

**CONFORMED COPY**

**CODE OF BY-LAWS  
AS AMENDED  
(Incorporating changes made by the Board of Directors)**

**THE VILLAGE OF WESTCLAY OWNERS ASSOCIATION, INC.**

*Note: Text incorporated by amendment is in italics.*

**Code of By-Laws adopted August 9, 1999**

**Board of Directors adopted an Amendment on May 1, 2007**

**Board of Directors adopted an Amendment on December 31, 2013**

**Board of Directors adopted an Amendment on June 24, 2014**

**Board of Directors adopted an Amendment on July 7, 2020**

**Board of Directors adopted an Amendment on March 7, 2022**

**Board of Directors adopted an Amendment on September 12, 2022**

**Board of Directors adopted an Amendment on July 10, 2023**

**Board of Directors adopted an Amendment on September, 11, 2023**

**CODE OF BY-LAWS**  
**OF**  
**THE VILLAGE OF WEST CLAY OWNERS ASSOCIATION, INC.**

**ARTICLE 1**

**Definitions**

The definitions and terms as defined and used in the Articles of Incorporation shall have the same meaning in these By-Laws and reference is specifically made to Article 9 thereof containing definition of terms. If any term used herein is not defined in the Articles but is defined in the Declaration, then the definitions in the Declaration shall be applicable to these By-Laws.

**ARTICLE 2**

**Meetings of Members**

Section 2.01. Place of Meetings. All meetings of the Members shall be held at such place in Hamilton or Marion Counties, Indiana as may be designated by the Board of Directors and specified in the respective notices or waivers of notice thereof.

Section 2.02. Annual Meeting. An annual meeting of the Members shall be held between April 1 and June 30 of each year.

Section 2.03. Special Meetings. Special meetings of the Members may be called by the President, by a majority of the Board of Directors, or by written petition signed by not less than one-tenth of all Members.

Upon a request in writing delivered to the President or the Secretary by a Person or Persons entitled to call a special meeting, it shall be the duty of the President or the Secretary to give notice to the Members of such meeting, and, if such request is refused, the Person or Persons making such request may call a meeting by giving notice in the manner hereinafter provided.

Business transacted at all special meetings shall be limited to the subjects stated in the call or waiver of notice, and matters germane thereto.

Section 2.04. Notice of Meetings. A written or printed notice stating the place, day and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which such meeting is called, shall be delivered or mailed *or emailed* by the Secretary or by the officer of Person or *Village Management as directed by the Secretary* calling the meeting to each Member at such address *or email address* as appears on the records of the Corporation at least ten (10) days before the date of the meeting or, *if notice is not sent via email or* mailed by other than first class or

registered mail, sixty (60) days before the date of the meeting. Notice of any meeting may be waived in writing filed with the Secretary by any Member if the waiver sets forth in reasonable detail the purpose or purposes for which the meeting is called and the time and place of the meeting. Attendance at any meeting shall constitute a waiver of notice of that meeting.

Section 2.05. Voting Lists. After fixing a record date for a notice of a meeting, the Secretary shall prepare a complete list of Members entitled to notice of a meeting of Members, containing the address and number of votes each Member is entitled to cast at the meeting. The Secretary shall prepare on a current basis through the time of the membership meeting a list of Members, if any, who are entitled to vote at the meeting, but are not entitled to notice of the meeting. Such lists may be inspected by any Member, for any proper purpose, at any reasonable time.

Section 2.06. Quorum. At any meeting of the Members *ten percent (10%)* of the Members entitled to vote at such meeting, present in person or by proxy executed in writing, shall constitute a quorum for the transaction of business, except as otherwise provided by law. In the absence of a quorum, the Members present in person or by proxy, by a majority vote and without notice, may adjourn the meeting from time to time until a quorum is present. At any such adjourned meeting at which a quorum is present, any business may be transacted for which notice was originally given. The Members present at a duly organized meeting may continue to do business until adjournment notwithstanding the withdrawal of enough Members to leave less than a quorum.

Section 2.07. Voting Rights. The voting rights of the Members shall be as prescribed in the Articles. In any election of Directors, no Member shall have the right to multiply the number of votes to which such Member may be entitled by the number of Directors to be elected. A majority of the votes cast at a meeting of the Members, duly called and at which a quorum is present, shall be sufficient to take or authorize action upon any matter that may properly come before the meeting unless more than a majority of votes cast is required by law, the Declaration, any Supplemental Declaration, the Articles or these By-Laws.

Section 2.08. Multiple Owner. Where the Owner of a Lot constitutes more than one person, or is a partnership, there shall be only one voting representative entitled to cast the vote allocated to that Lot. Those persons constituting such Owner or the partners shall determine among themselves who shall be the voting representative for such Lot. In the event agreement is not reached the vote attributable to such Lot shall not be cast.

Section 2.09. Voting by Corporation, LLC or Trust. Where a corporation, a limited liability company or trust is an Owner or is otherwise entitled to vote, the trustee may cast the vote on behalf of the trust and the agent or other representative of the corporation or limited liability company duly empowered by the board of directors of such corporation or the managers or members of the limited liability company shall cast the vote to which the corporation or limited liability company is entitled.

Section 2.10. Proxies. A Member may vote either in person or by his duly authorized and designated attorney-in-fact. Where voting is by proxy, the Member shall designate his attorney-in-fact in writing, delivered to an officer of the Corporation prior to the commencement of the

meeting. No proxy shall be valid after eleven (11) months from the date of its execution unless a longer time is expressly provided in the proxy.

Section 2.11. Action Without a Meeting. Any action required by the Act to be taken at a meeting of the Members, or any action which may be taken at a meeting of the Members, may be taken without a meeting if, prior to the action, a consent in writing setting forth the action so taken is signed by all of the Members entitled to vote with respect to the subject matter thereof, and such written consent is filed with the minutes of the proceedings of the Members. Such consent shall have the same effect as a unanimous vote of the Members.

Section 2.12. Meeting by Telephone, etc. Any or all of the Members may participate in a meeting by or through the use of any means of communication by which all Members participating may simultaneously hear each other during the meeting. Participation in a meeting using these means constitutes presence in person at the meeting.

### **ARTICLE 3**

#### **Board of Directors**

Section 3.01. Functions. The business, property and affairs of the Corporation shall be managed and controlled by a Board of Directors as from time to time constituted (herein collectively called "Board" or "Directors" and individually called "Director").

Section 3.02 Eligibility. *No Person shall be a Director who is not an Owner of a Lot, nor shall any Person be a Director representing an Electoral Parcel who is not the Owner of a Lot in such Electoral Parcel. For the purposes of this provision, where an Owner is a trust, partnership, corporation, or other business entity, then a trustee on behalf of the trust, or a partner, officer, or director of the corporate entity, shall be eligible to serve on the Board of Directors, except that no single Lot may ever be represented on the Board by more than one person at a time.*

Section 3.03. Number. *The Board of Directors shall consist of thirteen (13) Directors each representing a designated Electoral Parcel*

Section 3.04. Classes. *. The Membership shall be divided into three classes consisting of three (3) Class One Directors (Electoral Parcels P-1, S-4, VC), five (5) Class Two Directors (Electoral Parcels P-2, P-3, P-4, S-2, S-5) and five (5) Class Three Directors (Electoral Parcels S-1, S-3, S-6, TH, UP*

Section 3.05. Appointment. *[Intentionally omitted]*

Section 3.06. Nomination. The Board of Directors by resolution *shall* establish such procedures as it deems appropriate governing nominations for election to the Board of Directors.

Section 3.07. Election. *Directors shall be elected pursuant to such election procedures as the Board of Directors by resolution may establish. A Director representing an Electoral Parcel shall be elected by those Members who are Owners of Lots in the Electoral Parcel to be represented by such Director. A Member who owns a Lot in more than one Electoral Parcel shall be entitled to vote for all Directors representing Electoral Parcels in which he owns a Lot. All Members shall be entitled to vote for Directors who do not represent Electoral Parcels other than those Directors who are Continuing.*

Voting for the Board of Directors shall be by a ballot emailed to Members. The ballot shall contain the name of each person nominated for election. Those persons receiving the highest number of votes shall be elected. *Ballots shall be emailed to the residents in each Electoral Parcel to the email address on file for each resident. Each resident shall have two weeks to vote. The ballot may be returned by U.S. Mail, electronically or may be hand delivered to Trustee Hall. If the Member does not have a registered email address with the Village, the ballot will be distributed by US Mail.*

Section 3.08. Term. Each Director shall serve for a term of *three (3)* years or until his successor is elected and qualified. Incumbent Directors shall be eligible for re-election and the number of years a person may serve as a Director is not limited.

Section 3.09. Resignation. Any Director may resign at any time by giving written notice of such resignation to the President or the Secretary of the Corporation. Such resignation shall take effect when the notice is effective unless the notice specifies a later effective date. The acceptance of a resignation shall not be necessary to make it effective.

Section 3.10. Removal. A Director, other than a Continuing Director may be removed, with or without cause, in accordance with the provisions of the Act.

Section 3.11. Vacancies. Any vacancy occurring on the Board of Directors caused by death, resignation, removal, *incapacitation* or otherwise, shall be filled through a vote of a majority of the remaining members of the Board. A Director elected to fill a vacancy shall hold office until the expiration of the term of the Director causing the vacancy or until his successor has been elected and qualified.

Section 3.12. Meetings. The Board of Directors shall meet each year for the purpose of organization, election of officers, and consideration of any other business. The Board of Directors may provide by resolution the time and the place, either within or without the State of Indiana, for the holding of additional regular meetings of the Board without other notice than such resolution. Special meetings of the Board may be called by the President and shall be called by order thereof upon the written request of not less than two (2) Directors, which request shall set forth the business to be conducted at such meeting.

Section 3.13. Notice of Meetings. Notice of all meetings of the Board of Directors, except as herein otherwise provided, shall be given by mailing, telephoning, telegraphing or delivering personally the same at least two (2) days before the meeting to the usual business or residence address of the Director as shown upon the records of the Corporation. Notice of any meeting of the Board

may be waived in a document filed with the Secretary by any Director if the waiver sets forth in reasonable detail the purpose or purposes for which the meeting is called and the time and place of the meeting. Attendance at any meeting of the Board shall constitute a waiver of notice of that meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Any meeting of the Board may adjourn from time to time to reconvene at the same place or some other place. No notice need be given of any such adjourned meeting.

Section 3.14. Quorum. A quorum of the Board of Directors at any annual or special meeting of the Board shall be a majority of the duly qualified members of the Board then occupying office, but in no event less than two (2) Directors, except that, subsequent to the Applicable Date, in filling vacancies a majority of the remaining Directors (but not less than two (2) Directors) shall constitute a quorum. The act of a majority of the Directors present at a meeting, who constitute a quorum, shall be the act of the Board unless otherwise provided by the Act, the Declaration, any Supplemental Declaration, the Articles, or these By-Laws. In the absence of a quorum, the Directors present may, by majority vote, adjourn the meeting from time to time until a quorum is present. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting for which notice was originally given.

Section 3.15. Action Without a Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors or any committee thereof may be taken without a meeting if the action is taken by all members of the Board of Directors or such committee. The action must be evidenced by at least one (1) written consent describing the action taken signed by each member of the Board of Directors or of such committee and included in the minutes or filed with the corporate records reflecting the action taken.

Section 3.16. Meeting by Telephone, etc. Any or all of the members of the Board or of any committee designated by the Board may participate in a meeting by or through the use of any means of communication by which all persons participating may simultaneously hear each other during the meeting. Participation in a meeting using these means constitutes presence in person at the meeting.

Section 3.17. Committees. The Board of Directors, by resolution adopted by a majority of the Board, may designate one or more committees, each of which shall consist of *one (1)* or more Directors, which committees, to the extent provided in said resolution, shall have and exercise the authority of the Board in the management of the Corporation. Other committees not having and exercising the authority of the Board in the management of the Corporation may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present. The designation of any such committee and the delegation thereto of authority shall not operate to relieve the Board, or any individual Director, of any responsibility imposed upon it or him by law. Subsequent to the Applicable Date, the Board shall annually establish an Elections Committee which shall be responsible for the conduct of the election of the Board of Directors pursuant to Sections 3.06 and 3.07.

Section 3.18. Powers. All of the corporate powers, except as otherwise provided herein or by law, shall be vested in and shall be exercised by the Board of Directors. Said powers shall include, but not be limited to:

(a) The power to adopt, publish and enforce rules and regulations governing the use of the Community Areas not inconsistent with the provisions of the Declaration or any Supplemental Declaration;

(b) The power to lease or purchase for the benefit of the Members such property, equipment, materials, labor and services as may be necessary in the judgment of the Board;

(c) The power to exercise the powers and perform the duties of the Corporation granted, imposed, authorized or permitted by the Declaration or any Supplemental Declaration, the exercise of which is not reserved or committed to the membership or a class thereof by the Articles of By-Laws.

(d) The power to make and collect Assessments and charges, establish and collect membership dues, and levy and collect fines for the violation of rules and regulations governing the use of the Community Areas to the extent authorized by the Declaration or a Supplemental Declaration;

(e) The power to employ legal counsel, architects, contractors, accountants, consultants, managers, independent contractors and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the maintenance, repair, replacement, restoration, and operation of the Community Area and the Common Facilities and the business and affairs of the Corporation.

Section 3.19. Duties. It shall be the duty of the Board of Directors to:

(a) cause the Community Area and the Common Facilities to be maintained in good, clean, attractive and sanitary condition, order and repair except for such thereof as is the responsibility of the Village Center Owners Association;

(b) adopt and publish rules and regulations, including fees, if any, governing the use of the Community Area, and the personal conduct of the Members, their tenants and guests to the extent not inconsistent with the provisions of the Declaration or any Supplemental Declaration;

(c) cause to be kept a complete record of all its corporate affairs, making such records available for inspection by any Member or his authorized agent, and present an annual report thereof to the Members;

(d) supervise all officers, agent and employees of the Corporation and see that their duties are properly performed;

(e) issue upon demand by any Member a certificate setting forth whether or not any Assessment has been paid and giving evidence thereof for which a reasonable charge may be made;

(f) designate depositories for the funds of the Corporation, designate those officers, agents and/or employees who shall have authority to withdraw funds from such accounts on behalf of the Corporation, and cause such persons to be bonded, as it may deem appropriate;

(g) approve the annual budget;

(h) fix annual General and Parcel Assessments (exclusive of the Parcel Assessment for the Village Center) at amounts sufficient to meet the obligations imposed by the Declaration and all Supplemental Declarations;

(i) annually set the date(s) Assessments are due and decide what, if any, interest rate is to be applied to Assessments which remain unpaid thirty (30) days after they become due;

(j) send written *or email* notice of each Assessment to every Owner subject thereto at least thirty (30) days in advance of the due date of the Assessment or first installment thereof;

(k) cause the lien against any property for which Assessments are not paid within thirty (30) day after due date to be foreclosed or cause an action at law to be brought against the Owner personally obligated to pay the same;

(l) suspend the right of an Owner or Occupant to use the recreational facilities constituting a part of the Community Area during any period during which such Owner shall be in default for more than thirty (30) days after notice in the payment of any Assessment. Such right of Members or Occupants may also be suspended, after notice and hearing, for a period not to exceed sixty (60) days for violation of any provision of the Declaration, any Supplemental Declaration or the Register of Regulations subject to the provisions of the Declaration or any Supplemental Declaration;

(m) procure and maintain adequate insurance to protect the Corporation, its employees and its personal and real properties;

(n) enter into mortgage agreements and obtain capital debt financing subject to the provisions of the Declaration;

(o) appoint such committees as are prescribed in Section 3.17;



(p) faithfully observe and perform each duty imposed on the Corporation by the terms of the Declaration and the Supplemental Declarations and exercise such discretion granted to the Board thereunder in the best interests of the Members; and

(q) exercise their powers and duties in good faith, with a view to the interest of the Corporation and the Members.

Section 3.20. Non-Liability of Directors. No Director shall be liable to any Person for any error or mistake of judgment exercised in carrying out his duties and responsibilities as a Director, unless (a) the Director has breached or failed to perform the duties of his office in compliance with the Act and (b) the breach or failure to perform constitutes willful misconduct or recklessness. The Members shall indemnify and hold harmless each of the Directors against any and all liability to any Person arising out of contracts made by the Board on behalf of the Corporation, unless any such contract shall have been made in bad faith or is contrary to the provisions of the Act, the Articles or these By-Laws. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Members and as their agent. The liability of any Member arising out of any contract made by the Board or out of the aforesaid indemnity in favor of the Directors shall be limited to such percentage of the total liability or obligation thereunder as is equal to a fraction, the numerator of which is the number of Lots owned by him and the denominator of which is the total number of Lots in the Tract.

Section 3.21. Indemnity of Officers and Directors. To the extent not inconsistent with the laws of the State of Indiana, every Person (and the heirs, assigns and legal representatives of such Person) who is or was a Director or an officer of the Corporation shall be indemnified by the Corporation as provided in the Act. To the extent the assets of the Corporation are insufficient to satisfy its indemnification obligations hereunder, the Board of Directors may levy a Special Assessment in the manner specified in the Declaration to obtain such funds as may be required to satisfy such obligation.

Section 3.22. Transactions Involving Affiliates. No contract or other transaction between the Corporation and one or more of its Directors, or between the Corporation and any Person (including the Developer) in which one or more of the Directors are directors, officers, partners, or employees or are pecuniarily or otherwise interested, shall be void or voidable because such Director or Directors are present at the meeting of the Board or any committee thereof which authorizes, approves or ratifies the contract or transaction, or because his or their votes are counted for such purpose if:

(a) the fact of the relationship or interest is disclosed or known to the Board or committee, and the Board or committee authorizes, approves, or ratifies such contract or transaction by a vote or consent sufficient for the purpose without counting the vote or consents of the interest Director(s); or

(b) the fact of the relationship or interest is disclosed or known to the Members, and they authorize, approve or ratify the contract or transaction by a vote or written consent; or

- (c) the contract or transaction is fair and reasonable to the Corporation.

Affiliated or interested Directors may be counted in determining the presence of a quorum of any meeting of the Board or committee thereof which authorizes, approves or ratifies any contract or transaction.

Section 3.23. Insurance. The Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain insurance for all of the Common Facilities and all of the structures located in the Community Area, whether owned or leased by the Corporation, against loss or damage by fire or other hazards commonly insured against in similar properties in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any insured hazard, and shall also obtain a broad form public liability policy covering all damage or injury caused by the negligence of the Corporation or any of its agents. All such insurance policies shall contain a provision that all Members shall, in appropriate circumstances, be able to recover damages claimants under such insurance. Premiums for all such insurance shall be included in the General Assessment.

Section 3.24. Insured Loss, Damage or Destruction. In the event of loss, damage or destruction by fire or other peril, the Board of Directors shall (unless otherwise agreed by two-thirds (2/3) of the Directors then serving), upon receipt of the insurance proceeds, contract to rebuild or repair damaged or destroyed portions of the insured property to its condition before such damage. All such insurance proceeds (if the amount of such proceeds exceeds \$5,000.00) shall be deposited in a bank or other financial institution, the accounts of which are insured by a federal governmental agency, with the provision agreed to by said bank or institution that such funds may be withdrawn only by signatures of at least one-third (1/3) of the members of the Board of Directors, or by their duly authorized agent. In such event, the Board of Directors shall advertise for sealed bids with any licensed contractors, and then may negotiate with any contractor, who may be required to provide a full performance and payment bond for the repair, reconstruction or rebuilding of such destroyed structure or structures. In the event that the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding to the same condition as previously existed, the Board of Directors may levy a Special Assessment in the manner specified in the Declaration to make up any deficiency. Excess insurance proceeds, if any, shall become a part of the Corporation's reserve for replacements.

Section 3.25. Uninsured Loss, Damage or Destruction. In the event of loss, damage or destruction to the Property caused by perils not covered by standard insurance described in Section 2.04(d) of the Articles, the Board of Directors may levy a Special Assessment in the manner specified in the Declaration to make up any deficiency created by such uninsured loss.

Section 3.26. Compensation. No Director shall receive any compensation for any service he may render to the Corporation. He may, however, be reimbursed for his actual expenses incurred in the performance of his duties.

## **ARTICLE 4**

## **The Officers of the Corporation**

**Section 4.01. Officers and Agents.** The officers of the Corporation shall consist of a President, one or more Vice Presidents, a Secretary, a Treasurer, and such other officers as the Board of Directors may, by resolution, designate from time to time. Any two or more offices may be held by the same person. The Board of Directors may, by resolution, create, appoint and define the duties and fix the compensation of such officers and/or agents as, in its discretion, is deemed necessary, convenient or expedient for carrying out the purposes for which the Corporation is formed; but such officers and agents shall be compensated only for actual services performed on behalf of the Corporation.

