

127.00  
(60)  
1.00 more

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)	Plat 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, L.L.C., 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

"Mortgage" 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(c) 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, 13 1st 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

(a) 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).

(c) 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 hereto 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.

(e) 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.

(e) 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.

(c) 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).

(c) 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, L.L.C., 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 9 day of August, 1999

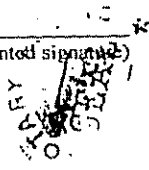
Marie M. Erick  
Notary Public Residing in Hendrick County

My Commission Expires:

May 24, 2007

Marie M. Erick

(printed signature)



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

INDS01 701 35844

**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

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 12 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 35 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.

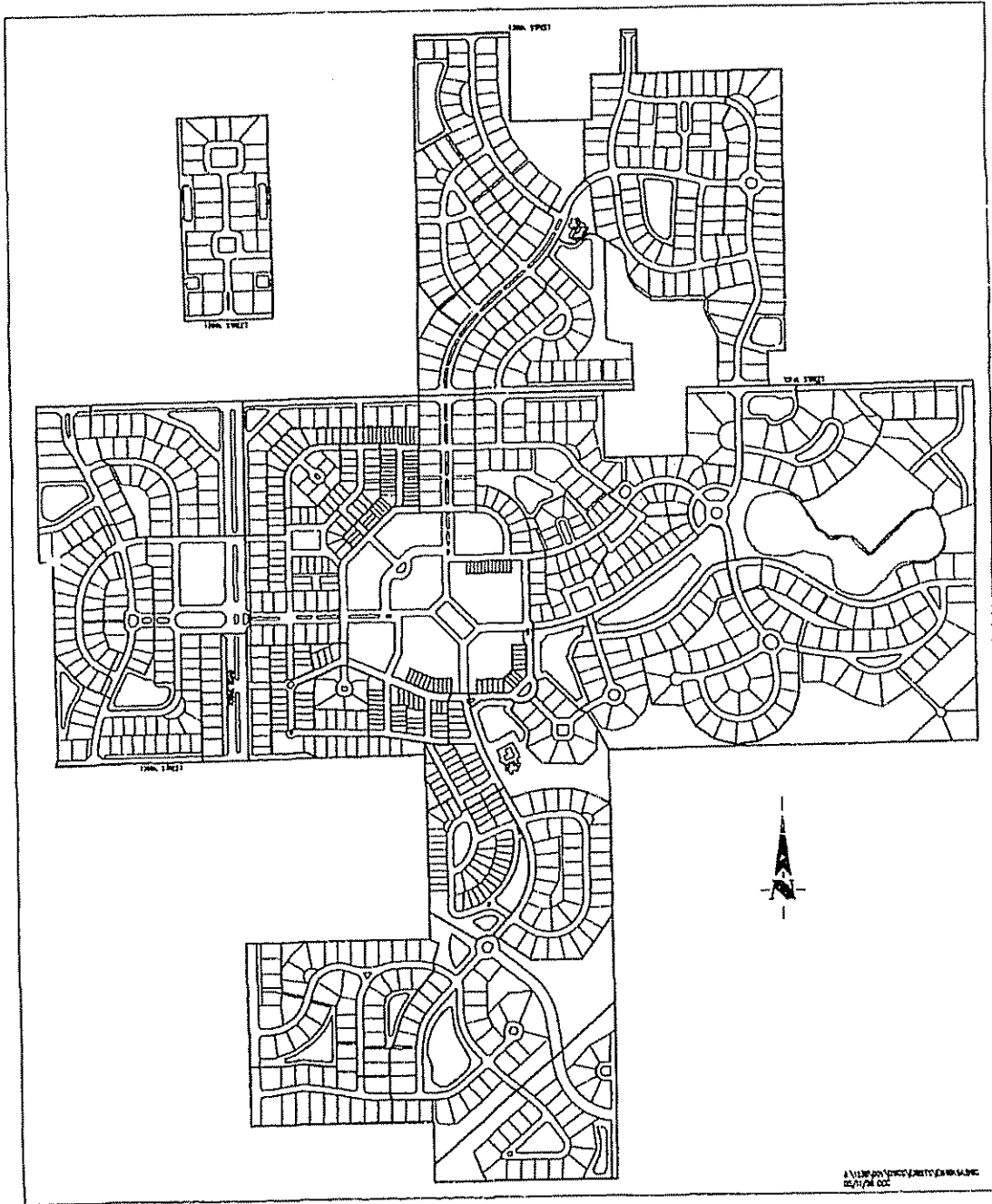
\\SEC\_INDI\DATA\JOBS\11238\001\DOCS\QA\OPTA.doc



**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 Szymal 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)