

07/13/99
Secondary Area
Parcel No. 2

29.00
11
2.00
1.00

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

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

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

WITNESSES THAT:

WHEREAS, the following facts are true:

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

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

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

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

“Board of Directors” means the Board of Directors of the Corporation.

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

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

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

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

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

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

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

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

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

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

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

4. Construction of Living Units.

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

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

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

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

(i) re-enter the Lot and divest the Owner of title thereto by tendering to the Owner or to the Clerk of the Circuit Court of Hamilton County the lesser of (a) the same net dollar amount as was received by Declarant from such Owner as consideration for the conveyance by Declarant of the Lot, together with such actual costs, if any, as the Owner may prove to have incurred in connection with the commencement of construction of a Principal Dwelling on the Lot and (b) the then fair market value of the Lot, as determined by averaging two (2) appraisals made by qualified appraisers appointed by the Judge of the Circuit or Superior Court of Hamilton County;

(ii) obtain injunctive relief to force the Owner to proceed with construction of any Principal Dwelling, a Lot Development Plan for which has been approved by the Architectural Review Board upon application by such Owner; or

(iii) pursue such other remedies at law or in equity as may be available to Declarant.

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

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

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

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

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

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

5. Maintenance of Lots.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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


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

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

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

BRENNICK TND COMMUNITIES, LLC

By



Tom Charles Huston, Co-Manager

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

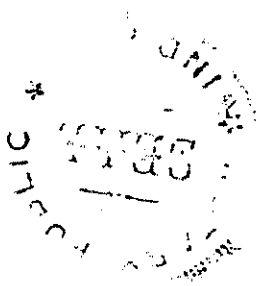
Before me, a Notary Public in and for said County and State, personally appeared Tom Charles Huston, the Co-Manager of Brenwick TND Communities, LLC, an Indiana limited liability company, who acknowledged execution of the foregoing Supplemental Declaration of Covenants and Restrictions for and on behalf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

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

Marie M. Urick
Notary Public Residing in Hendricks County

My Commission Expires:

May 24, 2007
Marie M. Urick (printed signature)



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

INDS01 TCH J16585

EXHIBIT AReal Estate Description

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

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

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

J:\1238\001\Legal\electoral\S-2 LAND DESCRIPTION.DOC

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

41.00
17

Townhomes

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

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

WITNESSES THAT:

WHEREAS, the following facts are true:

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

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

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

“Board of Directors” or “Board” means the board of directors of the Corporation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. Insurance.

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

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

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

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

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

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

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

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

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

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

(vi) contain a standard mortgagee clause which shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. Maintenance, Repairs and Replacements.

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

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

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

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

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

12. Section Assessment.

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

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

(c) Basis for Assessment.

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

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

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

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

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

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

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

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

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

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

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

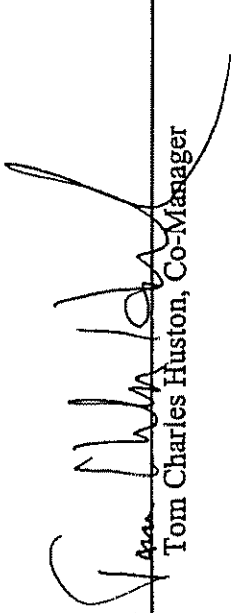
19. General Provisions. This Supplemental Declaration may be amended at any time in the manner provided in Paragraph 29 of the Declaration of Covenants and Restrictions except that no amendment adopted pursuant to Paragraph 29(a) of the Declaration of Covenants and Restrictions shall be effective as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

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

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

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

BRENNWICK TND COMMUNITIES, LLC

By 
Tom Charles Huston, Co-Manager

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

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

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

Marie M. Urlick
Notary Public Residing in Hendricks County

My Commission Expires:
May 24, 2007
Marie M. Urlick (printed signature)



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

INDS01 TCH 347013v1

EXHIBIT AReal Estate Description

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

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

64.00
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1.00
1.2012

19990969688
Filed for Record in
HAMILTON COUNTY, INDIANA
MARY L. CLARK
On 12-02-1999 at 01:25 PM.
DEC GOV RES 64.00

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

VILLAGE CENTER

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

WITNESSES THAT:

WHEREAS, the following facts are true:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Member" means a member of the Association.

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

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

"Plat" means the secondary plats of Sections 3004 Village Center, Part 1 and 3001 Village Center, Part 2 of the Village of West Clay recorded in the Office of the Recorder of Hamilton County, Indiana, as Instrument Nos. 9965089 and 9962267.

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

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

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

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

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

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

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

3. Common Parking Lots.

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

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

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

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

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

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

4. WestClay Village Center Owners Association, Inc.

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

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

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

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

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

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

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

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

5. ASSESSMENTS.

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

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

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

(b) Parcel Assessment.

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

(ii) Basis for Assessment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) Subordination of the Lien to Mortgages. To the extent specified herein, the lien of the Assessments provided for herein against a Lot shall be subordinate to the lien of any recorded first mortgage covering such Lot and to any valid tax or special assessment lien on such Lot in favor of any governmental taxing or assessing authority. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall, however, extinguish the lien of such Assessments as to payments which became due more than six (6) months prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

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

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

6. Architectural Control.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. Retail Operations.

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

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

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

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

10. Restrictions on Use.

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

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

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

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

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

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

13. Party Walls.

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

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

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

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

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

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

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

15. Maintenance, Repairs and Replacements.

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

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

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

16. Parking. No recreational vehicle, motor home, truck which exceeds $\frac{7}{8}$ ton in weight, trailer, boat or disabled vehicle shall be parked or store overnight or longer on a Lot in open view from a public street.