**Section 4.02. Election, Term of Office and Qualifications.** The officers shall be chosen annually by the Board of Directors. Each officer shall hold office (unless he resigns, is removed or dies) until the next annual meeting of the Board of Directors or until his successor is chosen and qualified.

**Section 4.03. Vacancies.** In the event an office of the Corporation becomes vacant by death, resignation, retirement, disqualification or any other cause, the Board of Directors shall elect a person to fill such vacancy, and the person so elected shall hold office and serve (unless he resigns, is removed or dies) until the next annual meeting of the Board or until the election and qualification of his successor.

**Section 4.04. President.** The President, who shall be chosen from among the membership of the Board of Directors, shall preside at all meetings of the Board, if present; shall appoint the chairman and members of all standing and temporary committees, subject to the review of the Board of Directors; shall be the executive officer of the Corporation; shall have and exercise general charge and supervision of the affairs of the Corporation; and shall do and perform such other duties as these By-Laws provide or as may be assigned to him by the Board of Directors.

**Section 4.05. Vice President.** Any Vice President may perform all duties incumbent upon the President during the absence or disability of the President and shall perform other duties as these By-Laws may require or as may be assigned to him by the President or the Board of Directors.

**Section 4.06. Secretary.** The Secretary shall have the custody and care of the corporate records and the minute book of the Corporation. He shall attend all of the meetings of the Board of Directors and the Members, and shall keep, or cause to be kept in a book provided for the purpose, a true and complete record of the proceedings of such meetings and shall perform a like duty for all standing committees of the Board of Directors when required. He shall attend to the giving and serving of all notices of the Corporation, shall file and take care of all papers and documents belonging to the Corporation, shall authenticate records of the Corporation, as necessary, and shall perform such other duties as may be required by these By-Laws or as may be prescribed by the Board of Directors or the President.

Section 4.07. Treasurer. The Treasurer shall keep correct and complete records of account, showing accurately at all times the financial condition of the Corporation. He shall be the legal custodian of all monies, notes, securities and other valuables which may from time to time come into the possession of the Corporation. He shall immediately deposit all funds of the Corporation coming into his hands in some reliable bank or other depository to be designated by the Board of Directors and shall keep such bank account in the name of the Corporation. He shall furnish at meetings of the Board of Directors, or whenever requested, a statement of the financial condition of the Corporation and shall perform such other duties as may be required by these By-Laws or as may be prescribed by the Board of Directors or the President.

Section 4.08. Assistant Officers. The Board of Directors may from time-to-time designate assistant officers who shall exercise and perform such powers and duties as the officers whom they are elected to assist shall specify and delegate to them, and such other powers and duties as may be prescribed by the Code of By-Laws, the Board of Directors or the President.

Section 4.09. Removal. Any officer of the Corporation may be removed from office, with or without cause, by the affirmative vote of two-thirds (2/3) of all the Directors at any regular or special meeting of the Board of Directors called for the purpose. Any officer whose removal is proposed shall be entitled to at least ten (10) days' notice in writing by mail of the meeting of the Board of Directors at which such removal is to be voted upon and shall be entitled to appear before and be heard by the Board of Directors at such meeting.

Section 4.10. Resignation. Any officer or member of a committee may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, and, if no time be specified, at the time of its receipt by the President or Secretary of the Corporation. The acceptance of a resignation shall not be necessary to make it effective.

## **ARTICLE 5**

### **Architectural Review Board**

*Section. 5.01. Composition. The Architectural Review Board shall be composed of five (5) members.*

*Section 5.02. Eligibility. Members of the Architectural Review Board shall be Members, except that the Village Architect appointed by the Architectural Review Board pursuant to Section 5.12 shall be eligible to serve as a member of the Architectural Review Board.*

*Section 5.03. Appointment. The membership of the Architectural Review Board shall be elected by a majority of the Board of Directors.*

*Section 5.04. Classes. The members of the Architectural Review Board shall be divided into classes consisting of (a) two members designated as "Class One ARB Members" and (b) three members designated as "Class Two ARB Members".*

Section 5.05. Term. A member of the Architectural Review Board shall serve for a term of three (3) years or until his successor is elected and qualified. Incumbent members of the Board shall be eligible for re-election and the number of years a person may serve on the Board is not limited.

Section 5.06. Removal. The Board of Directors may remove a member of the Architectural Review Board at any time, with or without cause, by a vote of two-thirds of the Directors then serving.

Section 5.07. Vacancies. In the event of a vacancy on the Architectural Review Board, the Board of Directors shall, by vote of a majority of the Directors then serving, elect a successor to serve the unexpired term.

Section 5.08. Organization. The Architectural Review Board shall elect from among its members a chairman, secretary and such other officers as it deems appropriate.

Section 5.09. Quorum. A quorum for action by the Architectural Review Board shall be a majority of its members, but in no event less than two (2) members.

Section 5.10. Duties. It shall be the duty of the Architectural Review Board to regulate the external design, appearance, location and maintenance of the Tract and the improvements thereon (exclusive of the Village Center and the Peripheral Retail Area), to apply and enforce the building regulations and guidelines and the sign regulations adopted by the Board of Directors, to regulate the uses of Lots and Units within the Tract to the extent provided in the Declaration and the Supplemental Declarations, and to otherwise exercise such duties as may be imposed on the Architectural Review Board by the Declaration and the Supplemental Declarations.

Section 5.11. Procedures. The Architectural Review Board may formulate such amendments, modifications or additions to the building guidelines and regulations and the sign regulations as it may deem appropriate and may adopt such further regulations authorized by the Declaration or any Supplemental Declaration as it may consider appropriate. Such amendments, modifications, additions or further regulations shall be submitted to the Board of Directors and shall become effective on the thirtieth (30<sup>th</sup>) day following such submission unless rejected, in whole or in part, by a majority vote of the Board of Directors.

Section 5.12. Village Architect. The Architectural Review Board shall engage a licensed architect familiar with classical architecture, knowledgeable of the essential elements of traditional neighborhood design, and experienced in the design of structures authorized for construction on the Tract by the adopted building guidelines and regulations to act as Village Architect. The Village Architect shall assist the Board in the exercise of its duties and shall perform such functions as are specified in the building guidelines and regulations and in such other policies, guidelines, regulations or resolutions adopted by the Architectural Review Board. The Board of Directors shall include in the annual budget adopted pursuant to Section 3.19(g) an amount sufficient to compensate the Village Architect for his professional services and to pay reasonable expenses incurred by him in the discharge of his duties.

## **ARTICLE 6**

### **Loans to Officers and Directors**

The Corporation shall not lend money to or guarantee the obligations of any officer or Director of the Corporation.

## **ARTICLE 7**

### **Corporate Books; Notices to Members**

*Section 7.01. Association Records. As and to the extent required by Indiana Code 32-25.5-3-3, current copies of the Declaration, the Articles of Incorporation, the By-Laws, rules and regulations, financial documents, executed contracts, corporate minutes, and other corporate documents concerning the Association will be made available for inspection by any member or other properly designated party. Requests to inspect records must be in writing and stated with reasonable particularity, detailing the specific records being requested. Records inspections shall occur in person at a reasonable time and place as designated by the Association, where copies of the records may be purchased by the member at a reasonable cost. Records will not be mailed, emailed, or delivered to any member.*

*Pursuant to Indiana Code 32-25.5-3-3, the Association is not required to make available for inspection to a member any records that were created more than two (2) years before the request.*

*Section 7.02. Notices. Except as otherwise provided therein or herein, any notice required to be given to a Member by the Declaration, the Articles or these By-Laws shall be (i) personally delivered, (ii) sent by first class or registered United States mail or (iii) sent by a courier service such as UPS, Federal Express or the like, (iv) sent via email to the Members, (v) posted on the web site in the Residential Portal addressed to the Member at such address as appears on the records of the Corporation and shall be deemed received upon the date of delivery when delivered personally or by courier service or on the second day following the date when mailed if sent by United States mail. Unless otherwise specified in the Declaration, the Articles or these By-Laws, a notice shall be effective as of the date of actual or deemed receipt.*

## **ARTICLE 8**

### **Financial Affairs**

**Section 8.01. Contracts.** The Board of Directors may authorize any officer or agent to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to a specific instance; and unless so authorized by the Board of Directors, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement, or to pledge its credit or render it liable pecuniarily for any purpose or to any amount.

**Section 8.02. Checks, Etc.** All checks, drafts, notes, bonds, bills of exchange, and orders for the payment of money and other evidence of indebtedness in excess of One Thousand Dollars (\$1,000.00), shall, unless otherwise directed by the Board of Directors or required by law, be signed by any two of the following officers, who are different persons: President, a Vice President, Secretary or Treasurer. Any such obligation equal to or less than One Thousand Dollars (\$1,000.00) may be signed by any one (1) of such preceding officers. The Board of Directors may, however, designate officers or employees of the Corporation, other than those named above, who may, in the name of the Corporation, execute drafts, checks and order for the payment of money on its behalf.

**Section 8.03. Investments.** The Corporation shall have the right to retain all or any part of any securities or property acquired by it in whatever manner, and to invest and reinvest any funds held by it, according to the judgment of the Board of Directors.

**Section 8.04. Reserve for Replacements.** The Board of Directors shall establish and maintain a reserve fund for replacements by the allocation and payment to such reserve fund of the Community Area Initial Assessment and an amount determined annually by the Board to be sufficient to meet the cost of periodic maintenance, repairs, renewal and replacement of the Property. In determining the amount, the Board shall take into consideration the expected useful life of the Property, projected increases in the cost of materials and labor, interest to be earned by such fund and the advice of the Developer, managing agent or any consultants the Board may employ. Such fund shall be deposited in a special account with a lending institution the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America.

**Section 8.05. Community Area Debt Service Assessment.** The Board of Directors shall establish and maintain an account for the deposits of Community Area Debt Service Assessments. The funds in such account shall be held and disbursed in accordance with Paragraph 18(f) of the Declaration.

**Section 8.06. Fiscal Year.** The fiscal year of the Corporation shall commence on January 1 in each year.

Section 8.07. Assessment Year. The assessment year of the Corporation shall be the same as the fiscal year established in Section 8.06.

Section 8.08. Auditing. If requested by any Member or the holder of a first mortgage on any Lot, the books and accounts of the Corporation shall at the close of each fiscal year be audited by an independent Certified Public Accountant whose report shall be prepared and certified in accordance with generally accepted auditing standards. A copy of such report shall be distributed to each Member or mortgagee who requests a copy thereof.

## **ARTICLE 9**

### **Amendments**

Subject to the provisions of Sections 7.02 of the Articles, the power to make, alter, amend or repeal the By-Laws is vested in the Board of Directors, which power shall be exercised by affirmative vote of a two-thirds (2/3) majority of the Directors present at any meeting of the Board. Any proposed amendment shall be included in the notice of such meeting. If notice of a proposed amendment to the By-Laws is included in the notice of any meeting of the Board, it shall be in order to consider and adopt at that meeting any amendment to the By-Laws dealing with the subject matter with which the proposed amendment is concerned.



**CONFORMED COPY**

**DECLARATION OF COVENANTS AND RESTRICTIONS  
AS AMENDED**

**(Incorporating changes made by the 1<sup>st</sup> through the 16<sup>th</sup> Amendments)**

**The Village of WestClay**

**Carmel, Indiana**

*Note: Text incorporated by amendment is in italics.*

**Recording Information:**

Declaration recorded August 9, 1999, as Instrument No. 199909946964

First Amendment recorded August 23, 1999, as Instrument No. 199909949854

Second Amendment recorded December 13, 1999, as Instrument No. 199909971389

Third Amendment recorded February 7, 2000, as Instrument No. 200000006007

Fourth Amendment recorded September 20, 2000, as Instrument No. 200000046940

Fifth Amendment recorded December 7, 2000, as Instrument No. 20000061135

Sixth Amendment recorded July 25, 2002, as Instrument No. 200200052497

Seventh Amendment recorded December 28, 2005, as Instrument No. 200500083618

Eighth Amendment recorded August 15, 2006, as Instrument No. 200600047668

Ninth Amendment recorded April 19, 2007, as Instrument No. 2007021957

Tenth Amendment recorded June 1, 2007, as Instrument No. 2007030144

Eleventh Amendment recorded December 15, 2008, as Instrument No. 2008060715

Twelfth Amendment recorded July 26, 2010, as Instrument No. 2010033737

Thirteenth Amendment recorded September 9, 2010, as Instrument No. 2010043657

Fourteenth Amendment recorded October 24, 2013, as Instrument No. 2013065349

Fifteenth Amendment recorded November 20, 2013, as Instrument No. 2013069862

Sixteenth Amendment recorded December 17, 2013, as Instrument No. 2013073552

# DECLARATION OF COVENANTS AND RESTRICTIONS

## THE VILLAGE OF WESTCLAY

### INDEX

	Page
1. Definitions.....	-2-
2. Declaration.....	-11-
3. Additions to the Tract .....	-11-
4. The Lake .....	-11-
(a) Development.....	-11-
(b) Title and Maintenance.....	-11-
(c) Use .....	-12-
5. The Ponds.....	-12-
(a) Development.....	-12-
(b) Title and Maintenance.....	-12-
(c) Use .....	-12-
6. The Commons.....	-13-
7. Parks.....	-13-
8. Village Community Buildings .....	-13-
9. Drainage System .....	-14-
10. Common Lighting.....	-14-
11. Paths and Path Lights.....	-14-
12. Private Drives and Private Gates .....	-14-
(a) Maintenance of Private Drives (Exclusive of Alleys).....	-15-
(b) Maintenance of Alleys .....	-15-
(c) Maintenance of Private Gates .....	-15-
13. Entry Ways, Landscape Easements, Planting Areas, Crosswalks and Traffic Signs.....	-15-
(a) Entry Ways.....	-15-

(b)	Landscape Easements .....	-15-
(c)	Planting Areas .....	-16-
(d)	Crosswalks and Special Traffic Signs .....	-16-
14.	Site Furniture and Facilities .....	-16-
15.	Round-Abouts and Street Trees .....	-17-
(a)	Round-Abouts .....	-17-
(b)	Street Trees .....	-17-
(c)	Maintenance of Street Trees .....	-17-
16.	Common Parking Lots .....	-17-
17.	Open Space .....	-18-
18.	Village of WestClay Owners Association, Inc. ....	-18-
(a)	Membership .....	-18-
(b)	Powers .....	-18-
(c)	Classes of Members .....	-18-
(d)	Voting and Other Rights of Members .....	-18-
(e)	Reserve for Replacements .....	-18-
(f)	Debt Service Account .....	-19-
(g)	Maintenance Standards .....	-19-
(h)	Insurance, Taxes and Utilities .....	-19-
(i)	Limitations on Action by the Corporation .....	-20-
(j)	Mergers .....	-20-
19.	Assessments .....	-21-
(a)	Creation of the Personal Obligation of Assessments .....	-21-
(b)	General Assessment .....	-21-
(i)	Purpose of Assessment .....	-21-
(ii)	Basis for Assessment .....	-21-
(1)	Residential Lots .....	-21-
(2)	Commercial Lots .....	-22-
(3)	Senior Housing .....	-23-
(4)	Lots Owned by Declarant or Permitted Title Holder .....	-24-
(5)	Condominiums .....	-24-
(6)	Change in Basis .....	-24-
(iii)	Method of Assessment .....	-25-
(iv)	Allocation of Assessment .....	-25-
(c)	Community Area Initial Assessment .....	-26-
(d)	Community Area Debt Service Assessment .....	-27-
(e)	Parcel Assessments .....	-27-

	(i)	Purpose of Assessments .....	-27-
	(ii)	Method of Assessment .....	-27-
	(iii)	Special Assessments .....	-28-
(f)		Architectural Control Assessment .....	-28-
(g)		Special Assessment .....	-28-
(h)		Date of Commencement of Assessments .....	-29-
(i)		Effect of Nonpayment of Assessments; Lien Creation and Enforcement; Remedies of the Corporation .....	-29-
(j)		Subordination of the Lien to Mortgages .....	-31-
(k)		Certificates .....	-31-
(l)		Annual Budget .....	-31-
	(1)	Adoption of Budget .....	-31-
	(2)	Certification of Village Center Maintenance Costs .....	-31-
	(3)	Village Center Budget .....	-32-
(m)		Title Transfer Assessments .....	-32-
20.		Architectural Control .....	-33-
	(a)	The Architectural Review Board .....	-33-
	(b)	Purpose .....	-33-
	(c)	Building Activity .....	-33-
	(d)	Procedures .....	-34-
	(e)	Guidelines and Standards .....	-34-
	(f)	Application of Guidelines and Standards .....	-34-
	(g)	Design Consultants .....	-35-
	(h)	Existing Violations of Declaration .....	-35-
	(i)	Exercise of Discretion .....	-35-
	(j)	Liability of Board .....	-36-
	(k)	Inspection .....	-36-
21.		Community Area and Common Facilities .....	-36-
	(a)	Ownership .....	-36-
	(b)	Density of Use .....	-36-
	(c)	Obligations of the Corporation .....	-36-
	(d)	Easements of Enjoyment .....	-37-
	(i)	Owners .....	-37-
	(ii)	Occupants .....	-37-
	(iii)	Entities .....	-38-
	(iv)	Responsibilities of Owners and Occupants .....	-38-
	(v)	Rights of Occupants are Derivative .....	-38-
	(e)	Extent of Easements .....	-38-
	(f)	Additional Rights of Use .....	-40-
	(g)	Damage or Destruction by Owner .....	-40-
	(h)	Conveyance of Title .....	-41-

22.	Use of Tract.....	-41-
	(a) Protective Covenants .....	-41-
	(i) Land Use .....	-41-
	(ii) Nuisances .....	-41-
	(iii) Other Restrictions .....	-41-
	(iv) Exceptions.....	-42-
	(b) Maintenance of Tract .....	-42-
23.	Easements .....	-42-
	(a) Plat Easements .....	-42-
	(i) Drainage Easements.....	-42-
	(ii) Sewer Easements .....	-43-
	(iii) Utility Easements .....	-43-
	(iv) Entry Way Easements .....	-43-
	(v) Landscape Easements .....	-43-
	(vi) Water Access Easements .....	-43-
	(vii) Community Area Access Easements .....	-44-
	(viii) Pathway Easements.....	-44-
	(ix) Non-Access Easements.....	-44-
	(x) Alley Easements.....	-44-
	(b) General Easement .....	-44-
	(c) Public Health and Safety Easements.....	-45-
	(d) Drainage Board Easement.....	-45-
	(e) Crossing Underground Easements .....	-45-
	(f) Declarant's Easement to Correct Drainage.....	-45-
	(g) Water Retention .....	-46-
24.	Use of Lots During Development .....	-46-
	(a) By Declarant.....	-46-
	(b) By Builders .....	-46-
25.	Enforcement.....	-46-
26.	Limitations on Rights of the Corporation .....	-47-
27.	Approvals by Declarant.....	-47-
28.	Mortgages.....	-47-
	(a) Notice to Corporation .....	-47-
	(b) Notices to Mortgagees .....	-47-
	(c) Notice of Unpaid Assessments .....	-48-

(d)	Financial Statements .....	-48-
(e)	Payments by Mortgagees .....	-48-
29.	Amendments .....	-48-
(a)	Generally .....	-48-
(b)	By Declarant.....	-49-
(c)	Approval by Zoning Authority.....	-49-
(d)	Class Approval.....	-49-
(e)	Effective Date .....	-49-
30.	Interpretation.....	-49-
31.	Duration .....	-50-
32.	Severability .....	-50-
33.	Non-Liability of Declarant.....	-50-
34.	Compliance with the Soil Erosion Control Plan.....	-50-
(a)	The Plan .....	-50-
(b)	Indemnity .....	-51-
35.	Annexation.....	-51-
36.	Exclusive Builders .....	-51-
Exhibit A	Description of Development Area	
Exhibit B	General Plan of Development	
Exhibit C	Description of the Tract	

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

This Declaration, made as of the 9th day of August, 1999, by BRENNICK TND COMMUNITIES, LLC, an Indiana limited liability company ("Declarant"),

**W I T N E S S E T H :**

WHEREAS, the following facts are true:

A. Declarant owns, or has the right to acquire the real estate located in Hamilton County, Indiana, described in Exhibit A and depicted on Exhibit B, upon which Declarant intends, but is not obligated, to develop a traditional neighborhood to be known as The Village of WestClay.

B. The Development Area has been designated as the Planned Unit Development District and development thereof is subject to the development standards set forth in the Zoning Ordinance.

C. Declarant intends, but is not obligated, to construct certain improvements and amenities in WestClay which shall constitute Community Area.

