conclusively presumed that complete destruction of all Living Units did not occur unless it is determined by vote of not less than ninety percent (90%) all Owners of Block Lots in the Section at a special meeting of such Owners held within one hundred twenty (120) days following the date of damage or destruction that all Living Units have been completely destroyed. In the event of a determination of complete destruction, insurance proceeds shall be payable in accordance with the terms of the insurance policy covering such loss.

7. Insurance.

(a) Coverage. The Board of Directors on behalf of the Owners and as a Common Expense shall cause to be obtained and kept in full force and effect at all times casualty or physical damage insurance in an amount equal to the full replacement cost of the Living Units as initially constructed, without deduction or allowance for depreciation in excess of One Thousand Dollars (\$1,000.00), such coverage to be underwritten by a company or companies duly authorized to do business in Indiana and to afford protection against at least the following:

(i) loss of damage by fire or other hazards covered by the standard extended coverage endorsement; and

(ii) such other risks as are customarily covered with respect to projects similar in construction, location and use, as the Board may from time to time determine.

The provisions of this Paragraph 7 shall not be construed to limit the power or authority of the Board to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Board or a Majority of the Owners may deem appropriate from time to time.



As used in this subparagraph (a), the term "Living Units as initially constructed" means the Structures, and the standard partition walls, fixtures, pipes, wires, conduit and installations initially installed in Living Units by the original builder thereof, as shown on the Lot Development Plan as amended from time to time, and replacements thereof, but does not mean any fixtures, alterations, installations or additions in or to the Living Unit made by an individual Owner of that Living Unit or any personal property of such Owner.

(b) Form. Insurance shall be carried in a form or forms naming as the insured the Board of Directors as trustee for all Owners and Mortgagees according to the loss or damage to their respective Living Units and payable in case of loss to the Insurance Trustee. Every such policy of insurance shall, if obtainable at a reasonable cost:

(i) provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim any right of set-off, counterclaim, apportionment, proration, or contribution by reason of any other insurance obtained by or for any Owner;

(ii) contain no provisions relieving the insurer from liability for loss occurring while the hazard to such building is increased, whether or not within the knowledge or control of the Board, or because of any breach of warranty or condition or any other act or neglect by the Board or any Owner or any other Person under either of them;

(iii) provide that such policy may not be canceled (whether or not requested by the Board) except by the insurer giving at least thirty (30) days' prior written notice thereof to the Board, all Owners, all Mortgagees and every other Person in interest who shall have requested such notice of the insurer;

(iv) contain a waiver by the insurer of any right of subrogation to any right of the Board or Owners against any of them or any other Person under them;

(v) provide that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Owners do not elect to restore pursuant to Paragraph 6 of this Supplemental Declaration;

(vi) contain a standard mortgagee clause which shall:

(A) provide that any reference to a mortgagee in such policy shall mean and include any Mortgagee, whether or not named therein;

(B) provide that such insurance as to the interest of any Mortgagee shall not be invalidated by any act or neglect of the Board or any Owner, or any Persons under any of them;

(C) waive any provision invalidating such mortgagee clauses by reason of the failure of any Mortgagee to notify the insurer of any hazardous use or vacancy, and requirement that the Mortgagee pay any premium thereon, and any contribution clause; and

(D) provide that without affecting any protection afforded by such mortgagee clause, any proceeds payable under such policy shall be payable to the Insurance Trustee.

(c) Allocation of Insurance Proceeds. In the event of damage or destruction by fire or other cause to Living Units covered by insurance written in the name of the Board as trustee for Owners and their Mortgagees, proceeds on account of such damage to Living Units shall be allocated as follows:

(i) If the Living Unit is to be restored, insurance proceeds shall be allocated to such Living Unit in the proportion that the cost of Restoration of such Living Unit bears to the cost of Restoration of all damaged Living Units, such cost to be determined by the Board. In determining such cost, the Board shall not take into consideration the cost of repairing any items specifically excluded from insurance coverage pursuant to the provision of subparagraph (a).

(ii) If the Living Unit is not to be restored, insurance proceeds shall be allocated to such Living Unit in accordance with the terms of the policy insuring such loss.

(iii) In the event a mortgage endorsement has been issued with respect to a particular Living Unit, the amount of the insurance proceeds allocated to the Owner of such Living Unit shall be held in trust for the mortgagee and the Owner as their interests may appear; provided, however, that no mortgagee shall have the right to

determine or participate in the determination as to whether or not any damaged property shall be restored or repaired, and no mortgagee shall have any right to apply or to have applied to the reduction of a mortgage debt any insurance proceeds except distributions thereof made to the Owner and mortgagee pursuant to the provisions of this Supplemental Declaration.

(d) Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the Owners and their mortgagees as their respective interests appear, in the following manner:

(i) Expense of Trust. All expenses of the Insurance Trustee shall be first paid or provision made therefor.

(ii) Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof pursuant to the provisions of Paragraph 8.

(iii) Failure to Reconstruct or Repair. If it is determined that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the Owners in the proportions that the proceeds were allocated to the Owners pursuant to Paragraph 8(c)(ii).

(iv) Certificate. In making distributions to Owners and their mortgagees, the Insurance Trustee may rely upon a certificate issued by the Board as to the names of the Owners and their respective shares of the distribution, and, with respect to the names of mortgagees, may rely upon a certificate from an attorney-at-law, or title insurance company, who has examined the Mortgage Records in the office of the Recorder of Hamilton County, Indiana, as to the names of the holders of mortgages of record.

(e) Corporation as Owner's Agent. The Corporation, acting by its Board of Directors, is hereby irrevocably appointed agent for each Owner and for each owner of a mortgage or other lien upon a Living Unit and for each owner of any other interest in a Living Unit to negotiate all claims arising under insurance policies purchased by the Board, and to execute and deliver releases upon the payment of claims.

(f) Individual Policies - Recommendation of Declarant. Any Owner or Mortgagee may obtain at his own expense additional insurance for improvements and betterments to a Living Unit made or acquired at the expense of the Owner. The Board of Directors may require that such insurance provide that it shall be without contribution as against the insurance maintained by the Board of Directors. Such insurance shall contain the same waiver of subrogation provision as that set forth in subparagraph (b)(iv). If an insured loss is sustained to a Living Unit and the amount of insurance proceeds that would otherwise be payable to the Insurance Trustee is reduced due to proration of insurance purchased pursuant to this subparagraph, the Owner shall assign the proceeds of the personally purchased insurance, to the extent of the amount of the reduction, to the Insurance Trustee to be distributed as provided in subparagraph (d). The Declarant recommends that each Owner obtain, in addition to the insurance hereinabove provided to be obtained by the Board of Directors, a policy insuring against loss or damage to personal property used or incidental to the occupancy of the Living Unit and insuring the Owner against loss as a result of fire, extended coverage perils, vandalism or malicious mischief, theft, personal liability and the like. Such policy should also cover losses to improvements and betterments to the Living Unit made or acquired at the expense of the Owner.

8. Procedure for Restoration or Repair. If as a result of damage or destruction to a Living Unit by fire or other cause, Restoration or repair of the Living Unit is required or authorized pursuant to Paragraph 6, such Restoration or repair shall be undertaken in accordance with the following provisions:

(a) Estimate of Cost. Promptly after the occurrence of the damage or destruction to the Living Unit that the Corporation has the responsibility to restore or repair, the Board shall obtain reliable and detailed estimates of the cost to restore or repair. In the event of damage to any Living Units exceeding Fifty Thousand Dollars (\$50,000.00), the Board shall retain the services of an architect to supervise the Restoration or repair and the disbursement of the construction funds.

(b) Plans and Specifications. Any Restoration or repair must be either substantially in accordance with the original Lot Development Plan for the Living Unit or according to plans and specifications approved by the Architectural Review Board and by a Majority of the Owners of the Living Units in the Block, which approval shall not be unreasonably withheld.

(c) Sealed Bids. The Board shall advertise for sealed bids with licensed contractors, and then may negotiate with any contractor, who may be required to provide a full performance and payment bond for the Restoration or repair of the damaged Living Units.

(d) Responsibility. If the damage is only to those parts of a Living Unit for which the responsibility of maintenance and repair is that of an Owner, then the Owner of the Living Unit shall be responsible for the cost of Restoration and repair. The Restoration or repair of a damaged Living Unit shall be subject to approval by the Architectural Review Board.

(e) Construction Funds. The funds for payment of the costs of Restoration or repair, which shall consist of the proceeds of insurance held by or payable to the Insurance Trustee, such amounts from the reserve for replacements as are authorized by the Board for the purpose of Restoration or repair, and the funds collected by the Board from any Special Assessments against Owners deemed necessary by the Board to satisfy its Restoration or repair obligations under this Supplemental Declaration, shall be deposited with the Insurance Trustee who shall disburse the same in payment of the costs of Restoration or repair as provided in this Paragraph 8.

(f) Certificates. The Insurance Trustee may rely upon a certificate from the Board to determine whether or not the damaged Living Unit is to be restored or repaired and upon a certificate from the architect employed by the Board to supervise the Restoration or repair with respect to the payments to be made to contractors undertaking the Restoration and/or repair.

(g) Insurance Trustee. The Insurance Trustee shall not be liable for payment of insurance premiums, the renewal or the sufficiency of insurance policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes herein stated, and for the benefit of the Owners and their Mortgagees as herein provided.

9. Advisory Committee. In order to assist the Board in establishing the budget for annual maintenance and repair of the Living Units, subsequent to the Applicable Date there shall be created an Advisory Committee consisting of three (3) Persons elected annually by the Owners of Living Units in the Section. The Owners of each Living Unit in the Section shall have one (1) vote and the three (3) Persons receiving the largest number of votes cast by Owners of Living Units in the Section shall be elected to the Advisory Committee. The members of the Advisory Committee shall elect from among their membership a President, a Secretary and such other officers as they may deem appropriate. The Advisory Committee shall perform such functions as are specified herein and such other functions as are not in conflict with the terms of the Declaration of Covenants and Restrictions, the Primary Area Supplemental Declaration or this Supplemental Declaration, or in derogation of the rights of the Corporation, as they may by majority vote determine.

10. Maintenance, Repairs and Replacements.

(a) Living Unit Interiors. Each Owner shall, at his own expense, be responsible for all maintenance, repair, decoration and replacement within his own Living Unit, and each Owner shall promptly perform all maintenance and repair therein which, if neglected, might adversely affect the structural integrity of his Living Unit. In the event that the maintenance or repair of any Living Unit is reasonably necessary in the discretion of the Board of Directors to preserve the structural integrity of a Living Unit, or is otherwise necessary for the health and safety, or in the interest of general welfare, of the Owners of Block Lots in the Section, the Board of Directors shall have the power to undertake such maintenance or repair; provided that no such maintenance or repair shall be undertaken without a resolution of the Board of Directors and reasonable written notice to the Owner of the Living Unit proposed to be maintained and, provided further, that the cost thereof shall be assessed as a Special Assessment against the Living Unit on which such maintenance or repair is performed and, when so assessed, a statement for the amount thereof shall be rendered promptly to the then Owner of said Living Unit at which time the Assessment shall become due and payable and a continuing lien and obligation of said Owner in all respects as provided in Paragraph 9(i) of the Declaration of Covenants and Restrictions.

(b) Lawn Maintenance. At the request of an Owner, the Corporation may arrange for maintenance of the lawn of such Owner's Block Lot and assess the cost thereof directly to the Owner requesting such service.

(c) Structures. Each Owner shall, at his own expense, be responsible for all maintenance of and repairs to the Structures necessitated by his negligence, misuse or neglect except to the extent covered by insurance maintained by the Corporation pursuant to Paragraph 7. All other maintenance, repairs and replacements to the Structures shall be furnished by the Corporation and the cost thereof shall be a Common Expense. The Board of Directors may adopt rules and regulations concerning the maintenance, repair and replacement of the Structures and may establish reserves with respect thereto as part of the Common Expenses for which Assessments shall be made against the Owners of Living Units as provided in Paragraph 12.

(d) Right of Entry. The Board of Directors, the Architectural Review Board, any managing agent employed by the Board of Directors, or any other Person authorized by the Board of Directors or such managing agent shall have the right, at reasonable times and upon reasonable prior notice (except in cases of emergency in which no notice shall be required), to enter upon the Block Lots and to have access to the Structures for the purposes of inspection thereof and replacement, repair and maintenance of the same.

11. Architectural Review Board. The Architectural Review Board shall have full power and authority to adopt and enforce rules and regulations appropriate to the Section. In addition, the Architectural Review Board shall have full power and authority to interpret, administer and enforce the Restrictions set forth in the Declaration of Covenants and Restrictions, as amended and supplemented. Nothing contained in this Supplementary Declaration is intended to, or shall be construed as, in any manner limiting the regulatory authority of the Architectural Review Board as that authority is set forth in the Declaration of Covenants and Restrictions.

12. Section Assessment.

(a) Purpose. The Annual Section Assessment shall be used exclusively for the improvement, maintenance, repair, replacement and operation of the Structures and the payment of Common Expenses and other costs and expenses incurred by the Corporation in performing its rights and duties hereunder.

(b) Preparation of Annual Budget. Each year prior to the Applicable Date Declarant, and subsequent to the Applicable Date the Advisory Committee, shall cause to be prepared an annual budget estimating the total amount of the Common Expenses for the ensuing fiscal year (including without limitation an amount for working capital, a general operating reserve, a reserve for replacements and the sums necessary to make up any deficit in the Common Expenses for any prior year). Not less than ten (10) days prior to the date of a meeting of the Board of Directors at which the annual budget of the Corporation will be adopted which occurs subsequent to the Applicable Date, the Advisory Committee shall hold a public hearing, after having given due notice, at which Owners may comment upon the proposed budget, a copy of which shall have been provided to each Owner at least five (5) days prior to such public hearing. Following such public hearing and prior to the date of the budget meeting of the Board of Directors, the annual budget shall be approved by not less than a majority of the members of the Advisory Committee then serving for recommendation to the Board of Directors as the basis for the Annual Section Assessment for the ensuing assessment year.

(c) Basis for Assessment.

(i) Improved Block Lots. Each Block Lot upon which a Living Unit has been constructed shall be assessed at a rate which is uniform for the type of Living Unit located thereon, adjusted to reflect special services provided, if any, and differences in per Living Unit insurance premiums.

(ii) Unimproved Block Lots. A Block Lot upon which a Living Unit has not been constructed shall not be subject to assessment.

(d) Annual Section Assessments. The annual budget as determined by Declarant or, subsequent to the Applicable Date, recommended by the Advisory Committee shall, based on the estimated requirement for Common Expenses in the ensuing fiscal year as set forth in such budget, contain a proposed assessment against each Block Lot subject to assessment determined on the basis set forth in subparagraph (c). Immediately following the adoption of the budget by the Board of Directors pursuant to the provisions of subparagraph (e), the Secretary of the Corporation shall give each Owner written notice of the Annual Section Assessment against each Block Lot subject to assessment for the ensuing fiscal year of the Corporation. The Annual Section Assessment against each such Block Lot shall be paid in equal monthly installments commencing on the first day of the first calendar month of each assessment year and on the first day of each calendar month thereafter through and including the first day of the twelfth calendar month of such assessment year. Payment of the monthly installments of the Annual Section Assessment shall be made to the Corporation or otherwise as directed by the Board of Directors. The Annual Section Assessment for the assessment year shall become a lien on each Block Lot subject thereto as of the first day of the first calendar month of each assessment year.

(e) Adoption of Budget. Declarant or the Advisory Committee, as applicable, shall submit the annual budget to the Board of Directors for adoption. The Board of Directors shall review such budget and if a majority thereof determines that the budget and the assessments proposed therein are sufficient to meet the obligations imposed by this Supplemental Declaration upon the Corporation, then the Board of Directors shall adopt such budget. If a majority does not so determine, then the budget shall either be returned to Declarant or the Advisory Committee, as applicable, for revision in accordance with the recommendations of the Board of Directors or the Board of Directors may, by a vote of not less than two-thirds of all members thereof then serving, amend the proposed budget and adopt it as thus amended. In the event the Advisory Committee fails to follow the procedures outlined in this Paragraph 12 for the preparation of a budget and the recommendation thereof to the Board of Directors, the Board of Directors shall by the vote of not less than two thirds of its members present and voting at a duly constituted meeting of the Board of Directors, adopt a budget and fix the amount of the Annual Section Assessment for the ensuing assessment year.

13. Encroachments. A perpetual easement is hereby created on each Block Lot or other parcel of land in the Section upon which an Encroachment exists for the benefit of Declarant, the Corporation and any Owner of a Block Lot containing an improvement which constitutes the Encroachment. In the event an encroaching Living Unit or other improvement shall be partially or totally destroyed as a result of fire or other casualty or as a result of the exercise of the power of eminent domain or a conveyance in anticipation thereof, and then rebuilt in its original configuration or substantially in accordance with a Lot Development Plan approved by the Architectural Review



Board, any resulting Encroachment shall be permitted and a perpetual easement therefor is hereby created for the benefit of the Owner of the encroaching structure.

14. General Community Rules. Each Block Lot shall be subject to the guidelines, rules, regulations and procedures adopted by Declarant, the Corporation and the Architectural Review Board pursuant to authority granted by the Declaration of Covenants and Restrictions and all Supplemental Declarations, and each Owner of a Lot shall at all times comply therewith.

15. Electoral Parcel. The Parcel shall constitute an Electoral Parcel for the purpose of election of the Board of Directors.

16. Enforcement. The right to enforce each of the foregoing Restrictions by injunction, together with the right to cause the removal by due process of law of structures erected or maintained in violation thereof, is reserved to Declarant, the Corporation, the Architectural Review Board, the Owners of the Lots in the Section, their heirs and assigns, and to the Zoning Authority, their successors and assigns, who are entitled to such relief without being required to show any damage of any kind to Declarant, the Corporation, the Architectural Review Board, any Owner or Owners, or such Zoning Authority by or through any such violation or attempted violation. Under no circumstances shall Declarant, the Corporation or the Architectural Review Board be liable for damages of any kind to any Person for failure to abide by, enforce or carry out any provision or provisions of this Supplemental Declaration. There shall be no rights of reversion or forfeiture of title resulting from any violations.

17. Severability. Invalidation of any of these covenants and restrictions or any part thereof by judgment or court order shall not affect or render the remainder of said covenants and restrictions invalid or inoperative.

18. Non-Liability of Declarant. Declarant shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Declarant, and no duty of, or warranty by, Declarant shall be implied by or inferred from any term or provision of this Supplemental Declaration.

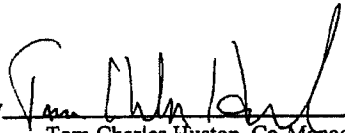
19. General Provisions. This Supplemental Declaration may be amended at any time in the manner provided in Paragraph 29 of the Declaration of Covenants and Restrictions except that no amendment adopted pursuant to Paragraph 29(a) of the Declaration of Covenants and Restrictions shall be effective as against a Mortgagee who subsequently acquires title to a Block Lot unless approved by at least two-thirds (2/3) of the Mortgagees who hold first mortgages on the Block Lots in the Section (based on one vote for each first mortgage owned) or at least two-thirds (2/3) of the Owners of the Block Lots in the Section (excluding Declarant).

Except as the same may be amended from time to time, the foregoing restrictions will be in full force and effect until January 1, 2030, at which time they will be automatically extended for

successive periods of ten (10) years, unless by a vote of a Majority of the Owners it is agreed that these Restrictions shall terminate in whole or in part.

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

BRENNICK TND COMMUNITIES, LLC

By   
Tom Charles Huston, Co-Manager

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HAMILTON )

Before me, a Notary Public in and for said County and State, personally appeared Tom Charles Huston, the Co-Manager of Brenwick TND Communities, LLC, an Indiana limited liability company, who acknowledged execution of the foregoing Supplemental Declaration of Covenants and Restrictions for and on behalf of said limited partnership.

WITNESS my hand and Notarial Seal this 10th day of December, 1999.

Marie M. Urlick  
Notary Public Residing in Hendricks County

My Commission Expires:

May 24, 2007

Marie M. Urlick  
(printed signature)



This instrument prepared by Tom Charles Huston, Attorney at Law, 1313 Merchants Bank Building, 11 South Meridian Street, Indianapolis, Indiana 46204.

INDS01 TCH 347013v1

**EXHIBIT A**

**Real Estate Description**

A part of the Southwest Quarter of Section 28, Township 18 North, Range 3 East, Clay Township, Hamilton County, Indiana, described as follows:

Commencing at the Southwest corner of the East Half of the Southwest Quarter of said Section 28; thence South 89 degrees 14 minutes 42 seconds West 169.63 feet along the South line of the said Southwest Quarter; thence North 00 degrees 08 minutes 09 seconds West 113.69 feet to the Point of Beginning; thence North 80 degrees 51 minutes 15 seconds West 122.62 feet; thence North 88 degrees 40 minutes 53 seconds West 120.65 feet; thence North 01 degrees 19 minutes 07 seconds East 50.00 feet; thence North 00 degrees 08 minutes 09 seconds West 287.98 feet; thence South 87 degrees 21 minutes 46 seconds East 114.13 feet; thence North 00 degrees 08 minutes 09 seconds West 45.71 feet; thence North 89 degrees 51 minutes 51 seconds East 52.00 feet; North 00 degrees 08 minutes 09 seconds West 2.55 feet; South 66 degrees 08 minutes 09 seconds East 220.93 feet to the point of curvature of a curve to the left having a radius of 500.00 feet, the radius point of which bears North 23 degrees 51 minutes 51 seconds East; thence southeasterly along said curve an arc distance of 44.25 feet to a point which bears South 18 degrees 47 minutes 42 seconds West from said radius point; thence South 00 degrees 08 minutes 09 seconds East 16.25 feet; thence North 89 degrees 51 minutes 51 seconds East 52.00 feet; thence North 00 degrees 08 minutes 09 seconds West 1.51 feet to a non-tangent curve to the left having a radius of 500.00 feet, the radius point of which bears North 12 degrees 35 minutes 53 seconds East; thence southeasterly along said curve an arc distance of 111.12 feet to a point which bears South 00 degrees 08 minutes 09 seconds East from said radius point; thence North 89 degrees 51 minutes 51 seconds East 8.79 feet; thence South 00 degrees 08 minutes 09 seconds East 263.59 feet; thence South 89 degrees 51 minutes 51 seconds West 16.00 feet; thence South 00 degrees 08 minutes 09 seconds East 50.00 feet; thence South 89 degrees 51 minutes 51 seconds West 50.81 feet to the point of curvature of a curve to the right having a radius of 110.00 feet, the radius point of which bears North 00 degrees 08 minutes 09 seconds West; thence northwesterly along said curve an arc distance of 17.82 feet to a point of which bears South 09 degrees 08 minutes 45 seconds West from said radius point; thence North 80 degrees 51 minutes 15 seconds West 28.71 feet; thence South 73 degrees 28 minutes 13 seconds West 50.00 feet to a non-tangent curve to the right having a radius of 225.00 feet, the radius point of which bears North 73 degrees 28 minutes 13 seconds East; thence northwesterly along said curve an arc distance of 23.49 feet to a point of which bears South 79 degrees 27 minutes 08 seconds West from said radius point; thence North 80 degrees 51 minutes 15 seconds West 175.65 feet to the Point of Beginning. Containing 4.567 acres more or less.

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Filed for Record in  
HAMILTON COUNTY, INDIANA  
MARY L CLARK  
On 12-02-1999 at 01:26 PM.  
DEC COV RES 64.00

SUPPLEMENTAL DECLARATION OF  
COVENANTS AND RESTRICTIONS  
THE VILLAGE OF WESTCLAY

VILLAGE CENTER

This Supplemental Declaration, dated as of the 22nd day of November, 1999, by BRENNICK TND COMMUNITIES, LLC, an Indiana limited liability company,

WITNESSES THAT:

WHEREAS, the following facts are true:

- A. Declarant is the owner of the fee simple title to the real estate located in Hamilton County, Indiana, more particularly described in Exhibit A attached hereto and incorporated herein by this reference.
- B. This Declaration is a Supplemental Declaration as that term is defined in the Declaration of Covenants and Restrictions.
- C. Declarant intends to subdivide the Parcel into Lots upon each of which one or more Units may be constructed.

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

1. Definitions: Words, phrases and terms that are defined in the Declaration of Covenants and Restrictions have the same meaning in this Supplemental Declaration except as herein otherwise provided. The following words, phrases and terms, as used in this Supplemental Declaration, unless the context clearly requires otherwise, mean the following:

"Association" means WestClay Village Center Owners Association, Inc., an Indiana nonprofit corporation.

"Block" means each of Blocks A, B, C and D depicted on the Plat of Section 3004 Village Center, Part 1 and Blocks E, F and J depicted on the Plat of Section 3004 Village Center, Part 2.

"Board of Directors", "Board" and "Directors" each means the Board of Directors of the Association.

"Building" means any Commercial Unit, Multiuse Structure or Multifamily Structure.

"Building Activity" means any activity or undertaking on a Commercial Lot of a type described in the first sentence of Paragraph 6(c) of this Supplemental Declaration.

"Building Guidelines" means guidelines and requirements for Building Activity on the Parcel adopted by Declarant or the Design Review Board.

"Certificate of Appropriateness" means a certificate signed by not less than a majority of the members of the Design Review Board authorizing the use of a Lot, Building or other improvement for a Regulated Use subject to such conditions and requirements as may be set forth therein.

"Corporation" means The Village of WestClay Owners Association, Inc., an Indiana nonprofit corporation.

"Declaration" means the Declaration of Covenants and Restrictions of The Village of WestClay dated as of August 9, 1999 and recorded in the Office of the Recorder of Hamilton County, Indiana as Instrument Number 9946964, as amended from time to time.

"Design Review Board" means that entity established pursuant to Paragraph 6 of this Supplemental Declaration.

"Encroachment" means the encroachment upon a Lot, public right-of-way, Common Parking Lot or Community Area by any Commercial Unit or Multiuse Structure or any stoop, porch, steps, arcade, overhang or other structure or improvement constituting a part thereof or an appurtenance thereto as a result of the construction of a Commercial Unit or Multiuse Structure substantially in accordance with a Lot Development Plan approved by the Design Review Board, or as a result of the settling or shifting thereof.

"Lot" means a Commercial Lot located in the Parcel.

"Member" means a member of the Association.

"Owner" means any Person, including Declarant, who at any time owns the fee simple title to a Lot.

"Parcel" means the Village Center exclusive of Residential Lots and Community Area located therein.

"Plat" means the secondary plats of Sections 3004 Village Center, Part 1 and 3001 Village Center, Part 2 of the Village of WestClay recorded in the Office of the Recorder of Hamilton County, Indiana, as Instrument Nos. 9965089 and 99PLAT:7

"Regulated Use" means each of the following: antique shop, auto parts store, package liquor store, garden shop, hardware store, health studio, license bureau, medical/optical laboratory, orthopedic and medical appliance and supply sales, pet shop, printing shop, recording studio, reducing salon, rental agency, shoe repair shop, water management and use facilities and any public, semi-public or private recreational use within the scope of Section 5.1.F of the Zoning Ordinance.

"Retail Facility" means a Commercial Unit which is used for the on-site sale of goods or services to the public.

"Street Front" means the exterior facade of a Commercial Unit fronting on a public street.

"Store Window" means a ground floor window in a Street Front.

"Tract" means the real estate, including all or any part of the Parcel, that is subject to the covenants, restrictions, easements, charges and liens imposed by the Declaration.

"Village Center" means the real estate described in Exhibit A.

2. Declaration. Declarant hereby declares that, in addition to the covenants, restrictions, easements, charges and liens imposed by the Declaration, the Parcel shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

3. Common Parking Lots.

(a) Ownership. The Common Parking Lots shall remain private, and neither Declarant's execution or recording of an instrument portraying the Common Parking Lots, nor the doing of any other act by Declarant is, or is intended to be, or shall be construed as, a dedication to the public of the Common Parking Lots.

(b) Use. Each Owner of a Lot abutting a Common Parking Lot, its tenants, customers and invitees shall have a non-exclusive right to park in such abutting Common Parking Lot subject to such reasonable regulations as may be established from time to time by the Association. Such regulations may include, but need not be limited to, designation of employee parking spaces, assignment of reserved parking spaces, limitations on the types of vehicles which may park in the Common Parking Lot and the length of time a vehicle may remain parked therein, and periodic closure of the Common Parking Lot to avoid any claim that such facility has been dedicated to the public. The Common Parking Lots may also be used by Persons making use of the Village Community Buildings.

(c) Maintenance. The Association shall maintain the Common Parking Lots located in the Village Center, including the exterior and interior landscaping required by the Zoning Ordinance, and the Maintenance Costs thereof shall be assessed as a Parcel Assessment against all Lots which derive a substantial benefit from the availability of parking in the Common Parking Lot. In determining substantial benefit, it shall be presumed that all Owners of abutting Lots derive substantial benefit from the Common Parking Lot unless parking areas located exclusively on an Owner's Lot meet the minimum on-site parking requirement specified in the Zoning Ordinance for the use then being made of such Lot. Where a Common Parking Lot serves a Village Community Building, a proportionate share of the Maintenance Costs of the Common Parking Lot shall be allocated to the Corporation and included in the General Assessment against all Lots subject to Assessment. The Association may fix the allocated share of an abutting Lot Owner for Maintenance Costs for a Common Parking Lot with such abutting Lot Owner by contract provided such negotiated allocated share is subject to adjustment during the term of the contract if there is a change in the use of the Lot which affects materially the use of the Common Parking Lot by the Owner or Occupants of the Lot or their customers or invitees.

(d) Reserved Rights of Declarant. Declarant reserves the right for itself and the Association to reconfigure the Common Parking Lots from time to time, which reconfiguration may increase or decrease the number of parking spaces available.

