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07/26/01
Primary Area
Parcel No. 3

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

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

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

WITNESSES THAT:

WHEREAS, the following facts are true:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Construction of Living Units.

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

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

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

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

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

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

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

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

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

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

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

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

5. Maintenance of Lots.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BRENNICK TND COMMUNITIES, LLC

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

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

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

WITNESS my hand and Notarial Seal this Friday of August, 2007

Marie M. Urick
Notary Public Residing in Hendricks County
Marie M. Urick (print)

My Commission Expires:
May 24, 2007

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

EXHIBIT A

BEST POSSIBLE IMAGE

Real Estate Description

Village of WestClay Electoral Parcel P-3

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

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

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07/20/01 Kdk

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

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

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

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

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

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

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

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

5. Maintenance of Lots.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

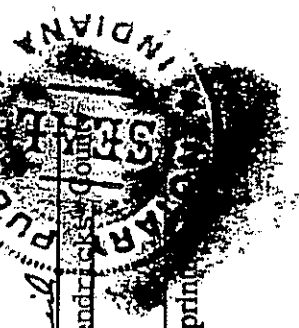
IN WITNESS WHEREOF, this Supplemental Declaration has been executed as of the date first above written.

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

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

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

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



Marie M. Irick
Notary Public Residing in Hendricks County
Marie M. Irick (print)

My Commission Expires:
May 24, 2007

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

EXHIBIT A**BEST POSSIBLE IMAGE**Real Estate Description**Village of WestClay Electoral Parcel P-3**

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

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

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07/20/01 ktk

44.00
18

Cross Reference: 200100054091
PC2 Slide 653
Townhomes
(Block J)

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

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

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

WITNESSES THAT:

WHEREAS, the following facts are true:

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

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

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

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

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

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

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

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

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

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

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

2. Declaration. Declarant hereby declares that, in addition to the covenants, restrictions, easements, charges and liens imposed by the Declaration of Covenants and Restrictions and the Parcel Supplemental Declaration, the Section shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.
3. Description of Block Lots. Declarant plans to subdivide the Section into ten (10) Blocks designated "1" through "10" containing not more than forty (40) Block Lots. The boundaries of each Block Lot shall be as shown on a Final Secondary Plat.

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

5. Party Walls.

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

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

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

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

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

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

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

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

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

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

7. Insurance.

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

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

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

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

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

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

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

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

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

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

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

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

(vi) contain a standard mortgagee clause which shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. Maintenance, Repairs and Replacements.

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

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

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

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

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

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

12. Section Assessment.

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

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

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

(c) Basis for Assessment.

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

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

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

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

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

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

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

15. Section Specific Restrictions.

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

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

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

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

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

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

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

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

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

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

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


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

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

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

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

BRENNICK TND COMMUNITIES, LLC

By 
Tom Charles Huston, Co-Manager

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

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


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

Marie M. Leick
Notary Public Residing in
Newburgh County

My Commission Expires:

May 24, 2007

Marie M. Leick
(printed signature)



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

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

07/26/01
Primary Area
Parcel No. 2

29.00
⑪

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

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

WITNESSES THAT:

WHEREAS, the following facts are true:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Construction of Living Units.

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

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

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

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

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

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

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

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

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

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

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

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

5. Maintenance of Lots.

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

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

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

(c) Sight Lines. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between thirty (30) and seventy-two (72) inches above the street shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting points 2.5 feet from the intersection of said street lines, or in the case of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BRENTWICK 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 Brentwick 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 24th day of November, 2007.