D. Declarant desires to provide for the preservation and enhancement of the property values, amenities and opportunities in WestClay and for the maintenance of the Tract and the improvements thereon, and to this end desires to subject the Tract together with such additions as may hereafter be made thereto (as provided in Paragraph 3) to the covenants, restrictions, easements, charges and liens hereinafter set forth, each of which is for the benefit of the Lots and lands in the Tract and the future owners thereof.

E. Declarant deems it desirable, for the efficient preservation of the values and amenities in WestClay, to create agencies to which may be delegated and assigned the powers of owning, maintaining and administering the Community Area, administering and enforcing the Restrictions, collecting and disbursing the Assessments and charges hereinafter created, and promoting the recreation, health, safety and welfare of the Owners of Lots in WestClay.

F. Declarant has incorporated under the laws of the State of Indiana nonprofit corporations known as The Village of WestClay Owners Association, Inc. and WestClay Village Owners Association, Inc. for the purpose of exercising such functions.

NOW, THEREFORE, Declarant hereby declares that all of the Lots and lands in the Tract and such additions thereto as may hereafter be made pursuant to Paragraph 3 hereof, as they are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, are subject to the following Restrictions, all of which are declared to be in furtherance of a plan for the improvement and sale of Lots in the Tract, and are established and agreed upon for the

purpose of enhancing and protecting the value, desirability and attractiveness of the Tract as a whole and of each of Units, Lots and lands situated therein. The Restrictions shall run with the land and shall be binding upon Declarant, its successors and assigns, and upon the parties having or acquiring any interest in the Tract or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of Declarant and its successors in title to the Tract or any part or parts thereof.

1. Definitions. Terms defined in the Zoning Ordinance used in this Declaration shall have the meaning herein as therein unless otherwise defined herein or the context otherwise requires. The following terms, as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

"Applicable Date" means the earlier of (i) the date when all Lots in the Development Area have been improved by the construction thereon of Units, (ii) *December 31, 2018*, or (iii) *a date specified as the Applicable Date in a document executed by Brenwick TND Communities, LLC and recorded in the Office of the Recorder of Hamilton County.*

"Architectural Control Assessment" means the assessment levied by the Corporation pursuant to Paragraph 19(f) of this Declaration *or Paragraph 5 of the PRA Supplemental Declaration* or by the Association pursuant to Paragraph 5 of the Village Center Supplemental Declaration.

"Architectural Review Board" means that entity established pursuant to Paragraph 20 of this Declaration for the purposes therein stated.

"Articles" means the Articles of Incorporation of the Corporation, as amended from time to time.

"Assessments" means all sums lawfully assessed against the Members or as declared by this Declaration, any Supplemental Declaration, the Articles or the By-Laws.

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

"Board of Directors" means the governing body of the Corporation or the Association, as the context may require.

"Building Activity" means any activity or undertaking on a Residential Lot of a type described in Paragraph 20(c).

"Building Guidelines" means guidelines and requirements for Building Activity on the Tract adopted by the Declarant, the Architectural Review Board or the Design Review Board, as applicable.



"By-Laws" means the Code of By-Laws of the Corporation, as amended from time to time.

"Commercial Lot" means each established building site or platted lot on which a Commercial Unit, a Multifamily Structure or a Multiuse Structure has been or is intended to be constructed.

"Commercial Unit" means any structure or portion thereof situated upon the Tract which is designed and intended for use and occupancy for such non-residential purposes as are permitted under the Zoning Ordinance exclusive of home-based offices and other uses accessory to the use and enjoyment of a Residential Lot. A Commercial Unit may be a Condominium.

"Common Facilities" means the Common Lighting, the Path Lights, the Site Furniture and Facilities and other personal property of the Corporation.

"Common Lighting" means the light standards, wiring, bulbs and other appurtenances, if any, installed to illuminate the Community Area or the public and private ways in WestClay exclusive of the Path Lights.

"Common Parking Lot" means any parking lot owned, managed and/or maintained by the Corporation or the Association and intended for use by the Occupants of or visitors to a Village Community Building, an Education Facility, a Commercial Unit, a Multifamily Structure or a Multiuse Structure.

"Commons" means such land, if any, as may be denoted on a Plat as "Commons" or designated as "Commons" in any recorded instrument executed by Declarant.

"Community Area" means (i) the Lake, (ii) the Ponds, (iii) the Private Drives and Private Gates, (iv) the Village Community Buildings, (v) the Entry Ways, (vi) the Planting Areas, (vii) the Parks, (viii) the Commons, (ix) the Drainage System, (x) the Paths, (xi) the Common Lighting, (xii) the Site Furniture and Facilities, (xiii) any utility service lines or facilities not maintained by a public utility company or governmental agency that are located on, over or below or through more than one Section or Parcel, and (xiv) any areas of land (1) shown on any Plat, (2) described in any recorded instrument prepared by Declarant or its agents, or (3) conveyed to or acquired by the Corporation or the Association, together with all improvements thereto, that are intended to be devoted to the use or enjoyment of some, but not necessarily all, of the Owners and Occupants of Lots and Units, exclusive of Common Parking Lots.

"Community Area Access Easement" means the area designated on a Plat as a means of access to a Community Area or Common Parking Lot.

"Community Area Debt Service Assessment" means the periodic Assessment to meet the obligation of the Corporation for payments on account of Community Area Secured Indebtedness.

"Community Area Initial Assessment" means the initial Assessment for the Reserve for Replacements required by Paragraph 19(c).

"Community Area Secured Indebtedness" means indebtedness in an aggregate principal amount not exceeding Two Million Dollars (\$2,000,000) incurred *by the Corporation* to finance, in whole or in part, *Maintenance Costs relating to* the Village Community Buildings and the Common Facilities, or parts thereof, secured by a lien or liens on the Village Community Buildings and the Common Facilities, or parts thereof.

"Condominium" means a Unit in a Horizontal Property Regime.

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

"Crosswalks" *means the decorative brick crosswalks installed by Declarant between sidewalks across a public right-of-way.*

"Declarant" means Brenwick TND Communities, LLC *and such designee, if any, as may be designated as its successor as Declarant in an instrument executed by Brenwick TND Communities, LLC and recorded in the Office of the Recorder of Hamilton County.*

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

"Designated Builder" means during such period as such designation by Declarant may continue, any Person engaged in the construction of more than one (1) Unit on the Tract who is designated by Declarant as a "Designated Builder". Declarant may make and revoke any such designation at any time and from time to time. A builder approved pursuant to Paragraph 36 may, but will not necessarily be, a Designated Builder.

"Detention Area" means an area depicted on a Plat which has been engineered to accommodate from time to time surface water drainage.

"Development Area" means the land described in Exhibit A together with any additional land added to the Tract pursuant to Paragraph 3 of this Declaration.

"Drainage Board" means the Hamilton County Drainage Board, its successors or assigns, or, in the event of annexation of the Tract to the City of Carmel, the Board of Public Works of the City of Carmel.

"Drainage System" means the open drainage ditches and swales, the subsurface drainage tiles, pipes and structures, the dry and wet retention and/or detention ponds (including all Detention Areas), and the other structures, fixtures, properties, equipment and facilities (excluding the Lake and the Ponds) located in the Tract and designed for the purpose of controlling, retaining or expediting the drainage of surface and subsurface waters from, over and across the Tract, including but not limited to those shown or referred to on a Plat, all or part of which may be established as legal drains subject to the jurisdiction of the Drainage Board.

"Education Facility" means any facility on the Tract owned or leased by a public or private educational institution or its successor in title, which does not constitute Community Area and is used principally for educational purposes.

"Electoral Parcel" means one or more Parcels the Supplemental Declaration(s) for which authorizes the Owners of Lots in such Parcel(s) to elect a member of the Board of Directors of the Corporation to represent such Parcel(s) on the Board.

"Entry Ways" means the structures constructed as an entrance to WestClay or a part thereof (exclusive of the street pavement, curbs and drainage structures and tiles), the traffic islands depicted as designated Blocks on a Plat and any other traffic islands dividing a roadway providing access to WestClay or a part thereof, and the grassy area surrounding such structures.

"General Assessment" means an Assessment made pursuant to Paragraph 19(b).

"General Plan of Development" means that plan prepared by Declarant and approved, if necessary, by appropriate public agencies that outlines the total scheme of development and general uses of land in the Development Area, as such may be modified from time to time.

"Horizontal Property Regime" means a horizontal property regime established in the Tract pursuant to I.C. 32-1-6 or any successor provision authorizing the creation of a Condominium.

"Lake" means the lake identified on the Development Plan as Hourglass Lake.

"Landscape Easement" means a portion of a Lot denoted on a Plat *or described in a recorded easement* as an area to be landscaped.

"Living Unit" means a room or combination of rooms designed for year-round habitation, containing a bathroom and kitchen facilities, and designed for or used as a permanent residence by at least one Person.

"Lot" means (1) any plot of land intended as a building site shown upon any recorded Plat, with the exception of Community Area and Common Parking Lots, (2) any Condominium, (3) any part of the Tract designated in a recorded instrument as a "Lot", and (4) any other part of the Tract acquired by an Owner or used by Declarant for the construction or operation of, or occupancy as, one or more Units.

"Lot Development Plan" means (i) a site plan prepared by a licensed engineer or architect, (ii) foundation plan and proposed finished floor elevations, (iii) building plans, including elevation and floor plans, (iv) material plans and specifications, (v) landscaping plan, (vi) exterior lighting plan, (vii) tree preservation plan and (viii) all other data or information that the Architectural Review Board, the Design Review Board *or the PRA Review Board*, as applicable, may request with respect to the improvement or alteration of a Lot (including but not limited to the landscaping thereof) or the construction or alteration of a Unit, Multifamily Structure, Multiuse Structure or other structure or improvement thereon.

"Maintain" means maintain, repair and replace as necessary or appropriate.

"Maintenance Costs" means all of the costs necessary to keep the facilities to which the term applies operational and in good condition, including but not limited to the cost of all upkeep, maintenance, repair, replacement of all or any part of any such facility, payment of all insurance premiums for public liability, casualty and other insurance maintained with respect thereto, all utility charges relating to such facilities, all taxes imposed on the facility and on the underlying land, leasehold, easement or right-of-way, and any other expense related to the continuous maintenance, operation or improvement of the facility.

"Member" means a member of the Corporation and "Members" means all members of the Corporation.

"Mortgagee" means the holder of a first mortgage on a Unit, a Multifamily Structure or a Multiuse Structure.

"Multifamily Structure" means a structure with two or more Living Units under one roof, except when such Living Units are situated upon their own individual Lots, are Condominiums or are located in a Multiuse Structure.

"Multiuse Structure" means a structure which contains one or more Commercial Units and one or more Living Units.

"Occupant" means any Person who is in possession of a Unit either as an Owner or as a tenant pursuant to a lease or other occupancy agreement.

"Owner" means a Person, including Declarant, who at the time has or is acquiring legal title to a Lot except a Person who has or is acquiring such title merely as security for the performance of an obligation.

"Parcel" means each platted subdivision or part thereof, parcel of land or Horizontal Property Regime consisting of one or more Lots within the Development Area that are subject to the same Supplemental Declaration or are declared by Declarant to constitute a "Parcel". One or more Lots may be included in more than one Parcel.

"Parcel Assessment" means an Assessment made pursuant to Paragraph 19(e) of this Declaration, Paragraph 5(b) of the Village Center Supplemental Declaration or *Paragraph 5(b) of the PRA Supplemental Declaration*.

"Park" means such land as may be denoted on a Plat as "Park" or designated as "Park" in any recorded instrument executed by Declarant.

"Part of the Development Area" means any part of the Development Area not included in the Tract.

"Paths" means those walkways and/or bikeways installed pursuant to Paragraph 11 and such other real estate or interest therein as is conveyed or granted to the Corporation for the purpose of being used for walkways and/or bikeways.

"Path Lights" means the light standards, conduits, wiring, bulbs and other appurtenances, if any, installed to illuminate the Paths.

"Peripheral Retail Area" means that part of the Tract depicted on the Development Plan as the "Peripheral Retail Area."

"Permitted Title Holder" means (a) the Corporation, (b) the Association, (c) a public or private educational institution, (d) the City of Carmel, Indiana, or (e) a nonprofit corporation having perpetual existence or a governmental entity designated, in either case, by Declarant.

"Person" means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

"Plat" means a final secondary plat of a portion of the Development Area executed by Declarant and recorded in the Office of the Recorder of Hamilton County, Indiana.

"Pond" means a body of water located in the Development Area and depicted on the General Plan of Development (other than the Lake) and "Ponds" means all of such bodies of water (other than the Lake).

"Planting Area" means a landscaped area located in the right-of-way of a public street, on or adjacent to a Private Drive or Common Parking Lot or on a Commons, in a Park or in or on other Community Area.

*"PRA Review Board" means that entity established pursuant to Paragraph 6 of the PRA Supplemental Declaration.*

*"PRA Supplemental Declaration" means the Supplemental Declaration relating to the Peripheral Retail Area.*

*"Primary Area (SH)" means that part of the Tract depicted on the Development Plan as "Primary Area (SH)."*

"Principal Streets" means, to the extent constructed by Declarant, Towne Road, 131<sup>st</sup> Street, Broad Street, Meeting House Road, Horseferry Road and Pettigru Street.

"Private Drive" means a street, lane, road, driveway or other right-of-way designed to provide access to one or more Lots or to the Community Area that has not been accepted for maintenance by a public authority. Private Drive does not include a driveway located entirely on a single Lot, but does include alleys.

"Private Gate" means a security gate controlling access to and from a Private Drive.

"Recreation Centers" means Provost Park, Webster Park, *Goldwater Park, University Green, Ronald Reagan Green* and MacArthur Field and the recreational facilities therein or thereon.

"Register of Regulations" means the document containing rules, regulations, policies, and procedures adopted by the Board of Directors, the Architectural Review Board, the Design Review Board or the *PRA Review Board*, as the same may from time to time be amended.

"Reserve for Replacements" means a fund established and maintained by the Corporation to meet the cost of periodic maintenance, repairs, renewal and replacement of the Community Area and the Common Facilities.

"Residential Lot" means a Lot which is used or intended to be used primarily for residential purposes except where the Lot is improved by the construction thereon of a Multifamily Structure or a Multiuse Structure.

"Restrictions" means the covenants, conditions, easements, charges, liens, restrictions, rules and regulations and all other provisions set forth in this Declaration, all applicable Supplemental Declarations, the Building Guidelines and the Register of Regulations, as the same may from time to time be amended.

"Round-About" means a square, green or traffic circle in WestClay.

"Section" means that portion of the Development Area that is depicted on a Plat.

*"Senior Housing" means congregate housing for the elderly, including associated Living Units the Owners or Occupants of which have the benefit of access to goods and services provided by the operator of the congregate care facility.*

"Significant Tree" means any tree measuring eight (8) inches in caliper measured at four (4) to five (5) feet above grade.

"Site Furniture and Facilities" means any furniture, trash containers, sculpture or other furniture, fixtures, equipment or facilities constructed, installed or placed in the Development Area by Declarant, the Corporation or the Association and intended for the common use or benefit of some, if not all, of the Owners and Occupants.

"Special Assessment" means an Assessment made pursuant to Paragraph 19(g) or any other provision of this Declaration or any Supplemental Declaration authorizing the levying of a Special Assessment.

*"Special Traffic Signs" means traffic control or street signs installed by Declarant on decorative posts or on street posts, provided that Special Traffic Signs shall comply with the Manual on Uniform Traffic Control Devices in terms of sign height and horizontal distance from curbs, sidewalks or street intersections.*

"Street Trees" means the trees, shrubs and other plantings planted by Declarant or an Owner within a Planting Area, as the same may be replaced from time to time.

"Supplemental Declaration" means any supplemental declaration of covenants, conditions or restrictions or any declaration of horizontal property regime which may be recorded and which extends the provisions of this Declaration or any previously recorded Supplemental Declaration to a Section or Parcel and contains such complementary or supplementary provisions for such Section or Parcel as are required or permitted by this Declaration.

"Tract" means the land described in Exhibit C and such other real estate as may from time to time be annexed thereto under the provisions of Paragraph 3 hereof.

"Unit" means any Living Unit or Commercial Unit, and "Units" means all Living Units and Commercial Units.

"Village Center" means that part of the Tract depicted on the Development Plan as the "Village Center."

"Village Center Maintenance Amount" has the meaning set forth in Paragraph 19(1)(3).

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

"Village Center Supplemental Declaration" means the Supplemental Declaration relating to the Village Center Parcel.

"Village Community Buildings" means the Meeting House, the Trustees Hall, the buildings constituting a part of or located in or on the Recreation Centers and such other civic or recreational buildings as may be constructed in WestClay by Declarant principally for the use of the Owners as a benefit of ownership of a Lot, title to which is, or is intended ultimately to be, vested in a Permitted Title Holder.

"Warranty Period" means, with respect to Street Trees, a period of one (1) year following the date a Street Tree is planted in a Planting Area.

"Water Access Easement" means the area designated on a Plat as a means of access to the Lake or a Pond.

"WestClay" means the name by which the Tract shall be commonly known.

"Zoning Authority" with respect to any action means the Director of the Department of Community Services of the City of Carmel or, where he lacks the capacity to take action, or fails to take such action, the governmental body or bodies,



administrative or judicial, in which authority is vested under applicable law to hear appeals from, or review the action, or the failure to act, of the Director.

"Zoning Ordinance" means the ordinance adopted by the Common Council of the City of Carmel, Indiana, establishing the WestClay Village Planned Unit Development District.

2. Declaration. Declarant hereby expressly declares that the Tract and any additions thereto pursuant to Paragraph 3 hereof shall be held, transferred, and occupied subject to the Restrictions. The Owner of any Lot or Parcel subject to these Restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot or Parcel, or (ii) by the act of occupancy of any Lot or Parcel, shall accept such deed and execute such contract subject to each Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, each Owner acknowledges the rights and powers of Declarant and of the Corporation with respect to these Restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant, the Corporation, and the Owners and subsequent Owners of each of the Lots and Parcels affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreement.

3. Additions to the Tract. Declarant shall have the right to bring within the scheme of this Declaration and add to the Tract real estate that is a Part of the Development Area or that is contiguous to the Development Area. In determining contiguity, public rights of way shall not be considered.

The additions authorized under this Paragraph 3 shall be made by the filing of record of one or more Supplemental Declarations with respect to the additional real estate and by filing with the Corporation any revisions to the General Plan of Development necessary to reflect the scheme of development of the additional real estate. Unless otherwise stated therein, such revisions to the General Plan of Development shall not bind Declarant to make the proposed additions. For purposes of this Paragraph 3, a Plat depicting a portion of the Development Area shall be deemed a Supplemental Declaration.

4. The Lake.

(a) Development. Declarant intends, but is not obligated, to acquire title to the Lake. Declarant reserves the right, subsequent to acquisition of the Lake, to alter the size and configuration thereof (as a result of which, the Lake may vary from that depicted on the General Plan of Development attached as Exhibit B hereto).

(b) Title and Maintenance. If Declarant acquires title to the Lake, it shall subsequently convey such title to a Permitted Title Holder. Unless otherwise specified in the instrument of conveyance, the Corporation shall be responsible for maintaining the Lake. The Maintenance Costs of the Lake shall be assessed as a

General Assessment against all Lots subject to assessment. Each Owner of a Lot that abuts the Lake shall be responsible at all times for maintaining so much of the bank of the Lake above the pool level as constitutes a part of, or abuts, his Lot (exclusive of the Lake Liner and any Path) and shall keep that portion of the Lake abutting his Lot free of debris and otherwise in reasonably clean condition.

(c) Use. No boats shall be permitted upon any part of the Lake except if and to the extent authorized by the Board of Directors and then subject to such rules and regulations as may be adopted by the Board of Directors. No dock, pier, wall or other structure may be extended into the Lake without the prior written consent of the Architectural Review Board and such governmental authority as may have jurisdiction thereover. *No swimming or fishing will be permitted in the Lake.* Each Owner of a Lot abutting the Lake shall indemnify and hold harmless Declarant, the Corporation and each other Owner against all loss or damage incurred as a result of injury to any Person or damage to any property, or as a result of any other cause or thing, arising from or related to use of, or access to, the Lake by any Person who gains access thereto from, over or across the Owner's Lot with the knowledge or acquiescence of such Owner. Declarant shall have no liability to any Person with respect to the Lake, the *design, depth, pool level, water quality or* use thereof or access thereto, or with respect to any damage to any Lot resulting from the Lake or the proximity of a Lot thereto, including loss or damage from erosion.

## 5. The Ponds.

(a) Development. Declarant intends, but is not obligated, to develop the Ponds. Declarant reserves the right, subsequent to commencement of development of the Ponds, to determine the size and configuration thereof (which may vary from that depicted on the General Plan of Development attached as Exhibit B hereto).