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

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

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

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

21. General Community Rules.

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

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

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

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

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

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

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

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

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

28. Environmental Matters.

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

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

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

(ii) "Hazardous Substances" - Includes:

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

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

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

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

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

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

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

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

(e) Rights of Declarant and the Association.

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

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

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

29. Amendments.

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

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

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

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

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

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

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

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

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

BRENNICK TND COMMUNITIES, LLC

By Tom Huston
Tom Charles Huston, Co-Manager

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

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

WITNESS my hand and Notarial Seal this 22nd day of November, 1999, 3-11-C

Marie M. Urick
Notary Public Residing in Hamilton County
6303
Marie M. Urick
(printed signature)

My Commission Expires:

May 24, 2007

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

FORM 1001 (REV. 4/04)

EXHIBIT A

Real Estate Description

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

Commencing at the Northeast corner of the Southwest Quarter of said Section 28; thence South 89 degrees 14 minutes 59 seconds West along the North line of the said Southwest Quarter 940.18 feet; thence South 00 degrees 08 minutes 09 seconds East 815.76 feet to a point of curvature of a curve to the right, non-tangent to the last described course, having a radius of 253.00 feet, the radius point which bears South 00 degrees 19 minutes 09 seconds West; thence Easterly along said curve an arc distance of 16.74 feet to the Point of Beginning, which bears North 04 degrees 06 minutes 30 seconds East from said radius point; thence continuing southeasterly along said curve an arc distance of 378.67 feet to a point which bears North 89 degrees 51 minutes 51 seconds East from said radius point; thence South 00 degrees 08 minutes 09 seconds East 106.36 feet; thence North 89 degrees 51 minutes 51 seconds East 56.17 feet to a point of curvature of a curve to the left having a radius of 974.00 feet, the radius point of which bears North 00 degrees 08 minutes 09 seconds West; thence northeasterly along said curve an arc distance of 80.65 feet to a point which bears South 04 degrees 52 minutes 49 seconds East from said radius point; thence South 04 degrees 52 minutes 49 seconds East 52.00 feet to a point of curvature of a curve to the right, non-tangent to the last described line, having a radius of 1026.00 feet, the radius point of which bears North 04 degrees 52 minutes 48 seconds West; thence southwesterly along said curve an arc distance of 13.78 feet to a point which bears South 04 degrees 08 minutes 38 seconds East from said radius point; thence South 00 degrees 08 minutes 09 seconds East, a distance 430.32 feet to a point of curvature of a curve to the left having a radius of 20.00 feet, the radius point of which bears North 89 degrees 51 minutes 51 seconds East; thence southeasterly along said curve an arc distance of 33.19 feet to a point of compound curve or a curve to the left having a radius of 1324.00 feet, the radius point of which bears North 05 degrees 13 minutes 51 seconds West; thence northeasterly along said curve an arc distance of 8.91 feet to a point which bears South 05 degrees 36 minutes 59 seconds East from said radius point; thence South 05 degrees 36 minutes 59 seconds East 52.00 feet to a curve having a radius of 1376.00 feet, the radius point of which bears North 05 degrees 36 minutes 59 seconds West; thence southwesterly along said curve an arc distance of 13.17 feet to a point which bears South 05 degrees 04 minutes 05 seconds East from said radius point; thence south 00 degrees 08 minutes 09 seconds East 345.24 feet to point on a curve having a radius of 120.97 feet, the radius point which bears South 05 degrees 45 minutes 03 seconds West; thence southeasterly along said curve an arc distance of 41.75 feet to a point which bears North 70 degrees 31 minutes 23 seconds East from said radius point; thence South 70 degrees 31 minutes 23 seconds West 50.00 feet to a point on a curve having a radius of 70.97 feet, the radius point which bears South 70 degrees 31 minutes 23 seconds West; thence northwesterly along said curve an arc distance of 5.16 feet to a point which bears North 66 degrees 21 minutes 15 seconds East from said radius point; thence South 44 degrees 51 minutes 51 seconds West 132.08 feet to a point on a curve having a radius of 70.97 feet, the radius point which bears North 23 degrees 22 minutes 27 seconds East; thence southeasterly along said curve an arc distance of 5.16 feet to a point which bears South 19 degrees 12 minutes 19 seconds West from said radius point; thence South 19 degrees 12 minutes 19 seconds West 50.00 feet to a point on a curve having a radius of 120.97 feet, the radius point which bears North 19 degrees 12 minutes 19 seconds East; thence northwesterly along said curve an arc distance of 41.75 feet to a point which bears South 38 degrees 58 minutes 38 seconds West from said radius point; thence South 89 degrees 51 minutes 51 seconds West 219.04 feet; thence