(e) Conveyance of Title. Declarant may retain the legal title to the Common Parking Lots until the Applicable Date, but notwithstanding any provision herein, the Declarant hereby covenants that it shall, not later than the Applicable Date, convey the Common Parking Lots which Declarant acquires, develops or constructs to a Permitted Title Holder, free and clear of all liens and other financial encumbrances and the lien for taxes not yet due and payable, but subject to the Declaration and this Supplemental Declaration.



(f) "Abutting" Defined. A Lot located on a Block on which a Common Parking Lot is located shall for the purposes of this Paragraph 3 be deemed to abut the Common Parking Lot.

4. WestClay Village Center Owners Association, Inc.

(a) Membership. Each Owner shall automatically be a Member of the Association and shall enjoy the privileges and be bound by the obligations contained in the Articles and By-Laws. If a Person would realize upon his security and become an Owner, he shall then be subject to all the requirements and limitations imposed by this Supplemental Declaration on other Owners, including those provisions with respect to the payment of Assessments.

(b) Powers. The Association shall have such powers as are set forth in the Declaration, this Supplemental Declaration and in the Articles, together with all other powers that belong to it by law.

(c) Classes of Members. The Association shall have a single class of Members.

(d) Voting and Other Rights of Members. The voting and other rights of Members shall be as specified in the Articles and By-Laws.

(e) Maintenance Standards. In each instance in which the Declaration or this Supplemental Declaration imposes on the Association a maintenance obligation with respect to the Community Area, the Common Facilities or the Common Parking Lots, or a part thereof, the Association shall maintain the Community Area, the Common Facilities, or the Common Parking Lots, or designated part thereof in good condition, order and repair substantially comparable to its condition when originally constructed, installed or planted and compatible in appearance and utility with a first-class commercial center. Grass, trees, shrubs and other plantings located on the Community Area or the Common Parking Lots for which the Association has maintenance responsibility shall be kept properly irrigated and neatly cut, cultivated or trimmed as reasonably required and otherwise maintained at all times in good and slightly condition appropriate to a first-class commercial center.

(f) Insurance, Taxes and Utilities. The Association shall maintain public liability and casualty insurance in prudent amounts insuring against risk of loss to the Association on account of injury to person or property and damage to property owned by the Association and shall pay all taxes assessed against such property and all utility charges incurred with respect to Community Area for which the Association has maintenance responsibility.

(g) Limitations on Action by the Corporation. Unless at least two-thirds (2/3) of the Mortgages (based on one vote for each first mortgage owned) or two-thirds (2/3) of the Members have given their prior written approval, a Permitted Title Holder, the Board of Directors and the Owners may not: (i) except as authorized by Paragraph 21(a) of the Declaration (but subject to the limitations of Paragraph 17 of the Declaration), by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Community Area (but the granting of easements for public utilities or other public purposes consistent with the intended use of the Community Area shall not be deemed a transfer for the purposes of this clause); (ii) fail to maintain fire and extended coverage insurance on insurable Community Area and Common Facilities on a current replacement cost basis in the amount of one hundred percent (100%) of the insurable value (based on current replacement cost); (iii) use hazard insurance proceeds for losses to any Community Area or Common Facilities for other than the repair, replacement or reconstruction of the Community Area or Common Facilities; (iv) change the method of determining the obligations, Parcel Assessments, dues or other charges that may be levied against the Owner of a Unit; or (v) by act or omission change, waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Units, or the maintenance and upkeep of the Community Area, Common Facilities and Common Parking Lots.

(h) Mergers. Upon a merger or consolidation of another corporation with the Corporation, its properties, rights and obligations may, as provided in its articles of incorporation, by operation of law be transferred to another surviving or consolidated corporation or, alternatively, the properties, rights and obligations of another corporation may by operation of law be added to the properties, rights and obligations of the Corporation as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established by this Supplemental Declaration within the Parcel together with the covenants and restrictions established upon any other properties as one scheme. No merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Supplemental Declaration within the Parcel except as hereinafter provided.

5. Assessments.

(a) Creation of the Lien and Personal Obligation of Assessments. Declarant hereby covenants, and each Owner of any Lot by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the following: (1) Parcel Assessments, (2) Architectural Control Assessments (to the extent levied) and (3) Special Assessments, such Assessments to be established and collected as hereinafter provided.

If two (2) or more Lots originally shown on a Plat are consolidated as a single Lot by virtue of partial vacation of a Plat, or if a Lot is divided by conveyance of portions thereof to owners of adjacent Lots, then, in either such event, so long as the consolidated or divided Lot is used in its entirety by one or more Owners of contiguous Lots, the vacated or divided Lot(s) shall cease to be Lot(s) for purposes of Assessments under this Paragraph 5.

All Assessments, together with interest thereon and costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which each Assessment is made until paid in full. Each Assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due.

(b) Parcel Assessment.

(i) Purpose of Assessment. The Parcel Assessment levied by the Association shall be used exclusively to promote the health, safety, and welfare of the Owners of Lots and Occupants of Units and for the improvement, maintenance, repair, replacement and operation of the Community Area, Common Facilities and Common Parking Lots.

(ii) Basis for Assessment.

(1) Unimproved Lots. Unimproved Lots shall not be subject to assessment.

(2) Lots Improved with Multifamily Structures. Lots improved with one or more Multifamily Structures shall not be subject to assessment.

(3) Lots Improved with Commercial Units. Each Lot improved with one or more Commercial Units (not located in a Multiuse Structure) shall be assessed at a rate which bears the same proportion to all other similarly improved Lots as the gross square footage of the Commercial Unit(s) located on such Lot bears to the gross square footage of all Commercial Units.

(4) Lots Improved with Multiuse Structures. Each Lot improved with a Multiuse Structure shall be assessed as follows: that part of the Multiuse Structure that consists of one or more Commercial Units, shall be assessed in the same manner as specified in Clause (3) above; and that part of the Multiuse Structure that consists of one or more Living Units shall not be subject to assessment; provided, however, that if Occupants of such Living Units have the right to use of a Common Parking Lot, then an agreed amount shall be payable by the Owner of such Living Units pursuant to the last sentence of Paragraph 3.

(5) Lots Owned by Declarant or Permitted Title Holder. Notwithstanding the foregoing provisions of this subparagraph (ii), no Lot owned by Declarant or a Permitted Title Holder shall be assessed by the Association except such Lots as have been improved by the construction thereon of Units, which improved Lots shall be subject to assessment as provided in Clauses (2) through (4) above; provided, however, Lots improved by the construction thereon of Village Community Buildings or an Education Facility shall in no event be subject to Assessments.

(6) Condominiums. Condominiums shall be separately assessed as a Lot applying the provisions of the foregoing Clauses (2) and (4). If a Multiuse Structure is a Horizontal Property Regime, then each Condominium therein shall be separately assessed applying the provisions of the foregoing Clauses (3) and (4).

(7) Change in Basis. The basis for assessment may be changed upon recommendation of the Board of Directors if such change is approved by (i) two-thirds (2/3) of the Members or two-thirds (2/3) of the Mortgagees (based on one vote for each first mortgage owned) who are voting in person or by proxy at a meeting of Members duly called for this purpose; provided, however, if a proposed change would adversely affect the Owners of a particular

class of property, such change in the basis for assessment may be made only if approved by a majority of the Owners adversely affected. For purposes of this Clause (7), "classes of property" include Multifamily Structures, Multiuse Structures and Commercial Units not located in a Multiuse Structure, each as a separate class.

(iii) Method of Assessment. By a vote of a majority of the Directors, the Board of Directors shall, on the basis specified in subparagraph (ii), fix the Parcel Assessment for each assessment year of the Association at an amount sufficient to meet the obligations imposed by the Declaration and this Supplemental Declaration upon the Association. The Board of Directors shall establish the date(s) the Parcel Assessment shall become due, and the manner in which it shall be paid.

(iv) Allocation of Assessment. Certain of the costs of maintaining, operating, restoring or replacing the Community Area, Common Facilities and Common Parking Lots may be allocated among Owners of Lots on the basis of the location of the lands and improvements constituting the Community Area, Common Facilities and Common Parking Lots and the intended use thereof. In determining the Parcel Assessment, costs and expenses which in accordance with the provisions of the Declaration or this Supplemental Declaration are to be borne by all Owners shall first be allocated to all Owners. Costs and expenses which in accordance with the provisions of the Declaration or this Supplemental Declaration are to be borne by the Owners of certain Lots shall then be allocated to the Owners of such Lots. The provisions of subparagraph (ii) shall not be deemed to require that all Assessments against Lots improved with comparable types of Commercial Units, Multifamily Structures or Multiuse Structures be equal, but only that each Lot be assessed uniformly with respect to comparable Lots subject to assessment for similar costs and expenses.

(c) Architectural Control Assessment. If any Owner or Person acting for and on behalf of, or pursuant to the authorization or acquiescence of, an Owner fails to comply with the Building Guidelines or other requirements for construction of improvements, landscaping, lighting, signage and other Building Activities or maintenance of a Lot (including but not limited to installation of required Street Trees or the filing of a Lot Development Plan) or any other Restriction set forth in this Supplemental Declaration, then the Association may levy against the Lot owned

by such Owner an Assessment in an amount determined by the Board of Directors which does not exceed the greater of (i) One Thousand Dollars (\$1,000.00) for each day that such failure continues after written notice thereof is given by Declarant or the Association to such Owner or (ii) Five Hundred Thousand Dollars (\$500,000.00). Such Assessment shall constitute a lien upon the Lot of such Owner and may be enforced in the manner provided in subparagraph (f) below. The levy of an Architectural Control Assessment shall be in addition to, and not in lieu of, any other remedies available to Declarant and/or the Association provided in the Declaration or this Supplemental Declaration, at law or in equity in the case of the failure of an Owner to comply with the provisions of the Declaration, a Supplemental Declaration, the Building Guidelines or the Register of Regulations.

(d) Special Assessment. In addition to such other Special Assessments as may be authorized herein, the Association may levy in any fiscal year a Special Assessment applicable to that year and not more than the next four (4) succeeding fiscal years for the purpose of defraying, in whole or in part, the cost of any construction, repair, or replacement of a capital improvement upon the Community Area and/or the Common Parking Lots, including fixtures and personal property relating thereto or any Common Facilities, provided that any such Assessment shall have the assent of a majority of the votes of the Members whose Lots are subject to assessment with respect to the capital improvement who are voting in person or by proxy at a meeting of Members duly called for this purpose. Any Special Assessment pursuant to this subparagraph (d) shall be allocated equally among all Lots in the Parcel except those exempt from General or Parcel Assessments.

(e) Date of Commencement of Assessments. The Parcel Assessment shall commence with respect to a Lot on the first day of the month following the earlier of (a) the issuance by the Zoning Authority of a certificate of occupancy for the improvements (or part thereof) located on a Lot, or (b) the date the structure or a part thereof is first occupied for its intended purpose. The initial Parcel Assessment on any assessable Lot shall be adjusted according to the days remaining in the month in which the Lot became subject to assessment.

(f) Effect of Nonpayment of Assessments; Remedies of the Association. Any Assessment not paid within thirty (30) days after the due date may upon resolution of the Board of Directors bear interest from the due date at a percentage rate no greater than the current statutory maximum annual interest rate, to be set by the Board of Directors for each assessment year. The Association shall be entitled to institute in any court of competent jurisdiction any lawful action to collect a delinquent Assessment plus any expenses or costs, including attorneys' fees, incurred by the Association in collecting such Assessment. If the Association has provided for collection of any Assessment in installments, upon default in the payment of any one or more installments, the Association may accelerate payment and declare the

entire balance of said Assessment due and payable in full. No Owner may waive or otherwise escape liability for the Assessments provided for herein by nonuse of the Community Area, the Common Parking Lots or the Common Facilities or by abandonment of his Lot.

(g) Subordination of the Lien to Mortgages. To the extent specified herein, the lien of the Assessments provided for herein against a Lot shall be subordinate to the lien of any recorded first mortgage covering such Lot and to any valid tax or special assessment lien on such Lot in favor of any governmental taxing or assessing authority. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall, however, extinguish the lien of such Assessments as to payments which became due more than six (6) months 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.

(h) Certificates. The Association shall, upon demand by an Owner, at any time, furnish a certificate in writing signed by an officer of the Association that the Assessments on a Lot have been paid or that certain Assessments remain unpaid, as the case may be.

(i) Annual Budget. By a majority vote of the Directors, the Board of Directors shall adopt an annual budget for the subsequent fiscal year, which shall provide for allocation of expenses in such a manner that the obligations imposed on the Association by the Declaration and this Supplemental Declaration will be met.

6. Architectural Control.

(a) The Design Review Board. A Design Review Board consisting of three (3) or more Persons shall be established by the Board of Directors of the Association. Prior to the Applicable Date, the members of the Design Review Board shall be appointed by Declarant. Thereafter, one (1) of the members of the Design Review Board shall be appointed by the Board of Directors of the Corporation and the other members shall be appointed by the Board of Directors of the Association.

(b) Purpose. The Design Review Board shall regulate the external design, appearance, use, location and maintenance of the Parcel and of all improvements thereon in such manner as to preserve and enhance values, to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography consistent with the design theme of the Village Center established by Declarant, to implement the development standards and guidelines set forth in the Zoning Ordinance and to assure compliance with the Building Guidelines established by Declarant for the Village Center.

(c) Building Activity. Except as otherwise expressly provided in this Supplemental Declaration, no improvements, alterations, repairs, change of colors, excavations, changes in grade, planting, installation or modification of signage or other work that in any way alters any Lot or the exterior of the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by Declarant to another Owner (including, but not limited to, (i) construction, erection or alteration of any Unit, Multifamily Structure, Multiuse Structure, other building, fixture, equipment, fence, wall, swimming pool, ball court, patio, deck, parking area, or other structure on a Lot, or (ii) any plantings, other landscaping or exterior lighting on a Lot, (iii) the installation or alteration of any signage on any Lot, Unit, Multifamily Structure or Multiuse Structure, or (iv) the removal of any Significant Tree from a Lot, shall be made or done without the prior approval of the Design Review Board of a Lot Development Plan therefor. Prior to commencement by any Owner other than Declarant of any Building Activity a Lot Development Plan with respect thereto shall be submitted to the Design Review Board, and no Building Activity shall be commenced or continued by any Person other than Declarant without the prior written approval of the Design Review Board of a Lot Development Plan relating to such Building Activity. Such approval shall be in addition to, and not in lieu of, all approvals, consents, permits and/or variances required by law from governmental authorities having jurisdiction over the Parcel, and no Owner shall undertake any Building Activity within the Parcel unless all legal requirements have been satisfied. Approval by the Design Review Board of a Lot Development Plan shall not be deemed to imply compliance with approvals, consents, permits and/or variances required by law from governmental authorities having jurisdiction over the Parcel. Each Owner shall complete all improvements to a Lot strictly in accordance with the Lot Development Plan approved by the Design Review Board. As used in this subparagraph (c), "plantings" does not include flowers, bushes, shrubs or other plants having a height of less than eighteen (18) inches.

(d) Procedures. In the event the Design Review Board fails to approve, modify or disapprove in writing a Lot Development Plan within sixty (60) days after notice of such plan has been duly filed with the Design Review Board in accordance with procedures established by Declarant or, subsequent to the Applicable Date, the Board of Directors, approval will be deemed denied. A decision of the Design Review Board (including a denial resulting from the failure of such Board to act on the plan within the specified period) may be appealed to the Board of Directors which may reverse or modify such decision (including approve a Lot Development Plan deemed denied by the failure of the Design Review Board to act on such plan within the specified period) by a two-thirds (2/3) vote of the Directors then serving.

(e) Guidelines and Standards. The Design Review Board shall have the power to establish and modify from time to time such written architectural,



landscaping, lighting, fencing, recreational facility and signage design guidelines and standards as it may deem appropriate to achieve the purpose set forth in subparagraph (b) to the extent that such design guidelines and standards are not in conflict with the specific provisions of the Declaration, this Supplemental Declaration, the Zoning Ordinance or, prior to the Applicable Date, the Building Guidelines established by Declarant. Any such guideline or standard may be appealed to the Board of Directors which may terminate or modify such guideline or standard by a two-thirds (2/3) vote of the Directors then serving. The Building Guidelines may establish different standards and requirements for various Lots in the Parcel based on the size, location and use of such Lots and the improvements to be located thereon.

(f) Application of Guidelines and Standards. The Design Review Board shall apply the Building Guidelines in a fair, uniform and reasonable manner consistent with the discretion inherent in the design review process. In disapproving any Lot Development Plan, the Design Review Board shall furnish the applicant with specific reasons for such disapproval and may suggest modifications in such plan which would render the plan acceptable to the Board if resubmitted. Notwithstanding the foregoing, the Design Review Board shall have the right to disapprove any signage which in its absolute unfettered discretion it deems inappropriate and such disapproval may be based solely on aesthetic considerations.

(g) Design Consultants. The Design Review Board may utilize the services of architects, engineers and other Persons possessing design expertise and experience in evaluating Lot Development Plans. No presumption of any conflict of interest or impropriety shall be drawn or assumed by virtue of the fact that any of such consultants are affiliated with Declarant or a Designated Builder or may, from time to time, represent Persons filing Lot Development Plans with the Design Review Board.

(h) Existing Violations of Supplemental Declaration. The Design Review Board shall not be required to consider any Lot Development Plan submitted by an Owner who is, at the time of submission of such Lot Development Plan, in violation of the requirements of the Declaration, this Supplemental Declaration and/or the provisions of the Zoning Ordinance, unless such Owner submits to the Design Review Board with such Lot Development Plan an irrevocable agreement and undertaking (with such surety as the Board may reasonably require) to remove from the Owner's Lot any improvements, landscaping, exterior lighting or signage constructed and/or installed prior to the submission of a Lot Development Plan (or constructed and/or installed in violation of a previously approved Lot Development Plan) to the extent any such previously constructed and/or installed improvement, landscaping, exterior lighting or signage is not subsequently approved by the Design Review Board. The Design Review Board shall have the power to recommend to the Board of Directors that the Association assess an Architectural Control Assessment

against any Owner who fails to comply with the requirements of this Supplemental Declaration, the Register of Regulations or the provisions of the Zoning Ordinance. Under no circumstances shall any action or inaction of the Design Review Board be deemed to be unreasonable, arbitrary or capricious if, at the time of such decision, the Person having submitted a Lot Development Plan for approval by the Design Review Board has violated this Supplemental Declaration, the Register of Regulations or the provisions of the Zoning Ordinance and such violation remains uncured.

(i) Exercise of Discretion. Declarant intends that the members of the Design Review Board exercise discretion in the performance of their duties consistent with the provisions of subparagraph (f), and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members. In any judicial proceeding challenging a determination by the Design Review Board and in any action initiated to enforce this Supplemental Declaration in which an abuse of discretion by the Design Review Board is raised as a defense, abuse of discretion may be established only if a reasonable Person, weighing the evidence and drawing all inferences in favor of the Board, could only conclude that such determination constituted an abuse of discretion.

(j) Liability of Board. Neither the Design Review Board, or any member or agent thereof, nor Declarant shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Board does not make, and shall not be deemed by virtue of any action of approval or disapproval taken by it to have made, any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.

(k) Inspection. Members of the Design Review Board may inspect work being performed to assure compliance with these Restrictions and applicable regulations.

7. Electoral Parcel. The Parcel shall constitute an Electoral Parcel for the purpose of election of Directors of the Corporation.

8. Retail Operations.

(a) Minimum Hours of Operation. Prior to the Applicable Date, Declarant may establish minimum hours of operation by Owners or Occupants of Retail Facilities located in the Parcel. Following the Applicable Date, the Board of Directors of the Association may establish such hours unless a deed to a Lot contains a covenant on the part of Declarant not to establish such hours with respect to operations by the grantee designated in such deed, or its successors.

(b) Doors in Street Fronts. Unless the Design Review Board approves a variance from this Restriction or compliance with such Restriction would violate applicable legal requirements, all doors in a Street Front shall at all times be operable and shall afford direct access from the street to the Commercial Unit during the hours the Owner or Occupant of such Commercial Unit is open for business.

(c) Store Windows. Store Windows of a Retail Facility shall be unobstructed and maintained at all times so that the interior of the Retail Facility is visible from the street. This Restriction shall not preclude window displays and window signage which, in the judgment of the Design Review Board, is consistent with the character of the retail operations conducted on the premises and does not unreasonably obstruct visibility from the street.

9. Master Marketing. The Association may establish a master marketing budget and include the amount thereof in the annual budget and the Parcel Assessment; provided, however, that (a) any such Assessment shall be levied only against Lots on which a Retail Facility is located and (b) the amount of such master marketing budget must be approved by not less than a majority of the Owners of Lots which would be subject to assessment for such purpose.

10. Restrictions on Use.

(a) Uses Requiring Certificate of Appropriateness. No use shall be made of any Commercial Lot, Building or other improvement in the Parcel which constitutes a Regulated Use unless the Design Review Board has issued a Certificate of Appropriateness authorizing such use and such Certificate continues in full force and effect. A Certificate of Appropriateness shall authorize a Regulated Use only in the premises specifically identified in such certificate and shall be valid only so long as there is no substantial change in the method of operation of the Regulated Use from that authorized in the Certificate ("Material Change"). If there is any Material Change or if any Regulated Use authorized by the issuance of a Certificate of Appropriateness shall be discontinued for a period in excess of forty-five (45) consecutive days except as a consequence of casualty, then, in either of such events, the Design Review Board may revoke the Certificate of Appropriateness. A Certificate of Appropriateness shall run with the premises identified therein and not the applicant to whom such certificate was issued and, except as otherwise provided herein, shall continue in full force and effect so long as the Regulated Use continues to be conducted on the premises notwithstanding a change in the Owner or Occupant of such premises. If, however, a Regulated Use is discontinued for a period in excess of forty-five (45) consecutive days other than as a consequence of casualty, then the Certificate of Appropriateness shall terminate and any future Regulated Use of the premises shall require the issuance of a new Certificate of Appropriateness. The Design Review Board may condition the issuance of a Certificate of Appropriateness upon compliance by the Person engaged in the Regulated Use with operating

standards and other requirements respecting the conduct of the Regulated Use. If any such Person fails to comply with such standards and requirements, the Design Review Board may, after written notice to such Person, revoke the Certificate of Appropriateness if compliance is not effected within ten (10) days following the giving of such notice; provided, however, that such notice shall be required only with respect to the first instance of noncompliance which occurs in any twelve-month period and in the event of more than one instance of noncompliance within such period the Design Review Board may revoke the Certificate of Appropriateness without prior notice or opportunity to cure.

(b) Exclusive Uses. Declarant by deed, lease or other instrument may grant to any Owner or Occupant the exclusive right to the use in the Tract of a Retail Facility for one or more specified retail purposes (an "exclusive use"), and no other Owner or Occupant shall use any Commercial Unit for a use that constitutes an exclusive use if notice of the exclusive use is contained in an instrument of record; provided, however, that no Owner or Occupant shall be restricted in its use of a Commercial Unit for a retail purpose (the "conflicting use") as a consequence of an exclusive use, notice of which was first placed of record subsequent to the commencement of such conflicting use by the Owner or Occupant.

(c) Prohibited Uses. No Lot, Building or other structure shall be used for a massage parlor, an "adult" bookstore or business catering to pornographic interests, a so-called "head shop", a funeral parlor, a flea market, a warehouse or storage facility, an off-track betting parlor, a miniature golf course, a pinball or video game arcade, a used-clothing or thrift shop, a check-cashing service or pawn shop, any dangerous, noxious or offensive trade or business or any illegal trade or business.

11. Compliance by Occupants. Each Owner shall undertake in good faith and with due diligence to cause Occupants of Units on its Lot to comply with the Zoning Ordinance, the Declaration, this Supplemental Declaration and all rules and regulations duly adopted by the Corporation, the Association or the Design Review Board.

12. Encroachments. A perpetual easement is hereby created on each Lot or other parcel of land in the Parcel upon which an Encroachment exists for the benefit of the Owner of the Lot containing the improvement which constitutes the Encroachment. In the event an encroaching Commercial Unit or Multiuse Structure shall be partially or totally destroyed as a result of fire or other casualty or as a result of the exercise of the power of eminent domain or a conveyance in anticipation thereof, and then rebuilt in its original configuration or substantially in accordance with a Lot Development Plan approved by the Design Review Board, any resulting Encroachment shall be perfected and a perpetual easement therefor is hereby created for the benefit of the Owner of the encroaching structure.

13. Party Walls.

(a) General Rules of Law to Apply. Each wall that is built as a part of the original construction of a Commercial Unit or Multiuse Structure and placed on the dividing line between Lots shall constitute a party wall and, to the extent not inconsistent with the provisions of this Paragraph 13, another Supplemental Declaration or a recorded agreement between Owners of adjoining Lots who share a party wall, the general rules of Indiana law regarding party walls shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of routine repair and maintenance of a party wall shall be shared equally by the Owners who make use of the wall unless other provision for such routine repair and maintenance is made in another Supplemental Declaration or a recorded agreement between Owners of adjoining Lots who share a party wall.

(c) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other cause, then, unless other provision for restoration is made in another Supplemental Declaration or in a recorded agreement between Owners of adjoining Lots who share a party wall, either Owner who has used the wall may restore it, and if the other Owner thereafter makes use of the wall, he shall contribute equally to the cost of restoration thereof unless the restoring Owner has the right to call for a larger contribution from the subsequent user under a rule of law regarding liability for negligent or willful acts or omissions, in which event the subsequent user shall make such larger contribution as may be lawfully determined.

(d) Weatherproofing. An Owner who by his negligent or willful act or omission causes the party wall to be exposed to the elements shall furnish the necessary protection against such elements and shall bear the entire cost thereof.

(e) Rights and Duties Run with Land. The rights and duties of an Owner with respect to a party wall under this Paragraph 13 shall be appurtenant to such Owner's Lot and shall pass to the successor in title of such Owner.

14. Insurance. Each Owner shall obtain and maintain with respect to all Buildings owned by him in the Parcel insurance with respect to such Buildings and related building equipment insuring against any peril included within the classification "All Risks of Physical Loss" in amounts at all times sufficient to prevent the Owner from becoming a co-insurer within the terms of the applicable policies and under applicable law, but in any event such insurance shall be maintained in an amount equal to the full insurable value of the Buildings and building equipment, the term "full insurable value" to mean the actual replacement cost of the Buildings and building equipment (without taking into account any depreciation, and exclusive of excavations, footings and foundations) determined annually by an insurer, a recognized independent insurance broker or an

independent appraiser selected by the Owner. The insurance required by this Paragraph 14 shall be issued by a financially responsible insurer authorized to issue casualty insurance in the State of Indiana. Each Owner shall deliver annually to the Association evidence of the maintenance of the insurance herein required. Each Owner and Occupant shall comply with all insurance requirements and shall not bring, keep or permit any condition to exist on the Lot or in the Building which would be prohibited by an insurance requirement or would invalidate the insurance coverage required hereunder. The insurance coverage required under this Paragraph 14 may be effected under a blanket policy or policies covering the Building and other properties and assets not constituting a part of the Building; provided that any such blanket policy shall specify the portion of the total coverage of such policy that is allocated to the Building and any sublimit in such blanket policy applicable to the Building and shall, in any case, comply in all other respects with this Paragraph 14.

15. Maintenance, Repairs and Replacements.

(a) Buildings. Each Owner shall, at his own expense, be responsible for the maintenance, repair, decoration and replacement of the Buildings and other structures and improvements owned by him, and each Owner shall promptly perform all maintenance and repair which, if neglected, might adversely affect the structural integrity or the exterior appearance thereof, including but not limited to painting of exterior wood surfaces and repainting on a regular basis of all other exterior painted surfaces. In the event that the maintenance or repair of any Building or other structure or improvement is reasonably necessary in the discretion of the Board of Directors to preserve the structural integrity or sightliness thereof, or is otherwise necessary for the health and safety, or in the interest of the general welfare, of the Owners of Lots in the Parcel, the Board of Directors shall have the power to seek injunctive relief to compel compliance with this Restriction or the Board may undertake such maintenance or repair; provided that no such maintenance or repair shall be undertaken without a resolution of the Board of Directors and reasonable written notice to the Owner and, provided further, that the cost thereof shall be assessed against the Lot on which such maintenance or repair is performed and, when so assessed, a statement for the amount thereof shall be rendered promptly to the then Owner of said Lot at which time the Assessment shall become due and payable and a continuing lien and obligation of said Owner in all respects as provided in Paragraph 19(i) of the Declaration.

(b) Grounds. The Owner of each Lot shall at his expense properly irrigate and keep the grass, trees, shrubs and other plantings located thereon or in a tree lawn adjacent thereto nourished and neatly cut, cultivated or trimmed as reasonably necessary to maintain the same at all times in a good and sightly condition appropriate to a first-class commercial center and, if such Owner fails to do so, the Corporation may undertake such maintenance and assess the Maintenance Costs thereof as a Special Assessment against the Lot, or the Corporation may seek injunctive relief to compel compliance with this Restriction.

(c) Damage or Destruction. If a Building located on a Lot is damaged or destroyed as a consequence of fire, storm or other event ("Casualty") to the extent that the cost of restoration or replacement thereof is less than the fair market value of such Building prior to the Casualty, then the Owner therefor shall promptly restore, repair, replace and rebuild the portion of the Building so damaged or destroyed as nearly as possible to its quality, utility, value, condition and character immediately prior to such Casualty. Such restoration shall conform to the Lot Development Plan originally approved for such Building except to the extent that deviations therefrom have been approved in writing by the Design Review Board. If the cost of restoration or replacement exceeds the fair market value of the Building prior to the Casualty, then the Owner shall not be required to repair or restore (but if it elects to so repair or restore, it shall do so in accordance with this Paragraph 15(c)), and in the event the Owner elects not to repair or restore the Building, it shall, as soon as practical after such Casualty, remove all debris from the Lot and take such actions as are necessary to make the undamaged portion of the Building into a functional economic unit insofar as it is possible under the circumstances. Areas of the Lot previously occupied by a Building damaged by Casualty and not restored shall be promptly landscaped in accordance with a landscaping plan approved by the Design Review Board. As used in this subparagraph (c), "Building" does not include a Multifamily Structure.