(b) Title and Maintenance. Declarant shall convey title to the Ponds to a Permitted Title Holder. Unless otherwise specified in the instrument of conveyance, the Corporation shall be responsible for maintaining the Ponds. The Maintenance Costs of the Ponds shall be assessed as a General Assessment against all Lots subject to assessment. Each Owner of a Lot that abuts a Pond shall be responsible at all times for maintaining so much of the bank of the Pond above the pool level as constitutes a part of, or abuts, his Lot (exclusive of any Path) and shall keep that portion of the Pond abutting his Lot free of debris and otherwise in reasonably clean condition.

(c) Use. No boats shall be permitted upon any part of a Pond. No dock, pier, wall or other structure may be extended into a Pond without the prior written consent of the Architectural Review Board and such governmental authority as may have jurisdiction thereover. No swimming will be permitted in any Pond *and, except as otherwise provided in Paragraph 21(d)(i), fishing will be permitted only at such*

*locations, if any, as may be designated by the Board of Directors and upon such terms and conditions as the Board of Directors may specify. Under no circumstances will fishing be permitted in Kew, Druid, Tree Shadow, Dogwood and Wilson Ponds.* Each Owner of a Lot abutting a Pond shall indemnify and hold harmless Declarant, the Corporation and each other Owner against all loss or damage incurred as a result of injury to any Person or damage to any property, or as a result of any other cause or thing, arising from or related to use of, or access to, a Pond by any Person who gains access thereto from, over or across such Owner's Lot with the knowledge or acquiescence of such Owner. Declarant shall have no liability to any Person with respect to a Pond, the *design, depth, pool level, water quality or use* thereof or access thereto, or with respect to any damage to any Lot resulting from a Pond or the proximity of a Lot thereto, including loss or damage from erosion.

6. The Commons. Declarant shall convey title to the Commons to a Permitted Title Holder. Unless otherwise specified in the instrument of conveyance, the Corporation shall be responsible for maintaining the Commons and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. Unless approved by the Architectural Review Board, no permanent improvements shall be made to or installed on the Commons (excepting University Green) other than Village Community Buildings, Education Facilities, underground utility facilities, Site Furniture and Facilities, walkways, planting structures, and fountains or other nonrecreational water features. University Green may be improved with recreational facilities, including but not limited to Founder's Corner and a croquet court. The use of the Commons shall be subject to rules and regulations adopted by the Board of Directors which are not inconsistent with the provisions of this Declaration or any Supplemental Declaration.

7. Parks. Declarant shall convey title to the Parks to a Permitted Title Holder. Unless the instrument of conveyance provides otherwise, the Corporation shall be responsible for maintaining the Parks and the Maintenance Costs thereof, together with any costs incurred by the Corporation in connection with the further improvement thereof, shall be assessed as a General Assessment against all Lots subject to assessment. The Parks may be improved as appropriate for recreational and open space areas. The use of the Parks shall be subject to rules and regulations adopted by the Board of Directors which are not inconsistent with the provisions of this Declaration or any Supplemental Declaration.

8. Village Community Buildings. Declarant may, but is not obligated to, construct in the area designated on the General Plan of Development as the contemplated location thereof the Meeting House, the Trustees Hall and one or more Recreation Center (which may include a bath house, swimming pool, tennis courts and other recreational facilities) and such other recreational and community facilities as Declarant in its sole discretion believes are justified by the progress of development of the Development Area. If Declarant undertakes the development of one or more Village Community Buildings, Declarant intends upon completion of construction to convey the same to a Permitted Title Holder prior to the Applicable Date free and clear of all financial encumbrances and other liens securing indebtedness of Declarant except Community Area Secured Indebtedness, but subject to the right of Declarant to use the Village Community Buildings as

provided in Paragraph 24(a). Unless the instrument of conveyance provides otherwise, the Corporation shall be responsible for maintenance of the Village Community Buildings and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. The Board of Directors may adopt such rules and regulations with respect to the use of the Village Community Buildings as it deems appropriate and may charge reasonable fees for the use thereof, but no rule, regulation or charge shall be inconsistent with the provisions of this Declaration or any Supplemental Declaration.

Any Education Facility shall be constructed by and be the sole property of the public or private educational institution which operates the Education Facility and none of the Corporation, the Association or any Owner shall have any interest therein except as otherwise specifically provided herein, in a Supplemental Declaration or in an instrument of conveyance from Declarant to such educational institution.

Declarant may secure indebtedness incurred to finance construction of the Village Community Buildings and the Common Facilities, or parts thereof, with a mortgage lien(s) on all or some of the Village Community Buildings; provided that the aggregate original principal amount of the indebtedness secured by such lien(s) shall not exceed Two Million Dollars (\$2,000,000.00).

9. Drainage System. The Drainage System has or will be constructed for the purpose of controlling drainage within and adjacent to the Development Area and maintaining the water level in the Lake and the Ponds. The Corporation shall maintain the Drainage System to the extent not maintained by the Drainage Board and the Maintenance Costs thereof shall be assessed against all Lots subject to assessment serviced by that part of the Drainage System with respect to which Maintenance Costs are incurred. Each Owner shall be individually liable for the cost of maintenance of any drainage system located entirely upon his Lot and which is devoted exclusively to drainage of his Lot and is not maintained by the Drainage Board.

10. Common Lighting. Declarant may, but is not obligated to, install Common Lighting in WestClay and may reserve easements for such purpose over and across Lots. If installed, the Corporation shall operate and maintain the Common Lighting and, unless otherwise provided in a Supplemental Declaration, the Maintenance Costs thereof shall be assessed as a General or Parcel Assessment against all Lots subject to assessment.

11. Paths and Path Lights. Declarant may, but is not obligated to, install the Paths and Path Lights at the approximate locations depicted on the General Plan of Development and may reserve easements for such purpose over and across Lots. If installed, the Corporation shall operate and maintain the Paths and Path Lights and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. The Board of Directors may adopt such rules and regulations with respect to the use of the Paths as it may deem appropriate including but not limited to the prohibition of the use of all or some of the Paths by bicycles, skateboards and/or motorized or non-motorized vehicles.

12. Private Drives and Private Gates.

(a) Maintenance of Private Drives (Exclusive of Alleys). Unless otherwise provided in a Supplemental Declaration, each Private Drive (exclusive of alleys) shall be owned by the Corporation and maintained by the Corporation in good condition satisfactory for the purpose for which it was constructed. The Maintenance Costs incurred by the Corporation in maintaining a Private Drive (*other than a Frontage Place*) shall be assessed against all Lots whose principal means of vehicular access to a public right-of-way or to the Village Center is over and across such Private Drive. *The Maintenance Costs for Frontage Places shall be assessed as a General Assessment against all Lots subject to assessment. As used herein, "Frontage Place" has the meaning set forth in Section 3 of the Zoning Ordinance except that for purposes of this Declaration it shall include private streets separated from a publicly maintained street by an "eyebrow" median.* Estimated Maintenance Costs, including a contribution to a reserve fund for future maintenance, repair and replacement of Private Drives, shall be included in each annual budget of the Corporation adopted pursuant to Paragraph 19(l).

(b) Maintenance of Alleys. Unless otherwise provided in a Supplemental Declaration, the Corporation shall maintain all alleys and the Maintenance Costs incurred for such maintenance shall be assessed against all Lots served by alleys.

(c) Maintenance of Private Gates. Private Gates shall be maintained by the Corporation. The Maintenance Costs incurred by the Corporation in maintaining Private Gates shall be assessed against all Lots whose principal access to a public right-of-way or to the Village Center is through a Private Gate.

13. Entry Ways, Landscape Easements, Planting Areas, Crosswalks and Special Traffic Signs.

(a) Entry Ways. The Corporation shall maintain the Entry Ways and all improvements and plantings thereon, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. Grass, trees, shrubs and other plantings located on an Entry Way shall be kept neatly cut, cultivated or trimmed as reasonably required to maintain an attractive entrance to WestClay or a part thereof. All entrance signs located on an Entry Way shall be maintained at all times in good and sightly condition appropriate to a first-class residential community.

(b) Landscape Easements. Unless the Board of Directors (of the Corporation or the Association, as applicable) determines that all or some of the Landscape Easements shall be maintained by the Corporation and/or the Association and the Maintenance Costs thereof assessed as a General or Parcel Assessment, the Owner of each Lot upon which a Landscape Easement is located shall at his/her expense keep the grass, trees, shrubs and other

plantings located on a Landscape Easement properly irrigated and neatly cut, cultivated or trimmed as reasonably necessary to maintain the same at all times in a good and sightly condition appropriate to a first-class residential subdivision and, if such Owner fails to do so, the Corporation or the Association, as applicable, may undertake such maintenance and assess the Maintenance Costs thereof as a Special Assessment against such Lot. *The Corporation shall maintain (and replace as appropriate) all fences installed by Declarant or the Corporation in a Landscape Easement and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment.*

(c) Planting Areas. Following the expiration of the Warranty Period, the Corporation (or, if the Village Center Supplemental Declaration so provides with respect to Planting Areas in the Village Center Parcel, the Association) shall maintain the Planting Areas and the Maintenance Costs thereof shall be assessed as a General or Parcel Assessment.

(d) Crosswalks and Special Traffic Signs. *Unless responsibility therefor is assumed by a governmental entity, the Corporation (or, if the Village Center Supplemental Declaration so provides with respect to Crosswalks and Special Traffic Signs in the Village Center Parcel, the Association) shall maintain the Crosswalks and Special Traffic Signs and the Maintenance Costs thereof shall be assessed as a General or Parcel Assessment. In doing so the Corporation or the Association, as the case may be, shall first obtain all required permits from any governmental entity having jurisdiction over the public right-of-way in which the Crosswalks or Special Traffic Signs are located. If replacement of a Special Traffic Sign is necessary and the Corporation or Association fails to do so within thirty (30) days after notice from the governmental entity having jurisdiction over the public right-of-way, such governmental entity may replace the Special Traffic Sign using its standard in-stock materials.*

14. Site Furniture and Facilities. Declarant may, but is not obligated to, construct, install or place Site Furniture and Facilities in WestClay. If it does so, title thereto shall be conveyed to a Permitted Title Holder. After conveyance to a Permitted Title Holder, unless otherwise specified in the instrument of conveyance, the Corporation (or, if the Village Center Supplemental Declaration so provides with respect to Site Furniture and Facilities in the Village Center Parcel, the Association) shall maintain the Site Furniture and Facilities and the Maintenance Costs thereof shall be assessed as a General or Parcel Assessment.

15. Round-Abouts and Street Trees.

(a) Round-Abouts. The Corporation shall maintain the Round-Abouts (exclusive of the street pavement, curbs and drainage structures and tiles unless they constitute a part of a Private Drive), and the Maintenance Costs thereof shall be assessed as a General or Parcel Assessment.

(b) Street Trees. Declarant shall plant Street Trees within Planting Areas adjacent to such of the Principal Streets as are constructed by Declarant and in Community Areas adjacent to other streets constructed in WestClay. Each Owner shall, within the time specified in the Building Guidelines, plant within a Planting Area adjacent to the Owner's Lot that number of Street Trees as are depicted on such Lot on the Development Plan, such Street Trees to be of a size and species designated by the Architectural Review Board, the Design Review Board *or the PRA Review Board*, as applicable, and to be planted at locations specified on the landscaping plan submitted by the Owner to and approved by the applicable Board. Declarant, the Corporation or the Association may plant additional Street Trees on any Lot.

(c) Maintenance of Street Trees. During the Warranty Period, all dead or dying Street Trees, installed new, transplanted, or designated on the Lot Development Plan as existing trees to be retained, shall be replaced by the person responsible for causing such Street Trees to be planted. Following the expiration of the Warranty Period for a Street Tree, unless otherwise provided in a Supplemental Declaration, the Corporation shall maintain and, if necessary, replace the Street Tree, and the Maintenance Cost thereof shall be assessed as a General Assessment against all Lots subject to Assessment.

16. Common Parking Lots. Declarant shall construct such Common Parking Lots as it deems desirable. The Association shall maintain the Common Parking Lots located in the Village Center, including the exterior and interior landscaping required by the Zoning Ordinance, and the Maintenance Costs thereof shall *except as may otherwise be provided in the PRA Supplemental Declaration*, be assessed as a Parcel Assessment as provided in the Village Center Supplemental Declaration. The Corporation shall maintain all other Common Parking Lots, including the exterior and interior landscaping required by the Zoning Ordinance, and the Maintenance Costs thereof shall be assessed against all Lots which derive a substantial benefit from the availability of parking in such other Common Parking Lots, as determined in the reasonable discretion of the Board of Directors of the Corporation. The Association may allocate to the Corporation a portion of the Maintenance Costs of Common Parking Lots in the Village Center which serve a Village Community Building as provided in the Village Center Supplemental Declaration and the amount so allocated shall be included in the General Assessment against all Residential Lots subject to assessment. *Maintenance Costs for Common Parking Lots located in the Peripheral Retail Area shall be allocated as provided in the PRA Supplemental Declaration.*

17. Open Space. A Permitted Title Holder shall not change the use of any Park, Commons or other area designated by Declarant as open space conveyed to the Permitted Title Holder by Declarant from the use being made thereof at the time of conveyance without the prior consent or approval of the Zoning Authority.

18. Village of WestClay Owners Association, Inc.

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

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

(c) Classes of Members. The Corporation shall have *two (2) classes of Members, one class for Owners of Commercial Lots and one class for Owners of Residential Lots.*

(d) Voting and Other Rights of Members. The voting and other rights of Members shall be as specified in the Articles and By-Laws; provided, however, that *subsequent to the Applicable Date* the Owners of Lots in each Electoral Parcel shall be entitled to elect a Person to serve as a Director representing such Electoral Parcel on the Board of Directors in the manner specified in the Code of By-Laws of the Corporation.

(e) Reserve for Replacements. The Board of Directors shall establish and maintain the Reserve for Replacements by the allocation and payment to such reserve fund of an amount determined annually by the Board to be sufficient to meet the cost of periodic maintenance, repair, renewal and replacement of the Community Area and the Common Facilities to the extent the Corporation is responsible for the maintenance thereof. In determining the amount, the Board shall take into consideration the expected useful life of the Community Area and the Common Facilities, projected increases in the cost of materials and labor, interest to be earned by such fund and the advice of Declarant or such consultants as the Board may employ. The Reserve for Replacements shall be deposited in a special account with a lending institution the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. Prior to the Applicable Date, funds from the Reserve for Replacements may be withdrawn and



applied at the direction of Declarant to meet the costs of periodic maintenance, repairs, renewal or replacement of the Community Area and the Common Facilities.

(f) Debt Service Account. The Board of Directors shall establish and maintain a separate account for the payment of principal, interest and other charges on account of Community Area Secured Indebtedness. Community Area Debt Service Assessments shall be deposited to said account and disbursed solely for the purpose of payments on account of Community Area Secured Indebtedness. The debt service account shall be maintained in a lending institution the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. Prior to the Applicable Date, funds from the debt service account may be withdrawn and applied at the direction of Declarant to make payments on account of Community Area Secured Indebtedness.

(g) Maintenance Standards. In each instance in which this Declaration or a Supplemental Declaration imposes on the Corporation a maintenance obligation with respect to the Community Area or the Common Facilities or a part thereof, the Corporation shall maintain the Community Area, Common Facilities or designated part thereof in good condition, order and repair substantially comparable to its condition when originally constructed, installed or planted and compatible in appearance and utility with a first-class residential community. Grass, trees, shrubs and other plantings located on the Community Area for which the Corporation has maintenance responsibility shall be kept properly irrigated and neatly cut, cultivated or trimmed as reasonably required and otherwise maintained at all times in good and slightly condition appropriate to a first-class residential community. In each fiscal year subsequent to the Applicable Date the Corporation shall make expenditures to Maintain the Community Area and Common Facilities located in the Village Center in an amount not less than the Village Center Maintenance Amount established pursuant to Paragraph 19(1)(3).

(h) Insurance, Taxes and Utilities. The Corporation shall maintain public liability and casualty insurance in prudent amounts insuring against risk of loss to the Corporation on account of injury to person or property and damage to property owned by the Corporation and shall pay all taxes assessed against such property and all utility charges incurred with respect to Community Area for which the Corporation has maintenance responsibility. *The required public liability insurance shall include coverage insuring the Corporation, the Board of Commissioners of Hamilton County, Indiana and the Hamilton County Drainage Board (and, in the event of annexation of the Tract, the Board of Public Works of the City of Carmel) against claims resulting from injury to person or loss of life as a consequence of the design, construction and/or maintenance of those ponds whose banks have been improved by a retaining wall or edge of bank treatment, such insurance to afford aggregate coverage (primary and umbrella) in an amount not less than Seven Million*

*Dollars (\$7,000,000), adjusted, subsequent to the Applicable Date, for inflation. A certificate of insurance evidencing such coverage shall be provided annually to the Hamilton County, Indiana Auditor.*

(i) Limitations on Action by the Corporation. Unless at least two-thirds (2/3) of the Mortgagees (based on one vote for each first mortgage owned) or two-thirds (2/3) of the Members have given their prior written approval, a Permitted Title Holder, the Board of Directors and the Owners may not: (i) except as authorized by Paragraph 21(a) (but subject to the limitations of Paragraph 17), by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Community Area (but the granting of easements for public utilities or other public purposes consistent with the intended use of the Community Area shall not be deemed a transfer for the purposes of this clause); (ii) fail to maintain fire and extended coverage insurance on insurable Community Area and Common Facilities on a current replacement cost basis in the amount of one hundred percent (100%) of the insurable value (based on current replacement cost); (iii) use hazard insurance proceeds for losses to any Community Area or Common Facilities for other than the repair, replacement or reconstruction of the Community Area or Common Facilities; (iv) subject to Paragraph 19(b)(ii)(5), the last sentence of Paragraph 19(b)(iv) and 19(l)(iii), change the method of determining the obligations, Assessments, dues or other charges that may be levied against the Owner of a Unit; (v) by act or omission change, waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Units, or the maintenance and upkeep of the Community Area and Common Facilities; or (vi) fail to maintain the Reserve for Replacements in the amount required by this Declaration or any Supplemental Declaration.

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

19. Assessments.

(a) Creation of the Personal Obligation of Assessments. Declarant hereby covenants, and each Owner of any Lot by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Corporation the following: (1) General Assessments, (2) the Community Area Initial Assessment, (3) Community Area Debt Service Assessments, (4) annual and special Parcel Assessments, (5) Architectural Control Assessments (to the extent levied), (6) Special Assessments, and (7) *Title Transfer Assessments*, such Assessments to be established and collected as hereinafter provided.

If two (2) or more Lots originally shown on a Plat are consolidated as a single Lot by virtue of partial vacation of a Plat *or the construction thereon of a Unit, some part of which extends over a Lot line*, or if a Lot is divided by conveyance of portions thereof to owners of adjacent Lots, then, in *any of* such events, so long as the consolidated or divided Lot is used in its entirety by one or more Owners of contiguous Lots, the vacated or divided Lot(s) shall cease to be Lot(s) for purposes of Assessments under this Paragraph 19, *and the consolidated Lots shall constitute one (1) Lot for purposes of Assessments under this Paragraph 19. In the event of consolidation of Lots as a building site, the yard dimensions required by the Zoning Ordinance or the Building Guidelines shall be applied to the consolidated building site and setbacks shall be measured from the exterior Lot lines of the consolidated building site.*

(b) General Assessment.

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

(ii) Basis for Assessment.

(1) Residential Lots. *Subject to sub-paragraph (h) below, each Residential Lot shall be assessed at a uniform rate without regard to whether a Living Unit or other improvements have been constructed upon the Lot, except that if no Living Unit has been constructed on the Lot, the Corporation shall waive with respect to such undeveloped Lot that part of any Assessment that is attributable to services (such as trash removal) that are provided only with respect to improved Lots.*

(2) Commercial Lots.

(A) Subject to subparagraph (h) below, each unimproved Commercial Lot shall be assessed at a uniform rate without regard to whether a Commercial Unit, Multifamily Structure or Multiuse Structure has been constructed upon the Lot, except that the Corporation shall waive with respect to such undeveloped Lot that part of any Assessment that is attributable to services (such as trash removal) that are provided only with respect to improved Lots.