South 55 degrees 45 minutes 55 seconds West 74.81 feet to the point of curvature of a curve to the left having a radius of 25.00 feet, the radius which bears South 34 degrees 14 minutes 05 seconds East; thence southerly along said curve an arc distance of 29.38 feet to a point which bears South 78 degrees 25 minutes 26 seconds West from said radius point; thence south 78 degrees 25 minutes 26 seconds West 52.00 feet to a point on a curve to the right having a radius of 1026.00 feet, the radius point which bears North 78 degrees 25 minutes 26 seconds East; thence northwesterly along said curve an arc distance of 74.92 feet to a point which bears South 82 degrees 36 minutes 29 seconds West from said radius point; thence South 89 degrees 561 minutes 51 seconds West 111.00 feet to the point of curvature of a curve to the right having a radius of 500.00 feet, the radius point which bears North 00 degrees 08 minutes 09 seconds West; thence northwesterly along said curve an arc distance of 111.12 feet to a point which bears South 12 degrees 09 seconds East 1.51 feet; thence South 89 degrees 51 minutes 51 seconds West 52.00 feet; thence North 00 degrees 08 minutes 09 seconds West 16.25 feet to a point on a curve to the right having a radius of 500.00 feet, the radius point which bears North 18 degrees 47 minutes 42 seconds East; thence northwesterly along said curve an arc distance of 44.25 feet to a point which bears South 23 degrees 51 minutes 51 seconds West from said radius point; thence North 66 degrees 08 minutes 09 seconds East 2.55 feet; thence South 89 degrees 51 minutes 51 seconds West 52.00 feet; thence North 00 degrees 08 minutes 09 seconds West 25.70 feet; thence North 66 degrees 08 minutes 09 seconds East 4.80 feet; thence South 89 degrees 51 minutes 51 seconds West 50.00 feet; thence North 00 degrees 08 minutes 09 seconds West 10.27 feet; thence South 65 degrees 51 minutes 51 seconds West 9.36 feet; thence North 24 degrees 08 minutes 09 seconds West 50.00 feet; thence North 65 degrees 51 minutes 51 seconds East 26.15 feet; thence North 00 degrees 08 minutes 09 seconds West 666.08 feet; thence North 45 degrees 08 minutes 09 seconds West 25.14 feet; thence North 44 degrees 51 minutes 51 seconds East 50.00 feet; thence South 45 degrees 08 minutes 09 seconds East 4.50 feet; thence North 44 degrees 08 minutes 09 seconds West 4.50 feet; thence North 44 degrees 08 minutes 09 seconds West 4.50 feet; thence North 44 degrees 51 minutes 51 seconds East 250.21 feet to a point of curvature of a curve to the left having a radius of 74.00 feet, the radius point of which bears North 45 degrees 08 minutes 09 seconds West; thence northwesterly along said curve an arc distance of 32.33 feet to a point which bears South 70 degrees 10 minutes 11 seconds East from said radius point; thence South 70 degrees 10 minutes 11 seconds East 52.00 feet to a point of curvature of a curve to the right having a radius of 126.00 feet, the radius point of which bears North 70 degrees 10 minutes 11 seconds West; thence southwesterly along said curve an arc distance of 6.49 feet to a point which bears South 67 degrees 13 minutes 13 seconds East from said radius point; thence North 89 degrees 51 minutes 51 seconds East 112.94 feet; thence South 00 degrees 08 minutes 09 seconds East 52.00 feet; thence North 89 degrees 51 minutes 51 seconds East 176.00 feet; thence South 00 degrees 08 minutes 09 seconds East 4.50 feet; thence North 89 degrees 51 minutes 51 seconds East 158.00 feet to a point of curvature of a curve to the right having a radius of 201.00 feet, the radius point of which bears South 00 degrees 08 minutes 09 seconds East; thence southeasterly along said curve an arc distance of 14.89 feet to a point which bears North 04 degrees 06 minutes 30 seconds East from said radius point; thence North 04 degrees 06 minutes 30 seconds East 52.00 feet to the Point of Beginning Containing 39.679 acres, more or less.

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200000000256
Filed for Record in
HAMILTON COUNTY, INDIANA
MARY L CLARK
On 01-03-2000 At 02:10 pm.
AMEND DECL 12.00

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

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

1. **Recitals.** The following facts are true:
 - (a) The Supplemental Declaration was recorded in the Office of the Recorder of Hamilton County, Indiana, on December 13, 1999, as Instrument No. 9971384.
 - (b) Declarant has the right unilaterally to amend and revise the Supplemental Declaration pursuant to the provisions of Paragraph 12 of the Supplemental Declaration.
 - (c) Declarant desires to extend the period within which construction of a Principal Dwelling upon a Lot must be commenced.

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


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

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

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

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

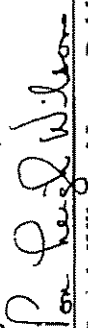
BRENNICK TND COMMUNITIES, LLC

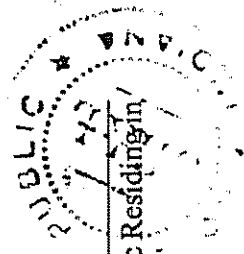
By 
 Tom Charles Huston, Co-Manager

STATE OF INDIANA)
) SS:
 COUNTY OF MARION)

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

WITNESS my hand and Notarial Seal this 23rd day of December, 1999.


 Von Leigh Wilson, Notary Public Residing in
 Marion County



My Commission Expires: August 13, 2006

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

20000030240
Filed for Record in
HAMILTON COUNTY, INDIANA
MARY L CLARK
On 06-21-2000 at 04:08 pm.
AMEND DECL 14.00
MLC

14.00
③
1.00 none

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

THIS FIRST AMENDMENT to that certain Supplemental Declaration of Covenants and Restrictions for Primary Area Parcel 1 of The Village of WestClay dated as of November 17, 1999, (the "Supplemental Declaration"), is executed as of the 14th day of June, 2000, by Brenwick TND Communities, LLC, ("Declarant"), who by the execution hereof, hereby declares that:

1. Recitals. The following facts are true:

(a) The Supplemental Declaration was recorded in the Office of the Recorder of Hamilton County, Indiana, on November 19, 1999, as Instrument No. 9967430.