16. Parking. No recreational vehicle, motor home, truck which exceeds ¾ ton in weight, trailer, boat or disabled vehicle shall be parked or store overnight or longer on a Lot in open view from a public Street.

17. Recreational Facilities. No swimming pool, basketball goal, tennis court or other outdoor recreational equipment or facility shall be located on a Lot without the prior written approval of the Design Review Board, which approval may be conditioned or denied in the unfettered discretion of the Board.

18. Garbage and Refuse Disposal. All facilities and equipment for the storage and disposal of rubbish, garbage or other waste shall be confined to an enclosed area out of public view and shall be maintained in a clean and sanitary manner.

19. Antennas and Receivers. No satellite receiver, down-link or antenna which is visible from a public way or from any other Lot, and no satellite dish greater than eighteen (18) inches in diameter shall be located on any Lot without the prior written consent of the Design Review Board. To the extent permitted by regulations of the Federal Communications Commission, the Design Review Board may refuse to approve any satellite dish which is visible from a public way. The Design Review Board may establish Restrictions relating to the screening of satellite receivers, down-links and dishes and antennas.

20. Utilities. All utilities serving the Buildings and other improvements located on the Parcel shall be underground; provided that the foregoing shall not prohibit underground utilities to be connected with utility tie-in locations above ground on exterior walls of the Buildings to be constructed on the Parcel immediately adjacent to the locations where such underground utilities penetrate the ground.

21. General Community Rules.

(a) Binding Nature. Each Lot shall be subject to the guidelines, rules, regulations and procedures adopted by the Corporation, the Association or any instrumentality thereof in accordance with the authority granted by the Declaration and this Supplemental Declaration.

(b) Rule-Making Authority. The Design Review Board may adopt general rules and regulations relating to the use and enjoyment of the Village Center appropriate to the maintenance of the Village Center as a vital retail core of a first-class residential community. Such general rules may be amended by a two-thirds (2/3) vote of the Design Review Board. Subsequent to the Applicable Date, any such amendment may be made only after a public hearing for which due notice to all affected Owners has been provided, and if such amendments are approved by a two-thirds (2/3) vote of the Board of Directors. All general rules and any subsequent amendments thereto shall be placed in the Register of Regulations and shall constitute Restrictions.

22. Building Requirements and Guidelines. The Owners of Lots in the Parcel shall at all times comply with the Building Guidelines adopted by Declarant or the Design Review Board.

23. Outside Activities. No sidewalk, patio, arcade, parking area or other exterior space shall be used for any commercial or recreational purpose except in conformity with guidelines and regulations adopted by the Design Review Board.

24. Mechanic's Liens. Each Owner agrees that in the event any mechanic's lien or other statutory lien shall be filed against its Lot, any other Lot, a Common Parking Lot or any Community Area by reason of work, labor, services or materials supplied to or at the request of such Owner pursuant to any construction on its Lot, or at the request of the Owner or an Occupant of the Lot pursuant to any construction by said Owner or Occupant, it shall pay and discharge the same of record within thirty (30) days after the filing thereof, subject to the provisions of the following sentence. Each Owner shall have the right to contest the validity, amount or applicability of any such liens by appropriate legal proceedings, and, so long as it shall furnish bond or indemnify as hereinafter provided and be prosecuting such contest in good faith, the requirement that it pay and discharge such liens within said thirty (30) days shall not be applicable; provided, however, that in any event such Owner shall, within thirty (30) days after the filing thereof, bond or indemnify against such liens in amount and in form satisfactory to induce the title insurance company which



insured title to the respective parcel, to insure over such liens or to reissue and update its existing policy, binder or commitment without showing title exception by reason of such liens, and shall indemnify and save harmless Declarant, the other Owners, the Corporation and the Association from all loss damage, liability, expense or claim whatsoever (including reasonable attorneys' fees and other costs of defending against the foregoing) resulting from the assertion of any such liens. In the event such legal proceeding shall be finally concluded (so that no further appeal may be taken adversely to the Owner contesting such liens) such Owner shall, within five (5) days thereafter, cause the liens to be discharged of record.

25. Taxes. Each Owner shall pay (or cause to be paid) before delinquency all real estate taxes and assessments (herein collectively "Taxes") levied on its Lot and the improvements situated thereon. Each Owner may, at its own cost and expense by appropriate proceeding, contest the validity, applicability and/or the amount of any Taxes. Nothing in this Paragraph 25 shall require an Owner to pay any Taxes so long as it contests the validity, applicability or the amount thereof in good faith and so long as it does not allow the affected Lot to be forfeited to the imposer of such Taxes as a result of its nonpayment. If an Owner fails to comply with this Paragraph 25, the Declarant or the Association may pay the Taxes in question and, if it does, shall be entitled to prompt reimbursement from the defaulting Owner for the sums so expended with interest thereon at the rate of ten percent (10%) per annum.

26. Nuisances. Each Owner and Occupant shall operate its business or conduct its operations on the Parcel so that no nuisance will occur on its Lot or any area adjacent thereto which may be subject to the control of such Owner or Occupant and so that no other Owner or Occupant of a Lot in the Parcel or a Residential Lot in proximity thereto will be unreasonably annoyed, disturbed or interfered with.

27. Security Operations. Each Owner and/or Occupant shall, at its sole expense, provide the security personnel and equipment it deems to be required for the protection of persons who, and property which, shall from time to time come or be upon the Lot or Building owned by such Owner or occupied by such Occupant. None of Declarant, the Corporation or the Association assumes any responsibility for, nor shall have any liability with respect to or as a consequence of, unlawful acts committed by Persons in, on or about the Parcel or the Community Area.

28. Environmental Matters.

(a) Definitions. As used herein, the following terms have the meaning indicated:

(i) "Environmental Laws" - All federal, state and municipal laws, ordinances, rules and regulations applicable to the environmental and ecological condition of a Lot, including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended; the Federal

Resource Conservation and Recovery Act; the Federal Toxic Substance Control Act; the Clean Air Act; the Clean Water Act; the rules and regulations of the Federal Environmental Protection Agency, or any other federal, state or municipal or governmental board or entity having jurisdiction over the Lot.

(ii) "Hazardous Substances" - Includes:

(1) Those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," "solid waste" or "infectious waste" in any of the Environmental Laws; and

(2) Such other substances, materials and wastes which are or become regulated under applicable local, state or federal law, or which are classified as hazardous, toxic or infectious under present or future Environmental Laws or other federal, state, or local laws or regulations.

(b) Compliance. Each Owner and Occupant, at its sole cost and expense, shall promptly comply with all Environmental Laws which impose any duty upon either of them with respect to the use, occupancy, maintenance or alteration of the Lot and/or the Buildings thereon. Each Owner and Occupant shall promptly comply with any notice from any source issued pursuant to Environmental Laws or with any notice from any insurance company pertaining to use, occupancy, maintenance or alteration of a Lot or Building thereon.

(c) Restrictions. No Owner or Occupant shall cause or permit to occur:

(i) Any violation of Environmental Laws related to environmental conditions on, under, or about the Lot or a Building, or arising from use or occupancy of the Lot or a Building thereon, including, but not limited to, soil and ground water conditions.

(ii) The use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substances on, under, or about the Lot or a Building thereon, or the transportation to or from the Lot or any such Building of any Hazardous Substances, except as necessary and appropriate for residential, general office or retail use in which case the use, storage or disposal of such Hazardous Substances shall be performed in

compliance with Environmental Laws and the highest standards prevailing in the industry.

(d) Notices, Affidavits, Etc. An Owner shall immediately notify Declarant and the Association of (i) any violation by Owner or an Occupant, or their respective employees, agents, representatives, customers, invitees or contractors of Environmental Laws on, under or about the Lot, or (ii) the presence or suspected presence of any Hazardous Substances on, under or about the Lot and shall immediately deliver to Declarant and the Association any notice received from any source by any of them relating to (i) and (ii) above.

(e) Rights of Declarant and the Association.

(i) Declarant, the Association and their respective agents shall have the right, but not the duty, upon advance notice (except in the case of emergency when no notice shall be required) to inspect a Lot and all Buildings thereon and conduct tests thereon at any time to determine whether or the extent to which there has been a violation of Environmental Laws or whether there are Hazardous Substances on, under or about the Lot or any Building thereon. In exercising their rights herein, Declarant and the Association shall use reasonable efforts to minimize interference with the business being conducted on the Lot but neither Declarant or the Association (or their respective agents) shall be liable for any interference, loss, or damage to any property or business caused thereby.

(ii) If Declarant, the Association or any governmental agency shall ever require testing to ascertain whether there has been a release of Hazardous Substances on, under or about a Lot or any Building thereon or a violation of Environmental Laws, and such requirement arose in whole or in part because of an act or omission on the part of the Owner or Occupant of such Lot or Building, then the reasonable costs thereof may be assessed by the Association against the Lot as a Special Assessment.

(f) Indemnification. Each Owner shall indemnify and hold harmless Declarant, the Association and their respective agents or employees from any and all claims, loss, liability, costs, expenses or damage, including attorneys' fees and costs of remediation, incurred by any of them in connection with any breach by an Owner or Occupant of its obligations under this Paragraph 28.

29. Amendments.

(a) Generally. This Supplemental Declaration may be amended at any time by an instrument signed by (i) the appropriate officers of the Association acting pursuant to authority granted by (A) not less than two-thirds (2/3) of the votes of the Members cast at a meeting duly called for the purpose of amending this Supplemental Declaration and (B) a majority of the Directors of the Corporation and (ii) to the extent required by Paragraph 27 of the Declaration, Declarant.

(b) By Declarant. This Supplemental Declaration may be amended at any time prior to the Applicable Date by Declarant as provided in Paragraph 29(b) of the Declaration.

(c) Limitations on Amendments. The right to amend this Supplemental Declaration is subject to the provisions of subparagraphs (c) and (d) of Paragraph 29 of the Declaration.

30. Enforcement. The right to enforce each of the foregoing Restrictions by injunction or other lawful means, together with the right to cause the removal by due process of law of improvements erected or maintained in violation thereof and to require discontinuation of a Regulated Use for which no valid Certificate of Appropriateness is in effect or of any exclusive use which violates Paragraph 10(b), is reserved to Declarant, the Association, the Design Review Board, the Owners of the Lots in the Parcel, their heirs and assigns, and to the Zoning Authority, their successors and assigns, who are entitled to such relief without being required to show any damage of any kind to Declarant, the Association, the Design Review Board, any Owner or Owners, or such Zoning Authority by or through any such violation or attempted violation. Under no circumstances shall Declarant, the Association or the Design Review Board be liable for damages of any kind to any Person for failure to abide by, enforce or carry out any provision or provisions of this Supplemental Declaration. There shall be no rights of reversion or forfeiture of title resulting from any violations.

31. Severability. Invalidation of any of these covenants and restrictions or any part thereof by judgment or court order shall not affect or render the remainder of said covenants and restrictions invalid or inoperative.

32. Non-Liability of Declarant. Declarant shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Declarant, and no duty of, or warranty by, Declarant shall be implied by or inferred from any term or provision of this Supplemental Declaration.

33. General Provisions. Except as the same may be amended from time to time, the foregoing restrictions will be in full force and effect until January 1, 2030, at which time they will be automatically extended for successive periods of ten (10) years, unless by a vote of the majority

of the then Owners of Lots in the Parcel it is agreed that these Restrictions shall terminate in whole or in part.

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

BRENNICK TND COMMUNITIES, LLC

By Tom Charles Huston  
Tom Charles Huston, Co-Manager

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HAMILTON )

Before me, a Notary Public in and for said County and State, personally appeared Tom Charles Huston, the Co-Manager of Brenwick TND Communities, LLC, an Indiana limited liability company, who acknowledged execution of the foregoing Supplemental Declaration of Covenants and Restrictions for and on behalf of said company.

WITNESS my hand and Notarial Seal this 22nd day of November, 1999, LLC

Marie M. Urbeck  
Notary Public Residing in Hamilton County  
Marie M. Urbeck  
(printed signature)

My Commission Expires:

May 24, 2007

This instrument prepared by Tom Charles Huston, Attorney at Law, 11 South Meridian Street, Suite 1313, Indianapolis, Indiana 46204.

INDEX TO 14419

**EXHIBIT A**

**Real Estate Description**

A part of the Southwest Quarter of Section 28, Township 18 north, Range 3 East, Clay Township, Hamilton County, Indiana, described as follows:

Commencing at the Northeast corner of the Southwest Quarter of said Section 28; thence South 89 degrees 14 minutes 59 seconds West along the North line of the said Southwest Quarter 940.18 feet; thence South 00 degrees 08 minutes 09 seconds East 815.78 feet to a point of curvature of a curve to the right, non-tangent to the last described course, having a radius of 253.00 feet, the radius point which bears South 00 degrees 19 minutes 09 seconds West; thence Easterly along said curve an arc distance of 16.74 feet to the Point of Beginning, which bears North 04 degrees 06 minutes 30 seconds East from said radius point; thence continuing southeasterly along said curve an arc distance of 376.67 feet to a point which bears North 89 degrees 51 minutes 31 seconds East from said radius point; thence South 00 degrees 08 minutes 09 seconds East 106.36 feet; thence North 89 degrees 51 minutes 51 seconds East 56.17 feet to a point of curvature of a curve to the left having a radius of 974.00 feet, the radius point of which bears North 00 degrees 08 minutes 09 seconds West; thence northeasterly along said curve an arc distance of 80.85 feet to a point which bears South 04 degrees 52 minutes 49 seconds East from said radius point; thence South 04 degrees 52 minutes 49 seconds East 52.00 feet to a point of curvature of a curve to the right, non-tangent to the last described line, having a radius of 1026.00 feet, the radius point of which bears North 04 degrees 52 minutes 48 seconds West; thence southwesterly along said curve an arc distance of 13.78 feet to a point which bears South 04 degrees 08 minutes 38 seconds East from said radius point; thence South 00 degrees 08 minutes 09 seconds East a distance 430.32 feet to a point of curvature of a curve to the left having a radius of 20.00 feet, the radius point of which bears North 89 degrees 51 minutes 51 seconds East; thence southeasterly along said curve an arc distance of 33.19 feet to a point of compound curve or a curve to the left having a radius of 1324.00 feet, the radius point of which bears North 05 degrees 13 minutes 51 seconds West; thence northeasterly along said curve an arc distance of 8.91 feet to a point which bears South 05 degrees 36 minutes 59 seconds East from said radius point; thence South 05 degrees 36 minutes 59 seconds East 52.00 feet to a curve having a radius of 1376.00 feet, the radius point of which bears North 05 degrees 36 minutes 59 seconds West; thence southwesterly along said curve an arc distance of 13.17 feet to a point which bears South 05 degrees 04 minutes 05 seconds East from said radius point; thence south 00 degrees 08 minutes 09 seconds East 345.24 feet to point on a curve having a radius of 120.97 feet, the radius point which bears South 50 degrees 45 minutes 03 seconds West; thence southeasterly along said curve an arc distance of 41.75 feet to a point which bears North 70 degrees 31 minutes 23 seconds East from said radius point; thence South 70 degrees 31 minutes 23 seconds West 50.00 feet to a point on a curve having a radius of 70.97 feet, the radius point which bears South 70 degrees 31 minutes 23 seconds West; thence northwesterly along said curve an arc distance of 5.16 feet to a point which bears North 68 degrees 21 minutes 15 seconds East from said radius point; thence South 44 degrees 51 minutes 51 seconds West 132.08 feet to a point on a curve having a radius of 70.97 feet, the radius point which bears North 23 degrees 22 minutes 27 seconds East; thence southeasterly along said curve an arc distance of 5.16 feet to a point which bears South 19 degrees 12 minutes 19 seconds West from said radius point; thence South 19 degrees 12 minutes 19 seconds West 50.00 feet to a point on a curve having a radius of 120.97 feet, the radius point which bears North 19 degrees 12 minutes 19 seconds East; thence northwesterly along said curve an arc distance of 41.75 feet to a point which bears South 36 degrees 58 minutes 38 seconds West from said radius point; thence South 89 degrees 51 minutes 51 seconds West 219.04 feet; thence

South 55 degrees 45 minutes 55 seconds West 74.81 feet to the point of curvature of a curve to the left having a radius of 25.00 feet, the radius which bears South 34 degrees 14 minutes 05 seconds East; thence southerly along said curve an arc distance of 29.38 feet to a point which bears South 78 degrees 25 minutes 26 seconds West from said radius point; thence south 78 degrees 25 minutes 26 seconds West 52.00 feet to a point on a curve to the right having a radius of 1026.00 feet, the radius point which bears North 78 degrees 25 minutes 26 seconds East; thence northwesterly along said curve an arc distance of 74.92 feet to a point which bears South 82 degrees 35 minutes 29 seconds West from said radius point; thence South 89 degrees 56 minutes 51 seconds West 111.00 feet to the point of curvature of a curve to the right having a radius of 500.00 feet, the radius point which bears North 00 degrees 08 minutes 09 seconds West; thence northwesterly along said curve an arc distance of 111.12 feet to a point which bears South 12 degrees 35 minutes 53 seconds West from said radius point; thence South 00 degrees 08 minutes 09 seconds East 1.51 feet; thence South 89 degrees 51 minutes 51 seconds West 52.00 feet; thence North 00 degrees 08 minutes 09 seconds West 16.25 feet to a point on a curve to the right having a radius of 500.00 feet, the radius point which bears North 18 degrees 47 minutes 42 seconds East; thence northwesterly along said curve an arc distance of 44.25 feet to a point which bears South 23 degrees 51 minutes 51 seconds West from said radius point; thence North 66 degrees 08 minutes 09 seconds West 220.83 feet; thence South 00 degrees 08 minutes 09 seconds East 2.55 feet; thence South 89 degrees 51 minutes 51 seconds West 52.00 feet; thence North 00 degrees 08 minutes 09 seconds West 25.70 feet; thence North 66 degrees 08 minutes 09 seconds West 282.81 feet; thence South 00 degrees 08 minutes 09 seconds East 4.80 feet; thence South 89 degrees 51 minutes 51 seconds West 50.00 feet; thence North 00 degrees 08 minutes 09 seconds West 10.27 feet; thence South 65 degrees 51 minutes 51 seconds West 9.36 feet; thence North 24 degrees 08 minutes 09 seconds West 50.00 feet; thence North 65 degrees 51 minutes 51 seconds East 26.15 feet; thence North 00 degrees 08 minutes 09 seconds West 666.08 feet; thence North 45 degrees 08 minutes 09 seconds West 25.14 feet; thence North 44 degrees 51 minutes 51 seconds East 50.00 feet; thence South 45 degrees 08 minutes 09 seconds East 4.50 feet; thence North 44 degrees 51 minutes 51 seconds East a distance 238.20 feet; thence North 45 degrees 08 minutes 09 seconds West 4.50 feet; thence North 44 degrees 51 minutes 51 seconds East 52.00 feet; thence South 45 degrees 08 minutes 09 seconds East 4.50 feet; thence North 44 degrees 51 minutes 51 seconds East 250.21 feet to a point of curvature of a curve to the left having a radius of 74.00 feet, the radius point of which bears North 45 degrees 08 minutes 09 seconds West; thence northeasterly along said curve an arc distance of 32.33 feet to a point which bears South 70 degrees 10 minutes 11 seconds East from said radius point; thence South 70 degrees 10 minutes 11 seconds East 52.00 feet to a point of curvature of a curve to the right having a radius of 126.00 feet, the radius point of which bears North 70 degrees 10 minutes 11 seconds West; thence southwesterly along said curve an arc distance of 6.49 feet to a point which bears South 67 degrees 13 minutes 13 seconds East from said radius point; thence North 89 degrees 51 minutes 51 seconds East 112.94 feet; thence South 00 degrees 08 minutes 09 seconds East 52.00 feet; thence North 89 degrees 51 minutes 51 seconds East 178.00 feet; thence South 00 degrees 08 minutes 09 seconds East 4.50 feet; thence North 89 degrees 51 minutes 51 seconds East 90.00 feet; thence North 00 degrees 08 minutes 09 seconds West 4.50 feet; thence North 89 degrees 51 minutes 51 seconds East 158.00 feet to a point of curvature of a curve to the right having a radius of 201.00 feet, the radius point of which bears South 00 degrees 08 minutes 09 seconds East; thence southeasterly along said curve an arc distance of 14.89 feet to a point which bears North 04 degrees 06 minutes 30 seconds East from said radius point; thence North 04 degrees 06 minutes 30 seconds East 52.00 feet to the Point of Beginning. Containing 39.679 acres, more or less.

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Filed for Record in  
HAMILTON COUNTY, INDIANA  
MARY L CLARK  
On 01-03-2000 At 02:10 pm.  
AMEND DECL 12.00

**FIRST AMENDMENT**  
**TO**  
**SUPPLEMENTAL DECLARATION OF COVENANTS AND RESTRICTIONS**  
**OF**  
**THE VILLAGE OF WESTCLAY**

THIS FIRST AMENDMENT to that certain Supplemental Declaration of Covenants and Restrictions of the Village of WestClay (Secondary Area, Parcel 2) dated as of December 10, 1999 (the "Supplemental Declaration"), is executed as of the 23<sup>rd</sup> day of December, 1999, by Brenwick TND Communities, LLC, ("Declarant"), who by the execution hereof, hereby declares that:

1. **Recitals.** The following facts are true:

(a) The Supplemental Declaration was recorded in the Office of the Recorder of Hamilton County, Indiana, on December 13, 1999, as Instrument No. 9971384.

(b) Declarant has the right unilaterally to amend and revise the Supplemental Declaration pursuant to the provisions of Paragraph 12 of the Supplemental Declaration.

(c) Declarant desires to extend the period within which construction of a Principal Dwelling upon a Lot must be commenced.

2. **Amendment.** The second sentence of Paragraph 4(d) of the Supplemental Declaration is amended to read as follows:

Unless a delay is caused by strikes, war, court injunction or act of God, or is authorized in writing by Declarant, the Owner of any Lot which on the date of purchase from Declarant is not improved with a Principal Dwelling shall commence construction of a Principal Dwelling upon the Lot within one (1) year from the date the Owner acquired title thereto and shall complete construction of such



Principal Dwelling within one (1) year after the date of commencement of the building process, but in no event later than two (2) years after the date the Owner acquired title to the Lot unless such Lot is adjacent to a Lot upon which the Owner has constructed a Principal Dwelling in which such Owner permanently resides.

- 3. **Effective Date.** The foregoing amendment shall be effective as of the date this First Amendment is recorded in the Office of the Recorder of Hamilton County, Indiana.

IN WITNESS WHEREOF, this First Amendment has been executed as of the date first above written.

BRENNICK TND COMMUNITIES, LLC

By *Tom Charles Huston*  
Tom Charles Huston, Co-Manager

STATE OF INDIANA     )  
  ) SS:  
COUNTY OF MARION    )

Before me, a Notary Public in and for said County and State, personally appeared Tom Charles Huston, a Co-Manager of Brenwick TND Communities, LLC, an Indiana limited liability company, who acknowledged the execution of the foregoing "First Amendment to Declaration of Covenants and Restrictions" for and on behalf of said limited liability company.

WITNESS my hand and Notarial Seal this 23<sup>rd</sup> day of December, 1999.

*Von Leigh Wilson*  
Von Leigh Wilson, Notary Public Residing in  
Marion County



My Commission Expires: August 13, 2006

This instrument prepared by (and should be returned to) Tom Charles Huston, Attorney at Law, 11 S. Meridian Street, Suite 1313, Indianapolis, Indiana 46204.

INDS01 TCH 352356

200000030240  
Filed for Record in  
HAMILTON COUNTY, INDIANA  
MARY L CLARK  
On 06-21-2000 At 04:08 pm.  
AMEND DECL 14.00  
MLC

14.00  
③  
1.00 more

**FIRST AMENDMENT  
TO  
THE SUPPLEMENTAL DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR PRIMARY AREA PARCEL NO. 1 OF  
THE VILLAGE OF WESTCLAY**

THIS FIRST AMENDMENT to that certain Supplemental Declaration of Covenants and Restrictions for Primary Area Parcel 1 of The Village of WestClay dated as of November 17, 1999, (the "Supplemental Declaration"), is executed as of the 19th day of June, 2000, by Brenwick TND Communities, LLC, ("Declarant"), who by the execution hereof, hereby declares that:

1. **Recitals.** The following facts are true:

- (a) The Supplemental Declaration was recorded in the Office of the Recorder of Hamilton County, Indiana, on November 19, 1999, as Instrument No. 9967430.
- (b) Declarant has the right unilaterally to amend and revise the Supplemental Declaration pursuant to the Provisions of Paragraph 13 of the Supplemental Declaration.

2. **Amendments.** The Supplemental Declaration is amended as follows:

(a) The following definition is added to Paragraph 1:

"Designated Lot" means a Lot which is subject to a Supplemental Declaration which authorizes the use of such Lot for a use permitted by Section 5.1 of the Zoning Ordinance other than a use specified in Section 5.1A(1), (2), or (4).

(b) The definition of the term "Principal Dwelling" in Paragraph 1 is amended to read as follows:

"Principal Dwelling" means a Living Unit (other than a Living Unit which is located in a Multifamily Structure or Multiuse Structure or is a Condominium) designated as the principal structure on the Lot.

- (c) Paragraph 3 is amended to read as follows:

Except for Designated Lots which may be used for any use authorized by a Supplemental Declaration encumbering such Designated Lots, Lots may be used only for residential purposes as provided in Section 5.1A(1), (2), and (4) of the Zoning Ordinance and for Home-Based Offices accessory to residential use of Lots as provided in Paragraph 6 of this Supplemental Declaration. Not more than one (1) Principal Dwelling and not more than one (1) Accessory Dwelling may be located on a Lot which is not a Designated Lot, and no Accessory Dwelling may be located on a Lot unless a Principal Dwelling is also located thereon. No Accessory Dwelling may be erected in front of the Principal Dwelling or in the required front yard of a corner Lot unless the Accessory Dwelling is attached to the Principal Dwelling by a common wall. No home occupation shall be conducted or maintained on a Lot which is not a Designated Lot other than a home occupation which does not constitute a "special use" and is incidental to a business, profession or occupation of the Owner or Occupant of such Lot and which is generally or regularly conducted at another location which is away from such Lot. No signs of any nature, kind or description shall be erected, placed, or permitted to remain on any Lot advertising a permitted home occupation.

3. **Effective Date.** The foregoing amendment shall be effective as of the date this First Amendment is recorded in the Office of the Recorder of Hamilton County, Indiana.

IN WITNESS WHEREOF, this First Amendment has been executed as of the date first above written.

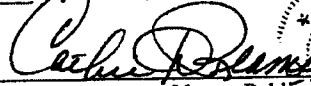
BRENWICK TND COMMUNITIES, LLC

By   
Tom Charles Huston, Co-Manager

STATE OF INDIANA )  
 ) ss:  
COUNTY OF HAMILTON )

Before me, a Notary Public in and for said County and State, personally appeared Tom Charles Huston, a Co-Manager of Brenwick TND Communities, LLC, an Indiana limited liability company, who acknowledged the execution of the foregoing "First Amendment to Supplemental Declaration of Covenants and Restrictions" for and on behalf of said limited liability company.

WITNESS my hand and Notarial Seal this 19<sup>th</sup> day of June, 2000.

  
Cathie D. Reamer, Notary Public  
Residing in Hamilton County



My commission Expires: February 1, 2007

This instrument prepared by (and should be returned to) Tom Charles Huston, 12722 Hamilton Crossing Blvd., Carmel, Indiana 46032

TCH/cdr  
VWC misc.

12/23/99  
Secondary Area  
Parcel No. 3

270  
11  
1712

**SUPPLEMENTAL DECLARATION OF  
COVENANTS AND RESTRICTIONS  
THE VILLAGE OF WESTCLAY**

200000062971  
Filed for Record in  
HAMILTON COUNTY, INDIANA  
MARY L CLARK  
On 12-20-2000 At 02:55 pm.  
DEC COV RES 29.00

This Supplemental Declaration, dated as of the 11<sup>th</sup> day of October, 2000,  
by BRENNICK TND COMMUNITIES, LLC, an Indiana limited company,

**WITNESSES THAT:**

WHEREAS, the following facts are true:

- A. Declarant owns or has the right to acquire the real estate located in Hamilton County, Indiana, more particularly described in Exhibit A attached hereto and incorporated herein by this reference.
- B. This Declaration is a Supplemental Declaration as that term is defined in the Declaration of Covenants and Restrictions.
- C. Declarant intends to subdivide the Parcel into Lots upon each of which a Living Unit may be constructed.

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

1. Definitions. Words, phrases and terms that are defined in the Declaration of Covenants and Restrictions have the same meaning in this Supplemental Declaration except as herein otherwise provided. The following words, phrases and terms, as used in this Supplemental Declaration, unless the context clearly requires otherwise, mean the following:

"Accessory Dwelling" means a Living Unit which is attached to or located on the same Lot as a Principal Dwelling, has an independent means of access and is owned by the Owner of the Principal Dwelling but occupied by another.

"Board of Directors" means the Board of Directors of the Corporation.

"Declaration of Covenants and Restrictions" means the Declaration of Covenants and Restrictions of The Village of WestClay dated as of August 9, 1999

and recorded in the Office of the Recorder of Hamilton County, Indiana as Instrument Number 9946964, as amended from time to time.

"Lot" means a numerically designated subdivided parcel of land depicted on a Plat.

"Owner" means any Person, including Declarant, who at any time owns the fee simple title to a Lot.

"Parcel" means that part of the real estate described in Exhibit A which is at any time subject to the covenants, restrictions, easements, charges and liens imposed by the Declaration of Covenants and Restrictions.

"Plat" means the secondary plat of a Section within the Parcel.