(B) Each Commercial Lot upon which a Multifamily Structure has been constructed shall be assessed at a rate equitably determined by the Board of Directors which takes into account the number of Living Units located on the Lot and the rights of Occupants of such Living Units to the use and enjoyment of the Community Area. The General Assessment for any such Lot shall not exceed the product of (i) the number of Living Units located on the Lot and (ii) fifty percent (50%) of the amount of the General Assessment for Residential Lots established on the basis set forth in Clause (1) above if Occupants have a right to use the Recreation Centers and the Village Community Buildings (the "Maximum Assessment") or, if Occupants do not have such right, twenty-five percent (25%) of the General Assessment for Residential Lots (the "Minimum Rate"). Owners of Multifamily Structures may elect to be assessed at the Minimum Rate by delivering to the Corporation written notice thereof and, in such event, Occupants of Multifamily Structures owned by the Owners giving such notice shall not have a right to use the Recreation Centers or the Village Community Buildings. An Owner of a Multifamily Structure may revoke such election by giving to the Corporation written notice of revocation. Following receipt by the Corporation of notice of revocation, the Owners giving such notice shall be assessed at the Maximum Rate and the Occupants of such Multifamily Structures may use the Recreation Centers and the Village Community Buildings on the basis set forth in Paragraph 21(d)(ii). The Maximum Rate shall be deemed to include an amount allocable to the Maintenance Costs of the Recreation Centers.

(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; provided, however, that the General Assessment for a Commercial Lot located in the Peripheral Retail Area shall not exceed an amount equal to four times 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.*

(E) *The General Assessment for an unimproved Commercial Lot shall not exceed the amount of the General Assessment for an unimproved Residential Lot in the Primary Area.*

(3) Senior Housing. *Subject to sub-paragraph (h) below, each Lot in the Primary Area (SH) which is used for Senior Housing shall be assessed at a rate equitably determined by the Board of Directors which takes into account the number of Living Units located on the Lot and the use made by the Owners or Occupants of such Living Units of the Community Area and Common Facilities. The General Assessment for any such Lot shall not exceed the sum of:*

(A) *The product of (i) the number of detached or attached Living Units not incorporated in the congregate care facility and (ii) an amount equal to the General Assessment for Residential Lots established on the basis set forth in Clause (1) above; and*

(B) *The product of (i) the number of Living*

*Units located in the congregate care facility which are occupied by an individual who is less than 85 years old and (ii) 25% of the amount of the General Assessment for Residential Lots established on the basis set forth in Clause (1) above; provided, however, that only Living Units which are occupied shall be included in the calculation pursuant to this subclause (B). Occupancy shall be determined on a quarterly basis as of the first day of each March, June, September and December. For purposes of this Clause (3), "Living Unit" shall not include a Unit used exclusively for the provision of skilled nursing care to the occupants thereof.*

*(4) Lots Owned by Declarant or a Permitted Title Holder. Notwithstanding the foregoing provisions of this subparagraph (ii), no Lot owned by Declarant or a Permitted Title Holder shall be assessed by the Corporation except such Lots as have been improved by the construction thereon of Units, which improved Lots shall be subject to assessment as provided in Clauses (1) or (2) above; provided, however, Lots improved by the construction thereon of Village Community Buildings or an Education Facility shall in no event be subject to Assessments.*

*(5) Condominiums. Condominiums shall be separately assessed as a Lot applying the provisions of the foregoing Clauses (1), (2) and (3). If a Multiuse Structure is a Horizontal Property Regime, then each Condominium therein shall be separately assessed applying the provisions of the foregoing Clauses (1), (2) and (3).*

*(6) Change in Basis. The basis for assessment may be changed upon recommendation of the Board of Directors if such change is approved by (i) two-thirds (2/3) of the Members or two-thirds (2/3) of the Mortgagees (based on one vote for each first mortgage owned) who are voting in person or by proxy at a meeting of Members duly called for this purpose; provided, however, if a proposed change would adversely affect the Owners of a particular class of property, such change in the basis for assessment may be made only if approved by a majority of the Owners adversely affected. For purposes of this Clause (5), "classes of property" include Living Units not located in a Multifamily Structure or Multiuse Structure, Multifamily Structures, Multiuse*

*Structures, Commercial Units in the Village Center which are not located in a Multiuse Structure, Commercial Units in the Peripheral Retail Area which are not located in a Multiuse Structure and Senior Housing, each as a separate class.*

(iii) Method of Assessment. By a vote of a majority of the Directors, the Board of Directors shall, on the basis specified in subparagraph (ii), fix the General Assessment for each assessment year of the Corporation at an amount sufficient to meet the obligations imposed by this Declaration and all Supplemental Declarations upon the Corporation, including but limited to the obligation to maintain the Community Area and Common Facilities in the Village Center in accordance with the budget for Village Center Maintenance Costs established in accordance with Paragraph 19(1)(3) below. The Board of Directors shall establish the date(s) the General Assessment shall become due, and the manner in which it shall be paid.

(iv) Allocation of Assessment. Certain of the costs of maintaining, operating, restoring or replacing the Community Area and Common Facilities may be allocated among Owners of Lots on the basis of the location of the lands and improvements constituting the Community Area and Common Facilities and the intended use thereof. In determining the General Assessment, costs and expenses which in accordance with the provisions of this Declaration or a Supplemental Declaration are to be borne by all Owners shall first be allocated to all Owners. Costs and expenses which in accordance with the provisions of this Declaration or a Supplemental Declaration are to be borne by the Owners of certain Lots shall then be allocated to the Owners of such Lots. The provisions of subparagraph (ii) shall not be deemed to require that all Assessments against vacant Lots or Lots improved with comparable types of Units, Multifamily Structures or Multiuse Structures be equal, but only that each Lot be assessed uniformly with respect to comparable Lots subject to assessment for similar costs and expenses. Any category of Maintenance Cost included in the Village Center Maintenance Amount that was allocated to all Owners prior to the Applicable Date shall be allocated to all Owners subsequent to the Applicable Date. Costs of trash removal and other services provided by the Corporation to individual Lots shall not be included in the General Assessment of any Lot the Owner of which has elected to obtain the same service directly from a service provider.

(c) Community Area Initial Assessment. Unless otherwise provided in a Supplemental Declaration, on the earlier of (i) the date a Lot is conveyed by Declarant to an Owner (other than the holder of a first mortgage on such Lot in a conveyance which constitutes a deed in lieu of foreclosure), (ii) the date a Unit constructed on the Lot has been certified for occupancy by the Zoning Authority or (iii) the date a Unit on the Lot is first occupied by an Owner or Occupant upon completion of construction thereof, there shall be due and payable to the Corporation by the Owner of such Lot the following sum which shall be deposited in the Reserve for Replacements maintained by the Corporation:

- (i) a Lot on which a detached or an attached single-family residence is to be constructed, the sum of Three Hundred Dollars (\$300.00);
- (ii) a Lot on which a detached single-family residence together with an attached or detached accessory dwelling is to be constructed, the sum of Four Hundred Dollars (\$400.00);
- (iii) a Lot on which a detached single-family residence with an attached or detached home-based office is to be constructed, the sum of Five Hundred Dollars (\$500.00);
- (iv) a Lot on which a Multifamily Structure, a Multiuse Structure or a Horizontal Property Regime is to be constructed, an amount equal to the greater of Six Hundred Dollars (\$600.00) or the product of (y) the number of Living Units to be constructed in such Multifamily Structure, Multiuse Structure or Horizontal Property Regime and (z) One Hundred Dollars (\$100.00);
- (v) *a Lot on which Senior Housing is to be constructed, an amount equal to the product of (y) the number of Living Units (exclusive of those devoted solely to skilled nursing care for the*



*occupants thereof) to be constructed on the Lot and (z) One Hundred Dollars (\$100.00); and*

- (vi) a Lot on which a Commercial Unit is to be constructed, the sum of One Hundred Dollars (\$100.00) for each one thousand (1,000) square feet or portion thereof of gross floor area for the building or buildings constructed or authorized to be constructed thereon which, in the case of a Multiuse Structure, are to be used as Commercial Units.

(d) Community Area Debt Service Assessment. If any Community Area Secured Indebtedness is outstanding, the Corporation shall levy a Community Area Debt Service Assessment against each Lot (other than a Lot exempt from the General Assessment pursuant to subparagraph (b)(ii)(3) above) in an amount established by the Board of Directors which is sufficient to meet all debt service requirements on such indebtedness but does not exceed, in any fiscal year of the Corporation, an amount equal to one quarter of one percent (0.25%) *of the assessed valuation of the Lot (exclusive of improvements) for real estate taxation purposes as reflected on the records of the Assessor of Clay Township, Hamilton County, Indiana, or its successor.* The Community Area Debt Service Assessment shall be held and disbursed in accordance with the provisions of Paragraph 18(f).

(e) Parcel Assessments.

(i) Purpose of Assessments. Parcel Assessments shall be used for such purposes as are authorized by the Supplemental Declaration for such Parcel.

(ii) Method of Assessment. An annual Parcel Assessment shall be levied by the Corporation against Lots in a Parcel (except the Village Center Parcel or a Parcel which is a Horizontal Property Regime) using the basis set forth in the Supplemental Declaration for such Parcel, and collected and disbursed by the Corporation. The Board of Directors shall fix in accordance with the By-Laws and the provisions of any Supplemental Declaration the annual Parcel Assessment for each Parcel, the date(s) such Assessment shall become due, and the manner in which it shall be paid.

(iii) Special Assessments. In addition to the annual Parcel Assessment, the Corporation may levy in any fiscal year a special Parcel Assessment against one or more of the Lots in a Parcel (except the Village Center Parcel or a Parcel which is a Horizontal Property Regime) for the purpose of (A) defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Parcel, including fixtures and personal property related thereto, provided that any such Assessment shall have the assent of a majority of the Owners of Lots in the Parcel who are voting in person or by proxy at a meeting of such Owners duly called for this purpose or (B) defraying any Maintenance Costs incurred in satisfying any requirements imposed on the Corporation by a Supplemental Declaration relating to a Parcel. Any Special Assessment pursuant to this clause (iii) shall be allocated equally among all Lots in the Parcel except those exempt from the General Assessment.

(f) Architectural Control Assessment. If any Owner or Person acting for or on behalf of, or pursuant to the authorization or acquiescence of, an Owner fails to comply with Building Guidelines or other requirements for construction of improvements, landscaping and other Building Activities or maintenance of a Lot (including but not limited to installation of required Street Trees or the filing of a Lot Development Plan) or any restrictive covenant or condition specified in a Supplemental Declaration for the Parcel in which such Owner's Lot is located (exclusive of the Village Center Parcel) and/or the provisions of Paragraphs 20 or 22 of this Declaration, then the Corporation may levy against the Lot owned by such Owner an Assessment in an amount determined by the Board of Directors which does not exceed the greater of (i) Five Hundred Dollars (\$500.00) for each day that such failure continues after written notice thereof is given by Declarant or the Corporation to such Owner or (ii) One Hundred Thousand Dollars (\$100,000.00). Such Assessment shall constitute a lien upon the Lot of such Owner and may be enforced in the manner provided in subparagraph (i) below. The levy of an Architectural Control Assessment shall be in addition to, and not in lieu of, any other remedies available to Declarant and/or the Corporation provided in this Declaration, at law or in equity in the case of the failure of an Owner to comply with the provisions of this Declaration and all applicable Supplemental Declarations (exclusive of the Village Center Supplemental Declaration).

(g) Special Assessment. In addition to such other Special Assessments as may be authorized herein, the Corporation may levy in any fiscal year a Special Assessment applicable to that year and not more than the next four (4) succeeding fiscal years for the purpose of defraying, in whole or in part, the cost of any construction, repair, or replacement of a capital improvement upon the Community Area, including fixtures and personal property relating thereto or any Common

Facilities, provided that any such Assessment shall have the assent of a majority of the votes of the Members whose Lots are subject to assessment with respect to the capital improvement who are voting in person or by proxy at a meeting of Members duly called for this purpose. Any Special Assessment pursuant to this subparagraph (g) shall be allocated equally among all Lots in the Tract except those exempt from the General Assessment.

(h) Date of Commencement of Assessments. The General Assessment and Parcel Assessments (exclusive of Parcel Assessments applicable to Commercial Lots in the Village Center Parcel) shall commence with respect to assessable Lots within a Parcel on the first day of the month following conveyance of the first Lot in the Parcel to an Owner who is not Declarant. The initial Assessment on any assessable Lot shall be adjusted according to the days remaining in the month in which the Lot became subject to assessment. *Notwithstanding the foregoing, (A) if a Designated Builder owns more than one (1) Residential Lot, the General Assessment shall commence with respect to each Lot on the earlier of (i) the date construction of a Living Unit on the Lot is completed and a certificate of occupancy issued or (ii) the first anniversary of the date the Designated Builder acquired title to the Lot; (B) the General Assessment on a Commercial Lot shall commence on the earlier of (i) the date a certificate of occupancy is issued for a Commercial Unit constructed on the Lot or (ii) eighteen (18) months following the date the Owner acquired title to the Lot; and (C) the General Assessment on a Lot located in the Primary Area (SH) shall commence on the earlier of (i) the first anniversary of the date a certificate of occupancy is issued for a Living Unit constructed on the Lot or (ii) the second anniversary of the date the Owner acquired title to the Lot.*

(i) Effect of Nonpayment of Assessments; Lien Creation and Enforcement; Remedies of the Corporation. Any Assessment not paid within thirty (30) days after the due date thereof, and any subsequent Assessment due and unpaid, shall bear interest from the due date thereof to the date actually received by the Corporation at the rate of twelve percent (12%) per annum, or such other rate as may hereafter be adopted by resolution of the Board of Directors, simple interest on a 365/365 basis year. If authorized by a resolution of the Board of Directors then in effect, the Corporation shall, with respect to a past-due Assessment, send to each Person who was the Owner of the Lot at the time when the applicable Assessment became due (an "Affected Owner"): (a) a reminder statement when the applicable Assessment is at least fifteen (15) days past due; (b) a letter demanding immediate payment of both the applicable Assessment and the interest accrued under the first sentence of this subparagraph (i) when the applicable Assessment becomes thirty (30) days past due; and (c) a second letter when the applicable Assessment and the interest accrued under the first sentence of this subparagraph (i) are not received within forty-five (45) days after the due date of such Assessment, stating that unless such Assessment and the accrued interest thereon are paid in full within fifteen (15) days from the date of the letter, the Affected Owner's account may be referred to the

*Corporation's attorney for collection, and further stating that upon this referral to the Corporation's attorney, the Affected Owner shall be liable to the Corporation for the Corporation's attorneys' fees and other costs, fees, and expenses incurred by the Corporation in enforcing such Affected Owner's obligations to the Corporation; provided, however, in the event that during the period that the foregoing reminder statement or demand letters are otherwise to be sent, a subsequent Assessment becomes due and payable, (x) such subsequent Assessment shall be included in any subsequent demand for payment and in the calculation of the interest due; and (y) no new or separate request or demand for payment of any such subsequent Assessment shall or need be sent. The foregoing resolution may also expressly direct the Corporation to refer the Affected Owner's account to the Corporation's attorney for collection if the series of communications described in (a)-(c) (above) prove to be unsuccessful, in whole or in part, and state a general or specific time period for doing so. If any date specified herein is, or any period specified herein expires on, a Saturday, Sunday or federal holiday, then such date or the expiration date of such period, as the case may be, shall be extended to the next succeeding business day.*

*Whether or not the resolution described in the immediately preceding paragraph of this subparagraph (i) is adopted by the Board of Directors and whether or not the Corporation complies with that resolution, in whole or in part, any Affected Owner with a past-due Assessment shall be personally obligated to the Corporation for the payment of (a) the applicable Assessment; (b) the interest described in, and accrued under, the first sentence of this subparagraph (i); (c) all attorneys' fees (including paralegal fees) incurred by the Corporation in enforcing such Affected Owner's personal obligations hereunder or enforcing the charge on the land described hereinbelow, whether incurred before litigation is commenced, during litigation, or on appeal; (d) such other and further collection costs and expenses incurred by the Corporation in enforcing such Affected Owner's personal obligations hereunder or enforcing the charge on the land described hereinbelow (exclusive of court costs); and (e) court costs incurred by the Corporation (including on appeal) if and when awarded by the court.*

*All Assessments together with the interest, fees, charges, costs and expenses described in the immediately preceding paragraph of this subparagraph (i) (under the terms and conditions specified therein) shall also be a charge on the land, from the date assessed, due, accrued, incurred, or awarded, as applicable, and shall be a continuing lien upon the Lot against which the applicable Assessment is made until paid in full. Notwithstanding anything contained in this subparagraph (i) possibly to the contrary, the Board of Directors, by vote of a majority of the Directors, or appropriate officers of the Corporation acting pursuant to authority granted by a vote of a majority of the Directors, which authority may be general or specific, shall be empowered, for good cause shown and in appropriate circumstance, to waive or forego interest and other fees, costs, and expenses otherwise due the Corporation hereunder or becoming a lien upon a Lot; provided, however, the fact that interest or*

*other fees, costs, and expenses otherwise due the Corporation or becoming a lien upon a Lot may be or have been waived or foregone in a similar or analogous instance or case may not be used as a defense to an action for the collection thereof or lien enforcement in connection therewith and such defense shall be deemed waived by each and all Owners.*

If the Corporation has provided for collection of any Assessment in installments, upon default in the payment of any one or more installments, the Corporation may accelerate payment and declare the entire balance of said Assessment due and payable in full. No Owner may waive or otherwise escape liability for the Assessments provided for herein by nonuse of the Community Area or the Common Facilities or abandonment of his Lot.

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

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

(l) Annual Budget.

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

(2) Certification of Village Center Maintenance Costs. On or before the Applicable Date, Declarant shall certify to the Corporation the annual Maintenance Costs with respect to the Community Area within the Village Center incurred by the

Corporation and Declarant for each of the two (2) fiscal years prior to the Applicable Date and incurred or to be incurred for the fiscal year in which the Applicable Date occurs. The sum of such amount divided by three (3) shall constitute the "Base Village Center Maintenance Amount."

(3) Village Center Budget. The annual budget adopted pursuant to subparagraph (a) above for each fiscal year subsequent to the fiscal year in which the Applicable Date occurs shall include an amount which is not less than the sum of (i) the Base Village Center Maintenance Amount and (ii) the product of (A) the Base Village Center Amount and (B) the difference between the Consumer Price Index for All Urban Consumers (All Items) ("Index") published by the Bureau of Labor Statistics of the United States Department of Labor (or any generally accepted substitute for such index if it is no longer published) for the preceding fiscal year and the Index for the year prior to the year in which the Applicable Date occurs. The amount thus determined each year is referred to as the "Village Center Maintenance Amount." In establishing the annual budget, the Board of Directors shall give good faith consideration to the amount recommended by the Association to be included therein to maintain the Village Center. *The annual budget shall also include such amount as may be required to pay the premiums on the public liability insurance required to be maintained by the Corporation pursuant to Paragraph 18(h).*

(m) Title Transfer Assessments. *On the date title to a Lot or a Living Unit is conveyed by an Owner other than Declarant, a Designated Builder or any other builder approved by Declarant pursuant to Paragraph 36, there shall be due to the Corporation by the Person acquiring title to such Lot (the new Owner) a Title Transfer Assessment in the following amount which shall be deposited in the Reserve for Replacements maintained by the Corporation:*

(i) *If the gross sales price of the Lot or Living Unit is less than Five Hundred Thousand Dollars, Three Hundred Dollars (\$300.00);*

(ii) *If the gross sales price of the Lot or Living Unit is greater than Five Hundred Thousand but less than One Million Dollars, Four Hundred Dollars (\$400.00); and*

(iii) *If the gross sales price of the Lot or Living Unit is greater than One Million Dollars (\$1,000,000.00), Five Hundred Dollars (\$500.00).*

20. Architectural Control.

(a) The Architectural Review Board. An Architectural Review Board consisting of three (3) or more Persons as specified in the By-Laws shall, prior to the Applicable Date, be appointed by Declarant. Thereafter, the Architectural Review Board shall be appointed by the Board of Directors of the Corporation.

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

(c) Building Activity. Except as otherwise expressly provided in this Declaration or a Supplemental Declaration, and excluding from the provisions of this Paragraph 20 all Commercial Lots located in the Village Center Parcel, no improvements, alterations, repairs, change of colors, excavations, changes in grade, planting, installation or modification of signage or other work that in any way alters any Lot or the exterior of the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by Declarant to another Owner (including, but not limited to, (i) construction, erection or alteration of any Unit, Multifamily Structure, Multiuse Structure, other building, fixture, equipment, fence, wall, deck, swimming pool, ball court, patio, parking area, or other structure on a Lot, or (ii) any plantings, other landscaping or exterior lighting on a Lot, (iii) the installation or alteration of any signage on any Lot, Unit, Multifamily Structure or Multiuse Structure, or (iv) the removal of any Significant Tree from a Lot, shall be made or done without the prior approval of the Architectural Review Board of a Lot Development Plan therefor. Prior to commencement by any Owner other than Declarant of any Building Activity a Lot Development Plan with respect thereto shall be submitted to the Architectural Review Board, and no Building Activity shall be commenced or continued by any Person other than Declarant without the prior written approval of the Architectural Review Board of a Lot

Development Plan relating to such Building Activity. Such approval shall be in addition to, and not in lieu of, all approvals, consents, permits and/or variances required by law from governmental authorities having jurisdiction over WestClay, and no Owner shall undertake any construction activity within WestClay unless all legal requirements have been satisfied. Approval by the Architectural Review Board of a Lot Development Plan shall not be deemed to imply compliance with approvals, consents, permits and/or variances required by law from governmental authorities having jurisdiction over the Tract. Each Owner shall complete all improvements to a Lot strictly in accordance with the Lot Development Plan approved by the Architectural Review Board. As used in this subparagraph (c), "plantings" does not include flowers, bushes, shrubs or other plants having a height of less than eighteen (18) inches.