(b) Declarant has the right unilaterally to amend and revise the Supplemental Declaration pursuant to the Provisions of Paragraph 13 of the Supplemental Declaration.

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

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

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

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

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

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

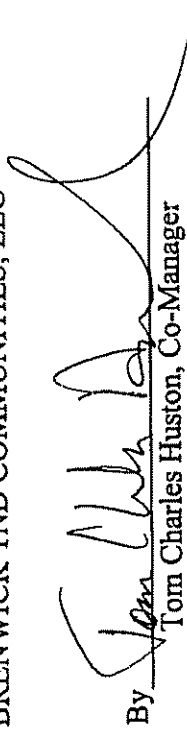
Except for Designated Lots which may be used for any use authorized by a Supplemental Declaration encumbering such Designated Lots, Lots may be used only for residential purposes as provided in Section 5.1A(1), (2), and (4) of the Zoning Ordinance and for Home-Based Offices accessory to residential use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

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

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

BRENNICK TND COMMUNITIES, LLC

By



Tom Charles Huston, Co-Manager

STATE OF INDIANA)
) ss:
COUNTY OF HAMILTON)

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

WITNESS my hand and Notarial Seal this 19th day of June, 2000.



Cathie D. Reamer, Notary Public,
Residing in Hamilton County



My commission Expires: February 1, 2007

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

TCH/cdr
VWC misc.

12/23/99

Secondary Area
Parcel No. 3

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

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

This Supplemental Declaration, dated as of the 11th day of October, 2000,
by BRENWICK TND COMMUNITIES, LLC, an Indiana limited company,

WITNESSES THAT:

WHEREAS, the following facts are true:

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

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

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

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

“Board of Directors” means the Board of Directors of the Corporation.

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

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

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

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

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

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

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

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

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

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

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

4. Construction of Living Units.

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

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

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

(d) Building Activity. All Building Activity shall be undertaken and completed strictly in accordance with the Building Guidelines and the Lot Development Plan approved by the Architectural Review Board. Unless a delay is caused by strikes, war, court injunction or acts of God, or is authorized in writing by Declarant, the Owner of any Lot which on the date of purchase from Declarant is not improved with a Principal Dwelling shall commence construction of a Principal Dwelling upon the Lot within one (1) year from the date the Owner acquired title thereto and shall complete construction of such Principal Dwelling within one (1) year after the date of commencement of the building process, but in no event later than two (2) years after the date the Owner acquired title to the Lot unless such Lot is adjacent to a Lot upon which the Owner has constructed a Principal Dwelling in which such Owner permanently resides. If the Owner fails to commence or complete construction of a Principal Dwelling within the time periods specified herein, or if the Owner should, without Declarant's written approval, sell, contract to sell, convey, or otherwise dispose of, or attempt to sell, convey or otherwise dispose of, the Lot before completion of construction of a Principal Dwelling on the Lot, then, in any of such events, Declarant may:

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

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

- (e) Septic Systems. No septic tank, absorption field or any other on-site sewage disposal system (other than a lateral main connected to a sanitary sewerage collection system operated by the Clay Township Regional Waste District or a successor public agency or public utility) shall be installed or maintained on any Lot.
- (f) Water Systems. No private or semi-private water supply system may be located upon any Lot which is not in compliance with regulations or procedures adopted or established by the Indiana State Board of Health, or other civil authority having jurisdiction. To the extent that domestic water service is available from a water line located within 200 feet of the lot line maintained by a public or private

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

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

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

5. Maintenance of Lots.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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


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

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

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

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

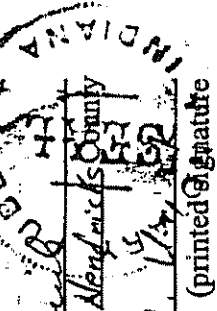
BRENNICK TND COMMUNITIES, LLC

By 
Tom Charles Huston, Co-Manager

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

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

WITNESS my hand and Notarial Seal this 11th day of October 2006



Marie M. Lusk
Notary Public Residing in Mendon County

Marie M. Lusk
(printed signature)

My Commission Expires:

May 24, 2007

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

INDS01 TCH 316585

EXHIBIT A**Real Estate Description**

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

Commencing at the Southwest corner of the Southwest Quarter of Section 33, Township 18 North, Range 3 East; thence North 00 degrees 27 minutes 03 seconds West along the West line of said Southwest Quarter 2591.69 feet to the Point of Beginning; thence continuing North 00 degrees 27 minutes 03 seconds West along said West line 48.00 feet to the Southwest corner of the Northwest Quarter of said section; thence North 00 degrees 27 minutes 13 seconds West along the West line of said Northwest Quarter 1281.55 feet; thence North 89 degrees 21 minutes 25 seconds East parallel with the South line of the West Half of said Northwest Quarter 1332.95 feet to the East line of said West Half; thence North 00 degrees 23 minutes 44 seconds West along said East line 89.02 feet; thence North 90 degrees 00 minutes 00 seconds East 298.90 feet; thence South 64 degrees 22 minutes 09 seconds East 92.68 feet; thence South 74 degrees 02 minutes 50 seconds East 85.59 feet; thence North 41 degrees 56 minutes 59 seconds East 135.94 feet to a point on a tangent curve having a radius of 25.00 feet, the radius point which bears North 48 degrees 03 minutes 01 seconds West; thence northwesterly along said curve an arc distance of 41.75 feet to a point which bears North 36 degrees 15 minutes 31 seconds East from said radius point; thence North 36 degrees 15 minutes 31 seconds East 50.00 feet; thence South 53 degrees 44 minutes 29 seconds East 6.67 to a point on a tangent curve having a radius of 25.00 feet, the radius point which bears North 36 degrees 15 minutes 31 seconds East; thence southeasterly along said curve 39.52 feet to the point of compound curve having a radius of 574.00 feet, the radius point which bears North 54 degrees 19 minutes 00 seconds West; thence northwesterly along said curve 633.81 feet to a point which bears North 62 degrees 25 minutes 01 seconds East from said radius point; thence North 27 degrees 34 minutes 59 seconds West 224.70 feet; thence North 62 degrees 25 minutes 01 seconds East 52.00 feet; thence North 73 degrees 48 minutes 35 seconds East 137.60 feet; thence North 80 degrees 00 minutes 03 seconds East 104.86 feet; thence North 86 degrees 06 minutes 12 seconds East 104.86 feet; thence South 89 degrees 12 minutes 36 seconds East 106.33 feet; thence South 76 degrees 02 minutes 03 seconds East 115.23 feet; thence South 64 degrees 14 minutes 23 seconds East 88.83 feet; thence South 64 degrees 54 minutes 45 seconds East 91.81 feet to the East line of said Northwest Quarter; thence South 00 degrees 20 minutes 16 seconds East along said East line 825.18 feet; thence South 35 degrees 04 minutes 15 seconds West 393.00 feet; thence South 89 degrees 23 minutes 24 seconds West 368.40 feet; thence North 53 degrees 44 minutes 29 seconds West 279.99 feet; thence South 41 degrees 56 minutes 59 seconds West 13.80 feet to a point on a tangent curve having a radius of 10.00 feet, the radius point which bears South 48 degrees 03 minutes 01 seconds East; thence southwesterly along said curve 12.01 feet to the point of compound curve having a radius of 89.50 feet, the radius point which bears South 63 degrees 09 minutes 40 seconds West; thence southwesterly along said curve 145.33 feet to a point which bears South 23 degrees 48 minutes 15 seconds East from said radius point; thence South 50 degrees 21 minutes 03 seconds East 294.67 feet to a point on a tangent curve having a radius of 420.00 feet, the radius point which bears South 39 degrees 38 minutes 57 seconds West; thence southeasterly along said curve 309.19 feet to a point which bears North 81 degrees 49 minutes 41 seconds East from said radius point; thence South 08 degrees 10 minutes 19 seconds East

336.01 feet to a point on a tangent curve having a radius of 480.00 feet, the radius point which bears North 81 degrees 49 minutes 41 seconds East, thence southeasterly along said curve 66.29 feet to a point which bears South 73 degrees 54 minutes 57 seconds West from said radius point; thence North 73 degrees 54 minutes 57 seconds East 80.00 feet; thence North 51 degrees 14 minutes 11 seconds East 84.26 feet; thence North 40 degrees 10 minutes 34 seconds East 159.76 feet; thence North 60 degrees 52 minutes 24 seconds East 180.40 feet; thence North 89 degrees 39 minutes 44 seconds East 40.00 feet to the East line of said Northwest Quarter; thence South 00 degrees 30 minutes 16 seconds East along said East line 559.69 feet to the Southeast corner of said Quarter Section; thence South 00 degrees 23 minutes 56 seconds East along the East line said Southwest Quarter 490.67 feet; thence South 89 degrees 21 minutes 25 seconds West parallel with the North line of said Southwest Quarter 1331.43 feet to the West line of the East Half of said Southwest Quarter; thence North 00 degrees 25 minutes 30 seconds West along said West line 442.67 feet; thence South 89 degrees 21 minutes 25 seconds West parallel with the South line of the West Half of said Northwest Quarter 1331.64 feet to the Point of Beginning. Containing 101.798 acres, more or less.

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28.00
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200100031842
Filed for Record in
HAMILTON COUNTY, INDIANA
MARY L CLARK
05-31-2001 02:38 PM
DEC COV RES 28.00

SUPPLEMENTAL DECLARATION OF
COVENANTS AND RESTRICTIONS
THE VILLAGE OF WESTCLAY

S/E/ CORNER, BLOCK F

This Supplemental Declaration, dated as of the 27th day of May, 2001, by BRENNWICK
TND COMMUNITIES, LLC, an Indiana limited company,

WITNESSES THAT:

WHEREAS, the following facts are true:

- A. Declarant is the owner of the fee simple title to the Real Estate.
- B. This instrument is a Supplemental Declaration as that term is defined in the Declaration of Covenants and Restrictions.
- C. Declarant intends to cause the Real Estate to be developed with Commercial Units and/or Multiuse Structures.

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

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

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

“Benefitted Person” means an Owner of a Lot on Block F, its tenants, subtenants, customers, suppliers, employees, licensees and invitees.

“Block F” means Block F as depicted on the Plat.

“Board of Directors” “Board” and “Directors” each means the Board of Directors of the Corporation.

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

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

“Members” means members of the Association.

“Plat” means the secondary plat of Section 3001-A Village Center, Part 2, recorded as Instrument No. 199909969687.

“Real Estate” means the land in Hamilton County, Indiana, described in Exhibit A attached hereto and incorporated herein by reference.

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

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

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

3. Access Easements.

(a) A perpetual, non-exclusive easement over and across the land described as Parcel 1 in Exhibit B (the “Pedestrian Access Easement Area”) is hereby created for the benefit of, and granted to, each Benefitted Person for the purpose of ingress and egress by pedestrians to and from Block F over and across the Pedestrian Access Easement Area. No structure, barrier or other impediment to access to or from Block F shall be installed or maintained on the Pedestrian Access Easement Area.