"Principal Dwelling" means a Living Unit designed as the principal structure on the Lot.

"Section" means that part of the Parcel which is depicted on a Plat.

"Tract" means the real estate, including all or any part of the Parcel, that is subject to the covenants, restrictions, easements, charges and liens imposed by the Declaration of Covenants and Restrictions.

2. Declaration. Declarant hereby declares that, in addition to the covenants, restrictions, easements, charges and liens imposed by the Declaration of Covenants and Restrictions, the Parcel shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

3. Land Use. Lots may be used only for residential purposes as provided in Section 5.2 of the Zoning Ordinance. No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of Principal Dwellings in a Section than the number of original Lots shown on a Plat of such Section. Not more than one (1) Principal Dwelling and not more than one (1) Accessory Dwelling may be located on a Lot and no Accessory Dwelling may be located on a Lot unless a Principal Dwelling is also located thereon. Notwithstanding any provision in the Zoning Ordinance to the contrary, no Lot may be used for any "Special Use" that is not clearly incidental and necessary to single family dwellings. No home occupation shall be conducted or maintained on any Lot other than one which does not constitute a "special use" and is incidental to a business, profession or occupation of the Owner or Occupant of such Lot and which is generally or regularly conducted at another location which is away from such Lot. No signs of any nature, kind or description shall be erected, placed, or permitted to remain on any Lot advertising a permitted home occupation.

4. Construction of Living Units.

(a) Lot Development Plans. Except to the extent such requirement is waived by Declarant, prior to commencement of any Building Activity on a Lot, a Lot Development Plan shall be submitted to the Architectural Review Board in accordance with the requirements of Paragraph 20 of the Declaration of Covenants and Restrictions. The Architectural Review Board may require as part of a Lot Development Plan a report of subsurface soils investigation of the Lot made by a qualified soils engineer, which report shall include recommendations for the foundations of the proposed improvements. Each Owner shall comply with the terms and provisions of Paragraph 20 of the Declaration of Covenants and Restrictions and the requirements of the Architectural Review Board established pursuant to the authority granted by the Declaration of Covenants and Restrictions.

(b) Size of Living Unit. No Principal Dwelling may be constructed on any Lot unless such Principal Dwelling, exclusive of open porches, attached garages and basements, shall have a gross floor area equal to or greater than the square footage specified in the Building Guidelines applicable to the Lot as of the date construction of the Principal Dwelling on the Lot commences. No Accessory Dwelling may contain more than eight hundred fifty (850) square feet of floor area.

(c) Building Guidelines. Each Owner shall at all times comply with the requirements of the Building Guidelines applicable to such Owner's Lot.

(d) Building Activity. All Building Activity shall be undertaken and completed strictly in accordance with the Building Guidelines and the Lot Development Plan approved by the Architectural Review Board. Unless a delay is caused by strikes, war, court injunction or acts of God, or is authorized in writing by Declarant, the Owner of any Lot which on the date of purchase from Declarant is not improved with a Principal Dwelling shall commence construction of a Principal Dwelling upon the Lot within one (1) year from the date the Owner acquired title thereto and shall complete construction of such Principal Dwelling within one (1) year after the date of commencement of the building process, but in no event later than two (2) years after the date the Owner acquired title to the Lot unless such Lot is adjacent to a Lot upon which the Owner has constructed a Principal Dwelling in which such Owner permanently resides. If the Owner fails to commence or complete construction of a Principal Dwelling within the time periods specified herein, or if the Owner should, without Declarant's written approval, sell, contract to sell, convey, or otherwise dispose of, or attempt to sell, convey or otherwise dispose of, the Lot before completion of construction of a Principal Dwelling on the Lot, then, in any of such events, Declarant may:

- (i) re-enter the Lot and divest the Owner of title thereto by tendering to the Owner or to the Clerk of the Circuit Court of Hamilton County the lesser of (a) the same net dollar amount as was received by Declarant from such Owner as consideration for the conveyance by Declarant of the Lot, together with such actual costs, if any, as the Owner may prove to have incurred in connection with the commencement of construction of a Principal Dwelling on the Lot and (b) the then fair market value of the Lot, as determined by averaging two (2) appraisals made by qualified appraisers appointed by the Judge of the Circuit or Superior Court of Hamilton County;
- (ii) obtain injunctive relief to force the Owner to proceed with construction of any Principal Dwelling, a Lot Development Plan for which has been approved by the Architectural Review Board upon application by such Owner; or
- (iii) pursue such other remedies at law or in equity as may be available to Declarant.

The failure of the Owner of a Lot to apply for approval of, or receive approval from, the Architectural Review Board of a Lot Development Plan shall not relieve such Owner from his obligation to complete construction of a Principal Dwelling upon the Lot within the time period specified herein. For the purposes of this subparagraph (d), construction of a Principal Dwelling will be deemed "completed" when the exterior of the Principal Dwelling (including but not limited to the foundation, walls, roof, windows, entry doors, gutters, downspouts, exterior trim, paved driveway, landscaping and yard light) has been completed in conformity with the Lot Development Plan.

(e) Septic Systems. No septic tank, absorption field or any other on-site sewage disposal system (other than a lateral main connected to a sanitary sewerage collection system operated by the Clay Township Regional Waste District or a successor public agency or public utility) shall be installed or maintained on any Lot.

(f) Water Systems. No private or semi-private water supply system may be located upon any Lot which is not in compliance with regulations or procedures adopted or established by the Indiana State Board of Health, or other civil authority having jurisdiction. To the extent that domestic water service is available from a water line located within 200 feet of the lot line maintained by a public or private



utility company, each Owner shall connect to such water line to provide water for domestic use on the Lot and shall pay all connection, availability or other charges lawfully established with respect to connections thereto. Notwithstanding the foregoing, an Owner may establish, maintain and use an irrigation water well on his Lot as long as the well does not adversely affect the normal pool level of the Lake or a Pond.

(g) Drainage. In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of such Lot to permit such drainage to continue, without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, although no specific drainage easement for such flow of water is provided on the Plat. To the extent not maintained by the Drainage Board, "Drainage Easements" reserved as drainage swales shall be maintained by the Owner of the Lot upon which such easements are located such that water from any adjacent Lot shall have adequate drainage along such swale. Lots within the Parcel may be included in a legal drain established by the Drainage Board. In such event, each Lot in the Parcel will be subject to assessment by the Drainage Board for the costs of maintenance of the portion of the Drainage System and/or the Lakes included in such legal drain, which assessment will be a lien against the Lot. The elevation of a Lot shall not be changed so as to affect materially the surface elevation or grade of surrounding Lots. Each Owner shall maintain the subsurface drains and tiles located on his Lot and shall be liable for the cost of all repairs thereto or replacements thereof.

(h) Geothermal Systems. No open loop geothermal heating and cooling system shall be installed on a Lot.

5. Maintenance of Lots.

(a) Vehicle Parking. No recreational vehicle, motor home, truck which exceeds ¼ ton in weight, trailer, boat or disabled vehicle may be parked or stored overnight or longer on any Lot in open public view.

(b) Signs. Except for such signs as Declarant may in its absolute discretion display in connection with the development of the Village of WestClay or the Parcel and the sale of Lots therein, such signs as may be located on the Community Area and such signs as may, with the consent of Declarant, be displayed by a Designated Builder to advertise the property during construction and sale of Living Units and the maintenance of model homes, no sign of any kind shall be displayed to the public view on any Lot without the prior approval of the Architectural Review Board except that one sign of not more than four (4) square feet may be displayed at any time for the purpose of advertising the property for sale or for rent.

(c) Sight Lines. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between thirty (30) and seventy-two (72) inches above the street shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting points 25 feet from the intersection of said street lines, or in the case of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(d) Vegetation. An Owner shall not permit the growth of weeds and volunteer trees and bushes on his Lot, and shall keep his Lot reasonably clear from such unsightly growth at all times. If an Owner fails to comply with this Restriction, the Board of Directors shall cause the weeds to be cut and the Lot cleared of such growth at the expense of the Owner thereof and the Corporation shall have a lien against the cleared Lot for the expense thereof.

(e) Nuisances. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood. Barking dogs shall constitute a nuisance.

(f) Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers out of public view. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

(g) Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets designated by the Board of Directors may be kept provided that they are not kept, bred or maintained for any commercial purpose. The owners of such permitted pets shall confine them to their respective Lots such that they will not be a nuisance. Owners of dogs shall so control or confine them so as to avoid barking which will annoy or disturb adjoining Owners.

(h) Outside Burning. No trash, leaves, or other materials shall be burned upon a Lot if smoke therefrom would blow upon any other Lot and, then, only in acceptable incinerators and in compliance with all applicable legal requirements.

(i) Exterior Lights. Except for such alley lights as may be required by the Building Guidelines, no exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Lot.

(j) Electric Bug Killers. Electric bug killers, "zappers" and other similar devices shall not be installed at a location or locations which will result in the operation thereof becoming a nuisance or annoyance to other Owners and shall only be operated when outside activities require the use thereof and not continuously.

(k) Air Conditioners. No room air conditioning unit shall be installed so as to protrude from any structure located on a Lot (including but not limited to the window of any Living Unit or garage) if the same would be visible from a public way, a Community Area or any other Lot; provided, however, that this Restriction shall not apply to central air conditioning units.

(l) Fences and Walls. No walls or fences shall be erected on any Lot without the prior approval of the Architectural Review Board. Each Owner shall maintain any approved wall or fence in good and sightly condition and in compliance with the requirements of the Building Guidelines.

(m) Swimming Pools. No above ground swimming pools, other than a children's wading pool, shall be installed or maintained on a Lot.

(n) Basketball Goals. No basketball goal shall be placed or maintained in the front driveway of a Lot or within the right-of-way of any street. Unless the Architectural Review Board establishes a policy establishing other specifications, backboards of all basketball goals shall be of a translucent material such as fiberglass or Lexan and attached to a black pole or a similar type of post. The location of a basketball goal on the Lot is subject to approval of the Architectural Review Board if it would be visible from a public right-of-way adjoining the Lot.

6. General Community Rules. Each Lot shall be subject to the guidelines, rules, regulations and procedures adopted by Declarant, the Corporation and the Architectural Review Board pursuant to authority granted by the Declaration of Covenants and Restrictions and all Supplemental Declarations, and each Owner of a Lot shall at all times comply therewith.

7. Assessments. The Board of Directors may make Assessments to cover any costs incurred in enforcing these Restrictions or in undertaking any maintenance or other activity that is the responsibility of the Owner of a Lot hereunder but which such Owner has not undertaken as required hereunder. Any such Assessment shall be assessed only against those Owners whose failure to comply with the requirements of these covenants necessitated the action to enforce these covenants or the undertaking of the maintenance or other activity.

8. Electoral Parcel. The Parcel shall constitute an Electoral Parcel for the purpose of election of the Board of Directors.

9. Enforcement. The right to enforce each of the foregoing Restrictions by injunction, together with the right to cause the removal by due process of law of structures erected or maintained in violation thereof, is reserved to Declarant, the Corporation, the Architectural Review Board, the Owners of the Lots in the Parcel, their heirs and assigns, and to the Zoning Authority, their successors and assigns, who are entitled to such relief without being required to show any damage of any kind to Declarant, the Corporation, the Architectural Review Board, any Owner or Owners, or such Zoning Authority by or through any such violation or attempted violation. Under no circumstances shall Declarant, the Corporation or the Architectural Review Board be liable for damages of any kind to any Person for failure to abide by, enforce or carry out any provision or provisions of this Supplemental Declaration. There shall be no rights of reversion or forfeiture of title resulting from any violations.

10. Severability. Invalidation of any of these covenants and restrictions or any part thereof by judgment or court order shall not affect or render the remainder of said covenants and restrictions invalid or inoperative.

11. Non-Liability of Declarant. Declarant shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Declarant, and no duty of, or warranty by, Declarant shall be implied by or inferred from any term or provision of this Supplemental Declaration.

12. General Provisions. This Supplemental Declaration may be amended at any time in the manner provided in Paragraph 29 of the Declaration of Covenants and Restrictions except that no amendment adopted pursuant to Paragraph 29(a) of the Declaration of Covenants and Restrictions shall be effective as against a Mortgagee who subsequently acquires title to a Lot unless approved by at least two-thirds (2/3) of the Mortgagees who hold first mortgages on the Lots in the Parcel (based on one vote for each first mortgage owned) or at least two-thirds (2/3) of the Owners of the Lots in the Parcel (excluding Declarant).

Except as the same may be amended from time to time, the foregoing restrictions will be in full force and effect until January 1, 2030, at which time they will be automatically extended for successive periods of ten (10) years, unless by a vote of the majority of the then Owners of Lots in the Parcel it is agreed that these Restrictions shall terminate in whole or in part.

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

BRENNICK TND COMMUNITIES, LLC

By

  
Tom Charles Huston, Co-Manager

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HAMILTON )

Before me, a Notary Public in and for said County and State, personally appeared Tom Charles Huston, the Co-Manager of Brenwick TND Communities, LLC, an Indiana limited liability company, who acknowledged execution of the foregoing Supplemental Declaration of Covenants and Restrictions for and on behalf of said limited partnership.

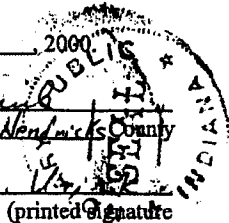
WITNESS my hand and Notarial Seal this 11th day of October, 2000.

Marie M. Vint  
Notary Public Residing in Newark County

My Commission Expires:

May 24, 2007

Marie M. Vint  
(printed signature)



This instrument prepared by Tom Charles Huston, Attorney at Law, 1313 Merchants Bank Building, 11 South Meridian Street, Indianapolis, Indiana 46204.

INDS01 TCH 316385

**EXHIBIT A****Real Estate Description**

A part of Northwest Quarter and the Southwest Quarter of Section 33, Township 18 North, Range 3 East in Hamilton County, Indiana, described as follows:

Commencing at the Southwest corner of the Southwest Quarter of Section 33, Township 18 North, Range 3 East; thence North 00 degrees 27 minutes 03 seconds West along the West line of said Southwest Quarter 2591.69 feet to the Point of Beginning; thence continuing North 00 degrees 27 minutes 03 seconds West along said West line 48.00 feet to the Southwest corner of the Northwest Quarter of said section; thence North 00 degrees 27 minutes 13 seconds West along the West line of said Northwest Quarter 1281.55 feet; thence North 89 degrees 21 minutes 25 seconds East parallel with the South line of the West Half of said Northwest Quarter 1332.95 feet to the East line of said West Half; thence North 00 degrees 23 minutes 44 seconds West along said East line 89.02 feet; thence North 90 degrees 00 minutes 00 seconds East 298.90 feet; thence South 64 degrees 22 minutes 09 seconds East 92.68 feet; thence South 74 degrees 02 minutes 50 seconds East 85.59 feet; thence North 41 degrees 56 minutes 59 seconds East 135.94 feet to a point on a tangent curve having a radius of 25.00 feet, the radius point which bears North 48 degrees 03 minutes 01 seconds West; thence northwesterly along said curve an arc distance of 41.75 feet to a point which bears North 36 degrees 15 minutes 31 seconds East from said radius point; thence North 36 degrees 15 minutes 31 seconds East 50.00 feet; thence South 53 degrees 44 minutes 29 seconds East 6.67 to a point on a tangent curve having a radius of 25.00 feet, the radius point which bears North 36 degrees 15 minutes 31 seconds East; thence southeasterly along said curve 39.52 feet to the point of compound curve having a radius of 574.00 feet, the radius point which bears North 54 degrees 19 minutes 00 seconds West; thence northwesterly along said curve 633.81 feet to a point which bears North 62 degrees 25 minutes 01 seconds East from said radius point; thence North 27 degrees 34 minutes 59 seconds West 224.70 feet; thence North 62 degrees 25 minutes 01 seconds East 52.00 feet; thence North 73 degrees 48 minutes 35 seconds East 137.60 feet; thence North 80 degrees 00 minutes 03 seconds East 104.86 feet; thence North 86 degrees 06 minutes 12 seconds East 104.86 feet; thence South 89 degrees 12 minutes 36 seconds East 106.33 feet; thence South 76 degrees 02 minutes 03 seconds East 115.23 feet; thence South 64 degrees 14 minutes 23 seconds East 88.83 feet; thence South 64 degrees 54 minutes 45 seconds East 91.81 feet to the East line of said Northwest Quarter; thence South 00 degrees 20 minutes 16 seconds East along said East line 825.18 feet; thence South 35 degrees 04 minutes 15 seconds West 393.00 feet; thence South 89 degrees 23 minutes 24 seconds West 368.40 feet; thence North 53 degrees 44 minutes 29 seconds West 279.99 feet; thence South 41 degrees 56 minutes 59 seconds West 13.80 feet to a point on a tangent curve having a radius of 10.00 feet, the radius point which bears South 48 degrees 03 minutes 01 seconds East; thence southwesterly along said curve 12.01 feet to the point of compound curve having a radius of 89.50 feet, the radius point which bears South 63 degrees 09 minutes 40 seconds West; thence southwesterly along said curve 145.33 feet to a point which bears South 23 degrees 48 minutes 15 seconds East from said radius point; thence South 50 degrees 21 minutes 03 seconds East 294.67 feet to a point on a tangent curve having a radius of 420.00 feet, the radius point which bears South 39 degrees 38 minutes 57 seconds West; thence southeasterly along said curve 309.19 feet to a point which bears North 81 degrees 49 minutes 41 seconds East from said radius point; thence South 08 degrees 10 minutes 19 seconds East

336.01 feet to a point on a tangent curve having a radius of 480.00 feet, the radius point which bears North 81 degrees 49 minutes 41 seconds East, thence southeasterly along said curve 66.29 feet to a point which bears South 73 degrees 54 minutes 57 seconds West from said radius point; thence North 73 degrees 54 minutes 57 seconds East 80.00 feet; thence North 51 degrees 14 minutes 11 seconds East 84.26 feet; thence North 40 degrees 10 minutes 34 seconds East 159.76 feet; thence North 60 degrees 52 minutes 24 seconds East 180.40 feet; thence North 89 degrees 39 minutes 44 seconds East 40.00 feet to the East line of said Northwest Quarter; thence South 00 degrees 30 minutes 16 seconds East along said East line 559.69 feet to the Southeast corner of said Quarter Section; thence South 00 degrees 23 minutes 56 seconds East along the East line said Southwest Quarter 490.67 feet; thence South 89 degrees 21 minutes 25 seconds West parallel with the North line of said Southwest Quarter 1331.43 feet to the West line of the East Half of said Southwest Quarter; thence North 00 degrees 25 minutes 30 seconds West along said West line 442.67 feet; thence South 89 degrees 21 minutes 25 seconds West parallel with the South line of the West Half of said Northwest Quarter 1331.64 feet to the Point of Beginning. Containing 101.798 acres, more or less.

J:\1238\001\legals\electoral\3 LAND DESCRIPTION.DOC

28.00  
10

200100031842  
Filed for Record in  
HAMILTON COUNTY, INDIANA  
MARY L CLARK  
05-31-2001 02:38 pm.  
DEC COV RES 28.00

**SUPPLEMENTAL DECLARATION OF  
COVENANTS AND RESTRICTIONS  
THE VILLAGE OF WESTCLAY**

**S/E/ CORNER, BLOCK F**

This Supplemental Declaration, dated as of the 22~~nd~~ day of May, 2001, by BRENWICK TND COMMUNITIES, LLC, an Indiana limited company,

**WITNESSES THAT:**

WHEREAS, the following facts are true:

- A. Declarant is the owner of the fee simple title to the Real Estate.
- B. This instrument is a Supplemental Declaration as that term is defined in the Declaration of Covenants and Restrictions.
- C. Declarant intends to cause the Real Estate to be developed with Commercial Units and/or Multiuse Structures.

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

1. Definitions. Words, phrases and terms that are defined in the Declaration of Covenants and Restrictions have the same meaning in this Supplemental Declaration except as herein otherwise provided. The following words, phrases and terms, as used in this Supplemental Declaration, unless the context clearly requires otherwise, mean the following:

"Association" means WestClay Village Center Owners Association, Inc., an Indiana nonprofit corporation.

"Benefitted Person" means an Owner of a Lot on Block F, its tenants, subtenants, customers, suppliers, employees, licensees and invitees.

"Block F" means Block F as depicted on the Plat.

"Board of Directors" "Board" and "Directors" each means the Board of Directors of the Corporation.



"Corporation" means The Village of WestClay Owners Association, Inc., an Indiana nonprofit corporation.

"Declaration of Covenants and Restrictions" or "Declaration" means the Declaration of Covenants and Restrictions of The Village of WestClay dated as of August 9, 1999 and recorded in the Office of the Recorder of Hamilton County, Indiana as Instrument Number 9946964, as amended from time to time.

"Members" means members of the Association.

"Plat" means the secondary plat of Section 3001-A Village Center, Part 2, recorded as Instrument No. 199909969687.

"Real Estate" means the land in Hamilton County, Indiana, described in Exhibit A attached hereto and incorporated herein by reference.

"Village Center" means the real estate described in Exhibit A to the Village Center Supplemental Declaration.

"Village Center Supplemental Declaration" means the Supplemental Declaration dated November 22, 1999 and recorded December 3, 1999, as Instrument No. 9969688 in the Office of the Recorder of Hamilton County.

2. Declaration. Declarant hereby declares that, in addition to the covenants, restrictions, easements, charges and liens imposed by the Declaration and the Village Center Supplemental Declaration, the Real Estate shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

3. Access Easements.

(a) A perpetual, non-exclusive easement over and across the land described as Parcel 1 in Exhibit B (the "Pedestrian Access Easement Area") is hereby created for the benefit of, and granted to, each Benefitted Person for the purpose of ingress and egress by pedestrians to and from Block F over and across the Pedestrian Access Easement Area. No structure, barrier or other impediment to access to or from Block F shall be installed or maintained on the Pedestrian Access Easement Area.

(b) A perpetual, non-exclusive easement over and across the land described as Parcel 2 in Exhibit B (the "Vehicular Access Easement Area") is hereby created for the benefit of, and granted to, each Benefitted Person and to each Person authorized by the Village Center Supplemental Declaration to use the Common Parking Lot located from time to time on Block F for the purpose of vehicular ingress and egress to and from such Common Parking Lot over and across the Vehicular Access Easement Area. No structure, barrier or

other impediment to access to or from the Common Parking Lot located on Block F shall be installed or maintained on the Vehicular Access Easement Area.

(c) The Corporation shall have authority over and shall maintain the Pedestrian Access Easement Area as if it were Commons and the Maintenance Costs thereof shall be assessed against all Lots on the Real Estate in the same proportions as the General Assessment is assessed against such Lots; provided, however, that with respect to grass, trees, shrubs and other plantings located on the Pedestrian Access Easement Area (the "Landscaping"), the Owner of the Lot shall maintain in accordance with Paragraph 15(b) of the Village Center Supplemental Declaration so much of the Landscaping as is located on its Lot.

(d) The Vehicular Access Easement Area shall be maintained by the Association and the Maintenance Costs thereof shall be included in the Assessment made pursuant to Paragraph 3(c) of the Village Center Supplemental Declaration.

4. Utility Easement.

(a) A perpetual, non-exclusive easement is hereby created for the benefit of, and granted to, the Owners from time to time of Lots on Block F to connect to and utilize such lines, pipes, cable, ducts, manholes and appurtenances intended for utility (including but not limited to sanitary sewer, gas, electricity, CATV, phone, storm sewer and water) purposes (the "Utility Facilities") as are located from time to time on, over or under the Real Estate, including but not limited to the land described as Parcel 1 in Exhibit B.

(b) The easement granted in subparagraph (a) above includes the right to enter onto the Real Estate to the extent necessary to connect to a Utility Facility, but in the event of any such entry, the entering Person shall complete such connection as expeditiously as possible in accordance with good construction practice (including, without limitation, taking all reasonable measures to prohibit injury to person or damage to property, including field locating any and all irrigation, power and telecommunication lines) and so as to minimize interference with the use of the Real Estate, and such Person shall restore such property subsequent to connection to the Utility Facilities to at least as good a condition and appearance as existed prior to such entry.

(c) Notwithstanding the grant of the foregoing utility easement, a Benefitted Person may not connect to a Utility Facility located on the Real Estate if, as a consequence of such connection, the existing capacity of such Utility Facility would be exceeded unless the connecting party undertakes at its sole cost and expense to increase the capacity of such Utility Facility in a manner and subject to such reasonable conditions as are satisfactory to Declarant or, subsequent to the Applicable Date, the Design Review Board. The capacity of any Utility Facility shall be determined on the assumption that the Real Estate has been completely developed in accordance with Lot Development Plans approved by the Design Review Board or with the General Plan of Development.

(d) The Owner of a Lot on the Real Estate shall maintain in good operating condition and repair, at its own cost and expense, the Utility Facilities located on its Lot exclusive of any connections thereto made by a Benefitted Person who shall, at its own cost and expense, maintain and repair such connections.

5. Sanitary Sewer Easement.

(a) A perpetual non-exclusive easement over and across the land described as Parcel 3 in Exhibit B is hereby created for the benefit of, and granted to, the Owners from time to time of Lots on Block F to connect to and utilize such pipes, manholes and appurtenances intended for sanitary sewer purposes (the "Sewer Line").

(b) The easement granted in subparagraph (a) above includes the right to enter onto Parcel 3 to the extent necessary to connect to the Sewer Line, but in the event of any such entry, the entering Person shall complete such connection as expeditiously as possible in accordance with good construction practice (including, without limitation, taking all reasonable measures to prohibit injury to person or damage to property) and so as to minimize interference with the use of Parcel 3 and such Person shall restore such property subsequent to connection to the Sewer Line to at least as good a condition and appearance as existed prior to such entry.

(c) Notwithstanding the grant of the foregoing utility easement, a Benefitted Person may not connect to the Sewer Line located on Parcel 3 if, as a consequence of such connection, the existing capacity of the Sewer Line would be exceeded unless the connecting party undertakes at its sole cost and expense to increase the capacity of the Sewer Line in a manner and subject to such reasonable conditions as are satisfactory to Declarant or subsequent to the Applicable Date, the Design Review Board. The capacity of the Sewer Line shall be determined on the assumption that the Real Estate has been completely developed in accordance with Lot Development Plans approved by the Design Review Board or with the General Plan of Development.

6. Drainage Easement.

(a) A perpetual, non-exclusive easement is hereby created for the benefit of, and granted to, the Owners from time to time of Lots on Block F for (i) the drainage of storm, surface and subsurface waters in, over, through and across the drainage facilities located from time to time on or under the Real Estate (including but not limited to drainage swales and storm sewer inlets, drains and lines) to serve one or more of such Lots and (ii) the installation, maintenance, operation and replacement of such connections thereto as may be required to accommodate the drainage requirements of the Lots on Block F.

(b) The easement granted in subparagraph (a) above includes the right to enter onto the Real Estate to construct, repair, maintain and operate the drainage system located thereon to the extent necessary to accommodate drainage from Block F, provided, however,

that (i) subsequent to such entry the Real Estate shall be restored to at least as good a condition and appearance as existed at the time of such entry and (ii) drainage from Block F (exclusive of the Real Estate) shall not exceed that which may be accommodated by the drainage system located on the Real Estate as the same may be expanded or enhanced by the Benefitted Person.

(c) The Owner of a Lot on the Real Estate shall maintain in good operating condition and repair, at its own cost and expense, the drainage facilities located on its Lot exclusive of any connections thereto made by a Benefitted Person who shall, at its own cost and expense, maintain and repair such connections.

7. Amendments.

(a) Generally. This Supplemental Declaration may, with the consent of all Owners of Lots on the Real Estate, be amended at any time by an instrument signed by (i) such Owners, (ii) the appropriate officers of the Association acting pursuant to authority granted by (A) not less than two-thirds ( $\frac{2}{3}$ ) of the votes of the Members cast at a meeting duly called for the purpose of amending this Supplemental Declaration and (B) a majority of the Directors of the Corporation and (iii) to the extent required by Paragraph 27 of the Declaration, Declarant.

(b) By Declarant. This Supplemental Declaration may, with the consent of all Owners of Lots on the Real Estate, be amended at any time prior to the Applicable Date by Declarant as provided in Paragraph 29(b) of the Declaration.

(c) Limitations on Amendments. The right to amend this Supplemental Declaration is subject to the provisions of subparagraphs (c) and (d) of Paragraph 29 of the Declaration.

8. Enforcement. The right to enforce each of the foregoing Restrictions by injunction, together with the right to cause the removal by due process of law of structures erected or maintained in violation thereof, is reserved to Declarant, the Corporation, the Association, the Design Review Board, the Owners of the Lots on the Real Estate, their heirs and assigns, and to the Zoning Authority, their successors and assigns, who are entitled to such relief without being required to show any damage of any kind to Declarant, the Corporation, the Association, the Design Review Board, any Owner or Owners, or such Zoning Authority by or through any such violation or attempted violation. Under no circumstances shall Declarant, the Corporation, the Association or the Design Review Board be liable for damages of any kind to any Person for failure to abide by, enforce or carry out any provision or provisions of this Supplemental Declaration. There shall be no rights of reversion or forfeiture of title resulting from any violations.

9. Severability. Invalidation of any of these covenants and restrictions or any part thereof by judgment or court order shall not affect or render the remainder of said covenants and restrictions invalid or inoperative.

10. Non-Liability of Declarant. Declarant shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Declarant, and no duty of, or warranty by, Declarant shall be implied by or inferred from any term or provision of this Supplemental Declaration.

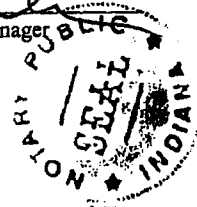
11. General Provisions. Except as the same may be amended from time to time, the foregoing restrictions will be in full force and effect until January 1, 2030, at which time they will be automatically extended for successive periods of ten (10) years, unless by a vote of the majority of the then Owners of Lots on the Real Estate it is agreed that these Restrictions shall terminate in whole or in part.