Marie M. Wendt
Notary Public Residing in Hamlet, IN
Marie M. Wendt
(printed signature)

My Commission Expires:
May 24, 2007

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

EXHIBIT AReal Estate Description

Village of Westclay -- Electoral Parcel P-2

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

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

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

20020020321
Filed for Record in
HAMILTON COUNTY, INDIANA
MARY L. CLARK
03-13-2002 02:45 pm.
DEC COV RES 21.00

8/100
①

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

BLOCKS "A" and "B"

This Supplemental Declaration, dated as of the 1st day of March, 2002, by BRENWICK
TND COMMUNITIES, LLC, an Indiana limited liability company,

WITNESSES THAT:

WHEREAS, the following facts are true:

- A. Declarant is the owner of the fee simple title to the real estate located in Hamilton County, Indiana, more particularly described in Exhibit A attached hereto and incorporated herein by this reference.
- B. This instrument is a Supplemental Declaration as that term is defined in the Declaration of Covenants and Restrictions.
- C. Declarant intends to cause the Parcel to be developed with Multifamily Structures.

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

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

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

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

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

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

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

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

"Members" means members of the Association.

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

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

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

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

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

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

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

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

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

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

4. Development.

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

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

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

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

6. Maintenance, Repairs and Replacements.

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

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

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

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

7. Amendments.

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

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

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

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

9. Severability. Invalidity 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, 2031, 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.

12. Prepayment of General Assessment. The payment, on or about the date of recordation of this Supplemental Declaration, to the Corporation of the sum of One Hundred Thousand Four Hundred Forty Dollars (\$100,440.00) on account of the General Assessment payable with respect to the Parcel through June 30, 2003, shall be in complete payment and exchange of the Owner's liability for payment of the General Assessment for such period. In no event shall any Owner be entitled to any refund on account of such prepayment or any further credit on account thereof.

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 company.

WITNESS my hand and Notarial Seal this 1st day of March, 2002.

Marie M. Jank
Notary Public Residing in Hendricks County,
Marie M. Jank
(printed name)
4 69
Banker Street
Carmel, IN

My Commission Expires:
May 24 2007

This instrument prepared by Tom Charles Huston, Attorney at Law, 12821 East New

Suite 200, Carmel, IN 46032.

EXHIBIT A

Legal Description

Block "A" and Block "B" in The Village of WestClay, Section 3004 Village Center, Part 1, the plat of which is recorded as Instrument Number 199909965089, Plat Cabinet 2, Slide 345, in the Office of the Recorder of Hamilton County, Indiana.

Cross Reference: 2002
PC 3 Slide 40
Townhomes
(Block C)

44.00
18

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

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

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

WITNESSES THAT:

WHEREAS, the following facts are true:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Party Walls.

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

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

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

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

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

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

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

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

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

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

7. Insurance.

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

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

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

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

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

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

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

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

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

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

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

(vi) contain a standard mortgagee clause which shall:

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

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

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

thereon, and any contribution clause;
and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. Maintenance, Repairs and Replacements.

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

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

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

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

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

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

12. Section Assessment.

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

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

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

(c) Basis for Assessment.

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

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

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

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

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

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

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

15. Section Specific Restrictions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BRENNICK TND COMMUNITIES, LLC

By 
Tom Charles Huston, Co-Manager

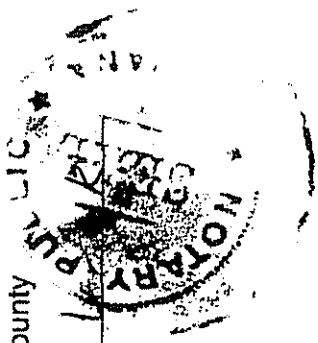
STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

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

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

Marie M. Baird
Notary Public Residing in
 Hendricks County

My Commission Expires:
May 24, 2007



Marie M.
(printed signature)

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

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

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

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

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

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

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

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

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

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

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

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

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

2002-52497
05/09/2003
Paula

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BRENNICK TND COMMUNITIES, LLC.

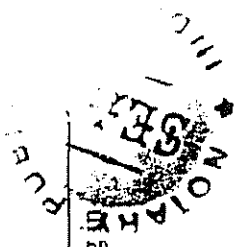
By: Tom Charles Huston
Tom Charles Huston, Co-Manager

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

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

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

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



My Commission Expires: May 24, 2007

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