(b) A perpetual, non-exclusive easement over and across the land described as Parcel 2 in Exhibit B (the “Vehicular Access Easement Area”) is hereby created for the benefit of, and granted to, each Benefitted Person and to each Person authorized by the Village Center Supplemental Declaration to use the Common Parking Lot located from time to time on Block F for the purpose of vehicular ingress and egress to and from such Common Parking Lot over and across the Vehicular Access Easement Area. No structure, barrier or

other impediment to access to or from the Common Parking Lot located on Block F shall be installed or maintained on the Vehicular Access Easement Area.

(c) The Corporation shall have authority over and shall maintain the Pedestrian Access Easement Area as if it were Commons and the Maintenance Costs thereof shall be assessed against all Lots on the Real Estate in the same proportions as the General Assessment is assessed against such Lots; provided, however, that with respect to grass, trees, shrubs and other plantings located on the Pedestrian Access Easement Area (the "Landscaping"), the Owner of the Lot shall maintain in accordance with Paragraph 15(b) of the Village Center Supplemental Declaration so much of the Landscaping as is located on its Lot.

(d) The Vehicular Access Easement Area shall be maintained by the Association and the Maintenance Costs thereof shall be included in the Assessment made pursuant to Paragraph 3(c) of the Village Center Supplemental Declaration.

4. Utility Easement.

(a) A perpetual, non-exclusive easement is hereby created for the benefit of, and granted to, the Owners from time to time of Lots on Block F to connect to and utilize such lines, pipes, cable, ducts, manholes and appurtenances intended for utility (including but not limited to sanitary sewer, gas, electricity, C.A.T.V, phone, storm sewer and water) purposes (the "Utility Facilities") as are located from time to time on, over or under the Real Estate, including but not limited to the land described as Parcel 1 in Exhibit B.

(b) The easement granted in subparagraph (a) above includes the right to enter onto the Real Estate to the extent necessary to connect to a Utility Facility, but in the event of any such entry, the entering Person shall complete such connection as expeditiously as possible in accordance with good construction practice (including, without limitation, taking all reasonable measures to prohibit injury to person or damage to property, including field locating any and all irrigation, power and telecommunication lines) and so as to minimize interference with the use of the Real Estate, and such Person shall restore such property subsequent to connection to the Utility Facilities to at least as good a condition and appearance as existed prior to such entry.

(c) Notwithstanding the grant of the foregoing utility easement, a Benefitted Person may not connect to a Utility Facility located on the Real Estate if, as a consequence of such connection, the existing capacity of such Utility Facility would be exceeded unless the connecting party undertakes at its sole cost and expense to increase the capacity of such Utility Facility in a manner and subject to such reasonable conditions as are satisfactory to Declarant or, subsequent to the Applicable Date, the Design Review Board. The capacity of any Utility Facility shall be determined on the assumption that the Real Estate has been completely developed in accordance with Lot Development Plans approved by the Design Review Board or with the General Plan of Development.

(d) The Owner of a Lot on the Real Estate shall maintain in good operating condition and repair, at its own cost and expense, the Utility Facilities located on its Lot exclusive of any connections thereto made by a Benefitted Person who shall, at its own cost and expense, maintain and repair such connections.

5. Sanitary Sewer Easement.

(a) A perpetual non-exclusive easement over and across the land described as Parcel 3 in Exhibit B is hereby created for the benefit of, and granted to, the Owners from time to time of Lots on Block F to connect to and utilize such pipes, manholes and appurtenances intended for sanitary sewer purposes (the "Sewer Line").

(b) The easement granted in subparagraph (a) above includes the right to enter onto Parcel 3 to the extent necessary to connect to the Sewer Line, but in the event of any such entry, the entering Person shall complete such connection as expeditiously as possible in accordance with good construction practice (including, without limitation, taking all reasonable measures to prohibit injury to person or damage to property) and so as to minimize interference with the use of Parcel 3 and such Person shall restore such property subsequent to connection to the Sewer Line to at least as good a condition and appearance as existed prior to such entry.

(c) Notwithstanding the grant of the foregoing utility easement, a Benefitted Person may not connect to the Sewer Line located on Parcel 3 if, as a consequence of such connection, the existing capacity of the Sewer Line would be exceeded unless the connecting party undertakes at its sole cost and expense to increase the capacity of the Sewer Line in a manner and subject to such reasonable conditions as are satisfactory to Declarant or subsequent to the Applicable Date, the Design Review Board. The capacity of the Sewer Line shall be determined on the assumption that the Real Estate has been completely developed in accordance with Lot Development Plans approved by the Design Review Board or with the General Plan of Development.

6. Drainage Easement.

(a) A perpetual, non-exclusive easement is hereby created for the benefit of, and granted to, the Owners from time to time of Lots on Block F for (i) the drainage of storm, surface and subsurface waters in, over, through and across the drainage facilities located from time to time on or under the Real Estate (including but not limited to drainage swales and storm sewer inlets, drains and lines) to serve one or more of such Lots and (ii) the installation, maintenance, operation and replacement of such connections thereto as may be required to accommodate the drainage requirements of the Lots on Block F.

(b) The easement granted in subparagraph (a) above includes the right to enter onto the Real Estate to construct, repair, maintain and operate the drainage system located thereon to the extent necessary to accommodate drainage from Block F; provided, however,

that (i) subsequent to such entry the Real Estate shall be restored to at least as good a condition and appearance as existed at the time of such entry and (ii) drainage from Block F (exclusive of the Real Estate) shall not exceed that which may be accommodated by the drainage system located on the Real Estate as the same may be expanded or enhanced by the Benefitted Person.