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

BRENWICK TND COMMUNITIES, LLC

By Tom Charles Huston  
Tom Charles Huston, Co-Manager

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HAMILTON )



Before me, a Notary Public in and for said County and State, personally appeared Tom Charles Huston, a Co-Manager of Brenwick TND Communities, LLC, an Indiana limited liability company, who acknowledged execution of the foregoing Supplemental Declaration of Covenants and Restrictions for and on behalf of said limited partnership.

WITNESS my hand and Notarial Seal this 22nd day of May, 2001.

Marie M. Urick  
Notary Public Residing in Hamilton County

My Commission Expires:  
May 24, 2007

Marie M. Urick  
(printed signature)

This instrument prepared by Tom Charles Huston, Attorney at Law, 12821 East New Market Street, Suite 200, Carmel, IN 46032.

**EXHIBIT A**

**Description of the Real Estate**

**Southerly Portion of Block "F"**

A part of Block "F" of the Village of WestClay, Section 3001-A, Village Center, Part 2, the Secondary Plat of which is Recorded as Instrument Number 199909969687, Plat Cabinet 2, Slide 363, in the Office of the Recorder, Hamilton County, Indiana, located in the Southwest Quarter of Section 28, Township 18 North, Range 3 East, of the Second Principal Meridian, Clay Township, Hamilton County, Indiana, more particularly described as follows:

**Beginning at the southeast corner of said Block "F"; thence along the easterly boundary of said Block "F" on a non-tangent curve to the right having a radius of 1037.50 feet, the radius point of which bears North 86 degrees 01 minutes 06 seconds East; thence northerly along said curve an arc distance of 69.64 feet to a point which bears South 89 degrees 51 minutes 51 seconds West from said radius point; thence North 00 degrees 08 minutes 09 seconds West along said east line 56.80 feet; thence South 89 degrees 51 minutes 51 seconds West 468.69 feet to the southerly boundary of said Block "F"; (the following three courses are along said southerly boundary) (1) thence South 66 degrees 08 minutes 09 seconds East 217.21 feet to a curve to the left having a radius of 440.00 feet, the radius point of which bears North 23 degrees 51 minutes 51 seconds East; (2) thence easterly along said curve an arc distance of 184.31 feet to a point which bears South 00 degrees 08 minutes 09 seconds East from said radius point; (3) thence North 89 degrees 51 minutes 51 seconds East 93.62 feet to the Point of Beginning. Containing 0.935 acres, more or less.**

**EXHIBIT B**

**Description of the Easement Areas**

**Parcel 1.**

A part of Block "F" of the Village of WestClay, Section 3001-A, Village Center, Part 2, the Secondary Plat of which is Recorded as Instrument Number 199909969687, Plat Cabinet 2, Slide 363, in the Office of the Recorder of Hamilton County, Indiana, in the Southwest Quarter of Section 28, Township 18 North, Range 3 East, of the Second Principal Meridian, Clay Township, Hamilton County, Indiana, being a strip of land 15.00 feet in width lying 7.50 feet on each side of the following described centerline:

Commencing at the southeast corner of said Block "F"; thence South 89 degrees 51 minutes 51 seconds West (assumed bearing) along the southerly boundary of said Block "F" 93.62 feet to a curve to the right having a radius of 440.00 feet, the radius point of which bears North 00 degrees 08 minutes 09 seconds West; thence northwesterly along said curve and said southerly boundary an arc distance of 43.09 feet to a point which bears South 05 degrees 28 minutes 31 seconds West from said radius point; thence North 03 degrees 37 minutes 41 seconds East 10.01 feet to the northerly line of a 10.00 feet Drainage, Utility, and Sewer Easement as depicted on said Plat and the Point of Beginning; thence continuing North 03 degrees 37 minutes 41 seconds East 70.28 feet; thence North 89 degrees 51 minutes 51 seconds East 38.33 feet to the westerly line of a parcel of land as described in Instrument Number 200100002509, in the Office of the Recorder of Hamilton County, Indiana and the Point of Terminus.

The side lines of the above described strip of land are to be lengthened and/or shortened to terminate at the northerly line of said Drainage, Utility, and Sewer Easement and at the westerly line of said Instrument Number 200100002509.

**Parcel 2.**

A part of Block "F" of the Village of WestClay, Section 3001-A, Village Center, Part 2, the Secondary Plat of which is Recorded as Instrument Number 199909969687, Plat Cabinet 2, Slide 363, in the Office of the Recorder of Hamilton County, Indiana, in the Southwest Quarter of Section 28, Township 18 North, Range 3 East, of the Second Principal Meridian, Clay Township, Hamilton County, Indiana, more particularly described as follows:

A strip of land 2.00 feet in width off of the entire north side of a parcel of land as described in Instrument Number 200100002509, in the Office of the Recorder of Hamilton County, Indiana.

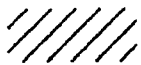
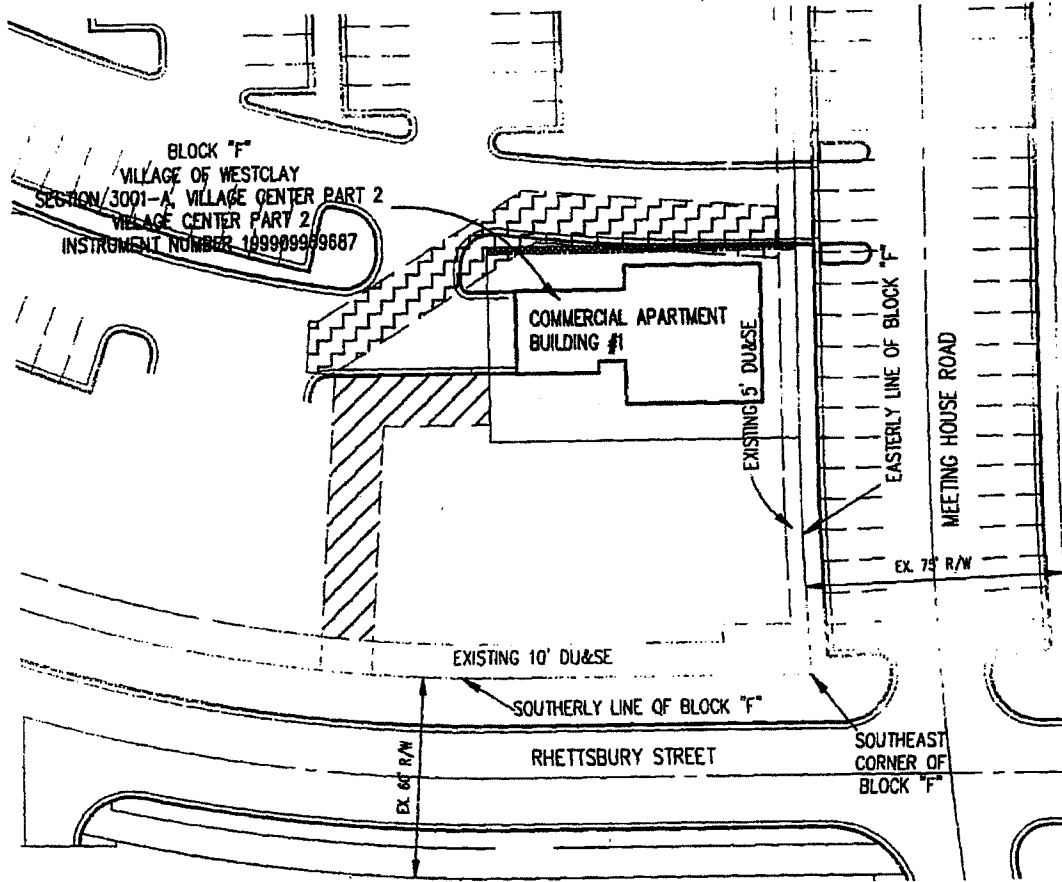
Parcel 3.

A part of Block "F" of the Village of WestCloy, Section 3001-A, Village Center, Part 2, the Secondary Plot of which is Recorded as Instrument Number 199909969687, Plat Cabinet 2, Slide 363, in the Office of the Recorder of Hamilton County, Indiana, in the Southwest Quarter of Section 28, Township 18 North, Range 3 East, of the Second Principal Meridian, Clay Township, Hamilton County, Indiana, being a strip of land 15.00 feet in width lying 7.50 feet on each side of the following described centerline:

Commencing at the southeast corner of said Block "F"; thence along the easterly boundary of said Block "F" on a non-tangent curve to the right having a radius of 1037.50 feet, the radius point of which bears North 86 degrees 01 minutes 06 seconds East (assumed bearing); thence northerly along said curve an arc distance of 69.64 feet to a point which bears South 89 degrees 51 minutes 51 seconds West from said radius point; thence North 00 degrees 08 minutes 09 seconds West along said easterly boundary 59.35 feet; thence North 85 degrees 29 minutes 01 seconds West 5.02 feet to the westerly line of a 5.00 feet Drainage, Utility, and Sewer Easement as depicted on said Plat and the Point of Beginning; thence continuing North 85 degrees 29 minutes 01 seconds West 73.24 feet; thence South 58 degrees 21 minutes 36 seconds West 71.17 feet; thence North 86 degrees 03 minutes 47 seconds West 5.00 feet to the Point of Terminus.

The side lines of the above described strip of land are to be lengthened and/or shortened to terminate at the westerly line of said Drainage, Utility, and Sewer Easement.





Parcel 1



Parcel 3



Parcel 2



ASSUMED NORTH  
SCALE: 1" = 40'

127.00  
(60)  
1.00 note

199909946964  
Filed for Record in  
HAMILTON COUNTY, INDIANA  
MARY L CLARK  
On 08-09-1999 At 04:02 pm.  
DEC COV RES 127.00

**DECLARATION OF COVENANTS AND RESTRICTIONS**

**The Village of WestClay**

**Carmel, Indiana**

Recorded 2 AUGUST, 1999  
Instrument No 199909946964  
Office of the Recorder of Hamilton County

**DECLARATION OF COVENANTS AND RESTRICTIONS  
THE VILLAGE OF WESTCLAY**

**INDEX**

		Page
1	Definitions .....	-2-
2	Declaration .....	-10-
3	Additions to the Tract .....	-10-
4	The Lake .....	-11-
	(a) Development .....	-11-
	(b) Title and Maintenance .....	-11-
	(c) Use .....	-11-
5	The Ponds .....	-12-
	(a) Development .....	-12-
	(b) Title and Maintenance .....	-12-
	(c) Use .....	-12-
6	The Commons .....	-12-
7	Parks .....	-13-
8	Village Community Buildings .....	-13-
9	Drainage System .....	-13-
10	Common Lighting .....	-14-
11	Paths and Path Lights .....	-14-
12	Private Drives and Private Gates .....	-14-
	(a) Maintenance of Private Drives (Exclusive of Alleys) .....	-14-
	(b) Maintenance of Alleys .....	-14-
	(c) Maintenance of Private Gates .....	-14-

13.	Entry Ways, Landscape Easements and Planting Areas	-15-
(a)	Entry Ways	-15-
(b)	Landscape Easements	-15-
(c)	Planting Areas	-15-
14.	Site Furniture and Facilities	-15-
15.	Round-Abouts and Street Trees	-15-
(a)	Round-Abouts	-15-
(b)	Street Trees	-16-
(c)	Maintenance of Street Trees	-16-
16.	Common Parking Lots	-16-
17.	Open Space	-16-
18.	Village of WestClay Owners Association, Inc.	-17-
(a)	Membership	-17-
(b)	Powers	-17-
(c)	Classes of Members	-17-
(d)	Voting and Other Rights of Members	-17-
(e)	Reserve for Replacements	-17-
(f)	Debt Service Account	-17-
(g)	Maintenance Standards	-18-
(h)	Insurance, Taxes and Utilities	-18-
(i)	Limitations on Action by the Corporation	-18-
(j)	Mergers	-19-
19.	Assessments	-19-
(a)	Creation of the Lien and Personal Obligation of Assessments	-19-
(b)	General Assessment	-20-
(i)	Purpose of Assessment	-20-
(ii)	Basis for Assessment	-20-
(1)	Residential Lots	-20-
(2)	Commercial Lots	-20-
(3)	Lots Owned by Declarant or Permitted Title Holder	-22-
(4)	Condominiums	-22-
(5)	Change in Basis	-22-
(iii)	Method of Assessment	-23-
(iv)	Allocation of Assessment	-23-
(c)	Community Area Initial Assessment	-24-
(d)	Community Area Debt Service Assessment	-25-
(e)	Parcel Assessments	-25-

	(i)	Purpose of Assessments	-25-
	(ii)	Method of Assessment	-25-
	(iii)	Special Assessments	-26-
(f)		Architectural Control Assessment	-26-
(g)		Special Assessment	-26-
(h)		Date of Commencement of Assessments	-27-
(i)		Effect of Nonpayment of Assessments; Remedies of the Corporation	-27-
(j)		Subordination of the Lien to Mortgages	-27-
(k)		Certificates	-28-
(l)		Annual Budget	-28-
	(1)	Adoption of Budget	-28-
	(2)	Certification of Village Center Maintenance Costs	-28-
	(3)	Village Center Budget	-28-
20		Architectural Control	-29-
	(a)	The Architectural Review Board	-29-
	(b)	Purpose	-29-
	(c)	Building Activity	-29-
	(d)	Procedures	-30-
	(e)	Guidelines and Standards	-30-
	(f)	Application of Guidelines and Standards	-31-
	(g)	Design Consultants	-31-
	(h)	Existing Violations of Declaration	-31-
	(i)	Exercise of Discretion	-31-
	(j)	Liability of Board	-32-
	(k)	Inspection	-32-
21		Community Area and Common Facilities	-32-
	(a)	Ownership	-32-
	(b)	Density of Use	-32-
	(c)	Obligations of the Corporation	-32-
	(d)	Easements of Enjoyment	-33-
	(i)	Owners	-33-
	(ii)	Occupants	-33-
	(e)	Extent of Easements	-34-
	(f)	Additional Rights of Use	-35-
	(g)	Damage or Destruction by Owner	-35-
	(h)	Conveyance of Title	-36-
22		Use of Tract	-36-
	(a)	Protective Covenants	-36-
	(i)	Land Use	-36-
	(ii)	Nuisances	-36-

	(iii) Other Restrictions	-36-
	(iv) Exceptions	-37-
(b)	Maintenance of Tract	-37-
23.	Easements	-37-
(a)	Pint Easements	-37-
	(i) Drainage Easements	-38-
	(ii) Sewer Easements	-38-
	(iii) Utility Easements	-38-
	(iv) Entry Way Easements	-38-
	(v) Landscape Easements	-38-
	(vi) Water Access Easements	-39-
	(vii) Community Area Access Easements	-39-
	(viii) Pathway Easements	-39-
	(ix) Non-Access Easements	-39-
	(x) Alley Easements	-39-
(b)	General Easement	-39-
(c)	Public Health and Safety Easements	-40-
(d)	Drainage Board Easement	-40-
(e)	Crossing Underground Easements	-40-
(f)	Declarant's Easement to Correct Drainage	-40-
(g)	Water Retention	-41-
24	Use of Lots During Development	-41-
(a)	By Declarant	-41-
(b)	By Builders	-41-
25	Enforcement	-41-
26	Limitations on Rights of the Corporation	-42-
27	Approvals by Declarant	-42-
28	Mortgages	-42-
(a)	Notice to Corporation	-42-
(b)	Notices to Mortgagees	-42-
(c)	Notice of Unpaid Assessments	-43-
(d)	Financial Statements	-43-
(e)	Payments by Mortgagees	-43-
29	Amendments	-43-
(a)	Generally	-43-
(b)	By Declarant	-44-

	(c) Approval by Zoning Authority	-44-
	(d) Class Approval	-44-
	(e) Effective Date	-44-
30.	Interpretation	-44-
32.	Severability	-45-
33.	Non-Liability of Declarant	-45-
34.	Compliance with the Soil Erosion Control Plan	-45-
	(a) The Plan	-45-
	(b) Indemnity	-46-
35.	Annexation	-46-
36.	Exclusive Builders	-46-

Exhibit A	Description of Development Area
Exhibit B	General Plan of Development
Exhibit C	Description of the Tract

**DECLARATION OF COVENANTS AND RESTRICTIONS  
THE VILLAGE OF WESTCLAY**

This Declaration, made as of the 9th day of August, 1999, by  
BRENWICK TND COMMUNITIES, LLC, an Indiana limited liability company ("Declarant").

**WITNESSETH:**

WHEREAS, the following facts are true:

A. Declarant owns, or has the right to acquire the real estate located in Hamilton County, Indiana, described in Exhibit A and depicted on Exhibit B, upon which Declarant intends, but is not obligated, to develop a traditional neighborhood to be known as The Village of WestClay.

B. The Development Area has been designated as the Planned Unit Development District and development thereof is subject to the development standards set forth in the Zoning Ordinance

C. Declarant intends, but is not obligated, to construct certain improvements and amenities in WestClay which shall constitute Community Area.

D. Declarant desires to provide for the preservation and enhancement of the property values, amenities and opportunities in WestClay and for the maintenance of the Tract and the improvements thereon, and to this end desires to subject the Tract together with such additions as may hereafter be made thereto (as provided in Paragraph 3) to the covenants, restrictions, easements, charges and liens hereinafter set forth, each of which is for the benefit of the Lots and lands in the Tract and the future owners thereof.

E. Declarant deems it desirable, for the efficient preservation of the values and amenities in WestClay, to create agencies to which may be delegated and assigned the powers of owning, maintaining and administering the Community Area, administering and enforcing the Restrictions, collecting and disbursing the Assessments and charges hereinafter created, and promoting the recreation, health, safety and welfare of the Owners of Lots in WestClay.

F. Declarant has incorporated under the laws of the State of Indiana nonprofit corporations known as The Village of WestClay Owners Association, Inc. and WestClay Village Owners Association, Inc. for the purpose of exercising such functions

NOW, THEREFORE, Declarant hereby declares that all of the Lots and lands in the Tract and such additions thereto as may hereafter be made pursuant to Paragraph 3 hereof, as they are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, are subject to the following Restrictions, all of which are declared to be in furtherance of a plan for the improvement and sale of Lots in the Tract, and are established and agreed upon for the



purpose of enhancing and protecting the value, desirability and attractiveness of the Tract as a whole and of each of Units, Lots and lands situated therein. The Restrictions shall run with the land and shall be binding upon Declarant, its successors and assigns, and upon the parties having or acquiring any interest in the Tract or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of Declarant and its successors in title to the Tract or any part or parts thereof.

1 **Definitions.** Terms defined in the Zoning Ordinance used in this Declaration shall have the meaning herein as therein unless otherwise defined herein or the context otherwise requires. The following terms, as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

"**Applicable Date**" means the earlier of (i) the date when all Lots in the Development Area have been improved by the construction thereon of Units or (ii) December 31, 2015.

"**Architectural Control Assessment**" means the assessment levied by the Corporation pursuant to Paragraph 19(f) of this Declaration or by the Association pursuant to Paragraph 5 of the Village Center Supplemental Declaration.

"**Architectural Review Board**" means that entity established pursuant to Paragraph 20 of this Declaration for the purposes therein stated.

"**Articles**" means the Articles of Incorporation of the Corporation, as amended from time to time.

"**Assessments**" means all sums lawfully assessed against the Members or as declared by this Declaration, any Supplemental Declaration, the Articles or the By-Laws.

"**Association**" means WestClay Village Center Owners Association, Inc., an Indiana nonprofit corporation.

"**Board of Directors**" means the governing body of the Corporation or the Association, as the context may require.

"**Building Activity**" means any activity or undertaking on a Residential Lot of a type described in Paragraph 20(c).

"**Building Guidelines**" means guidelines and requirements for Building Activity on the Tract adopted by the Declarant, the Architectural Review Board or the Design Review Board, as applicable.

"By-Laws" means the Code of By-Laws of the Corporation, as amended from time to time.

"Commercial Lot" means each established building site or platted lot on which a Commercial Unit, a Multifamily Structure or a Multiuse Structure has been or is intended to be constructed.

"Commercial Unit" means any structure or portion thereof situated upon the Tract which is designed and intended for use and occupancy for such non-residential purposes as are permitted under the Zoning Ordinance exclusive of home-based offices and other uses accessory to the use and enjoyment of a Residential Lot. A Commercial Unit may be a Condominium.

"Common Facilities" means the Common Lighting, the Path Lights, the Site Furniture and Facilities and other personal property of the Corporation.

"Common Lighting" means the light standards, wiring, bulbs and other appurtenances, if any, installed to illuminate the Community Area or the public and private ways in WestClay exclusive of the Path Lights.

"Common Parking Lot" means any parking lot owned, managed and/or maintained by the Corporation or the Association and intended for use by the Occupants of or visitors to a Village Community Building, an Education Facility, a Commercial Unit, a Multifamily Structure or a Multiuse Structure.

"Commons" means such land, if any, as may be denoted on a Plat as "Commons" or designated as "Commons" in any recorded instrument executed by Declarant.

"Community Area" means (i) the Lake, (ii) the Ponds, (iii) the Private Drives and Private Gates, (iv) the Village Community Buildings, (v) the Entry Ways, (vi) the Planting Areas, (vii) the Parks, (viii) the Commons, (ix) the Drainage System, (x) the Paths, (xi) the Common Lighting, (xii) the Site Furniture and Facilities, (xiii) any utility service lines or facilities not maintained by a public utility company or governmental agency that are located on, over or below or through more than one Section or Parcel, and (xiv) any areas of land (1) shown on any Plat, (2) described in any recorded instrument prepared by Declarant or its agents, or (3) conveyed to or acquired by the Corporation or the Association, together with all improvements thereto, that are intended to be devoted to the use or enjoyment of some, but not necessarily all, of the Owners and Occupants of Lots and Units, exclusive of Common Parking Lots.

"Community Area Access Easement" means the area designated on a Plat as a means of access to a Community Area or Common Parking Lot.

"Community Area Debt Service Assessment" means the periodic Assessment to meet the obligation of the Corporation for payments on account of Community Area Secured Indebtedness.

"Community Area Initial Assessment" means the initial Assessment for the Reserve for Replacements required by Paragraph 19(c).

"Community Area Secured Indebtedness" means indebtedness in an aggregate principal amount not exceeding Two Million Dollars (\$2,000,000) incurred to finance, in whole or in part, the Village Community Buildings and the Common Facilities, or parts thereof, secured by a lien or liens on the Village Community Buildings and the Common Facilities, or parts thereof.

"Condominium" means a Unit in a Horizontal Property Regime

"Corporation" means The Village of WestClay Owners Association, Inc., an Indiana nonprofit corporation, its successors and assigns.

"Declarant" means Brenwick TND Communities, LLC, its successors and assigns to its interest in the Tract other than Owners purchasing Lots or Units by deed from Declarant (unless the conveyance indicated an intent that the grantee assume the rights and obligations of Declarant).

"Design Review Board" means that entity established pursuant to Paragraph 6 of the Village Center Supplemental Declaration.

"Designated Builder" means during such period as such designation by Declarant may continue, any Person engaged in the construction of more than one (1) Unit on the Tract who is designated by Declarant as a "Designated Builder". Declarant may make and revoke any such designation at any time and from time to time. A builder approved pursuant to Paragraph 36 may, but will not necessarily be, a Designated Builder.

"Detention Area" means an area depicted on a Plat which has been engineered to accommodate from time to time surface water drainage.

"Development Area" means the land described in Exhibit A together with any additional land added to the Tract pursuant to Paragraph 3 of this Declaration.

"Drainage Board" means the Hamilton County Drainage Board, its successors or assigns, or, in the event of annexation of the Tract to the City of Carmel, the Board of Public Works of the City of Carmel

"Drainage System" means the open drainage ditches and swales, the subsurface drainage tiles, pipes and structures, the dry and wet retention and/or detention ponds (including all Detention Areas), and the other structures, fixtures, properties, equipment and facilities (excluding the Lake and the Ponds) located in the Tract and designed for the purpose of controlling, retaining or expediting the drainage of surface and subsurface waters from, over and across the Tract, including but not limited to those shown or referred to on a Plat, all or part of which may be established as legal drains subject to the jurisdiction of the Drainage Board.

"Education Facility" means the Education Center depicted on the Development Plan and any other facility on the Tract owned or leased by a public or private educational institution or its successor in title, which does not constitute Community Area and is used principally for educational purposes

"Electoral Parcel" means one or more Parcels the Supplemental Declaration(s) for which authorizes the Owners of Lots in such Parcel(s) to elect a member of the Board of Directors of the Corporation to represent such Parcel(s) on the Board

"Entry Ways" means the structures constructed as an entrance to WestClay or a part thereof (exclusive of the street pavement, curbs and drainage structures and tiles), the traffic islands depicted as designated Blocks on a Plat and any other traffic islands dividing a roadway providing access to WestClay or a part thereof, and the grassy area surrounding such structures.

"General Assessment" means an Assessment made pursuant to Paragraph 19(b).

"General Plan of Development" means that plan prepared by Declarant and approved, if necessary, by appropriate public agencies that outlines the total scheme of development and general uses of land in the Development Area, as such may be modified from time to time.

"Horizontal Property Regime" means a horizontal property regime established in the Tract pursuant to I.C. 32-1-6 or any successor provision authorizing the creation of a Condominium.

"Lake" means the lake identified on the Development Plan as Hourglass Lake

"Landscape Easement" means a portion of a Lot denoted on a Plat as an area to be landscaped

"Living Unit" means a room or combination of rooms designed for year-round habitation, containing a bathroom and kitchen facilities, and designed for or used as a permanent residence by at least one Person

"Lot" means (1) any plot of land intended as a building site shown upon any recorded Plat, with the exception of Community Area and Common Parking Lots, (2) any Condominium, (3) any part of the Tract designated in a recorded instrument as a "Lot", and (4) any other part of the Tract acquired by an Owner or used by Declarant for the construction or operation of, or occupancy as, one or more Units.

"Lot Development Plan" means (i) a site plan prepared by a licensed engineer or architect, (ii) foundation plan and proposed finished floor elevations, (iii) building plans, including elevation and floor plans, (iv) material plans and specifications, (v) landscaping plan, (vi) exterior lighting plan, (vii) tree preservation plan and (viii) all other data or information that the Architectural Review Board or the Design Review Board, as applicable, may request with respect to the improvement or alteration of a Lot (including but not limited to the landscaping thereof) or the construction or alteration of a Unit, Multifamily Structure, Multiuse Structure or other structure or improvement thereon

"Maintain" means maintain, repair and replace as necessary or appropriate

"Maintenance Costs" means all of the costs necessary to keep the facilities to which the term applies operational and in good condition, including but not limited to the cost of all upkeep, maintenance, repair, replacement of all or any part of any such facility, payment of all insurance premiums for public liability, casualty and other insurance maintained with respect thereto, all utility charges relating to such facilities, all taxes imposed on the facility and on the underlying land, leasehold, easement or right-of-way, and any other expense related to the continuous maintenance, operation or improvement of the facility.

"Member" means a member of the Corporation and "Members" means all members of the Corporation

"Mortgagee" means the holder of a first mortgage on a Unit, a Multifamily Structure or a Multiuse Structure

"Multifamily Structure" means a structure with two or more Living Units under one roof, except when such Living Units are situated upon their own individual Lots, are Condominiums or are located in a Multiuse Structure

"Multiuse Structure" means a structure which contains one or more Commercial Units and one or more Living Units

"Occupant" means any Person who is in possession of a Unit either as an Owner or as a tenant pursuant to a lease or other occupancy agreement

"Owner" means a Person, including Declarant, who at the time has or is acquiring legal title to a Lot except a Person who has or is acquiring such title merely as security for the performance of an obligation

"Parcel" means each platted subdivision or part thereof, parcel of land or Horizontal Property Regime consisting of one or more Lots within the Development Area that are subject to the same Supplemental Declaration or are declared by Declarant to constitute a "Parcel". One or more Lots may be included in more than one Parcel.

"Parcel Assessment" means an Assessment made pursuant to Paragraph 19(e) of this Declaration or Paragraph 5(b) of the Village Center Supplemental Declaration

"Park" means such land as may be denoted on a Plat as "Park" or designated as "Park" in any recorded instrument executed by Declarant

"Part of the Development Area" means any part of the Development Area not included in the Tract.

"Paths" means those walkways and/or bikeways installed pursuant to Paragraph 11 and such other real estate or interest therein as is conveyed or granted to the Corporation for the purpose of being used for walkways and/or bikeways

"Path Lights" means the light standards, conduits, wiring, bulbs and other appurtenances, if any, installed to illuminate the Paths.

"Permitted Title Holder" means (a) the Corporation, (b) the Association, (c) a public or private educational institution, (d) the City of Carmel, Indiana, or (e) a nonprofit corporation having perpetual existence or a governmental entity designated in either case, by Declarant.

"Person" means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

"Plat" means a final secondary plat of a portion of the Development Area executed by Declarant and recorded in the Office of the Recorder of Hamilton County, Indiana

"Pond" means a body of water located in the Development Area and depicted on the General Plan of Development (other than the Lake) and "Ponds" means all of such bodies of water (other than the Lake).

"Planting Area" means a landscaped area located in the right-of-way of a public street, on or adjacent to a Private Drive or Common Parking Lot or on a Commons, in a Park or in or on other Community Area.

"Principal Streets" means, to the extent constructed by Declarant, Towne Road, 131st Street, Broad Street, Meeting House Road, Horseferry Road and Grafton Street.

"Private Drive" means a street, lane, road, driveway or other right-of-way designed to provide access to one or more Lots or to the Community Area that has not been accepted for maintenance by a public authority. Private Drive does not include a driveway located entirely on a single Lot, but does include alleys.

"Private Gate" means a security gate controlling access to and from a Private Drive.

"Recreation Centers" means Provost Park, Webster Park and MacArthur Field and the recreational facilities therein or thereon.