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

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

(f) Application of Guidelines and Standards. The Architectural Review Board shall apply the Building Guidelines in a fair, uniform and reasonable manner consistent with the discretion inherent in the design review process. In disapproving any Lot Development Plan, the Architectural Review Board shall furnish the applicant with specific reasons for such disapproval and may suggest modifications in such plan which would render the plan acceptable to the Board if resubmitted.



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

(h) Existing Violations of Declaration. The Architectural Review Board shall not be required to consider any Lot Development Plan submitted by an Owner who is, at the time of submission of such Lot Development Plan, in violation of the requirements of a Supplemental Declaration relating to the Parcel in which such Owner's Lot is located and/or the provisions of the Zoning Ordinance or this Paragraph 20, unless such Owner submits to the Architectural Review Board with such Lot Development Plan an irrevocable agreement and undertaking (with such surety as the Board may reasonably require) to remove from the Owner's Lot any improvements, landscaping, exterior lighting or signage constructed and/or installed prior to the submission of a Lot Development Plan (or constructed and/or installed in violation of a previously approved Lot Development Plan) to the extent any such previously constructed and/or installed improvement, landscaping, exterior lighting or signage is not subsequently approved by the Architectural Review Board. The Architectural Review Board shall have the power to recommend to the Board of Directors that the Corporation assess an Architectural Control Assessment against any Owner who fails to comply with the requirements of a Supplemental Declaration (other than the Village Center Supplemental Declaration), Paragraph 20 of this Declaration or the provisions of the Zoning Ordinance. Under no circumstances shall any action or inaction of the Architectural Review Board be deemed to be unreasonable, arbitrary or capricious if, at the time of such decision, the Person having submitted a Lot Development Plan for approval by the Architectural Review Board has violated a Supplemental Declaration, Paragraph 20 of this Declaration or the provisions of the Zoning Ordinance and such violation remains uncured.

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

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

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

21. Community Area and Common Facilities.

(a) Ownership. The Community Area and the Common Facilities shall remain private, and neither Declarant's execution or recording of an instrument portraying the Community Area, nor the doing of any other act by Declarant is, or is intended to be, or shall be construed as, a dedication to the public of the Community Area or the Common Facilities. Declarant, the Corporation or the Association may, however, dedicate or transfer all or any part of the Community Area or the Common Facilities to any Permitted Title Holder for parks or other public purposes, to the City of Carmel or the County of Hamilton for use as public rights-of-way or to a public utility for public utility purposes, and Declarant may transfer all or any part of the Community Area to a Permitted Title Holder as contemplated by this Declaration.

(b) Density of Use. Declarant expressly disclaims any warranties or representations regarding the density of use of the Community Area or any facilities located thereon or constituting a part thereof.

(c) Obligations of the Corporation. The Corporation, subject to the rights of Declarant, the Association and the Owners set forth in this Declaration and the rights of any Permitted Title Holder established in an instrument conveying title to any part of the Common Area, shall be responsible for the exclusive management and control of the Community Area and all improvements thereon (including Common Facilities and other furnishings and equipment related thereto), and, except as otherwise provided herein, in a Supplemental Declaration, or in an instrument of conveyance to a Permitted Title Holder, shall keep the Community Area and Common Facilities in good, clean, attractive and sanitary condition, order and repair. The Corporation may, with the consent of the Board of Directors of the Association, transfer to the Association responsibility for management, control and/or maintenance of Community Area and Common Facilities located in the Village Center.

(d) Easements of Enjoyment.

(i) Owners. No Person shall have any right or easement of enjoyment in or to the Community Area except to the extent granted by, and subject to the terms and provisions of, this Declaration or a Supplemental Declaration. Such rights and easements as are thus granted shall be appurtenant to and shall pass with the title to every Lot for whose benefit they are granted. Unless otherwise provided in a Supplemental Declaration or a Plat, *an Owner may use upon and subject to such rules and regulations as may be adopted by the Board of Directors and upon the condition that the Owner is not delinquent in the payment of any Assessment or in violation of any term or condition of the Declaration, any Supplemental Declaration or any rule or regulation adopted by the Board of Directors, the Paths, the Village Community Buildings, the Parks and the Commons and the Site Furniture and Facilities located thereon or therein, subject to the reserved rights of Declarant, the Corporation and the Association. If authorized by the Board of Directors and subject to such terms and conditions as the Board may establish, the Owners of Lots abutting a Pond (other than Kew, Druid, Tree Shadow, Dogwood and Wilson Ponds) may fish in the Pond.* No Owner whose Lot does not abut the Lake or a Pond shall have any right of access to the Lake or a Pond over any Lot, but only such right of access over the Community Area as may be designated on a Plat or by the Board of Directors for such purpose.

(ii) Occupants. Occupants who are not also Owners may use and enjoy the Community Area only to the extent specified in subparagraph (f) or as explicitly authorized elsewhere in this Declaration, a Supplemental Declaration or by the Board of Directors. *Occupants shall have the same rights as Owners to use the Paths, the Parks (exclusive of the Recreation Centers) and the Commons subject to the same rules, regulations and conditions as are applicable to Owners. Except as otherwise provided herein or in a Supplemental Declaration, Occupants shall have the same rights as Owners to use the Village Community Buildings and Recreation Centers except that: (A) the Board of Directors may restrict or preclude the use thereof by Occupants of Commercial Units and Multifamily Structures if no part of the Maintenance Costs of the Recreation Centers are assessed to the Owners of such Commercial Units or Multifamily Structures, (B) with respect to a Commercial Unit, the number of Persons claiming as Occupant who may use the Village Community Buildings and the Recreation Centers shall not exceed two (2), each of whom shall be designated in the manner specified in Paragraph 21(d)(iii), and (C)*

*the Board of Directors may limit the number of Occupants of a Living Unit located in a Multiuse Structure or a Multifamily Structure who are entitled to the rights granted hereby to a number equal to the sum of the number of bedrooms located in the Living Unit plus one (1). To the extent Owners of Lots that do not abut the Lake or a Pond are granted rights of access to the Lake or a Pond over Community Area designated for that purpose, Occupants (other than Occupants of Commercial Units) shall enjoy the same rights. In the adoption of rules and regulations relating to the use of Community Area and Common Facilities, the Board of Directors of the Corporation or Association, as applicable, shall not discriminate against Occupants of Multifamily Structures or of Living Units located in Multiuse Structures but may restrict or preclude use of the *Village Community Buildings and Recreation Centers* by such Occupants as heretofore provided.*

*(iii) Entities. If an Owner or Occupant is not a natural person, then such Owner or Occupant shall designate in writing to the Corporation the names of not more than two (2) individuals who will be authorized to enjoy the rights and privileges granted by this Paragraph 21. An Owner or Occupant may change such designation at will by written notice to the Corporation. Individuals designated pursuant to this clause (iii) shall have the same rights and privileges under this Paragraph 21 as an Owner or Occupant who is a natural person.*

*(iv) Responsibilities of Owners and Occupants. No Owner or Occupant shall take any action which will damage, deface or impair (or result in damage to or defacement or impairment of) the Community Area or Common Facilities or will adversely affect the use thereof for the purpose intended.*

*(v) Rights of Occupants are Derivative. The rights of Occupants granted by this Declaration arise solely by virtue of the rights granted to Owners and are derivative therefrom. To the extent that an Owner's rights are limited or suspended as permitted by this Declaration or any Supplemental Declaration, the rights of all Occupants claiming by and through such Owner shall be similarly limited or suspended.*

*(e) Extent of Easements. The easements of enjoyment created hereby shall be subject to the following:*

(i) the right of the Corporation and/or the Association to establish reasonable rules for the use of the Community Area (including but not limited to use of identification cards) and to charge reasonable fees for the use of any meeting or banquet facilities (but not recreational facilities) located in or constituting a part of the Community Area;

(ii) the right of the Corporation and/or the Association to suspend the right of an Owner and all Persons whose right to use the Paths, the Lake, the Ponds, *the Recreation Centers*, the Village Community Buildings, the Commons or the Parks derives from such Owner's ownership of a Lot (including Occupants of the Lot) to use such portions of the Community Area for any period during which any Assessment against the Owner's Lot remains unpaid for more than thirty (30) days after notice;

(iii) the right of the Corporation and/or the Association to suspend the right of an Owner *and all* Persons claiming *by or through an Owner* (including *family members and* Occupants of the Unit) to use the Lake, the Ponds, the Village Community Buildings, *the Recreation Centers*, the Commons *and* the Parks for a period not to exceed *twelve (12) consecutive calendar months* for any *violation or* infraction of this Declaration, any Supplemental Declaration or the Register of Regulations *by such Owner or any Person for whom such Owner is responsible pursuant to the provisions of this Declaration*; provided, however, that Occupants of *Units in a Multifamily Structure or Multiuse Structure other than the Unit owned or occupied by the Person deemed responsible for the violation or infraction* shall not be denied such use as a consequence of a *violation or* infraction by the Owner or Occupant of *another Unit in such Multifamily Structure or Multiuse Structure*;

(iv) the rights of the holder of any Common Area Secured Indebtedness;

(v) the right of the Corporation to mortgage any or all of the Community Area, the facilities constructed thereon and the Common Facilities for the purposes of improvements to, or repair of, the Community Area, the facilities constructed thereon or the Common Facilities, pursuant to approval of a majority of the votes of the Members voting in person or by proxy at a regular meeting of the Corporation or a meeting duly called for this purpose;

(vi) the right of the Corporation to dedicate or transfer all or any part of the Community Area and/or the Common Facilities to any public agency, authority or utility exclusively for purposes permitted herein, but subsequent to the Applicable Date no such dedication or transfer shall be effective unless an instrument signed by the appropriate officers of the Corporation acting pursuant to authority granted by a majority of the votes of the Members present and voting at a duly constituted meeting of the Members, agreeing to such dedication or transfer, has been recorded; and

(vii) the right of Declarant in any Supplemental Declaration or Plat to restrict the use of Community Area and/or Common Facilities located in a Section or Parcel to (a) Owners and/or Occupants of Units, Multifamily Structures or Multiuse Structures located in such Section or Parcel or (b) to other Owners of less than all of the Lots in the Tract.

(f) Additional Rights of Use. The *spouse, children and grandchildren* of every Person who has a right of enjoyment to all or part of the Community Area and the Common Facilities may use the Community Area and the Common Facilities (or part thereof) on the same terms and subject to the same limitations as such Person subject to the terms of any instrument of conveyance of such Community Area or Common Facilities to a Permitted Title Holder and to such general regulations consistent with the provisions of this Declaration and all Supplemental Declarations as may be established from time to time by the Corporation and/or the Association and included within the Register of Regulations. Except as otherwise provided herein or in a Supplemental Declaration, the Corporation or the Association may restrict use of the Community Area and Common Facilities by guests of Persons whose use thereof is authorized herein.

(g) Damage or Destruction by Owner. *For purposes of this Paragraph 21, an Owner shall be responsible for his acts, the acts of all Persons claiming by and through him (including family members and Occupants) and the acts of the guests, invitees, licensees, tenants, agents and family members of the Owner and of all Persons claiming by and through him. If the Community Area or any Common Facility is damaged, defaced or destroyed by an Owner or by any Person for whom he is responsible pursuant to the foregoing sentence, then the Corporation may exercise its rights under Paragraph 21(e)(iii) and shall repair such damage or defacement or replace such destroyed property in a good workmanlike manner in conformance with the original plans and specifications of the property, as the same may have subsequently been revised in connection with any modification or alteration of the property by Declarant or the Corporation. An amount equal to all costs incurred to repair, restore or replace the damaged, defaced or destroyed property (including allocated payroll and overhead costs of employees of the*

*Corporation making or supervising such repairs, restoration or replacement) shall be assessed against the responsible Owner as a Special Assessment, shall bear interest at a rate established by the Board of Directors, shall be payable upon demand and shall constitute a lien on the Lot of the responsible Owner.*

(h) Conveyance of Title. Declarant may retain the legal title to the Community Area and the Common Facilities until the Applicable Date, but notwithstanding any provision herein, the Declarant hereby covenants that it shall convey such of the Lake, the Ponds, the Private Drives (exclusive of alleys), the Village Community Buildings, the Parks, the Commons and the Common Facilities which Declarant acquires, develops or constructs and such other of the Community Area to which Declarant holds title to a Permitted Title Holder, free and clear of all liens and other financial encumbrances exclusive of liens securing Community Area Secured Indebtedness and the lien for taxes not yet due and payable, not later than the Applicable Date.

22. Use of Tract.

(a) Protective Covenants.

(i) Land Use. Lots may be used only for the purposes authorized by the Zoning Ordinance.

(ii) Nuisances. No nuisance shall be permitted to exist or operate upon any Lot so as to be detrimental to any other Lot in the vicinity thereof or to its occupants.

(iii) Other Restrictions. Declarant may impose additional Restrictions in any Plat, Supplemental Declaration, Building Guidelines or other written instrument notice of which is given to Owners. In addition, the Architectural Review Board may adopt general rules and regulations to implement the purposes set forth in Paragraph 20(b) and/or to supplement any covenants or restrictions set forth in a Supplemental Declaration or the Building Guidelines, including but not limited to rules to regulate animals, antennas, signs, fences, walls and screens, mailboxes, exterior light fixtures, storage tanks, awnings, storage and use of recreational vehicles, storage and use of machinery, use of outdoor drying lines, recreational facilities, trash containers, and planting, maintenance and removal of vegetation on the Tract. The Architectural Review Board may adopt general rules and regulations appropriate to each Parcel (other than the Village Center Parcel), which rules and regulations may vary among Parcels. Such general rules may be amended by a two-thirds (2/3) vote of the Architectural Review Board. Subsequent to the

Applicable Date, any such amendment may be made only after a public hearing for which due notice to all affected Owners has been provided, and if such amendments are approved by a two-thirds (2/3) vote of the Board of Directors. All general rules and any subsequent amendments thereto shall be placed in the Register of Regulations and shall constitute Restrictions.

(iv) Exceptions. The Architectural Review Board may authorize exceptions to or variances from the general rules and regulations adopted pursuant to clause (iii) if the Architectural Review Board can show good cause and acts in accordance with adopted guidelines and procedures.

(b) Maintenance of Tract. To the extent that exterior maintenance is not provided for in a Supplemental Declaration, each Owner shall keep all Residential Lots owned by the Owner, and all improvements therein or thereon, in good order and repair and free of debris including, but not limited to, the seeding, watering, and mowing of all lawns, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management as determined by the Architectural Review Board. In the event an Owner of any Residential Lot in the Tract shall fail to maintain the premises and the improvements situated thereon, as provided herein, the Corporation, after notice to the Owner as provided by the By-Laws and approval by two-thirds (2/3) vote of the Board of Directors, shall have the right to enter upon said Lot to correct drainage and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon. All costs related to such correction, repair or restoration shall become a Special Assessment upon such Lot.

## 23. Easements.

(a) Plat Easements. In addition to such easements as are created elsewhere in this Declaration or in a Supplemental Declaration and as may be created by Declarant pursuant to other written instruments recorded in the office of the Recorder of Hamilton County, Indiana, Lots are subject to drainage easements, sewer easements, utility easements, entry way easements, landscape easements, water access easements, community area access easements, pathway easements and nonaccess easements, either separately or in any combination thereof, as shown on the Plats, which are reserved for the use of Declarant, Owners, the Corporation, the Architectural Review Board, public utility companies and governmental agencies as follows:

(i) Drainage Easements (DE) are created to provide paths and courses for area and local storm drainage, either overland or in



adequate underground conduit, to serve the needs of WestClay and adjoining ground and/or public drainage systems; and it shall be the individual responsibility of each Owner to maintain the drainage across his own Lot. Under no circumstance shall said easement be blocked in any manner by the construction or reconstruction of any improvement, nor shall any grading restrict, in any manner, the waterflow. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage, by Declarant, and by the Architectural Review Board, but neither Declarant nor the Architectural Review Board shall have any duty to undertake any such construction or reconstruction. Said easements are for the mutual use and benefit of the Owners.

(ii) Sewer Easements (SE) are created for the use of the local governmental agency having jurisdiction over any storm and sanitary waste disposal system which may be designed to serve WestClay for the purpose of installation and maintenance of sewers that are a part of said system.

(iii) Utility Easements (UE) are created for the use of Declarant, the Corporation, the Association and all public or municipal utility companies, not including transportation companies, for the installation and maintenance of mains, ducts, poles, lines, wires and other facilities, as well as for all uses specified in the case of sewer easements.

(iv) Entry Way Easements (EWE) are created for the use by Declarant, the Architectural Review Board, the Corporation and the Association for the installation, operation and maintenance of the Entry Ways.

(v) Landscape Easements (LE) are created for the use by Declarant, the Architectural Review Board, *the Design Review Board*, the Corporation and the Association for the planting and maintenance of trees, shrubs and other plantings *and the installation and maintenance of fencing*.

(vi) Water Access Easements (WAE) are created for the use of Declarant, the Corporation, the Association and the Drainage Board for the purpose of gaining access to the Lake and the Ponds in the course of maintenance, repair or replacement of any thereof.

(vii) Community Area Access Easements (CAE) are created for the use of Declarant, the Corporation and the Association for the purpose of gaining access to the Parks and the Commons in the course of maintenance, repair or replacement thereof and for the use of Owners for the purpose of gaining access to such Community Area to enjoy the use thereof to the extent authorized herein or in a Supplemental Declaration.

(viii) Pathway Easements (PE) are created for the installation by Declarant, the maintenance by the Corporation and the use by the Owners of the Paths and Path Lights.

(ix) Non-Access Easements (NAE) are created to preclude access from certain Lots to abutting rights-of-way across the land subject to such easements.

(x) Alley Easements (AE) are created to afford public access over Private Drives to the rear or side of Lots and for all uses specified in the case of utility easements.

All easements mentioned herein include the right of reasonable ingress and egress for the exercise of other rights reserved. No structure, including fences, shall be built on any drainage, sewer or utility easement if such structure would interfere with the utilization of such easement for the purpose intended or violate any applicable legal requirement or the terms and conditions of any easement specifically granted to a Person who is not an Owner by an instrument recorded in the Office of the Recorder of Hamilton County, Indiana, but a paved driveway necessary to provide access to a Lot from a public street or Private Drive and a sidewalk installed by or at the direction of Declarant (and replacements thereof) shall not be deemed a "structure" for the purpose of this Restriction.

(b) General Easement. There is hereby created a blanket easement over, across, through and under the Tract for ingress, egress, installation, replacement, repair and maintenance of underground utility and service lines and systems, including but not limited to water, sewers, gas, telephones, electricity, television, cable or communication lines and systems. By virtue of this easement it shall be expressly permissible for Declarant or the providing utility or service company to install and maintain facilities and equipment on the Tract and to excavate for such purposes if Declarant or such company restores the disturbed area as nearly as is practicable to the condition in which it was found. No sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or relocated in a Section or Parcel except as proposed and approved by Declarant prior to the Applicable Date or by the Architectural Review Board thereafter. Should any utility furnishing a service covered by the general easement herein provided request a

specific easement by separate recordable document, Declarant or the Corporation shall have the right to grant such easement on the Tract without conflicting with the terms hereof. This blanket easement shall in no way affect any other recorded easements on the Tract, shall be limited to improvements as originally constructed, and shall not cover any portion of a Lot upon which a Unit, Multifamily Structure or Multiuse Structure has been constructed or is proposed for construction pursuant to a Lot Development Plan which has been approved by the Architectural Review Board or the Design Review Board.

(c) Public Health and Safety Easements. An easement is hereby created for the benefit of, and granted to, all police, fire protection, ambulance, delivery vehicles, and all similar Persons to enter upon the Community Area in the performance of their duties.

(d) Drainage Board Easement. An easement is hereby created for the benefit of, and granted to, the Drainage Board to enter the Tract and all Lots therein to the extent necessary to exercise its rights with respect to any legal drain constituting a part of the Drainage System.

(e) Crossing Underground Easements. Easements utilized for underground service may be crossed by driveways, walkways, Paths, Water Access Easements and Community Area Access Easements provided prior arrangements are made with the utility company furnishing service. Such easements as are actually utilized for underground service shall be kept clear of all other improvements, including buildings, decks, patios, or other pavings, other than crossings, driveways, walkways, Paths, Water Access Easements or Community Area Access Easements, and neither Declarant nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, agents, employees, or servants to shrubbery, trees, flowers or other improvements of the Owner located on the land covered by said easements.