(c) The Owner of a Lot on the Real Estate shall maintain in good operating condition and repair, at its own cost and expense, the drainage facilities located on its Lot exclusive of any connections thereto made by a Benefitted Person who shall, at its own cost and expense, maintain and repair such connections.

7. Amendments.

(a) Generally. This Supplemental Declaration may, with the consent of all Owners of Lots on the Real Estate, be amended at any time by an instrument signed by (i) such Owners, (ii) the appropriate officers of the Association acting pursuant to authority granted by (A) not less than two-thirds ($\frac{2}{3}$) of the votes of the Members cast at a meeting duly called for the purpose of amending this Supplemental Declaration and (B) a majority of the Directors of the Corporation and (iii) to the extent required by Paragraph 27 of the Declaration, Declarant.

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

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

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

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

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

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

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

BRENNICK TND COMMUNITIES, LLC

By Tom Charles Huston
Tom Charles Huston, Co-Manager



STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

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

WITNESS my hand and Notarial Seal this 22nd day of May, 2001.

Marie M. Urick
Notary Public Residing in Hamilton County

My Commission Expires:
May 24, 2007
Marie M. Urick
(printed signature)

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

EXHIBIT A

Description of the Real Estate

Southerly Portion of Block "F"

A part of Block "F" of the Village of WestClay, Section 3001-A, Village Center, Part 2, the Secondary Plat of which is Recorded as Instrument Number 199909969687, Plat Cabinet 2, Slide 363, in the Office of the Recorder, Hamilton County, Indiana, located in the Southwest Quarter of Section 28, Township 18 North, Range 3 East, of the Second Principal Meridian, Clay Township, Hamilton County, Indiana, more particularly described as follows:

Beginning at the southeast corner of said Block "F"; thence along the easterly boundary of said Block "F" on a non-tangent curve to the right having a radius of 1037.50 feet, the radius point of which bears North 86 degrees 01 minutes 06 seconds East; thence northerly along said curve an arc distance of 69.64 feet to a point which bears South 89 degrees 51 minutes 51 seconds West from said radius point; thence North 00 degrees 08 minutes 09 seconds West along said east line 56.80 feet; thence South 89 degrees 51 minutes 51 seconds West 468.69 feet to the southerly boundary of said Block "F"; (the following three courses are along said southerly boundary) (1) thence South 66 degrees 08 minutes 09 seconds East 217.21 feet to a curve to the left having a radius of 440.00 feet, the radius point of which bears North 23 degrees 51 minutes 51 seconds East; (2) thence easterly along said curve an arc distance of 184.31 feet to a point which bears South 00 degrees 08 minutes 09 seconds East from said radius point; (3) thence North 89 degrees 51 minutes 51 seconds East 93.62 feet to the Point of Beginning. Containing 0.935 acres, more or less.

EXHIBIT B

Description of the Easement Areas

Parcel 1.

A part of Block "F" of the Village of WestClay, Section 3001-A, Village Center, Part 2, the Secondary Plat of which is Recorded as Instrument Number 199909969687, Plat Cabinet 2, Slide 363, in the Office of the Recorder of Hamilton County, Indiana, in the Southwest Quarter of Section 28, Township 18 North, Range 3 East, of the Second Principal Meridian, Clay Township, Hamilton County, Indiana, being a strip of land 15.00 feet in width lying 7.50 feet on each side of the following described centerline:

Commencing at the southeast corner of said Block "F"; thence South 89 degrees 51 minutes 51 seconds West (assumed bearing) along the southerly boundary of said Block "F" 93.62 feet to a curve to the right having a radius of 440.00 feet, the radius point of which bears North 00 degrees 08 minutes 09 seconds West; thence northwesterly along said curve and said southerly boundary an arc distance of 43.09 feet to a point which bears South 05 degrees 28 minutes 31 seconds West from said radius point; thence North 03 degrees 37 minutes 41 seconds East 10.01 feet to the northerly line of a 10.00 feet Drainage, Utility, and Sewer Easement as depicted on said Plat and the Point of Beginning; thence continuing North 03 degrees 37 minutes 41 seconds East 70.28 feet; thence North 89 degrees 51 minutes 51 seconds East 38.33 feet to the westerly line of a parcel of land as described in Instrument Number 200100002509, in the Office of the Recorder of Hamilton County, Indiana and the Point of Terminus.

The side lines of the above described strip of land are to be lengthened and/or shortened to terminate at the northerly line of said Drainage, Utility, and Sewer Easement and at the westerly line of said Instrument Number 200100002509.

Parcel 2.