"Reserve for Replacements" means a fund established and maintained by the Corporation to meet the cost of periodic maintenance, repairs, renewal and replacement of the Community Area and the Common Facilities.

"Residential Lot" means a Lot which is used or intended to be used primarily for residential purposes except where the Lot is improved by the construction thereon of a Multifamily Structure or a Multiuse Structure.

"Restrictions" means the covenants, conditions, easements, charges, liens, restrictions, rules and regulations and all other provisions set forth in this Declaration, all applicable Supplemental Declarations, the Building Guidelines and the Register of Regulations, as the same may from time to time be amended.

"Register of Regulations" means the document containing rules, regulations, policies, and procedures adopted by the Board of Directors, the Architectural Review Board or the Design Review Board, as the same may from time to time be amended.

"Round-About" means a square, green or traffic circle in WestClay.

"Section" means that portion of the Development Area that is depicted on a Plat

"Significant Tree" means any tree measuring eight (8) inches in caliper measured at four (4) to five (5) feet above grade.

"Site Furniture and Facilities" means any furniture, trash containers, sculpture or other furniture, fixtures, equipment or facilities constructed, installed or placed in the Development Area by Declarant, the Corporation or the Association and intended for the common use or benefit of some, if not all, of the Owners and Occupants

"Special Assessment" means an Assessment made pursuant to Paragraph 19(g) or any other provision of this Declaration or any Supplemental Declaration authorizing the levying of a Special Assessment

"Street Trees" means the trees, shrubs and other plantings planted by Declarant or an Owner within a Planting Area, as the same may be replaced from time to time

"Supplemental Declaration" means any supplemental declaration of covenants, conditions or restrictions or any declaration of horizontal property regime which may be recorded and which extends the provisions of this Declaration or any previously recorded Supplemental Declaration to a Section or Parcel and contains such complementary or supplementary provisions for such Section or Parcel as are required or permitted by this Declaration.

"Tract" means the land described in Exhibit C and such other real estate as may from time to time be annexed thereto under the provisions of Paragraph 3 hereof

"Unit" means any Living Unit or Commercial Unit, and "Units" means all Living Units and Commercial Units.

"Village Center" means that part of the Tract depicted on the Development Plan as the "Village Center"

"Village Center Maintenance Amount" has the meaning set forth in Paragraph 19(1)(3).

"Village Center Parcel" means the Village Center exclusive of Residential Lots and Community Area located therein



"Village Center Supplemental Declaration" means the Supplemental Declaration relating to the Village Center Parcel.

"Village Community Buildings" means the Meeting House, the Trustees Hall, the Chapel, the buildings constituting a part of or located in or on the Recreation Centers and such other civic or recreational buildings as may be constructed in WestClay by Declarant principally for the use of the Owners as a benefit of ownership of a Lot, title to which is, or is intended ultimately to be, vested in a Permitted Title Holder.

"Warranty Period" means, with respect to Street Trees, a period of one (1) year following the date a Street Tree is planted in a Planting Area

"Water Access Easement" means the area designated on a Plat as a means of access to the Lake or a Pond.

"WestClay" means the name by which the Tract shall be commonly known

"Zoning Authority" with respect to any action means the Director of the Department of Community Services of the City of Carmel or, where he lacks the capacity to take action, or fails to take such action, the governmental body or bodies, administrative or judicial, in which authority is vested under applicable law to hear appeals from, or review the action, or the failure to act, of the Director.

"Zoning Ordinance" means the ordinance adopted by the Common Council of the City of Carmel, Indiana, establishing the WestClay Village Planned Unit Development District.

2. Declaration Declarant hereby expressly declares that the Tract and any additions thereto pursuant to Paragraph 3 hereof shall be held, transferred, and occupied subject to the Restrictions. The Owner of any Lot or Parcel subject to these Restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot or Parcel, or (ii) by the act of occupancy of any Lot or Parcel, shall accept such deed and execute such contract subject to each Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, each Owner acknowledges the rights and powers of Declarant and of the Corporation with respect to these Restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant, the Corporation, and the Owners and subsequent Owners of each of the Lots and Parcels affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreement.

3. Additions to the Tract. Declarant shall have the right to bring within the scheme of this Declaration and add to the Tract real estate that is a Part of the Development Area or that is

contiguous to the Development Area. In determining contiguity, public rights of way shall not be considered

The additions authorized under this Paragraph 3 shall be made by the filing of record of one or more Supplemental Declarations with respect to the additional real estate and by filing with the Corporation any revisions to the General Plan of Development necessary to reflect the scheme of development of the additional real estate. Unless otherwise stated therein, such revisions to the General Plan of Development shall not bind Declarant to make the proposed additions. For purposes of this Paragraph 3, a Plat depicting a portion of the Development Area shall be deemed a Supplemental Declaration

4 The Lake.

(a) Development. Declarant intends, but is not obligated, to acquire title to the Lake. Declarant reserves the right, subsequent to acquisition of the Lake, to alter the size and configuration thereof (as a result of which, the Lake may vary from that depicted on the General Plan of Development attached as Exhibit B hereto)

(b) Title and Maintenance. If Declarant acquires title to the Lake, it shall subsequently convey such title to a Permitted Title Holder. Unless otherwise specified in the instrument of conveyance, the Corporation shall be responsible for maintaining the Lake. The Maintenance Costs of the Lake shall be assessed as a General Assessment against all Lots subject to assessment. Each Owner of a Lot that abuts the Lake shall be responsible at all times for maintaining so much of the bank of the Lake above the pool level as constitutes a part of, or abuts, his Lot (exclusive of the Lake Liner and any Path) and shall keep that portion of the Lake abutting his Lot free of debris and otherwise in reasonably clean condition.

(c) Use. No boats shall be permitted upon any part of the Lake except if and to the extent authorized by the Board of Directors and then subject to such rules and regulations as may be adopted by the Board of Directors. No dock, pier, wall or other structure may be extended into the Lake without the prior written consent of the Architectural Review Board and such governmental authority as may have jurisdiction thereover. No swimming will be permitted in the Lake except if and to the extent authorized by the Board of Directors. Each Owner of a Lot abutting the Lake shall indemnify and hold harmless Declarant, the Corporation and each other Owner against all 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, the Lake by any Person who gains access thereto from over or across the Owner's Lot with the knowledge or acquiescence of such Owner. Declarant shall have no liability to any Person with respect to the Lake, the use thereof or access thereto, or with respect to any damage to any Lot resulting from the Lake or the proximity of a Lot thereto, including loss or damage from erosion.

5. The Ponds.

(a) Development. Declarant intends, but is not obligated, to develop the Ponds. Declarant reserves the right, subsequent to commencement of development of the Ponds, to determine the size and configuration thereof (which may vary from that depicted on the General Plan of Development attached as Exhibit B hereto).

(b) Title and Maintenance. Declarant shall convey title to the Ponds to a Permitted Title Holder. Unless otherwise specified in the instrument of conveyance, the Corporation shall be responsible for maintaining the Ponds. The Maintenance Costs of the Ponds shall be assessed as a General Assessment against all Lots subject to assessment. Each Owner of a Lot that abuts a Pond shall be responsible at all times for maintaining so much of the bank of the Pond above the pool level as constitutes a part of, or abuts, his Lot (exclusive of any Path) and shall keep that portion of the Pond abutting his Lot free of debris and otherwise in reasonably clean condition.

(c) Use. No boats shall be permitted upon any part of a Pond. No dock, pier, wall or other structure may be extended into a Pond without the prior written consent of the Architectural Review Board and such governmental authority as may have jurisdiction thereover. No swimming will be permitted in any Pond except if and to the extent authorized by the Board of Directors. Each Owner of a Lot abutting a Pond shall indemnify and hold harmless Declarant, the Corporation and each other Owner against all 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 Pond by any Person who gains access thereto from, over or across such Owner's Lot with the knowledge or acquiescence of such Owner. Declarant shall have no liability to any Person with respect to a Pond, the use thereof or access thereto, or with respect to any damage to any Lot resulting from a Pond or the proximity of a Lot thereto, including loss or damage from erosion.

6. The Commons. Declarant shall convey title to the Commons to a Permitted Title Holder. Unless otherwise specified in the instrument of conveyance, the Corporation shall be responsible for maintaining the Commons and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. Unless approved by the Architectural Review Board and the Zoning Authority, no permanent improvements shall be made to or installed on the Commons (excepting University Green) other than Village Community Buildings, Education Facilities, underground utility facilities, Site Furniture and Facilities, walkways, planting structures, and fountains or other nonrecreational water features. University Green may be improved with recreational facilities, including but not limited to Founder's Corner and a croquet court. The use of the Commons shall be subject to rules and regulations adopted by the Board of Directors which are not inconsistent with the provisions of this Declaration or any Supplemental Declaration.

7 Parks. Declarant shall convey title to the Parks to a Permitted Title Holder. Unless the instrument of conveyance provides otherwise, the Corporation shall be responsible for maintaining the Parks and the Maintenance Costs thereof, together with any costs incurred by the Corporation in connection with the further improvement thereof, shall be assessed as a General Assessment against all Lots subject to assessment. The Parks may be improved as appropriate for recreational and open space areas. The use of the Parks shall be subject to rules and regulations adopted by the Board of Directors which are not inconsistent with the provisions of this Declaration or any Supplemental Declaration.

8 Village Community Buildings. Declarant may, but is not obligated to, construct in the area designated on the General Plan of Development as the contemplated location thereof the Meeting House, the Trustees Hall, the Chapel and one or more Recreation Center (which may include a bath house, swimming pool, tennis courts and other recreational facilities) and such other recreational and community facilities as Declarant in its sole discretion believes are justified by the progress of development of the Development Area. If Declarant undertakes the development of one or more Village Community Buildings, Declarant intends upon completion of construction to convey the same to a Permitted Title Holder prior to the Applicable Date free and clear of all financial encumbrances and other liens securing indebtedness of Declarant except Community Area Secured Indebtedness, but subject to the right of Declarant to use the Village Community Buildings as provided in Paragraph 24(a). Unless the instrument of conveyance provides otherwise, the Corporation shall be responsible for maintenance of the Village Community Buildings and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. The Board of Directors may adopt such rules and regulations with respect to the use of the Village Community Buildings as it deems appropriate and may charge reasonable fees for the use thereof, but no rule, regulation or charge shall be inconsistent with the provisions of this Declaration or any Supplemental Declaration.

Any Education Facility, including the Education Center, shall be constructed by and be the sole property of the public or private educational institution which operates the Education Facility and none of the Corporation, the Association or any Owner shall have any interest therein except as otherwise specifically provided herein, in a Supplemental Declaration or in an instrument of conveyance from Declarant to such educational institution.

Declarant may secure indebtedness incurred to finance construction of the Village Community Buildings and the Common Facilities, or parts thereof, with a mortgage lien(s) on all or some of the Village Community Buildings; provided that the aggregate original principal amount of the indebtedness secured by such lien(s) shall not exceed Two Million Dollars (\$2,000,000.00).

9. Drainage System. The Drainage System has or will be constructed for the purpose of controlling drainage within and adjacent to the Development Area and maintaining the water level in the Lake and the Ponds. The Corporation shall maintain the Drainage System to the extent not maintained by the Drainage Board and the Maintenance Costs thereof shall be assessed against all Lots subject to assessment serviced by that part of the Drainage System with respect to which

Maintenance Costs are incurred. Each Owner shall be individually liable for the cost of maintenance of any drainage system located entirely upon his Lot and which is devoted exclusively to drainage of his Lot and is not maintained by the Drainage Board

10. Common Lighting. Declarant may, but is not obligated to, install Common Lighting in WestClay and may reserve easements for such purpose over and across Lots. If installed, the Corporation shall operate and maintain the Common Lighting and, unless otherwise provided in a Supplemental Declaration, the Maintenance Costs thereof shall be assessed as a General or Parcel Assessment against all Lots subject to assessment.

11. Paths and Path Lights. Declarant may, but is not obligated to, install the Paths and Path Lights at the approximate locations depicted on the General Plan of Development and may reserve easements for such purpose over and across Lots. If installed, the Corporation shall operate and maintain the Paths and Path Lights and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. The Board of Directors may adopt such rules and regulations with respect to the use of the Paths as it may deem appropriate including but not limited to the prohibition of the use of all or some of the Paths by bicycles, skateboards and/or motorized or non-motorized vehicles

12. Private Drives and Private Gates

(a) Maintenance of Private Drives (Exclusive of Alleys). Unless otherwise provided in a Supplemental Declaration, each Private Drive (exclusive of alleys) shall be owned by the Corporation and maintained by the Corporation in good condition satisfactory for the purpose for which it was constructed. The Maintenance Costs incurred by the Corporation in maintaining a Private Drive shall be assessed against all Lots whose principal means of vehicular access to a public right-of-way or to the Village Center is over and across such Private Drive. Estimated Maintenance Costs, including a contribution to a reserve fund for future maintenance, repair and replacement of Private Drives, shall be included in each annual budget of the Corporation adopted pursuant to Paragraph 19(l).

(b) Maintenance of Alleys. Unless otherwise provided in a Supplemental Declaration, the Corporation shall maintain all alleys and the Maintenance Costs incurred for such maintenance shall be assessed against all Lots served by alleys.

(c) Maintenance of Private Gates. Private Gates shall be maintained by the Corporation. The Maintenance Costs incurred by the Corporation in maintaining Private Gates shall be assessed against all Lots whose principal access to a public right-of-way or to the Village Center is through a Private Gate.

13. Entry Ways, Landscape Easements and Planting Areas

(a) Entry Ways The Corporation shall maintain the Entry Ways and all improvements and plantings thereon, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. Grass, trees, shrubs and other plantings located on an Entry Way shall be kept neatly cut, cultivated or trimmed as reasonably required to maintain an attractive entrance to WestClay or a part thereof. All entrance signs located on an Entry Way shall be maintained at all times in good and sightly condition appropriate to a first-class residential community.

(b) Landscape Easements Unless the Board of Directors (of the Corporation or the Association, as applicable) determines that all or some of the Landscape Easements shall be maintained by the Corporation and/or the Association and the Maintenance Costs thereof assessed as a General or Parcel Assessment, the Owner of each Lot upon which a Landscape Easement is located shall at his/her expense keep the grass, trees, shrubs and other plantings located on a Landscape Easement properly irrigated and neatly cut, cultivated or trimmed as reasonably necessary to maintain the same at all times in a good and sightly condition appropriate to a first-class residential subdivision and, if such Owner fails to do so, the Corporation or the Association, as applicable, may undertake such maintenance and assess the Maintenance Costs thereof as a Special Assessment against such Lot.

(c) Planting Areas Following the expiration of the Warranty Period, the Corporation (or, if the Village Center Supplemental Declaration so provides with respect to Planting Areas in the Village Center Parcel, the Association) shall maintain the Planting Areas and the Maintenance Costs thereof shall be assessed as a General or Parcel Assessment.

14. Site Furniture and Facilities Declarant may, but is not obligated to, construct, install or place Site Furniture and Facilities in WestClay. If it does so, title thereto shall be conveyed to a Permitted Title Holder. After conveyance to a Permitted Title Holder, unless otherwise specified in the instrument of conveyance, the Corporation (or, if the Village Center Supplemental Declaration so provides with respect to Site Furniture and Facilities in the Village Center Parcel, the Association) shall maintain the Site Furniture and Facilities and the Maintenance Costs thereof shall be assessed as a General or Parcel Assessment.

15. Round-Abouts and Street Trees

(n) Round-Abouts The Corporation shall maintain the Round-Abouts (exclusive of the street pavement, curbs and drainage structures and tiles unless they constitute a part of a Private Drive), and the Maintenance Costs thereof shall be assessed as a General or Parcel Assessment.

(b) Street Trees. Declarant shall plant Street Trees within Planting Areas adjacent to such of the Principal Streets as are constructed by Declarant and in Community Areas adjacent to other streets constructed in WestClay. Each Owner shall, within the time specified in the Building Guidelines, plant within a Planting Area adjacent to the Owner's Lot that number of Street Trees as are depicted on such Lot on the Development Plan, such Street Trees to be of a size and species designated by the Architectural Review Board or the Design Review Board, as applicable, and to be planted at locations specified on the landscaping plan submitted by the Owner to and approved by the applicable Board. Declarant, the Corporation or the Association may plant additional Street Trees on any Lot.

(c) Maintenance of Street Trees. During the Warranty Period, all dead or dying Street Trees, installed new, transplanted, or designated on the Lot Development Plan as existing trees to be retained, shall be replaced by the person responsible for causing such Street Trees to be planted. Following the expiration of the Warranty Period for a Street Tree, unless otherwise provided in a Supplemental Declaration, the Corporation shall maintain and, if necessary, replace the Street Tree, and the Maintenance Cost thereof shall be assessed as a General Assessment against all Lots subject to Assessment.

16. Common Parking Lots. Declarant shall construct such Common Parking Lots as it deems desirable. The Association shall maintain the Common Parking Lots located in the Village Center, including the exterior and interior landscaping required by the Zoning Ordinance, and the Maintenance Costs thereof shall be assessed as a Parcel Assessment as provided in the Village Center Supplemental Declaration. The Corporation shall maintain all other Common Parking Lots, including the exterior and interior landscaping required by the Zoning Ordinance, and the Maintenance Costs thereof shall be assessed against all Lots which derive a substantial benefit from the availability of parking in such other Common Parking Lots, as determined in the reasonable discretion of the Board of Directors of the Corporation. The Association may allocate to the Corporation a portion of the Maintenance Costs of Common Parking Lots in the Village Center which serve a Village Community Building as provided in the Village Center Supplemental Declaration and the amount so allocated shall be included in the General Assessment against all Residential Lots subject to assessment.

17. Open Space. A Permitted Title Holder shall not change the use of any Park, Commons or other area designated by Declarant as open space conveyed to the Permitted Title Holder by Declarant from the use being made thereof at the time of conveyance without the prior consent or approval of the Zoning Authority.

18. Village of WestClay Owners Association, Inc.

(a) Membership. Each Owner shall automatically be a Member and shall enjoy the privileges and be bound by the obligations contained in the Articles and By-Laws. If a Person would realize upon his security and become an Owner, he shall

then be subject to all the requirements and limitations imposed by this Declaration on other Owners, including those provisions with respect to the payment of Assessments.

(b) Powers. The Corporation shall have such powers as are set forth in this Declaration, all Supplemental Declarations and in the Articles, together with all other powers that belong to it by law.

(c) Classes of Members. The Corporation shall have a single class of Members.

(d) Voting and Other Rights of Members. The voting and other rights of Members shall be as specified in the Articles and By-Laws; provided, however, that the Owners of Lots in each Electoral Parcel shall be entitled to elect a Person to serve as a Director representing such Electoral Parcel on the Board of Directors in the manner specified in the Code of By-Laws of the Corporation.

(e) Reserve for Replacements. The Board of Directors shall establish and maintain the Reserve for Replacements by the allocation and payment to such reserve fund of an amount determined annually by the Board to be sufficient to meet the cost of periodic maintenance, repair, renewal and replacement of the Community Area and the Common Facilities to the extent the Corporation is responsible for the maintenance thereof. In determining the amount, the Board shall take into consideration the expected useful life of the Community Area and the Common Facilities, projected increases in the cost of materials and labor, interest to be earned by such fund and the advice of Declarant or such consultants as the Board may employ. The Reserve for Replacements shall be deposited in a special account with a lending institution the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. Prior to the Applicable Date, funds from the Reserve for Replacements may be withdrawn and applied at the direction of Declarant to meet the costs of periodic maintenance, repairs, renewal or replacement of the Community Area and the Common Facilities.

(f) Debt Service Account. The Board of Directors shall establish and maintain a separate account for the payment of principal, interest and other charges on account of Community Area Secured Indebtedness. Community Area Debt Service Assessments shall be deposited to said account and disbursed solely for the purpose of payments on account of Community Area Secured Indebtedness. The debt service account shall be maintained in a lending institution the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. Prior to the Applicable Date, funds from



the debt service account may be withdrawn and applied at the direction of Declarant to make payments on account of Community Area Secured Indebtedness.

(g) Maintenance Standards. In each instance in which this Declaration or a Supplemental Declaration imposes on the Corporation a maintenance obligation with respect to the Community Area or the Common Facilities or a part thereof, the Corporation shall maintain the Community Area, Common Facilities or designated part thereof in good condition, order and repair substantially comparable to its condition when originally constructed, installed or planted and compatible in appearance and utility with a first-class residential community. Grass, trees, shrubs and other plantings located on the Community Area for which the Corporation has maintenance responsibility shall be kept properly irrigated and neatly cut, cultivated or trimmed as reasonably required and otherwise maintained at all times in good and sightly condition appropriate to a first-class residential community. In each fiscal year subsequent to the Applicable Date the Corporation shall make expenditures to Maintain the Community Area and Common Facilities located in the Village Center in an amount not less than the Village Center Maintenance Amount established pursuant to Paragraph 19(l)(3).

(h) Insurance, Taxes and Utilities. The Corporation shall maintain public liability and casualty insurance in prudent amounts insuring against risk of loss to the Corporation on account of injury to person or property and damage to property owned by the Corporation and shall pay all taxes assessed against such property and all utility charges incurred with respect to Community Area for which the Corporation has maintenance responsibility.

(i) Limitations on Action by the Corporation. Unless at least two-thirds (2/3) of the Mortgagees (based on one vote for each first mortgage owned) or two-thirds (2/3) of the Members have given their prior written approval, a Permitted Title Holder, the Board of Directors and the Owners may not: (i) except as authorized by Paragraph 21(a) (but subject to the limitations of Paragraph 17), by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Community Area (but the granting of easements for public utilities or other public purposes consistent with the intended use of the Community Area shall not be deemed a transfer for the purposes of this clause); (ii) fail to maintain fire and extended coverage insurance on insurable Community Area and Common Facilities on a current replacement cost basis in the amount of one hundred percent (100%) of the insurable value (based on current replacement cost); (iii) use hazard insurance proceeds for losses to any Community Area or Common Facilities for other than the repair, replacement or reconstruction of the Community Area or Common Facilities; (iv) subject to Paragraph 19(b)(ii)(5), the last sentence of Paragraph 19(b)(iv) and 19(l)(iii), change the method of determining the obligations, Assessments, dues or other charges that may be levied against the Owner of a Unit; (v) by act or omission change, waive or abandon any scheme of regulations or their enforcement pertaining to the

architectural design or the exterior appearance of Units, or the maintenance and upkeep of the Community Area and Common Facilities; or (vi) fail to maintain the Reserve for Replacements in the amount required by this Declaration or any Supplemental Declaration

(j) Mergers. Upon a merger or consolidation of another corporation with the Corporation, its properties, rights and obligations may, as provided in its articles of incorporation, by operation of law be transferred to another surviving or consolidated corporation or, alternatively, the properties, rights and obligations of another corporation may by operation of law be added to the properties, rights and obligations of the Corporation as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established by this Declaration within the Tract together with the covenants and restrictions established upon any other properties as one scheme. No merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Tract except as hereinafter provided.

19 Assessments

(a) Creation of the Lien and Personal Obligation of Assessments. Declarant hereby covenants, and each Owner of any Lot by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Corporation the following: (1) General Assessments, (2) the Community Area Initial Assessment, (3) Community Area Debt Service Assessments, (4) annual and special Parcel Assessments, (5) Architectural Control Assessments (to the extent levied) and (6) Special Assessments, such Assessments to be established and collected as hereinafter provided

If two (2) or more Lots originally shown on a Plat are consolidated as a single Lot by virtue of partial vacation of a Plat, or if a Lot is divided by conveyance of portions thereof to owners of adjacent Lots, then, in either such event, so long as the consolidated or divided Lot is used in its entirety by one or more Owners of contiguous Lots, the vacated or divided Lot(s) shall cease to be Lot(s) for purposes of Assessments under this Paragraph 19

All Assessments, together with interest thereon and costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which each Assessment is made until paid in full. Each Assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due.

(b) General Assessment.

(i) Purpose of Assessment. The General Assessment levied by the Corporation shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners of Lots and Occupants of Units and for the improvement, maintenance, repair, replacement and operation of the Community Area and Common Facilities

(ii) Basis for Assessment

(1) Residential Lots Subject to subparagraph (h) below, each Residential Lot shall be assessed at a uniform rate without regard to whether a Living Unit or other improvements have been constructed upon the Lot, except that if no Living Unit has been constructed on the Lot, the Corporation shall waive with respect to such undeveloped Lot that part of any Assessment that is attributable to services (such as trash removal) that are provided only with respect to improved Lots

(2) Commercial Lots.

(A) Subject to subparagraph (h) below, each unimproved Commercial Lot shall be assessed at a uniform rate without regard to whether a Commercial Unit, Multifamily Structure or Multiuse Structure has been constructed upon the Lot, except that the Corporation shall waive with respect to such undeveloped Lot that part of any Assessment that is attributable to services (such as trash removal) that are provided only with respect to improved Lots.

(B) Each Commercial Lot upon which a Multifamily Structure has been constructed shall be assessed at a rate equitably determined by the Board of Directors which takes into account the number of Living Units located on the Lot and the rights of Occupants of such Living Units to the use and enjoyment of the Community Area. The General Assessment for any such Lot shall not exceed the product of (i) the number of Living Units located on the Lot and (ii) seventy-five percent (75%) of the

amount of the General Assessment for Residential Lots established on the basis set forth in Clause (1) above if Occupants have a right to use the Recreation Centers or, if Occupants do not have such right, fifty percent (50%) of the amount of the General Assessment for Residential Lots. Owners of Multifamily Structures may elect not to be subject to assessment on account of Maintenance Costs of Recreation Centers in which event Occupants of such Multifamily Structures shall not have a right to use the Recreation Centers.

(C) Each Commercial Lot improved with one or more Commercial Units (not located in a Multiuse Structure) shall be assessed at a rate which bears the same proportion to all other improved Commercial Lots (other than those improved with Multifamily Structures) as the gross square footage of the Commercial Unit(s) located on such Lot bears to the gross square footage of all Commercial Units.

(D) Each Commercial Lot improved with a Multiuse Structure shall be assessed as follows: with respect to that part of the Multiuse Structure that consists of one or more Commercial Units, in the same manner as specified in subclause (C) above; and with respect to that part of the Multiuse Structure that consists of one or more Living Units, in the same manner as specified in subclause (B) above.

(E) The General Assessment for any unimproved Commercial Lot shall not exceed the amount of the General Assessment for unimproved Residential Lots in the Primary Area.

(F) The General Assessment for any Commercial Lot upon which one or more Commercial Units have been constructed (including Commercial Units located in a Multiuse Structure) shall not exceed the product of (i) the result obtained by dividing the gross square footage of the Commercial Unit by two thousand five hundred

(2,500) and (ii) the amount of the General Assessment established for Residential Lots on the basis set forth in Clause (1) above.

(G) The General Assessment for any Commercial Lot on which a Multiuse Structure has been constructed shall not, with respect to Living Units located therein, exceed the amount specified in subclause (B) above

(3) Lots Owned by Declarant or Permitted Title Holder Notwithstanding the foregoing provisions of this subparagraph (ii), no Lot owned by Declarant or a Permitted Title Holder shall be assessed by the Corporation except such Lots as have been improved by the construction thereon of Units, which improved Lots shall be subject to assessment as provided in Clauses (1) or (2) above; provided, however, Lots improved by the construction thereon of Village Community Buildings or an Education Facility shall in no event be subject to Assessments

(4) Condominiums Condominiums shall be separately assessed as a Lot applying the provisions of the foregoing Clauses (1) and (2). If a Multiuse Structure is a Horizontal Property Regime, then each Condominium therein shall be separately assessed applying the provisions of the foregoing Clauses (1) and (2)

(5) Change in Basis. The basis for assessment may be changed upon recommendation of the Board of Directors if such change is approved by (i) two-thirds (2/3) of the Members or two-thirds (2/3) of the Mortgagees (based on one vote for each first mortgage owned) who are voting in person or by proxy at a meeting of Members duly called for this purpose; provided, however, if a proposed change would adversely affect the Owners of a particular class of property, such change in the basis for assessment may be made only if approved by a majority of the Owners adversely affected. For purposes of this Clause (5), "classes of property" include Living Units not located in a Multifamily

Structure or Multiuse Structure, Multifamily Structures, Multiuse Structures and Commercial Units not located in a Multiuse Structure, each as a separate class

(iii) Method of Assessment. By a vote of a majority of the Directors, the Board of Directors shall, on the basis specified in subparagraph (ii), fix the General Assessment for each assessment year of the Corporation at an amount sufficient to meet the obligations imposed by this Declaration and all Supplemental Declarations upon the Corporation, including but limited to the obligation to maintain the Community Area and Common Facilities in the Village Center in accordance with the budget for Village Center Maintenance Costs established in accordance with Paragraph 19(1)(3) below. The Board of Directors shall establish the date(s) the General Assessment shall become due, and the manner in which it shall be paid.

(iv) Allocation of Assessment. Certain of the costs of maintaining, operating, restoring or replacing the Community Area and Common Facilities may be allocated among Owners of Lots on the basis of the location of the lands and improvements constituting the Community Area and Common Facilities and the intended use thereof. In determining the General Assessment, costs and expenses which in accordance with the provisions of this Declaration or a Supplemental Declaration are to be borne by all Owners shall first be allocated to all Owners. Costs and expenses which in accordance with the provisions of this Declaration or a Supplemental Declaration are to be borne by the Owners of certain Lots shall then be allocated to the Owners of such Lots. The provisions of subparagraph (ii) shall not be deemed to require that all Assessments against vacant Lots or Lots improved with comparable types of Units, Multifamily Structures or Multiuse Structures be equal, but only that each Lot be assessed uniformly with respect to comparable Lots subject to assessment for similar costs and expenses. Any category of Maintenance Cost included in the Village Center Maintenance Amount that was allocated to all Owners prior to the Applicable Date shall be allocated to all Owners subsequent to the Applicable Date. Costs of trash removal and other services provided by the Corporation to individual Lots shall not be included in the General Assessment of any Lot the Owner of which has elected to obtain the same service directly from a service provider.