(f) Declarant's Easement to Correct Drainage. For a period of ten (10) years from the date of conveyance of the first Lot in a Section or Parcel, Declarant reserves a blanket easement and right on, over and under the ground within that Section or Parcel to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary, following which Declarant shall restore the affected property to its original condition as nearly as practicable. Declarant shall give reasonable notice of its intention to take such action to all affected Owners, unless in the opinion of Declarant an emergency exists which precludes such notice.

(g) Water Retention. The Owner of each Lot, by acceptance of a deed thereto, consents to the temporary storage (detention) of storm water within the drainage easements (DE) on such Owner's Lot.

24. Use of Lots During Development.

(a) By Declarant. Notwithstanding any provisions to the contrary contained herein or in any other instrument or agreement, Declarant or its sales agents or contractors, or any Designated Builder, may maintain during the period of construction and sale or rental of Lots and Units in the Tract or the Development Area, upon such portion thereof as is owned or leased by Declarant or any Designated Builder, such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction, sale or rental of Lots and Units, including, but without limiting the generality thereof, a business office, storage area, construction yards, signs, model Units and sales or leasing offices. Declarant specifically reserves the right to maintain a sales office in, and make other use of, the Village Community Buildings during the period that it is engaged in the sale of Lots in WestClay.

(b) By Builders. Notwithstanding any provisions to the contrary contained herein, a *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.*

25. Enforcement. The Corporation, any Owner or Declarant shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration and of any Supplemental Declarations, but neither Declarant nor the Corporation shall be liable for damage of any kind to any Person for failure either to abide by, enforce or carry out any of the Restrictions. No delay or failure by any Person to enforce any of the Restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that Person of the right to do so thereafter, or an estoppel of that Person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the Restrictions. In any action to enforce this Declaration, the Person seeking enforcement shall be entitled to recover all costs of enforcement, including attorneys' fees, *paralegal fees and all court costs, including on appeal*, if it substantially prevails in such action, *provided, however, that the foregoing shall not apply to actions brought by the Corporation to enforce payment of Assessments or to foreclose a lien for unpaid Assessments, which shall be governed by Paragraph 19 of this Declaration.*

26. Limitations on Rights of the Corporation. Prior to the Applicable Date, the Corporation may not use its resources nor take a public position in opposition to the General Plan of Development or to changes thereto proposed by Declarant. *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 brought by the Corporation in proceedings instituted against it.* Nothing in this paragraph shall be construed to limit the rights of the Members acting as individuals or in affiliation with other Members or groups as long as they do not employ the resources of the Corporation or identify themselves as acting in the name, or on the behalf, of the Corporation.

27. Approvals by Declarant. Notwithstanding any other provisions hereof, prior to the Applicable Date, the following actions shall require the prior approval of Declarant: the addition of real estate to the Tract; dedication or transfer of the Community Area; mergers and consolidations of Sections or Parcels within the Tract or of the Tract with other real estate; mortgaging of the Community Area; amendment of this Declaration or any Supplemental Declaration; changes in the basis for assessment or the amount, use and time of payment of the Community Area Initial Assessment; *the initiation by the Corporation or the Association of any judicial or administrative proceedings;* and the adoption or modification of Building Guidelines.

28. Mortgages.

(a) Notice to Corporation. Any Owner who places a first mortgage lien upon his Unit, Multifamily Structure or Multiuse Structure or the Mortgagee shall notify the Secretary of the Board of Directors of such mortgage and provide the name and address of the Mortgagee. A record of such Mortgagee's name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of the Declaration, any Supplemental Declaration, the Articles or the By-Laws (the "Organizational Documents") shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided.

Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by the Organizational Documents shall be required and no Mortgagee shall be entitled to vote by virtue of the Organizational Documents or a proxy granted to such Mortgagee in connection with the mortgage.

(b) Notices to Mortgagees. The Corporation shall promptly provide to any Mortgagee of whom the Corporation has been provided notice under subparagraph (a) above notice of any of the following:

(i) Any condemnation or casualty loss that affects a material portion of the Community Area;

(ii) Any delinquency in the payment of any Assessment owed by the Owner of any Unit, Multifamily Structure or Multiuse Structure on which said Mortgagee holds a mortgage or any default by an Owner under the Organizational Documents, if said delinquency or default continues for more than sixty (60) days;

(iii) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Corporation;

(iv) Any proposed action that requires the consent of a specified percentage of Mortgagees; and,

(v) Any proposed amendment of the Organizational Documents effecting a change in (A) the interests in the Community Area appertaining to any Lot or the liability for Maintenance Costs appertaining thereto, (B) the vote appertaining to a Lot or (C) the purposes for which any Lot or the Community Area are restricted.

(c) Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such mortgagee or purchaser a statement setting forth the amount of the unpaid Assessments against the Lot and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid Assessments in excess of the amount set forth in such statement.

(d) Financial Statements. Upon the request of any Mortgagee, the Corporation shall provide to said Mortgagee the most recent financial statement prepared on behalf of the Corporation.

(e) Payments by Mortgagees. Any Mortgagee may (i) pay taxes or other charges that are in default and that may or have become a lien upon the Community Area or any part thereof and (ii) pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage for the Community Area in case of a lapse of a policy. A Mortgagee making such payments shall be entitled to immediate reimbursement from the Corporation.

## 29. Amendments.

(a) Generally. Subject to subparagraphs (c) and (d), this Declaration may be amended at any time by an instrument signed by (i) the appropriate officers of the

Corporation acting pursuant to the authority granted by not less than two-thirds (2/3) of the votes of the Members cast at a meeting duly called for the purpose of amending this Declaration and (ii), to the extent required by Paragraph 27, Declarant.

(b) By Declarant. Subject to subparagraph (c) but without regard to subparagraphs (a) and (d), Declarant hereby reserves the right prior to the Applicable Date unilaterally to amend and revise the standards, covenants and restrictions contained in this Declaration or any Supplemental Declaration. Such amendments shall be in writing, executed by Declarant, and recorded with the Recorder of Hamilton County, Indiana. No such amendment, however, shall restrict or diminish the rights or increase or expand the obligations of Owners with respect to Lots conveyed to such Owners prior to the amendment or adversely affect the rights and interests of Mortgagees holding first mortgages on Lots at the time of such amendment. Declarant shall give notice in writing to such Owners and Mortgagees of any amendments. Except to the extent authorized in Paragraph 23(b), Declarant shall not have the right at any time by amendment of this Declaration or any Supplemental Declaration to grant or establish any easement through, across or over any Lot which Declarant has previously conveyed without the consent of the Owner of such Lot.

(c) Approval by Zoning Authority. No amendment which would eliminate, waive or qualify a requirement set forth herein for the consent of or approval by the Zoning Authority shall be effective unless approved in writing by the Zoning Authority.

(d) Class Approval. No amendment which would limit or impair the rights granted herein or in any Supplemental Declaration to, or add to the burdens imposed by this Declaration or any Supplemental Declaration on, the Owners of Commercial Units, Multifamily Structures or Multiuse Structures (or any Units therein) and no amendment to Paragraphs 18, 19, 21(d), (e) or (f) or this Paragraph 29 shall be effective unless approved by not less than fifty-one percent (51%) of the Owners of Commercial Units, Multifamily Structures and Multiuse Structures (and all Units therein).

(e) Effective Date. Any amendment shall become effective upon its recordation in the Office of the Recorder of Hamilton County, Indiana.

30. Interpretation. The underlined titles preceding the various paragraphs and subparagraphs of this Declaration are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

31. Duration. The foregoing covenants and restrictions are for the mutual benefit and protection of the present and future Owners, the Corporation, and Declarant, and shall run with the land and shall be binding on all parties and all Persons claiming under them until January 1, 2030, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part by vote of those Persons who are then the Owners of a majority of the Lots in the Tract.

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

33. Non-Liability of Declarant. Declarant shall not have any liability to an Owner, Occupant or any other Person with respect to *any Lake or Pond (as provided in subparagraphs (c) of Paragraphs 4 and 5) or any drainage on, over or under a Lot or erosion of a Lot.* Such drainage and erosion control shall be the responsibility of the Owner of the Lot upon which a Unit, Multifamily Structure or Multiuse Structure is constructed and of the builder of such Unit, Multifamily Structure or Multiuse Structure and an Owner, by an acceptance of a deed to a Lot, shall be deemed to agree to indemnify and hold Declarant free and harmless from and against any and all liability arising from, related to, or in connection with the erosion of or drainage on, over and under the Lot described in such deed. Declarant shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Declarant, and no duty of, or warranty by, Declarant shall be implied by or inferred from any term or provision of this Declaration. *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.*

34. Compliance with the Soil Erosion Control Plan.

(a) The Plan. Declarant has established and implemented an erosion control plan pursuant to the requirements and conditions of Rule 5 of 327 IAC 15, Storm Water Run-Off Associated with Construction Activity. In connection with any construction activity on a Lot by an Owner, its contractor or the subcontractors of either, Owner shall take or cause to be taken all erosion control measures contained in such plan as the plan applies to "land disturbing activity" undertaken on a Lot and shall comply with the terms of Declarant's general permit under Rule 5 as well as all other applicable state, county or local erosion control authorities. All erosion control measures shall be performed by personnel trained in erosion control and shall meet the design criteria, standards, and specifications for erosion control measures established by the Indiana Department of Environmental Management in guidance



documents similar to, or as effective as, those outlined in the Indiana Handbook for Erosion Control in Developing Areas from the Division of Soil Conservation, Indiana Department of Natural Resources.

(b) Indemnity. The Owner of each Lot shall indemnify and hold Declarant harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which may arise out of or are connected with, or are claimed to arise out of or be connected with, any work done by such Owner, its contractor and their respective employees, agents, or subcontractors which is not in compliance with the erosion control plan implemented by the Declarant.

35. Annexation. Each Owner, by the acceptance of a deed to a Lot, consents to the annexation of the Tract to the City of Carmel and agrees not to remonstrate against any proposal for such annexation.

36. Exclusive Builders. Declarant reserves the absolute right prior to the Applicable Date to restrict construction of Units in WestClay to builders who have been approved by Declarant, such approval to be granted or withheld in the absolute discretion of Declarant. Notwithstanding the purchase of a Lot by an Owner, such Owner may not cause or authorize any Person to construct a Unit on the Lot other than a builder who has been approved in writing by Declarant.

IN TESTIMONY WHEREOF, Declarant has executed this Declaration as of the date set forth above.

BRENNICK TND COMMUNITIES, LLC

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

STATE OF INDIANA                    )  
  ) SS:  
COUNTY OF HAMILTON            )

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

WITNESS my hand and Notarial Seal this 9th day of August, 1999.

/s/ Marie M. Urick  
Notary Public Residing in Hendricks County  
Marie M. Urick

My Commission Expires:  
May 24, 2007

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

**EXHIBIT A**

**DESCRIPTION OF DEVELOPMENT AREA**

## EXHIBIT A

### Description of the Development Area

The Southwest quarter of Section 28, part of the Southeast quarter of Section 29 and part of the Northwest and Southwest quarters of Section 33 all in Township 18 North, Range 3 East of Hamilton County, Indiana, and being described as follows :

**Beginning** at the Northeast corner of the Southwest quarter of said Section 28; thence on an assumed bearing of South 00 degrees 01 minutes 09 seconds West along the East line of said Southwest quarter a distance of 503.75 feet; thence North 89 degrees 29 minutes 11 seconds East a distance of 605.93 feet; thence North 00 degrees 15 minutes 45 seconds East a distance of 506.25 feet to a point of the North line of the Southeast Quarter of said Section 28 distant 608.11 feet east of the Northwest corner thereof; thence North 89 degrees 15 minutes 12 seconds East along said North line a distance of 2069.03 feet to the Northeast corner of said Southeast Quarter; thence South 00 degrees 07 minutes 17 seconds West along the East line of said Southeast Quarter a distance of 2630.92 feet to the Southeast corner of said Southeast Quarter; thence South 89 degrees 23 minutes 24 seconds West along the South line of said Southeast Quarter a distance of 2672.37 feet to the Northeast corner of the Northwest Quarter of said Section 33; thence South 00 degrees 20 minutes 16 seconds East along the East line of the Northwest quarter of Section 33 a distance of 2632.10 feet to the Southeast corner thereof; thence South 00 degrees 23 minutes 56 seconds East along the East line of the Southwest quarter of said Section 33 a distance of 490.67 feet; thence South 89 degrees 20 minutes 46 seconds West parallel with the North line of said Southwest quarter a distance of 1331.44 feet to the West line of the East half of said Southwest quarter; thence North 00 degrees 25 minutes 30 seconds West along said West line a distance of 442.67 feet to a point distant 48.00 feet South from the Northwest corner of said half-quarter; thence South 89 degrees 20 minutes 46 seconds West parallel with the North line of said Southwest quarter a distance of 1331.64 feet to the West line of said Southwest quarter; thence North 00 degrees 27 minutes 03 seconds West along said West line a distance of 48.00 feet to the Northwest corner of said Southwest quarter; thence North 00 degrees 27 minutes 13 seconds West along the West line of the Northwest quarter of Section 33 a distance of 1281.55 feet; thence North 89 degrees 20 minutes 46 seconds East parallel with the South line of said Northwest quarter a distance of 1332.95 feet to the West line of the East half of said Northwest quarter; thence North 00 degrees 23 minutes 44 seconds West along said West line a distance of 1348.18 feet to the Northwest corner thereof; thence South 89 degrees 14 minutes 42 seconds West along the South line of the Southwest quarter of Section 28 a distance of 1334.33 feet to the southwest corner thereof; thence South 88 degrees 51 minutes 10 seconds West along the South line of the Southeast quarter of Section 29 a distance of 1351.40 feet to a point hereinafter referred to as Point A; thence North 01 degrees 08 minutes 50 seconds West a distance of 8.00 feet; thence North 52 degrees 30 minutes 24 seconds East a distance of 14.45 feet; thence North 22 degrees 52 minutes 44 seconds East a distance of 27.27 feet; thence North 00 degrees 36 minutes 26 seconds West a distance of 1453.10 feet; thence South 89 degrees 13 minutes 03 seconds West a distance of 107.69 feet; thence North 00 degrees 00 minutes 53 seconds West a distance of 1138.44 feet to the North line of said Southeast quarter; thence North 89 degrees 13 minutes 03 seconds East along said North line a distance of 1443.58 feet to the

Northeast corner thereof; thence North 89 degrees 14 minutes 59 seconds East along the North line of the Southwest quarter of Section 28 a distance of 2678.68 feet to the **Point of Beginning**. Containing 534.984 acres, more or less.

**Also**, Part of the Northwest and the Northeast Quarters of Section 28, Township 18 North, Range 3 East of the Second Principal Meridian, Hamilton County described as follows:

**Beginning** at a railroad spike at the southwest corner of the east half of the northwest quarter; thence North 00 degrees 00 minutes 08 seconds West along the west line of said half quarter 2631.74 to the northwest corner thereof; thence North 89 degrees 15 minutes 26 seconds East along the north line of the Northwest Quarter 693.79 feet to a railroad spike at the northwest corner of a tract of land described in a deed to Stumm, et al, and recorded as instrument number 9601331 in the Office of the Recorder of Hamilton County; thence South 00 degrees 02 minutes 24 seconds East along the west line thereof and along the west line of a tract of land described in a deed to Smith, recorded in Deed Book 154 page 17 a distance of 660.00 feet to a 5/8"x30" rebar with yellow plastic cap marked "SCHNEIDER ENG FIRM #0001" (hereinafter referred to as "REBAR/CAP") at the southwest corner of said Smith tract; thence North 89 degrees 15 minutes 26 seconds East along the south line thereof and along the south line of a tract of land described in a deed to Toll, recorded in Deed Book 310 page 838 a distance of 594.00 to a REBAR/CAP at the southeast corner of said Toll tract; thence North 00 degrees 02 minutes 24 seconds West along the east line thereof 329.99 feet to a REBAR/CAP on the westerly extension of the south line of a tract of land described in a deed to Sullivan, recorded in Deed Book 327 page 646; thence North 89 degrees 14 minutes 34 seconds East along said extension and said south line 211.43 to a REBAR/CAP at the southeast corner thereof; thence North 00 degrees 03 minutes 50 seconds West along the east line thereof 330.00 feet to a railroad spike on the north line of the Northeast Quarter; thence North 89 degrees 14 minutes 34 seconds East along said north line 120.00 feet to a railroad spike at the northwest corner of a tract of land described in a deed to Stumm, recorded in Deed Book 281 page 412; thence South 00 degrees 03 minutes 50 seconds East along the west line thereof 330.00 feet to a REBAR/CAP at the southwest corner thereof; thence North 89 degrees 14 minutes 34 seconds East parallel with the north line of the Northeast Quarter 1056.00 feet to the southeast corner of a tract of land described in a deed to Frederick, recorded as instrument number 9545201, and on the east line of the west half of the Northeast Quarter; thence South 00 degrees 03 minutes 50 seconds East along said east line 2030.77 feet to the northeast corner of a tract of land described in a deed to Lasher, recorded as instrument number 9213826; thence South 89 degrees 15 minutes 12 seconds West along the north line thereof 130.00 feet to a REBAR/CAP at the northwest corner thereof; thence South 00 degrees 03 minutes 50 seconds East along the west line of said Lasher tract 271.00 feet to a railroad spike on the south line of the Northeast Quarter; thence South 89 degrees 15 minutes 12 seconds West along the south line of said quarter 365.00 feet to the a railroad spike at the southeast corner of a tract of land described in a deed to Frank, recorded in Deed Book 163 page 280; thence North 00 degrees 04 minutes 33 seconds West 330.00 feet to the southeast corner of a tract of land described in a deed to Pierson, recorded as instrument number 9364918; thence North 01 degrees 13 minutes 35 seconds East along the east line thereof 60.44 feet to a REBAR/CAP, thence the following thirteen (13) courses along the lines of said tract, nine (9) of

which are also along Elliott Creek; (1) North 27 degrees 36 minutes 44 seconds West 177.33 feet; (2) North 17 degrees 26 minutes 49 seconds West 57.75 feet; (3) North 06 degrees 33 minutes 38 seconds East 59.39 feet; (4) North 88 degrees 53 minutes 52 seconds West 380.61 feet; (5) North 54 degrees 23 minutes 18 seconds West 158.25 feet; (6) North 32 degrees 36 minutes 31 seconds West 96.43 feet; (7) North 08 degrees 48 minutes 39 seconds West 159.88 feet; (8) North 36 degrees 36 minutes 53 seconds West 43.86 feet; (9) North 56 degrees 59 minutes 39 seconds West 141.03 feet; (10) South 00 degrees 49 minutes 57 seconds East 725.49 feet; (11) South 73 degrees 29 minutes 19 seconds East 139.54 feet; (12) North 89 degrees 15 minutes 15 seconds East 50.00 feet; (13) South 01 degrees 00 minutes 58 seconds East 356.12 feet to a railroad spike on the south line of the Northeast Quarter; thence South 89 degrees 15 minutes 12 seconds West along the south line thereof 222.21 feet to a Stone in two boxes 1.2 feet down at the southwest corner of the Northeast Quarter; thence South 89 degrees 14 minutes 59 seconds West along the south line of the Northwest Quarter 1339.34 feet to the **Point of Beginning**. Containing 130.021 acres, more or less.