A part of Block "F" of the Village of WestClay, Section 3001-A, Village Center, Part 2, the Secondary Plat of which is Recorded as Instrument Number 199909969687, Plat Cabinet 2, Slide 363, in the Office of the Recorder of Hamilton County, Indiana, in the Southwest Quarter of Section 28, Township 18 North, Range 3 East, of the Second Principal Meridian, Clay Township, Hamilton County, Indiana, more particularly described as follows:

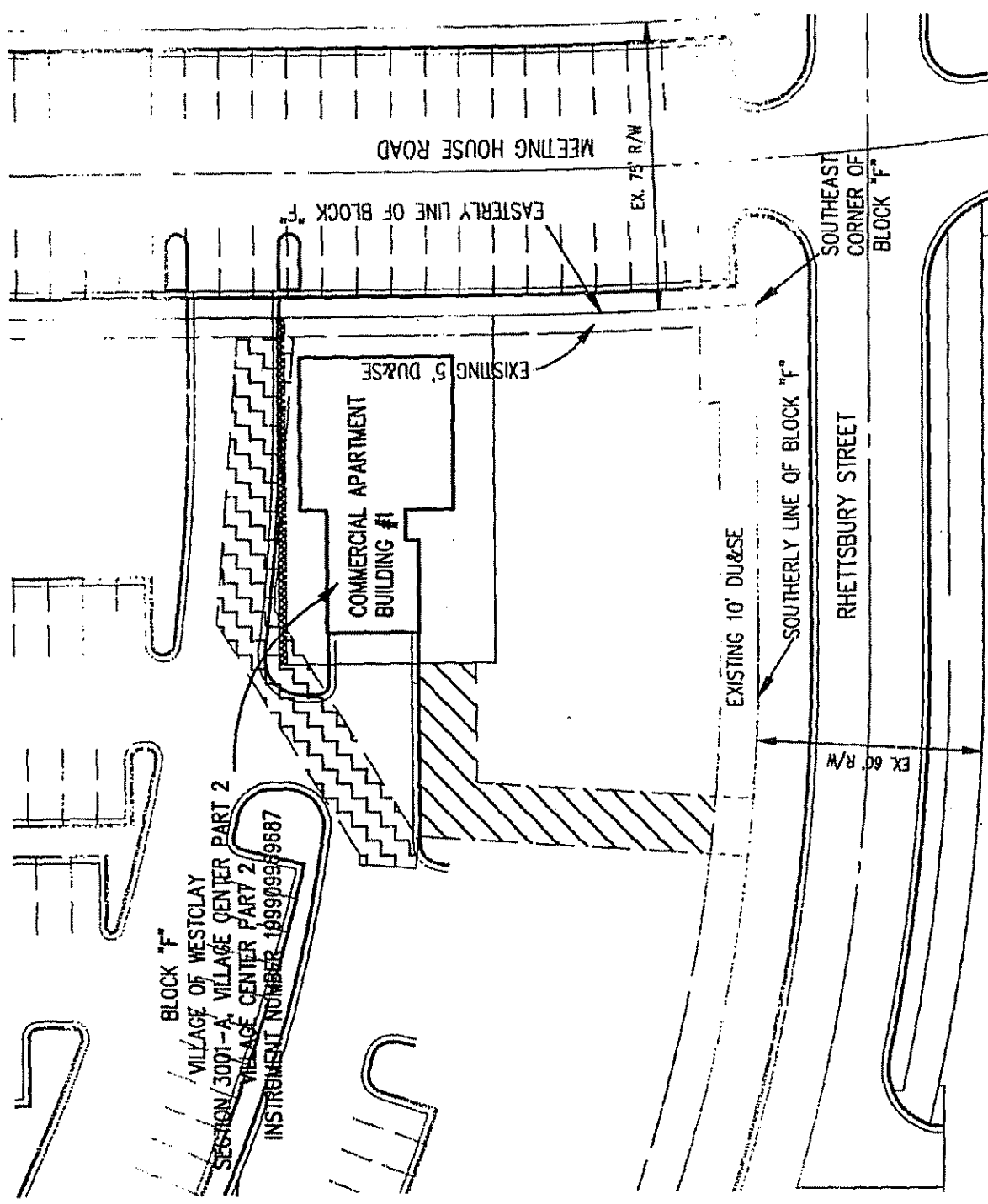
A strip of land 2.00 feet in width off of the entire north side of a parcel of land as described in Instrument Number 200100002509, in the Office of the Recorder of Hamilton County, Indiana.

Parcel 3.

A part of Block "F" of the Village of WestClay, Section 3001-A, Village Center, Part 2, the Secondary Plat of which is Recorded as Instrument Number 199909969687, Plat Cabinet 2, Slide 363, in the Office of the Recorder of Hamilton County, Indiana, in the Southwest Quarter of Section 28, Township 18 North, Range 3 East, of the Second Principal Meridian, Clay Township, Hamilton County, Indiana, being a strip of land 15.00 feet in width lying 7.50 feet on each side of the following described centerline:

Commencing at the southeast corner of said Block "F"; thence along the easterly boundary of said Block "F" on a non-tangent curve to the right having a radius of 1037.50 feet, the radius point of which bears North 86 degrees 01 minutes 06 seconds East (assumed bearing); thence northerly along said curve an arc distance of 69.64 feet to a point which bears South 89 degrees 51 minutes 51 seconds West from said radius point; thence North 00 degrees 08 minutes 09 seconds West along said easterly boundary 59.35 feet; thence North 85 degrees 29 minutes 01 seconds West 5.02 feet to the westerly line of a 5.00 feet Drainage, Utility, and Sewer Easement as depicted on said Plat and the Point of Beginning; thence continuing North 85 degrees 29 minutes 01 seconds West 73.24 feet; thence South 58 degrees 21 minutes 36 seconds West 71.17 feet; thence North 86 degrees 03 minutes 47 seconds West 5.00 feet to the Point of Terminus.

The side lines of the above described strip of land are to be lengthened and/or shortened to terminate at the westerly line of said Drainage, Utility, and Sewer Easement.



BLOCK "F"
VILLAGE OF WESTCLAY
SECTION 3001-A
VILLAGE CENTER PART 2
VILLAGE CENTER PART 2
INSTRUMENT NUMBER 1999099687