(c) Community Area Initial Assessment. Unless otherwise provided in a Supplemental Declaration, on the earlier of (i) the date a Lot is conveyed by Declarant to an Owner (other than the holder of a first mortgage on such Lot in a conveyance which constitutes a deed in lieu of foreclosure), (ii) the date a Unit constructed on the Lot has been certified for occupancy by the Zoning Authority or (iii) the date a Unit on the Lot is first occupied by an Owner or Occupant upon completion of construction thereof, there shall be due and payable to the Corporation by the Owner of such Lot the following sum which shall be deposited in the Reserve for Replacements maintained by the Corporation:

- (i) a Lot on which a detached or an attached single-family residence is to be constructed, the sum of Three Hundred Dollars (\$300.00);
- (ii) a Lot on which a detached single-family residence together with an attached or detached accessory dwelling is to be constructed, the sum of Four Hundred Dollars (\$400.00);
- (iii) a Lot on which a detached single-family residence with an attached or detached home-based office is to be constructed, the sum of Five Hundred Dollars (\$500.00);
- (iv) a Lot on which a Multifamily Structure, a Multiuse Structure or a Horizontal Property Regime is to be constructed, an amount equal to the greater of Six Hundred Dollars (\$600.00) or the product of (y) the number of Living Units to be constructed in such Multifamily Structure, Multiuse Structure or Horizontal Property Regime and (z) One Hundred Dollars (\$100.00); and
- (v) a Lot on which a Commercial Unit is to be constructed, the sum of One Hundred Dollars (\$100.00) for each one thousand (1,000) square feet or portion thereof of gross floor area for

the building or buildings constructed or authorized to be constructed thereon which, in the case of a Multiuse Structure, are to be used as Commercial Units.

(d) Community Area Debt Service Assessment If any Community Area Secured Indebtedness is outstanding, the Corporation shall levy a Community Area Debt Service Assessment against each Lot (other than a Lot exempt from the General Assessment pursuant to subparagraph (b)(ii)(3) above) in an amount established by the Board of Directors which is sufficient to meet all debt service requirements on such indebtedness but does not exceed, in any fiscal year of the Corporation, an amount equal to one quarter of one percent (0.0025%) of the original sales price of the Lot. Declarant shall certify to the Corporation upon sale of each Lot the original sales price of such Lot. The Community Area Debt Service Assessment shall be held and disbursed in accordance with the provisions of Paragraph 18(f).

(e) Parcel Assessments

(i) Purpose of Assessments Parcel Assessments shall be used for such purposes as are authorized by the Supplemental Declaration for such Parcel.

(ii) Method of Assessment An annual Parcel Assessment shall be levied by the Corporation against Lots in a Parcel (except the Village Center Parcel or a Parcel which is a Horizontal Property Regime) using the basis set forth in the Supplemental Declaration for such Parcel, and collected and disbursed by the Corporation. The Board of Directors shall fix in accordance with the By-Laws and the provisions of any Supplemental Declaration the annual Parcel Assessment for each Parcel, the date(s) such Assessment shall become due, and the manner in which it shall be paid.

(iii) Special Assessments In addition to the annual Parcel Assessment, the Corporation may levy in any fiscal year a special Parcel Assessment against one or more of the Lots in a Parcel (except the Village Center Parcel or a Parcel which is a Horizontal Property Regime) for the purpose of (A) defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Parcel, including fixtures and personal property related thereto, provided that any such Assessment shall have the assent of a majority of the Owners of Lots in the Parcel who are voting in person or by proxy at a meeting of such Owners duly called for this purpose or (B) defraying any Maintenance Costs



incurred in satisfying any requirements imposed on the Corporation by a Supplemental Declaration relating to a Parcel. Any Special Assessment pursuant to this clause (iii) shall be allocated equally among all Lots in the Parcel except those exempt from the General Assessment.

(f) Architectural Control Assessment If any Owner or Person acting for or on behalf of, or pursuant to the authorization or acquiescence of, an Owner fails to comply with Building Guidelines or other requirements for construction of improvements, landscaping and other Building Activities or maintenance of a Lot (including but not limited to installation of required Street Trees or the filing of a Lot Development Plan) or any restrictive covenant or condition specified in a Supplemental Declaration for the Parcel in which such Owner's Lot is located (exclusive of the Village Center Parcel) and/or the provisions of Paragraphs 20 or 22 of this Declaration, then the Corporation may levy against the Lot owned by such Owner an Assessment in an amount determined by the Board of Directors which does not exceed the greater of (i) Five Hundred Dollars (\$500.00) for each day that such failure continues after written notice thereof is given by Declarant or the Corporation to such Owner or (ii) One Hundred Thousand Dollars (\$100,000.00). Such Assessment shall constitute a lien upon the Lot of such Owner and may be enforced in the manner provided in subparagraph (i) below. The levy of an Architectural Control Assessment shall be in addition to, and not in lieu of, any other remedies available to Declarant and/or the Corporation provided in this Declaration, at law or in equity in the case of the failure of an Owner to comply with the provisions of this Declaration and all applicable Supplemental Declarations (exclusive of the Village Center Supplemental Declaration).

(g) Special Assessment In addition to such other Special Assessments as may be authorized herein, the Corporation may levy in any fiscal year a Special Assessment applicable to that year and not more than the next four (4) succeeding fiscal years for the purpose of defraying, in whole or in part, the cost of any construction, repair, or replacement of a capital improvement upon the Community Area, including fixtures and personal property relating thereto or any Common Facilities, provided that any such Assessment shall have the assent of a majority of the votes of the Members whose Lots are subject to assessment with respect to the capital improvement who are voting in person or by proxy at a meeting of Members duly called for this purpose. Any Special Assessment pursuant to this subparagraph (g) shall be allocated equally among all Lots in the Tract except those exempt from the General Assessment.

(h) Date of Commencement of Assessments The General Assessment and Parcel Assessments (exclusive of Parcel Assessments applicable to Commercial Lots in the Village Center Parcel) shall commence with respect to assessable Lots within a Parcel on the first day of the month following conveyance of the first Lot in

the Parcel to an Owner who is not Declarant. The initial Assessment on any assessable Lot shall be adjusted according to the days remaining in the month in which the Lot became subject to assessment. Notwithstanding the foregoing, if an Owner owns more than two (2) unimproved Residential Lots or one (1) or more unimproved Commercial Lots, the General Assessment shall not commence with respect to such unimproved Lot(s) until the earlier of (i) the date the Owner completes construction of a Unit, Multifamily Structure or Multiuse Structure thereon or (ii) the first day of the ninth month following the date the Owner acquired title to the Lot(s).

(i) Effect of Nonpayment of Assessments; Remedies of the Corporation. Any Assessment not paid within thirty (30) days after the due date may upon resolution of the Board of Directors bear interest from the due date at a percentage rate no greater than the current statutory maximum annual interest rate, to be set by the Board of Directors for each assessment year. The Corporation shall be entitled to institute in any court of competent jurisdiction any lawful action to collect a delinquent Assessment plus any expenses or costs, including attorneys' fees, incurred by the Corporation in collecting such Assessment. If the Corporation has provided for collection of any Assessment in installments, upon default in the payment of any one or more installments, the Corporation may accelerate payment and declare the entire balance of said Assessment due and payable in full. No Owner may waive or otherwise escape liability for the Assessments provided for herein by nonuse of the Community Area or the Common Facilities or abandonment of his Lot.

(j) Subordination of the Lien to Mortgages. To the extent specified herein, the lien of the Assessments provided for herein against a Lot shall be subordinate to the lien of any recorded first mortgage covering such Lot and to any valid tax or special assessment lien on such Lot in favor of any governmental taxing or assessing authority. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall, however, extinguish the lien of such Assessments as to payments which became due more than six (6) months 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.

(k) Certificates. The Corporation shall, upon demand by an Owner, at any time, furnish a certificate in writing signed by an officer of the Corporation that the Assessments on a Lot have been paid or that certain Assessments remain unpaid, as the case may be.

(l) Annual Budget.

(1) Adoption of Budget. By a majority vote of the Directors, the Board of Directors shall adopt an annual budget for the subsequent fiscal year, which shall provide for allocation of expenses in such a manner that the obligations imposed on the Corporation by the Declaration and all Supplemental Declarations will be met

(2) Certification of Village Center Maintenance Costs. On or before the Applicable Date, Declarant shall certify to the Corporation the annual Maintenance Costs with respect to the Community Area within the Village Center incurred by the Corporation and Declarant for each of the two (2) fiscal years prior to the Applicable Date and incurred or to be incurred for the fiscal year in which the Applicable Date occurs. The sum of such amount divided by three (3) shall constitute the "Base Village Center Maintenance Amount."

(3) Village Center Budget. The annual budget adopted pursuant to subparagraph (a) above for each fiscal year subsequent to the fiscal year in which the Applicable Date occurs shall include an amount which is not less than the sum of (i) the Base Village Center Maintenance Amount and (ii) the product of (A) the Base Village Center Amount and (B) the difference between the Consumer Price Index for All Urban Consumers (All Items) ("Index") published by the Bureau of Labor Statistics of the United States Department of Labor (or any generally accepted substitute for such index if it is no longer published) for the preceding fiscal year and the Index for the year prior to the year in which the Applicable Date occurs. The amount thus determined each year is referred to as the "Village Center Maintenance Amount." In establishing the annual budget, the Board of Directors shall give good faith consideration to the amount recommended by the Association to be included therein to Maintain the Village Center.

20. Architectural Control

(a) The Architectural Review Board. An Architectural Review Board consisting of three (3) or more Persons as specified in the By-Laws shall, prior to the Applicable Date, be appointed by Declarant. Thereafter, the Architectural Review Board shall be appointed by the Board of Directors of the Corporation.

(b) Purpose. The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the Tract (exclusive of the Village Center Parcel) and of all improvements thereon in such manner as to preserve and enhance values, to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography, to implement the development standards and guidelines set forth in the Zoning Ordinance and to assure compliance with the Building Guidelines established by Declarant or the Architectural Review Board for WestClay (exclusive of the Village Center Parcel).

(c) Building Activity. Except as otherwise expressly provided in this Declaration or a Supplemental Declaration, and excluding from the provisions of this Paragraph 20 all Commercial Lots located in the Village Center Parcel, no improvements, alterations, repairs, change of colors, excavations, changes in grade, planting, installation or modification of signage or other work that in any way alters any Lot or the exterior of the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by Declarant to another Owner (including, but not limited to, (i) construction, erection or alteration of any Unit, Multifamily Structure, Multiuse Structure, other building, fixture, equipment, fence, wall, deck, swimming pool, ball court, patio, parking area, or other structure on a Lot, or (ii) any plantings, other landscaping or exterior lighting on a Lot, (iii) the installation or alteration of any signage on any Lot, Unit, Multifamily Structure or Multiuse Structure, or (iv) the removal of any Significant Tree from a Lot, shall be made or done without the prior approval of the Architectural Review Board of a Lot Development Plan therefor. Prior to commencement by any Owner other than Declarant of any Building Activity a Lot Development Plan with respect thereto shall be submitted to the Architectural Review Board, and no Building Activity shall be commenced or continued by any Person other than Declarant without the prior written approval of the Architectural Review Board of a Lot Development Plan relating to such Building Activity. Such approval shall be in addition to, and not in lieu of, all approvals, consents, permits and/or variances required by law from governmental authorities having jurisdiction over WestClay, and no Owner shall undertake any construction activity within WestClay unless all legal requirements have been satisfied. Approval by the Architectural Review Board of a Lot Development Plan shall not be deemed to imply compliance with approvals, consents, permits and/or variances required by law from governmental authorities having jurisdiction over the Tract. Each Owner shall complete all improvements to a Lot strictly in accordance with the Lot Development Plan approved by the

Architectural Review Board. As used in this subparagraph (c), "plantings" does not include flowers, bushes, shrubs or other plants having a height of less than eighteen (18) inches.

(d) Procedures. In the event the Architectural Review Board fails to approve, modify or disapprove in writing a Lot Development Plan within sixty (60) days after notice of such plan has been duly filed with the Architectural Review Board in accordance with procedures established by Declarant or, subsequent to the Applicable Date, the Board of Directors, approval will be deemed denied. A decision of the Architectural Review Board (including a denial resulting from the failure of such Board to act on the plan within the specified period) may be appealed to the Board of Directors which may reverse or modify such decision (including approve a Lot Development Plan deemed denied by the failure of the Architectural Review Board to act on such plan within the specified period) by a two-thirds (2/3) vote of the Directors then serving.

(c) Guidelines and Standards. The Architectural Review Board shall have the power to establish and modify from time to time such written architectural, landscaping, lighting, fencing, recreational facility and signage design guidelines and standards as it may deem appropriate to achieve the purpose set forth in subparagraph (b) to the extent that such design guidelines and standards are not in conflict with the specific provisions of this Declaration, the Zoning Ordinance or, prior to the Applicable Date, the Building Guidelines established by Declarant. Any such guideline or standard may be appealed to the Board of Directors which may terminate or modify such guideline or standard by a two-thirds (2/3) vote of the Directors then serving. The Building Guidelines may establish different standards and requirements for various Lots within WestClay based on the size, location and use of such Lots and the improvements to be located thereon.

(f) Application of Guidelines and Standards. The Architectural Review Board shall apply the Building Guidelines in a fair, uniform and reasonable manner consistent with the discretion inherent in the design review process. In disapproving any Lot Development Plan, the Architectural Review Board shall furnish the applicant with specific reasons for such disapproval and may suggest modifications in such plan which would render the plan acceptable to the Board if resubmitted.

(g) Design Consultants. The Architectural Review Board may utilize the services of architects, engineers and other Persons possessing design expertise and experience in evaluating Lot Development Plans. No presumption of any conflict of interest or impropriety shall be drawn or assumed by virtue of the fact that any of such consultants are affiliated with Declarant or a Designated Builder or may, from time to time, represent Persons filing Lot Development Plans with the Architectural Review Board.

(h) Existing Violations of Declaration. The Architectural Review Board shall not be required to consider any Lot Development Plan submitted by an Owner who is, at the time of submission of such Lot Development Plan, in violation of the requirements of a Supplemental Declaration relating to the Parcel in which such Owner's Lot is located and/or the provisions of the Zoning Ordinance or this Paragraph 20, unless such Owner submits to the Architectural Review Board with such Lot Development Plan an irrevocable agreement and undertaking (with such surety as the Board may reasonably require) to remove from the Owner's Lot any improvements, landscaping, exterior lighting or signage constructed and/or installed prior to the submission of a Lot Development Plan (or constructed and/or installed in violation of a previously approved Lot Development Plan) to the extent any such previously constructed and/or installed improvement, landscaping, exterior lighting or signage is not subsequently approved by the Architectural Review Board. The Architectural Review Board shall have the power to recommend to the Board of Directors that the Corporation assess an Architectural Control Assessment against any Owner who fails to comply with the requirements of a Supplemental Declaration (other than the Village Center Supplemental Declaration), Paragraph 20 of this Declaration or the provisions of the Zoning Ordinance. Under no circumstances shall any action or inaction of the Architectural Review Board be deemed to be unreasonable, arbitrary or capricious if, at the time of such decision, the Person having submitted a Lot Development Plan for approval by the Architectural Review Board has violated a Supplemental Declaration, Paragraph 20 of this Declaration or the provisions of the Zoning Ordinance and such violation remains uncured.

(i) Exercise of Discretion. Declarant intends that the members of the Architectural Review Board exercise discretion in the performance of their duties consistent with the provisions of subparagraph (f), and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members. In any judicial proceeding challenging a determination by the Architectural Review Board and in any action initiated to enforce this Declaration in which an abuse of discretion by the Architectural Review Board is raised as a defense, abuse of discretion may be established only if a reasonable Person, weighing the evidence and drawing all inferences in favor of the Board, could only conclude that such determination constituted an abuse of discretion.

(j) Liability of Board. Neither the Architectural Review Board or any member or agent thereof, nor Declarant shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Board does not make, and shall not be deemed by virtue of any action of approval or disapproval taken by it to have made, any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.

(k) Inspection Members of the Architectural Review Board may inspect work being performed to assure compliance with these Restrictions and applicable regulations.

21. Community Area and Common Facilities

(a) Ownership The Community Area and the Common Facilities shall remain private, and neither Declarant's execution or recording of an instrument portraying the Community Area, nor the doing of any other act by Declarant is, or is intended to be, or shall be construed as, a dedication to the public of the Community Area or the Common Facilities. Declarant, the Corporation or the Association may, however, dedicate or transfer all or any part of the Community Area or the Common Facilities to any Permitted Title Holder for parks or other public purposes, to the City of Carmel or the County of Hamilton for use as public rights-of-way or to a public utility for public utility purposes, and Declarant may transfer all or any part of the Community Area to a Permitted Title Holder as contemplated by this Declaration.

(b) Density of Use Declarant expressly disclaims any warranties or representations regarding the density of use of the Community Area or any facilities located thereon or constituting a part thereof.

(c) Obligations of the Corporation The Corporation, subject to the rights of Declarant, the Association and the Owners set forth in this Declaration and the rights of any Permitted Title Holder established in an instrument conveying title to any part of the Common Area, shall be responsible for the exclusive management and control of the Community Area and all improvements thereon (including Common Facilities and other furnishings and equipment related thereto), and, except as otherwise provided herein, in a Supplemental Declaration, or in an instrument of conveyance to a Permitted Title Holder, shall keep the Community Area and Common Facilities in good, clean, attractive and sanitary condition, order and repair. The Corporation may, with the consent of the Board of Directors of the Association, transfer to the Association responsibility for management, control and/or maintenance of Community Area and Common Facilities located in the Village Center.

(d) Easements of Enjoyment

(i) Owners No Person shall have any right or easement of enjoyment in or to the Community Area except to the extent granted by, and subject to the terms and provisions of, this Declaration or a Supplemental Declaration. Such rights and easements as are thus granted shall be appurtenant to and shall pass with the title to every Lot for whose benefit they are granted. Unless otherwise provided in a Supplemental Declaration or a Plat, all

Owners may use the Paths, the Village Community Buildings, the Parks and the Commons and the Site Furniture and Facilities located thereon or therein, subject to the reserved rights of Declarant, the Corporation and the Association. The Owners of Lots abutting the Lake or a Pond may use the Lake or Pond which abuts such Owner's Lot, but such use shall be limited to fishing and such other uses as may be authorized by resolution adopted by the Board of Directors. Subject to restrictions on points of access, the Lake and the Ponds may be used by all Owners, but only for fishing and such other purposes as may be authorized by the Board of Directors. No Owner whose Lot does not abut the Lake or a Pond shall have any right of access to the Lake or a Pond over any Lot, but only such right of access over the Community Area as may be designated on a Plat or by the Board of Directors for such purpose.

(ii) Occupants. Occupants who are not also Owners may use and enjoy the Community Area only to the extent specified in subparagraph (f) or as explicitly authorized elsewhere in this Declaration, in a Supplemental Declaration or by the Board of Directors. Occupants shall have the same rights as Owners to the use of the Paths, the Village Community Buildings, the Parks and the Commons except that the Board of Directors may restrict or preclude the use of the Recreation Centers by Occupants of Commercial Units and Multifamily Structures if no part of the Maintenance Costs of the Recreation Centers are assessed to Owners of Commercial Units or Multifamily Structures. To the extent Owners of Lots that do not abut the Lake or a Pond are granted rights of access to the Lake or a Pond over Community Area designated for that purpose, Occupants (other than Occupants of Commercial Units) shall enjoy the same rights. In the adoption of rules and regulations relating to the use of Community Area and Common Facilities, the Board of Directors of the Corporation or Association, as applicable, shall not discriminate against Occupants of Multifamily Structures or of Living Units located in Multiuse Structures but may restrict or preclude use of the Recreation Centers by such Occupants as heretofore provided.

(c) Extent of Easements. The easements of enjoyment created hereby shall be subject to the following:

(i) the right of the Corporation and/or the Association to establish reasonable rules for the use of the Community Area (including but not limited to use of identification cards) and to charge reasonable fees for the use of any meeting or banquet facilities (but



not recreational facilities) located in or constituting a part of the Community Area;

(ii) the right of the Corporation and/or the Association to suspend the right of an Owner and all Persons whose right to use the Paths, the Lake, the Ponds, the Village Community Buildings, the Commons or the Parks derives from such Owner's ownership of a Lot (including Occupants of the Lot) to use such portions of the Community Area for any period during which any Assessment against the Owner's Lot remains unpaid for more than thirty (30) days after notice;

(iii) the right of the Corporation and/or the Association to suspend the right of an Owner or any Person claiming through the Owner (including Occupants of the Unit) to use the Paths, the Lake, the Ponds, the Village Community Buildings, the Commons or the Parks for a period not to exceed sixty (60) consecutive days for any other infraction of this Declaration, any Supplemental Declaration or the Register of Regulations; provided, however, that Occupants of a Multifamily Structure or Multiuse Structure who are not personally responsible for the infraction and who otherwise have a right of use shall not be denied such use as a consequence of an infraction by another Occupant of such Multifamily Structure or Multiuse Structure; provided, however, that a parent may be deemed personally responsible for the infraction of a minor;

(iv) the rights of the holder of any Common Area Secured Indebtedness;

(v) the right of the Corporation to mortgage any or all of the Community Area, the facilities constructed thereon and the Common Facilities for the purposes of improvements to, or repair of, the Community Area, the facilities constructed thereon or the Common Facilities, pursuant to approval of a majority of the votes of the Members voting in person or by proxy at a regular meeting of the Corporation or a meeting duly called for this purpose;

(vi) the right of the Corporation to dedicate or transfer all or any part of the Community Area and/or the Common Facilities to any public agency, authority or utility exclusively for purposes permitted herein, but subsequent to the Applicable Date no such dedication or transfer shall be effective unless an instrument signed by the appropriate officers of the Corporation acting pursuant to authority granted by a majority of the votes of the Members present

and voting at a duly constituted meeting of the Members, agreeing to such dedication or transfer, has been recorded; and

(vii) the right of Declarant in any Supplemental Declaration or Plat to restrict the use of Community Area and/or Common Facilities located in a Section or Parcel to (a) Owners and/or Occupants of Units, Multifamily Structures or Multiuse Structures located in such Section or Parcel or (b) to other Owners of less than all of the Lots in the Tract

(f) Additional Rights of Use. The members of the family of every Person who has a right of enjoyment to all or part of the Community Area and the Common Facilities may use the Community Area and the Common Facilities (or part thereof) on the same terms and subject to the same limitations as such Person subject to the terms of any instrument of conveyance of such Community Area or Common Facilities to a Permitted Title Holder and to such general regulations consistent with the provisions of this Declaration and all Supplemental Declarations as may be established from time to time by the Corporation and/or the Association and included within the Register of Regulations. Except as otherwise provided herein or in a Supplemental Declaration, the Corporation or the Association may restrict use of the Community Area and Common Facilities by guests of Persons whose use thereof is authorized herein

(g) Damage or Destruction by Owner. In the event the Community Area or any Common Facility is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents, or member of his family, such Owner authorizes the Corporation to repair said damaged area and the Corporation shall repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Corporation in the discretion of the Corporation. An amount equal to the costs incurred to effect such repairs shall be assessed against such Owner as a Special Assessment and shall constitute a lien upon the Lot of said Owner.

(h) Conveyance of Title. Declarant may retain the legal title to the Community Area and the Common Facilities until the Applicable Date, but notwithstanding any provision herein, the Declarant hereby covenants that it shall convey such of the Lake, the Ponds, the Private Drives (exclusive of alleys), the Village Community Buildings, the Parks, the Commons and the Common Facilities which Declarant acquires, develops or constructs and such other of the Community Area to which Declarant holds title to a Permitted Title Holder, free and clear of all liens and other financial encumbrances exclusive of liens securing Community Area Secured Indebtedness and the lien for taxes not yet due and payable, not later than the Applicable Date.

22. Use of Tract

(a) Protective Covenants

(i) Land Use. Lots may be used only for the purposes authorized by the Zoning Ordinance

(ii) Nuisances. No nuisance shall be permitted to exist or operate upon any Lot so as to be detrimental to any other Lot in the vicinity thereof or to its occupants

(iii) Other Restrictions. Declarant may impose additional Restrictions in any Plat, Supplemental Declaration, Building Guidelines or other written instrument notice of which is given to Owners. In addition, the Architectural Review Board may adopt general rules and regulations to implement the purposes set forth in Paragraph 20(b) and/or to supplement any covenants or restrictions set forth in a Supplemental Declaration or the Building Guidelines, including but not limited to rules to regulate animals, antennas, signs, fences, walls and screens, mailboxes, exterior light fixtures, storage tanks, awnings, storage and use of recreational vehicles, storage and use of machinery, use of outdoor drying lines, recreational facilities, trash containers, and planting, maintenance and removal of vegetation on the Tract. The Architectural Review Board may adopt general rules and regulations appropriate to each Parcel (other than the Village Center Parcel), which rules and regulations may vary among Parcels. Such general rules may be amended by a two-thirds (2/3) vote of the Architectural Review Board. Subsequent to the Applicable Date, any such amendment may be made only after a public hearing for which due notice to all affected Owners has been provided, and if such amendments are approved by a two-thirds (2/3) vote of the Board of Directors. All general rules and any subsequent amendments thereto shall be placed in the Register of Regulations and shall constitute Restrictions

(iv) Exceptions. The Architectural Review Board may authorize exceptions to or variances from the general rules and regulations adopted pursuant to clause (iii) if the Architectural Review Board can show good cause and acts in accordance with adopted guidelines and procedures.

(b) Maintenance of Tract. To the extent that exterior maintenance is not provided for in a Supplemental Declaration, each Owner shall keep all Residential Lots owned by the Owner, and all improvements therein or thereon, in good order

and repair and free of debris including, but not limited to, the seeding, watering, and mowing of all lawns, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management as determined by the Architectural Review Board. In the event an Owner of any Residential Lot in the Tract shall fail to maintain the premises and the improvements situated thereon, as provided herein, the Corporation, after notice to the Owner as provided by the By-Laws and approval by two-thirds (2/3) vote of the Board of Directors, shall have the right to enter upon said Lot to correct drainage and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon. All costs related to such correction, repair or restoration shall become a Special Assessment upon such Lot

23. Easements.

(a) Plat Easements In addition to such easements as are created elsewhere in this Declaration or in a Supplemental Declaration and as may be created by Declarant pursuant to other written instruments recorded in the office of the Recorder of Hamilton County, Indiana, Lots are subject to drainage easements, sewer easements, utility easements, entry way easements, landscape easements, water access easements, community area access easements, pathway easements and nonaccess easements, either separately or in any combination thereof, as shown on the Plats, which are reserved for the use of Declarant, Owners, the Corporation, the Architectural Review Board, public utility companies and governmental agencies as follows:

(i) Drainage Easements (DE) are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of WestClay and adjoining ground and/or public drainage systems; and it shall be the individual responsibility of each Owner to maintain the drainage across his own Lot. Under no circumstance shall said easement be blocked in any manner by the construction or reconstruction of any improvement, nor shall any grading restrict, in any manner, the waterflow. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage, by Declarant, and by the Architectural Review Board, but neither Declarant nor the Architectural Review Board shall have any duty to undertake any such construction or reconstruction. Said easements are for the mutual use and benefit of the Owners.

(ii) Sewer Easements (SE) are created for the use of the local governmental agency having jurisdiction over any storm and

sanitary waste disposal system which may be designed to serve WestClay for the purpose of installation and maintenance of sewers that are a part of said system.

(iii) Utility Easements (UE) are created for the use of Declarant, the Corporation, the Association and all public or municipal utility companies, not including transportation companies, for the installation and maintenance of mains, ducts, poles, lines, wires and other facilities, as well as for all uses specified in the case of sewer easements.

(iv) Entry Way Easements (EWE) are created for the use by Declarant, the Architectural Review Board, the Corporation and the Association for the installation, operation and maintenance of the Entry Ways.

(v) Landscape Easements (L.E) are created for the use by Declarant, the Architectural Review Board, the Corporation and the Association for the planting and maintenance of trees, shrubs and other plantings.

(vi) Water Access Easements (WAE) are created for the use of Declarant, the Corporation, the Association and the Drainage Board for the purpose of gaining access to the Lake and the Ponds in the course of maintenance, repair or replacement of any thereof.

(vii) Community Area Access Easements (CAE) are created for the use of Declarant, the Corporation and the Association for the purpose of gaining access to the Parks and the Commons in the course of maintenance, repair or replacement thereof and for the use of Owners for the purpose of gaining access to such Community Area to enjoy the use thereof to the extent authorized herein or in a Supplemental Declaration.

(viii) Pathway Easements (PE) are created for the installation by Declarant, the maintenance by the Corporation and the use by the Owners of the Paths and Path Lights.

(ix) Non-Access Easements (NAE) are created to preclude access from certain Lots to abutting rights-of-way across the land subject to such easements.

(k) Alley Easements (AE) are created to afford public access over Private Drives to the rear or side of Lots and for all uses specified in the case of utility easements.

All easements mentioned herein include the right of reasonable ingress and egress for the exercise of other rights reserved. No structure, including fences, shall be built on any drainage, sewer or utility easement if such structure would interfere with the utilization of such easement for the purpose intended or violate any applicable legal requirement or the terms and conditions of any easement specifically granted to a Person who is not an Owner by an instrument recorded in the Office of the Recorder of Hamilton County, Indiana, but a paved driveway necessary to provide access to a Lot from a public street or Private Drive and a sidewalk installed by or at the direction of Declarant (and replacements thereof) shall not be deemed a "structure" for the purpose of this Restriction.