Also, part of the Southeast Quarter of said Section 29 being described as follows:

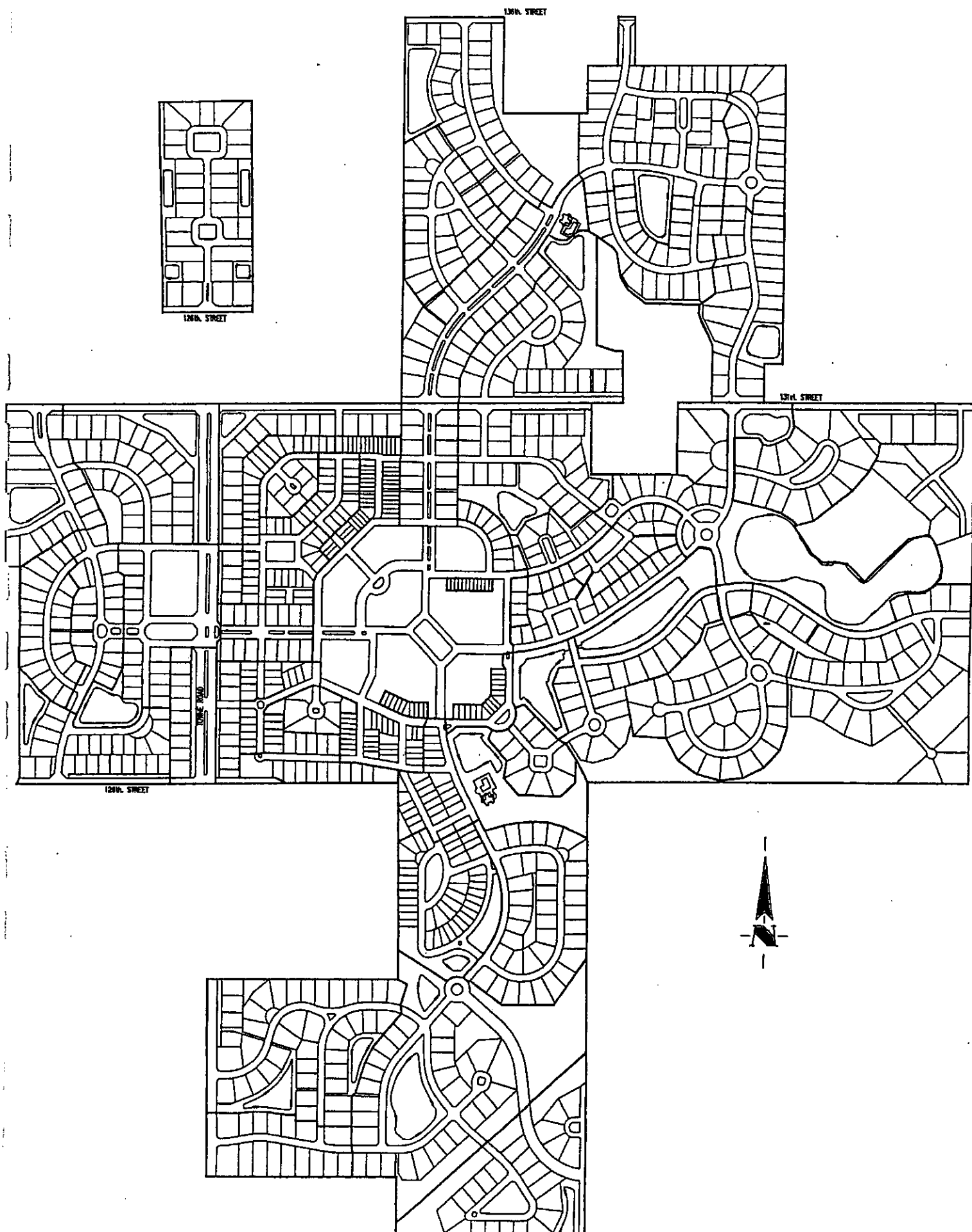
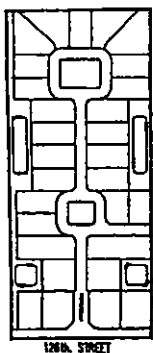
**Commencing** at the aforesaid Point A on the South line of said Southeast quarter; thence South 88 degrees 51 minutes 10 seconds West along said South line a distance of 627.23 feet to the **Point of Beginning** at the Southwest corner of the land described in a deed to Wendy Fortune (Instrument Number 8915090, Office of the Recorder of Hamilton County, Indiana); thence continuing South 88 degrees 51 minutes 10 seconds West along said South line a distance of 668.05 feet to the Southwest corner of said Southeast quarter; thence North 00 degrees 24 minutes 33 seconds West along the West line of said Southeast quarter a distance of 1437.39 feet to a point distant 1203.96 feet South of the Northeast corner thereof; thence North 88 degrees 29 minutes 35 seconds East a distance of 658.94 feet to a westerly corner of the aforesaid Fortune tract; thence South 00 degrees 46 minutes 26 seconds East along the West line thereof a distance of 1441.43 feet to the **Point of Beginning**. Containing 21.923 acres, more or less.

**Containing, in all, 686.928 acres, more or less.**

\\SEC\_INDY\DATA\JOBS\1238\001\DOCS\OAOPTA.doc

**EXHIBIT B**

**GENERAL PLAN OF DEVELOPMENT**





**EXHIBIT C**

**DESCRIPTION OF THE TRACT**

## EXHIBIT C

### DESCRIPTION OF THE TRACT

(Griffin, Rice, Perez and Szynal Land)

The Southwest quarter of Section 28, part of the Southeast quarter of Section 28 and part of the Northwest and Southwest quarters of Section 33 all in Township 18 North, Range 3 East of Clay Township, Hamilton County, Indiana, and being described as follows :

**Beginning** at the Northeast corner of the Southwest quarter of said Section 28; thence on an assumed bearing of South 00 degrees 01 minutes 09 seconds West along the East line of said Southwest quarter a distance of 503.75 feet; thence North 89 degrees 29 minutes 11 seconds East a distance of 605.93 feet; thence North 00 degrees 15 minutes 45 seconds East a distance of 506.25 feet to a point of the North line of the Southeast Quarter of said Section 28 distant 608.11 feet east of the Northwest corner thereof; thence North 89 degrees 15 minutes 12 seconds East along said North line a distance of 2069.03 feet to the Northeast corner of said Southeast Quarter; thence South 00 degrees 07 minutes 17 seconds West along the East line of said Southeast Quarter a distance of 2630.92 feet to the Southeast corner of said Southeast Quarter; thence South 89 degrees 23 minutes 24 seconds West along the South line of said Southeast Quarter a distance of 2672.37 feet to the Northeast corner of the Northwest Quarter of said Section 33; thence South 00 degrees 20 minutes 16 seconds East along the East line of the Northwest quarter of Section 33 a distance of 2632.10 feet to the Southeast corner thereof; thence South 00 degrees 23 minutes 56 seconds East along the East line of the Southwest quarter of said Section 33 a distance of 490.67 feet; thence South 89 degrees 20 minutes 46 seconds West parallel with the North line of said Southwest quarter a distance of 1331.44 feet to the West line of the East half of said Southwest quarter; thence North 00 degrees 25 minutes 30 seconds West along said West line a distance of 442.67 feet to a point distant 48.00 feet South from the Northwest corner of said half-quarter; thence South 89 degrees 20 minutes 46 seconds West parallel with the North line of said Southwest quarter a distance of 1331.64 feet to the West line of said Southwest quarter; thence North 00 degrees 27 minutes 03 seconds West along said West line a distance of 48.00 feet to the Northwest corner of said Southwest quarter; thence North 00 degrees 27 minutes 13 seconds West along the West line of the Northwest quarter of Section 33 a distance of 1281.55 feet; thence North 89 degrees 20 minutes 46 seconds East parallel with the South line of said Northwest quarter a distance of 1332.95 feet to the West line of the East half of said Northwest quarter; thence North 00 degrees 23 minutes 44 seconds West along said West line a distance of 1348.18 feet to the Northwest corner thereof; thence South 89 degrees 14 minutes 42 seconds West along the South line of the Southwest quarter of Section 28 a distance of 1334.33 feet to the southwest corner thereof; thence North 00 degrees 32 minutes 45 seconds East along the West line of the Southwest quarter of Section 28 a distance of 2624.94 feet to the Northwest corner of the Southwest quarter of Section 28; thence North 89 degrees 14 minutes 59 seconds East along the North line of the Southwest quarter of Section 28 a distance of 2678.68 feet to the **Point of Beginning**. Containing 451.608 acres, more or less.

(J.Kreutz 08-09-99)



**RHETTSBURY  
SOUTH VILLAGE**

29.00  
(11)

199909967430  
Filed for Record in  
HAMILTON COUNTY, INDIANA  
MARY L CLARK  
On 11-19-1999 At 08:30 am.  
DEC COV RES 29.00

Primary Area  
Parcel No. 1

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

\_\_\_\_\_  
This Supplemental Declaration, dated as of the 17<sup>th</sup> day of November, 1999, 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.

“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 designed as the principal structure on the Lot.

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

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

2. Declaration. Declarant hereby declares that, in addition to the covenants, restrictions, easements, charges and liens imposed by the Declaration of Covenants and Restrictions, the Parcel

shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

3. Land Use. Lots may be used only for residential purposes as provided in Section 5.1A(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 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 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 part of a Lot Development Plan a report of subsurface soils investigation of the Lot made by a qualified soils engineer, which report shall include recommendations for the foundations of the proposed improvements. Each Owner shall comply with the terms and provisions of Paragraph 20 of the Declaration of Covenants and Restrictions and the requirements of the Architectural Review Board established pursuant to the authority granted by the Declaration of Covenants and Restrictions.

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

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

(d) Building Activity. All Building Activity shall be undertaken and completed strictly in accordance with the Building Guidelines and the Lot Development Plan approved by the Architectural Review Board. Unless a delay is

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

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

The failure of the Owner of a Lot to apply for approval of, or receive approval from, the Architectural Review Board of a Lot Development Plan shall not relieve such Owner from his obligation to complete construction of a Principal Dwelling upon the Lot within the time period specified herein. For the purposes of this subparagraph (d), construction of a Principal Dwelling will be deemed "completed"

when the exterior of the Principal Dwelling (including but not limited to the foundation, walls, roof, windows, entry doors, gutters, downspouts, exterior trim, paved driveway, landscaping and yard light) has been completed in conformity with the Lot Development Plan.

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

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

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

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



5. Maintenance of Lots.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. 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 is 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 is accessory, there are not more than three (3) 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 or 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

## EXHIBIT A

### Real Estate Description

A part of the Southwest Quarter of Section 28, Township 18 North, Range 3 East and part of the East Half of the Northwest Quarter of Section 33, Township 18 North, Range 3 East, Clay Township, Hamilton County, Indiana, described as follows:

**Beginning** at the Southwest corner of the East Half of the Southwest Quarter of said Section 28; thence South 89 degrees 14 minutes 42 seconds West along the south line of said Southwest Quarter of Section 28, 801.67 feet; thence North 62 degrees 32 minutes 46 seconds West 84.62 feet; thence South 89 degrees 14 minutes 42 seconds West 403.02 feet; thence North 00 degrees 08 minutes 09 seconds West 925.31 feet; thence North 44 degrees 51 minutes 51 seconds East 35.36 feet; thence North 89 degrees 51 minutes 51 seconds East 650.29 feet; thence South 00 degrees 08 minutes 09 seconds East 150.00 feet; thence South 00 degrees 08 minutes 09 seconds East 114.87 feet; thence South 65 degrees 51 minutes 51 seconds West 26.15 feet; thence South 24 degrees 08 minutes 09 seconds East 50.00 feet; thence North 65 degrees 51 minutes 51 seconds East 9.36 feet; thence South 00 degrees 08 minutes 09 seconds East 10.27 feet; thence North 89 degrees 51 minutes 51 seconds East 50.00 feet; thence North 00 degrees 08 minutes 09 seconds West 4.80 feet; thence South 66 degrees 08 minutes 09 seconds East 282.81 feet; thence South 00 degrees 08 minutes 09 seconds East 25.70 feet; thence North 89 degrees 51 minutes 51 seconds East 52.00 feet; thence North 00 degrees 08 minutes 09 seconds West 2.55 feet; thence South 66 degrees 08 minutes 09 seconds East 220.93 feet to a curve having a radius of 500.00 feet, the radius point of which bears North 23 degrees 51 minutes 57 seconds East; thence southeasterly along said curve an arc distance of 44.25 feet to a point of which bears South 18 degrees 47 minutes 42 seconds West from said radius point; thence South 00 degrees 08 minutes 09 seconds East 16.25 feet; thence North 89 degrees 51 minutes 51 seconds East 52.00 feet; thence North 00 degrees 08 minutes 09 seconds West 1.51 feet to a curve having a radius of 500.00 feet, the radius point of which bears North 12 degrees 35 minutes 53 seconds East; thence southeasterly along said curve an arc distance of 111.12 feet to a point of which bears South 00 degrees 08 minutes 09 seconds East from said radius point; thence North 89 degrees 51 minutes 51 seconds East 111.00 feet to a curve having a radius of 1026.00 feet, the radius point of which bears North 82 degrees 36 minutes 29 seconds East; thence southeasterly along said curve an arc distance of 217.44 feet to a point of which bears South 70 degrees 27 minutes 55 seconds West from said radius point; thence South 19 degrees 32 minutes 05 seconds East 119.87 feet to a curve having a radius of 726.00 feet, the radius point of which bears North 70 degrees 27 minutes 55 seconds East; thence southeasterly along said curve an arc distance of 101.98 feet to a point of which bears South 62 degrees 25 minutes 01 seconds West from said radius point; thence South 27 degrees 34 minutes 59 seconds East 477.12 feet to a curve having a radius of 25.00 feet, the radius point of which bears South 62 degrees 25 minutes 01 seconds West; thence southwesterly along said curve an arc distance of 42.33 feet to a point of which bears South 20 degrees 34 minutes 48 seconds East from said radius point; thence South 69 degrees 25 minutes 12 seconds West 43.36 feet; thence South 20 degrees 34 minutes 48 seconds East 50.00 feet to a curve having a radius of 25.00 feet, the radius point of which bears South 20 degrees 34 minutes 48 seconds East; thence southeasterly along said curve an arc distance of 43.97 feet to a curve having a radius of 491.00 feet, the radius point of which bears South 80 degrees 11 minutes 06 seconds West; thence southwesterly along said curve an arc distance of 767.99 feet to a curve having a radius of 25.00 feet, the radius point of which bears North 10 degrees 11 minutes 47 seconds West; thence northwesterly along said curve an arc distance of 43.47 feet to a point of which bears South 89 degrees 25 minutes 12 seconds West from said radius point; thence North 00 degrees 34 minutes 48 seconds West 112.80 feet; thence South 89 degrees 25 minutes 12 seconds West 191.24 feet; thence North 00 degrees 23 minutes 44 seconds West along the East line of the West half of the Northwest Quarter of Section 33, 1005.25 to the **Point of Beginning**. Containing 38.674 more or less.

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

14.00  
③  
1.00 m.c.

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

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

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

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

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

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

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

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

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

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

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

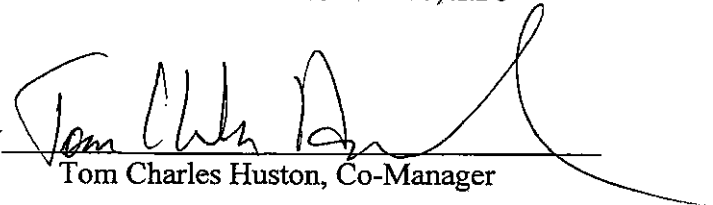
Except for Designated Lots which may be used for any use authorized by a Supplemental Declaration encumbering such Designated Lots, Lots may be used only for residential purposes as provided in Section 5.1A(1), (2), and (4) of the Zoning Ordinance and for Home-Based Offices accessory to residential use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

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

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

BRENNICK TND COMMUNITIES, LLC

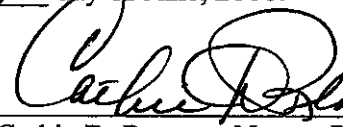
By

  
Tom Charles Huston, Co-Manager

STATE OF INDIANA        )  
                                  ) ss:  
COUNTY OF HAMILTON    )

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

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

  
Cathie D. Reamer, Notary Public  
Residing in Hamilton County



My commission Expires: February 1, 2007

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

TCH/cdr  
VWC misc.

Primary Area  
Parcel 1

16.00  
(3)  
2013054665 AMENDMENT \$16.00  
08/26/2013 10:10:48A 3 PGS  
Mary L. Clark  
HAMILTON County Recorder IN  
Recorded as Presented

**SECOND AMENDMENT**  
**TO THE**  
**SUPPLEMENTAL DECLARATION OF COVENANTS AND RESTRICTIONS**  
**OF**  
**THE VILLAGE OF WESTCLAY**  
**(PRIMARY AREA PARCEL NO. 1)**

THIS FIRST AMENDMENT to that certain Supplemental Declaration of Covenants and Restrictions (Primary Area Parcel No. 1) dated as of November 17, 1999 (the "Supplemental Declaration"), is executed as of the 26<sup>th</sup> day of August, 2013, by Brenwick TND Communities, LLC ("Declarant"), who, by the execution hereof, hereby declares that:

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

(a) The Supplemental Declaration was recorded in the Office of the Recorder of Hamilton County, Indiana, on November 19, 1999, as Instrument No. 199909967430.

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

2. **Amendments.**

(a) Paragraph 1 of the Supplemental Declaration is hereby amended by deleting the definition of "Parcel" and substituting the following definition in lieu thereof:

"Parcel" means that part of the real estate described in Exhibit A that is attached to the Supplemental Declaration, together with the real estate described as Block J of The Village of WestClay, Section 3001-A, Village Center, Part 2, per the plat thereof recorded as Instrument No. 199909969687, Plat Cabinet 2, Slide 363, and the real estate described in Exhibit A-1, attached hereto and incorporated herein, which is at any time subject to the covenants, restrictions, easements charges and liens imposed by the Declaration of Covenants and Restrictions.

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



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


BRENNICK TND COMMUNITIES, LLC

By:   
Tom Charles Huston, Co-Manager

STATE OF INDIANA       )  
                                      ) SS:  
COUNTY OF HAMILTON )

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

WITNESS my hand and Notarial Seal this 26<sup>th</sup> day of August, 2013.

  
Marie M. Urick, Notary Public Residing in  
Hendricks County



This instrument prepared by (and should be returned to) Tom Charles Huston, Attorney at Law, 12775 Horseferry Road, Suite 230, Carmel, Indiana 46032.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Tom Charles Huston

**EXHIBIT A-1**

**VILLAGE CENTER TOWNHOMES PHASE II**

A PART OF BLOCK "F" OF THE VILLAGE OF WEST CLAY, SECTION 3001-A, VILLAGE CENTER, PART 2, THE SECONDARY PLAT OF WHICH IS RECORDED DECEMBER 3, 1999 IN PLAT CABINET 2, SLIDE 363 AS INSTRUMENT NO. 199909969687 IN THE OFFICE OF THE RECORDER OF HAMILTON COUNTY, INDIANA, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 18 NORTH, RANGE 3 EAST, CLAY TOWNSHIP, HAMILTON COUNTY, INDIANA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID BLOCK "F", THENCE SOUTH 89 DEGREES 51 MINUTES 51 SECONDS WEST ALONG THE SOUTH LINE OF SAID BLOCK "F" A DISTANCE OF 93.62 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE RIGHT HAVING A RADIUS OF 440.00 FEET, THE RADIUS POINT OF WHICH BEARS NORTH 00 DEGREES 08 MINUTES 09 SECONDS WEST; THENCE WESTERLY ALONG SAID SOUTH LINE AND SAID CURVE AN ARC DISTANCE OF 150.33 FEET TO A POINT WHICH BEARS SOUTH 19 DEGREES 26 MINUTES 22 SECONDS WEST FROM SAID RADIUS POINT, BEING THE SOUTHWEST CORNER OF A 0.179 ACRE TRACT DESCRIBED IN CORRECTIVE DEED RECORDED AS INSTRUMENT NO. 2010042970 IN SAID RECORDER'S OFFICE AND THE POINT OF BEGINNING; THENCE NORTHWESTERLY ALONG SAID SOUTH LINE AND CURVE, AN ARC DISTANCE OF 33.98 FEET TO THE POINT OF TANGENCY LYING SOUTH 23 DEGREES 51 MINUTES 51 SECONDS WEST FROM SAID RADIUS POINT; THENCE NORTH 66 DEGREES 08 MINUTES 09 SECONDS WEST 237.76 FEET TO THE SOUTHWEST CORNER OF SAID BLOCK "F"; THENCE NORTH 23 DEGREES 51 MINUTES 51 SECONDS EAST, ALONG THE WEST LINE OF SAID BLOCK "F", 156.00 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT HAVING A RADIUS OF 110.00 FEET THE RADIUS POINT OF WHICH BEARS NORTH 66 DEGREES 08 MINUTES 09 SECONDS WEST; THENCE NORTHERLY ALONG SAID WEST LINE AND CURVE, AN ARC DISTANCE OF 46.08 FEET TO THE POINT OF TANGENCY LYING NORTH 89 DEGREES 51 MINUTES 51 SECONDS EAST FROM SAID RADIUS POINT; THENCE NORTH 00 DEGREES 08 MINUTES 09 SECONDS EAST, ALONG SAID WEST LINE, 120.40 FEET; THENCE NORTH 89 DEGREES 51 MINUTES 51 SECONDS EAST 133.27 FEET; THENCE SOUTH 00 DEGREES 08 MINUTES 09 SECONDS EAST 295.30 FEET; THENCE SOUTH 66 DEGREES 08 MINUTES 09 SECONDS EAST 81.06 FEET; THENCE SOUTH 19 DEGREES 26 MINUTES 22 SECONDS WEST 94.14 FEET TO THE POINT OF BEGINNING AND CONTAINING 1.435 ACRES, MORE OR LESS.