(b) General Easement. There is hereby created a blanket easement over, across, through and under the Tract for ingress, egress, installation, replacement, repair and maintenance of underground utility and service lines and systems, including but not limited to water, sewers, gas, telephones, electricity, television, cable or communication lines and systems. By virtue of this easement it shall be expressly permissible for Declarant or the providing utility or service company to install and maintain facilities and equipment on the Tract and to excavate for such purposes if Declarant or such company restores the disturbed area as nearly as is practicable to the condition in which it was found. No sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or relocated in a Section or Parcel except as proposed and approved by Declarant prior to the Applicable Date or by the Architectural Review Board thereafter. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Corporation shall have the right to grant such easement on the Tract without conflicting with the terms hereof. This blanket easement shall in no way affect any other recorded easements on the Tract, shall be limited to improvements as originally constructed, and shall not cover any portion of a Lot upon which a Unit, Multifamily Structure or Multiuse Structure has been constructed or is proposed for construction pursuant to a Lot Development Plan which has been approved by the Architectural Review Board or the Design Review Board.

(c) Public Health and Safety Easements. An easement is hereby created for the benefit of, and granted to, all police, fire protection, ambulance, delivery vehicles, and all similar Persons to enter upon the Community Area in the performance of their duties.

(d) Drainage Board Easement. An easement is hereby created for the benefit of, and granted to, the Drainage Board to enter the Tract and all Lots therein.

to the extent necessary to exercise its rights with respect to any legal drain constituting a part of the Drainage System

(e) Crossing Underground Easements Easements utilized for underground service may be crossed by driveways, walkways, Paths, Water Access Easements and Community Area Access Easements provided prior arrangements are made with the utility company furnishing service. Such easements as are actually utilized for underground service shall be kept clear of all other improvements, including buildings, decks, patios, or other pavings, other than crossings, driveways, walkways, Paths, Water Access Easements or Community Area Access Easements, and neither Declarant nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, agents, employees, or servants to shrubbery, trees, flowers or other improvements of the Owner located on the land covered by said easements

(f) Declarant's Easement to Correct Drainage For a period of ten (10) years from the date of conveyance of the first Lot in a Section or Parcel, Declarant reserves a blanket easement and right on, over and under the ground within that Section or Parcel to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary, following which Declarant shall restore the affected property to its original condition as nearly as practicable. Declarant shall give reasonable notice of its intention to take such action to all affected Owners, unless in the opinion of Declarant an emergency exists which precludes such notice

(g) Water Retention The Owner of each Lot, by acceptance of a deed thereto, consents to the temporary storage (detention) of storm water within the drainage easements (DE) on such Owner's Lot

24. Use of Lots During Development

(a) By Declarant Notwithstanding any provisions to the contrary contained herein or in any other instrument or agreement, Declarant or its sales agents or contractors, or any Designated Builder, may maintain during the period of construction and sale or rental of Lots and Units in the Tract or the Development Area, upon such portion thereof as is owned or leased by Declarant or any Designated Builder, such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction, sale or rental of Lots and Units, including, but without limiting the generality thereof, a business office, storage area, construction yards, signs, model Units and sales or leasing offices. Declarant specifically reserves the right to maintain a sales office in, and make other use of, the

Village Community Buildings during the period that it is engaged in the sale of Lots in WestClay

(b) By Builders Notwithstanding any provisions to the contrary contained herein, a builder who has constructed a Living Unit in WestClay may, with the prior consent of the Board of Directors, use such Living Unit as a "model" home and may hold such home open to the public, either individually or as part of a "home show" approved by the Board of Directors for such reasonable period as the Board of Directors may specify. With the approval of Declarant and the consent of the Owner thereof, undeveloped Lots adjacent to or in proximity to such model home may be used for parking by visitors to such model home

25 Enforcement The Corporation, any Owner or Declarant shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration and of any Supplemental Declarations, but neither Declarant nor the Corporation shall be liable for damage of any kind to any Person for failure either to abide by, enforce or carry out any of the Restrictions. No delay or failure by any Person to enforce any of the Restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that Person of the right to do so thereafter, or an estoppel of that Person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the Restrictions. In any action to enforce this Declaration, the Person seeking enforcement shall be entitled to recover all costs of enforcement, including attorneys' fees, if it substantially prevails in such action.

26. Limitations on Rights of the Corporation Prior to the Applicable Date, the Corporation may not use its resources nor take a public position in opposition to the General Plan of Development or to changes thereto proposed by Declarant. Nothing in this paragraph shall be construed to limit the rights of the Members acting as individuals or in affiliation with other Members or groups as long as they do not employ the resources of the Corporation or identify themselves as acting in the name, or on the behalf, of the Corporation.

27. Approvals by Declarant Notwithstanding any other provisions hereof, prior to the Applicable Date, the following actions shall require the prior approval of Declarant: the addition of real estate to the Tract; dedication or transfer of the Community Area; mergers and consolidations of Sections or Parcels within the Tract or of the Tract with other real estate; mortgaging of the Community Area; amendment of this Declaration or any Supplemental Declaration; changes in the basis for assessment or the amount, use and time of payment of the Community Area Initial Assessment; and the adoption or modification of Building Guidelines.

28 Mortgages

(a) Notice to Corporation Any Owner who places a first mortgage lien upon his Unit, Multifamily Structure or Multiuse Structure or the Mortgagee shall



notify the Secretary of the Board of Directors of such mortgage and provide the name and address of the Mortgagee. A record of such Mortgagee's name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of the Declaration, any Supplemental Declaration, the Articles or the By-Laws (the "Organizational Documents") shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by the Organizational Documents shall be required and no Mortgagee shall be entitled to vote by virtue of the Organizational Documents or a proxy granted to such Mortgagee in connection with the mortgage.

(b) Notices to Mortgagees The Corporation shall promptly provide to any Mortgagee of whom the Corporation has been provided notice under subparagraph (a) above notice of any of the following:

(i) Any condemnation or casualty loss that affects a material portion of the Community Area;

(ii) Any delinquency in the payment of any Assessment owed by the Owner of any Unit, Multifamily Structure or Multiuse Structure on which said Mortgagee holds a mortgage or any default by an Owner under the Organizational Documents, if said delinquency or default continues for more than sixty (60) days;

(iii) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Corporation;

(iv) Any proposed action that requires the consent of a specified percentage of Mortgagees; and,

(v) Any proposed amendment of the Organizational Documents effecting a change in (A) the interests in the Community Area appertaining to any Lot or the liability for Maintenance Costs appertaining thereto, (B) the vote appertaining to a Lot or (C) the purposes for which any Lot or the Community Area are restricted

(c) Notice of Unpaid Assessments The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such mortgagee or purchaser a statement setting forth the amount of the unpaid Assessments against the Lot and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid Assessments in excess of the amount set forth in such statement

(d) Financial Statements. Upon the request of any Mortgagee, the Corporation shall provide to said Mortgagee the most recent financial statement prepared on behalf of the Corporation.

(e) Payments by Mortgagees. Any Mortgagee may (i) pay taxes or other charges that are in default and that may or have become a lien upon the Community Area or any part thereof and (ii) pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage for the Community Area in case of a lapse of a policy. A Mortgagee making such payments shall be entitled to immediate reimbursement from the Corporation.

## 29 Amendments

(a) Generally. Subject to subparagraphs (c) and (d), this Declaration may be amended at any time by an instrument signed by (i) the appropriate officers of the Corporation acting pursuant to the authority granted by not less than two-thirds (2/3) of the votes of the Members cast at a meeting duly called for the purpose of amending this Declaration and (ii), to the extent required by Paragraph 27. Declarant

(b) By Declarant. Subject to subparagraph (c) but without regard to subparagraphs (a) and (d), Declarant hereby reserves the right prior to the Applicable Date unilaterally to amend and revise the standards, covenants and restrictions contained in this Declaration or any Supplemental Declaration. Such amendments shall be in writing, executed by Declarant, and recorded with the Recorder of Hamilton County, Indiana. No such amendment, however, shall restrict or diminish the rights or increase or expand the obligations of Owners with respect to Lots conveyed to such Owners prior to the amendment or adversely affect the rights and interests of Mortgagees holding first mortgages on Lots at the time of such amendment. Declarant shall give notice in writing to such Owners and Mortgagees of any amendments. Except to the extent authorized in Paragraph 23(b), Declarant shall not have the right at any time by amendment of this Declaration or any Supplemental Declaration to grant or establish any easement through, across or over any Lot which Declarant has previously conveyed without the consent of the Owner of such Lot.

(c) Approval by Zoning Authority. No amendment which would eliminate, waive or qualify a requirement set forth herein for the consent of or approval by the Zoning Authority shall be effective unless approved in writing by the Zoning Authority.

(d) Class Approval. No amendment which would limit or impair the rights granted herein or in any Supplemental Declaration to, or add to the burdens imposed by this Declaration or any Supplemental Declaration on, the Owners of Commercial Units, Multifamily Structures or Multiuse Structures (or any Units

therein) and no amendment to Paragraphs 18, 19, 21(d), (e) or (f) or this Paragraph 29 shall be effective unless approved by not less than fifty-one percent (51%) of the Owners of Commercial Units, Multifamily Structures and Multiuse Structures (and all Units therein).

(e) Effective Date Any amendment shall become effective upon its recordation in the Office of the Recorder of Hamilton County, Indiana.

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

31 Duration The foregoing covenants and restrictions are for the mutual benefit and protection of the present and future Owners, the Corporation, and Declarant, and shall run with the land and shall be binding on all parties and all Persons claiming under them until January 1, 2030, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part by vote of those Persons who are then the Owners of a majority of the Lots in the Tract.

32 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.

33 Non-Liability of Declarant Declarant shall not have any liability to an Owner, Occupant or any other Person with respect to drainage on, over or under a Lot or erosion of a Lot. Such drainage and erosion control shall be the responsibility of the Owner of the Lot upon which a Unit, Multifamily Structure or Multiuse Structure is constructed and of the builder of such Unit, Multifamily Structure or Multiuse Structure and an Owner, by an acceptance of a deed to a Lot, shall be deemed to agree to indemnify and hold Declarant free and harmless from and against any and all liability arising from, related to, or in connection with the erosion of or drainage on, over and under the Lot described in such deed. Declarant shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Declarant, and no duty of, or warranty by, Declarant shall be implied by or inferred from any term or provision of this Declaration.

34. Compliance with the Soil Erosion Control Plan

(a) The Plan Declarant has established and implemented an erosion control plan pursuant to the requirements and conditions of Rule 5 of 327 IAC 15, Storm Water Run-Off Associated with Construction Activity. In connection with any

construction activity on a Lot by an Owner, its contractor or the subcontractors of either, Owner shall take or cause to be taken all erosion control measures contained in such plan as the plan applies to "land disturbing activity" undertaken on a Lot and shall comply with the terms of Declarant's general permit under Rule 5 as well as all other applicable state, county or local erosion control authorities. All erosion control measures shall be performed by personnel trained in erosion control and shall meet the design criteria, standards, and specifications for erosion control measures established by the Indiana Department of Environmental Management in guidance documents similar to, or as effective as, those outlined in the Indiana Handbook for Erosion Control in Developing Areas from the Division of Soil Conservation, Indiana Department of Natural Resources.

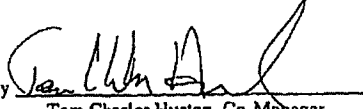
(b) **Indemnity.** The Owner of each Lot shall indemnify and hold Declarant harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which may arise out of or are connected with, or are claimed to arise out of or be connected with, any work done by such Owner, its contractor and their respective employees, agents, or subcontractors which is not in compliance with the erosion control plan implemented by the Declarant.

35 **Annexation.** Each Owner, by the acceptance of a deed to a Lot, consents to the annexation of the Tract to the City of Carmel and agrees not to remonstrate against any proposal for such annexation.

36 **Exclusive Builders.** Declarant reserves the absolute right prior to the Applicable Date to restrict construction of Units in WestClay to builders who have been approved by Declarant, such approval to be granted or withheld in the absolute discretion of Declarant. Notwithstanding the purchase of a Lot by an Owner, such Owner may not cause or authorize any Person to construct a Unit on the Lot other than a builder who has been approved in writing by Declarant.

IN TESTIMONY WHEREOF, Declarant has executed this Declaration as of the date set forth above.

BRENNICK TND COMMUNITIES, LLC

By   
Tom Charles Huston, Co-Manager

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HAMILTON )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Tom Charles Huston, a Co-Manager of Brenwick TND Communities, LLC, an Indiana limited liability company, who acknowledged the execution of the above and foregoing Declaration of Covenants and Restrictions for and on behalf of said company.

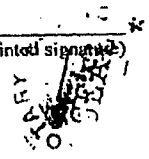
WITNESS my hand and Notarial Seal this 9th day of August, 1999

Marie M. Urbick  
Notary Public Residing in Hendrick County

My Commission Expires:

May 24, 2007

Marie M. Urbick  
(printed signature)



This instrument prepared by Tom Charles Huston, Attorney at Law, 11 South Meridian Street, Suite 1313, Indianapolis, Indiana 46204.

INDS01 TCI 32444

**DECLARATION OF COVENANTS AND RESTRICTIONS**

**EXHIBIT A**

**DESCRIPTION OF DEVELOPMENT AREA**

**EXHIBIT A**

**Description of the Development Area**

The Southwest quarter of Section 28, part of the Southeast quarter of Section 29 and part of the Northwest and Southwest quarters of Section 33 all in Township 18 North, Range 3 East of Hamilton County, Indiana, and being described as follows :

Beginning at the Northeast corner of the Southwest quarter of said Section 28; thence on an assumed bearing of South 00 degrees 01 minutes 09 seconds West along the East line of said Southwest quarter a distance of 503.75 feet; thence North 89 degrees 29 minutes 11 seconds East a distance of 605.93 feet; thence North 00 degrees 15 minutes 45 seconds East a distance of 506.25 feet to a point of the North line of the Southeast Quarter of said Section 28 distant 608.11 feet east of the Northwest corner thereof; thence North 89 degrees 15 minutes 12 seconds East along said North line a distance of 2069.03 feet to the Northeast corner of said Southeast Quarter; thence South 00 degrees 07 minutes 17 seconds West along the East line of said Southeast Quarter a distance of 2630.92 feet to the Southeast corner of said Southeast Quarter; thence South 89 degrees 23 minutes 24 seconds West along the South line of said Southeast Quarter a distance of 2672.37 feet to the Northeast corner of the Northwest Quarter of said Section 33; thence South 00 degrees 20 minutes 16 seconds East along the East line of the Northwest quarter of Section 33 a distance of 2632.10 feet to the Southeast corner thereof; thence South 00 degrees 23 minutes 56 seconds East along the East line of the Southwest quarter of said Section 33 a distance of 490.67 feet; thence South 89 degrees 20 minutes 46 seconds West parallel with the North line of said Southwest quarter a distance of 1331.44 feet to the West line of the East half of said Southwest quarter; thence North 00 degrees 25 minutes 30 seconds West along said West line a distance of 442.67 feet to a point distant 48.00 feet South from the Northwest corner of said half-quarter; thence South 89 degrees 20 minutes 46 seconds West parallel with the North line of said Southwest quarter a distance of 1331.64 feet to the West line of said Southwest quarter; thence North 00 degrees 27 minutes 03 seconds West along said West line a distance of 48.00 feet to the Northwest corner of said Southwest quarter; thence North 00 degrees 27 minutes 13 seconds West along the West line of the Northwest quarter of Section 33 a distance of 1281.55 feet; thence North 89 degrees 20 minutes 46 seconds East parallel with the South line of said Northwest quarter a distance of 1332.95 feet to the West line of the East half of said Northwest quarter; thence North 00 degrees 23 minutes 44 seconds West along said West line a distance of 1348.18 feet to the Northwest corner thereof; thence South 89 degrees 14 minutes 42 seconds West along the South line of the Southwest quarter of Section 28 a distance of 1334.33 feet to the southwest corner thereof; thence South 88 degrees 51 minutes 10 seconds West along the South line of the Southeast quarter of Section 29 a distance of 1351.40 feet to a point hereinafter referred to as Point A; thence North 01 degrees 08 minutes 50 seconds West a distance of 8.00 feet; thence North 52 degrees 30 minutes 24 seconds East a distance of 14.45 feet; thence North 22 degrees 52 minutes 44 seconds East a distance of 27.27 feet; thence North 00 degrees 36 minutes 26 seconds West a distance of 1453.10 feet; thence South 89 degrees 13 minutes 03 seconds West a distance of 107.69 feet; thence North 00 degrees 00 minutes 53 seconds West a distance of 1138.44 feet to the North line of said Southeast quarter; thence North 89 degrees 13 minutes 03 seconds East along said North line a distance of 1443.58 feet to the

Northeast corner thereof; thence North 89 degrees 14 minutes 59 seconds East along the North line of the Southwest quarter of Section 28 a distance of 2678 68 feet to the Point of Beginning Containing 534 984 acres, more or less

Also, Part of the Northwest and the Northeast Quarters of Section 28. Township 18 North. Range 3 East of the Second Principal Meridian. Hamilton County described as follows:

Beginning at a railroad spike at the southwest corner of the east half of the northwest quarter; thence North 00 degrees 00 minutes 08 seconds West along the west line of said half quarter 2631.74 to the northwest corner thereof; thence North 89 degrees 15 minutes 26 seconds East along the north line of the Northwest Quarter 693 79 feet to a railroad spike at the northwest corner of a tract of land described in a deed to Stumm, et al, and recorded as instrument number 9601331 in the Office of the Recorder of Hamilton County; thence South 00 degrees 02 minutes 24 seconds East along the west line thereof and along the west line of a tract of land described in a deed to Smith, recorded in Deed Book 154 page 17 a distance of 660.00 feet to a 5/8"x30" rebar with yellow plastic cap marked "SCHNEIDER ENG FIRM #0001" (hereinafter referred to as "REBAR/CAP") at the southwest corner of said Smith tract; thence North 89 degrees 15 minutes 26 seconds East along the south line thereof and along the south line of a tract of land described in a deed to Toll, recorded in Deed Book 310 page 838 a distance of 594 00 to a REBAR/CAP at the southeast corner of said Toll tract; thence North 00 degrees 02 minutes 24 seconds West along the east line thereof 329 99 feet to a REBAR/CAP on the westerly extension of the south line of a tract of land described in a deed to Sullivan, recorded in Deed Book 327 page 646; thence North 89 degrees 14 minutes 34 seconds East along said extension and said south line 211.43 to a REBAR/CAP at the southeast corner thereof; thence North 00 degrees 03 minutes 50 seconds West along the east line thereof 330 00 feet to a railroad spike on the north line of the Northeast Quarter; thence North 89 degrees 14 minutes 34 seconds East along said north line 120 00 feet to a railroad spike at the northwest corner of a tract of land described in a deed to Stumm, recorded in Deed Book 281 page 412; thence South 00 degrees 03 minutes 50 seconds East along the west line thereof 330 00 feet to a REBAR/CAP at the southwest corner thereof; thence North 89 degrees 14 minutes 34 seconds East parallel with the north line of the Northeast Quarter 1056.00 feet to the southeast corner of a tract of land described in a deed to Frederick, recorded as instrument number 9545201, and on the east line of the west half of the Northeast Quarter; thence South 00 degrees 03 minutes 50 seconds East along said east line 2030 77 feet to the northeast corner of a tract of land described in a deed to Lasher, recorded as instrument number 9213826; thence South 89 degrees 15 minutes 12 seconds West along the north line thereof 130 00 feet to a REBAR/CAP at the northwest corner thereof; thence South 00 degrees 03 minutes 50 seconds East along the west line of said Lasher tract 271.00 feet to a railroad spike on the south line of the Northeast Quarter; thence South 89 degrees 15 minutes 12 seconds West along the south line of said quarter 365 00 feet to the a railroad spike at the southeast corner of a tract of land described in a deed to Frank, recorded in Deed Book 163 page 280; thence North 00 degrees 04 minutes 33 seconds West 330 00 feet to the southeast corner of a tract of land described in a deed to Pierson, recorded as instrument number 9364918; thence North 01 degrees 13 minutes 35 seconds East along the east line thereof 60.44 feet to a REBAR/CAP, thence the following thirteen (13) courses along the lines of said tract, nine (9) of

Page 2 of 3



which are also along Elliott Creek; (1) North 27 degrees 36 minutes 44 seconds West 177.33 feet; (2) North 17 degrees 26 minutes 49 seconds West 57.75 feet; (3) North 06 degrees 33 minutes 38 seconds East 59.39 feet; (4) North 88 degrees 53 minutes 52 seconds West 380.61 feet; (5) North 54 degrees 23 minutes 18 seconds West 158.25 feet; (6) North 32 degrees 36 minutes 31 seconds West 96.43 feet; (7) North 08 degrees 48 minutes 39 seconds West 159.88 feet; (8) North 36 degrees 36 minutes 53 seconds West 43.86 feet; (9) North 56 degrees 59 minutes 39 seconds West 141.03 feet; (10) South 00 degrees 49 minutes 57 seconds East 725.49 feet; (11) South 73 degrees 29 minutes 19 seconds East 139.54 feet; (12) North 89 degrees 15 minutes 15 seconds East 50.00 feet; (13) South 01 degrees 00 minutes 58 seconds East 356.12 feet to a railroad spike on the south line of the Northeast Quarter; thence South 89 degrees 15 minutes 12 seconds West along the south line thereof 222.21 feet to a Stone in two boxes 1.2 feet down at the southwest corner of the Northeast Quarter; thence South 89 degrees 14 minutes 59 seconds West along the south line of the Northwest Quarter 1339.34 feet to the Point of Beginning. Containing 130.021 acres, more or less.

Also, part of the Southeast Quarter of said Section 29 being described as follows:

Commencing at the aforesaid Point A on the South line of said Southeast quarter; thence South 88 degrees 51 minutes 10 seconds West along said South line a distance of 627.23 feet to the Point of Beginning at the Southwest corner of the land described in a deed to Wendy Fortune (Instrument Number 8915090, Office of the Recorder of Hamilton County Indiana); thence continuing South 88 degrees 51 minutes 10 seconds West along said South line a distance of 668.05 feet to the Southwest corner of said Southeast quarter; thence North 00 degrees 24 minutes 33 seconds West along the West line of said Southeast quarter a distance of 1437.39 feet to a point distant 1203.96 feet South of the Northeast corner thereof; thence North 88 degrees 29 minutes 15 seconds East a distance of 658.94 feet to a westerly corner of the aforesaid Fortune tract; thence South 00 degrees 46 minutes 26 seconds East along the West line thereof a distance of 1441.43 feet to the Point of Beginning. Containing 21.923 acres, more or less.

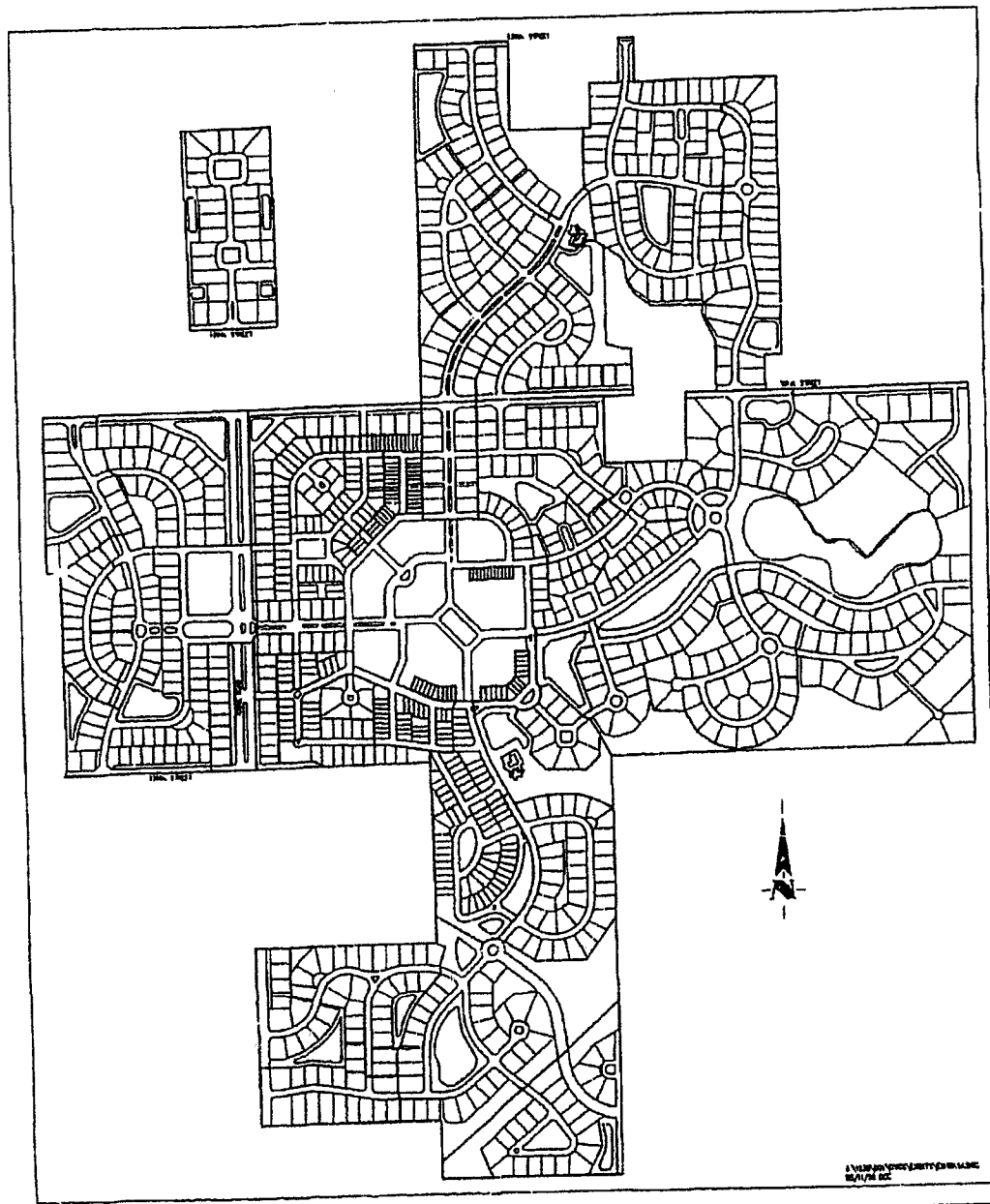
Containing, in all, 686.928 acres, more or less.

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**DECLARATION OF COVENANTS AND RESTRICTIONS**

**EXHIBIT B**

**GENERAL PLAN OF DEVELOPMENT**



**DECLARATION OF COVENANTS AND RESTRICTIONS**

**EXHIBIT C**

**DESCRIPTION OF THE TRACT**

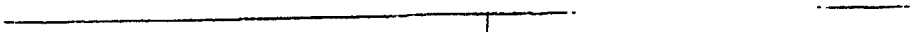


EXHIBIT C

DESCRIPTION OF THE TRACT

(Griffin, Rice, Perez and Szyml Land)

The Southwest quarter of Section 28, part of the Southeast quarter of Section 28 and part of the Northwest and Southwest quarters of Section 33 all in Township 18 North, Range 3 East of Clay Township, Hamilton County, Indiana, and being described as follows :

Beginning at the Northeast corner of the Southwest quarter of said Section 28; thence on an assumed bearing of South 00 degrees 01 minutes 09 seconds West along the East line of said Southwest quarter a distance of 503.75 feet; thence North 89 degrees 29 minutes 11 seconds East a distance of 605.93 feet; thence North 00 degrees 15 minutes 45 seconds East a distance of 506.25 feet to a point of the North line of the Southeast Quarter of said Section 28 distant 608.11 feet east of the Northwest corner thereof; thence North 89 degrees 15 minutes 12 seconds East along said North line a distance of 2069.03 feet to the Northeast corner of said Southeast Quarter; thence South 00 degrees 07 minutes 17 seconds West along the East line of said Southeast Quarter a distance of 2630.92 feet to the Southeast corner of said Southeast Quarter; thence South 89 degrees 23 minutes 24 seconds West along the South line of said Southeast Quarter a distance of 2672.37 feet to the Northeast corner of the Northwest Quarter of said Section 33; thence South 00 degrees 20 minutes 16 seconds East along the East line of the Northwest quarter of Section 33 a distance of 2632.10 feet to the Southeast corner thereof; thence South 00 degrees 23 minutes 56 seconds East along the East line of the Southwest quarter of said Section 33 a distance of 490.67 feet; thence South 89 degrees 20 minutes 46 seconds West parallel with the North line of said Southwest quarter a distance of 1331.44 feet to the West line of the East half of said Southwest quarter; thence North 00 degrees 25 minutes 30 seconds West along said West line a distance of 442.67 feet to a point distant 48.00 feet South from the Northwest corner of said half-quarter; thence South 89 degrees 20 minutes 46 seconds West parallel with the North line of said Southwest quarter a distance of 1331.64 feet to the West line of said Southwest quarter; thence North 00 degrees 27 minutes 03 seconds West along said West line a distance of 48.00 feet to the Northwest corner of said Southwest quarter; thence North 00 degrees 27 minutes 13 seconds West along the West line of the Northwest quarter of Section 33 a distance of 1281.55 feet; thence North 89 degrees 20 minutes 46 seconds East parallel with the South line of said Northwest quarter a distance of 1332.95 feet to the West line of the East half of said Northwest quarter; thence North 00 degrees 23 minutes 44 seconds West along said West line a distance of 1348.18 feet to the Northwest corner thereof; thence South 89 degrees 14 minutes 42 seconds West along the South line of the Southwest quarter of Section 28 a distance of 1334.33 feet to the southwest corner thereof; thence North 00 degrees 32 minutes 45 seconds East along the West line of the Southwest quarter of Section 28 a distance of 2624.94 feet to the Northwest corner of the Southwest quarter of Section 28; thence North 89 degrees 14 minutes 59 seconds East along the North line of the Southwest quarter of Section 28 a distance of 2678.68 feet to the Point of Beginning Containing 451.608 acres, more or less.

(J Kreutz 08-09-99)