

Cross Reference: Instrument No. _____

**DECLARATION OF PROTECTIVE
COVENANTS FOR FALLS POINTE BUSINESS PARK**

THIS DECLARATION OF PROTECTIVE COVENANTS FOR FALLS POINTE BUSINESS PARK (the "Declaration"), is made this ____ day of December, 2000, by the TOWN OF PENDLETON DEPARTMENT OF REDEVELOPMENT, by and through its REDEVELOPMENT COMMISSION (hereinafter referred to as "Declarant").

RECITALS:

A. Declarant is the fee simple owner of the Original Real Estate (as hereinafter defined), title thereto having been conveyed to Declarant pursuant to that certain Quitclaim Deed, dated February 15, 1998 and recorded _____ in the Office of the Recorder of Madison County, Indiana as Instrument No. _____.

B. The Original Real Estate and any additional real estate subjected to this Declaration will be known as Falls Pointe Business Park.

C. Declarant intends to own and to develop portions of the Property (as hereinafter defined) itself and/or to convey portions of the Property to other persons or entities for development, all in accordance with certain conditions, covenants and restrictions pertaining to the ownership and development of the Property.

D. Declarant has deemed it desirable to retain the power of and responsibility for owning, maintaining, preserving, and administering Common Area (as hereinafter defined), and certain portions of the Property for the benefit of other portions of Falls Pointe Business Park, for administering and enforcing this Declaration and for collecting and disbursing any assessments and charges for the maintenance, preservation and administration of the Common Area, all as hereinafter provided.

E. Declarant desires to subject the Original Real Estate to certain conditions, covenants and restrictions which are more particularly hereinafter set forth.

F. Declarant has the authority under Indiana Code 36-7-14 and other provisions of Indiana law to subject the Original Real Estate to this Declaration and take all actions contemplated by this Declaration.

DECLARATION:

NOW, THEREFORE, Declarant hereby declares that the Property is and shall be owned, held, transferred, sold, conveyed, mortgaged, encumbered, given, donated, leased, occupied, and used subject to the covenants, restrictions, conditions, easements, development standards, charges, assessments, affirmative obligations, and liens (hereinafter sometimes referred to in the singular as "Covenant" and collectively as the "Covenants") hereinafter set forth, and that the Covenants shall be construed to be covenants running with the land and, as such, shall be binding upon each and every Owner (as hereinafter defined) of any portion of the Property, its heirs, successors, assigns, and Occupants (as hereinafter defined); provided, however, that nothing herein contained shall obligate Declarant, its successors or assigns, to impose similar or identical protective covenants on any other property which either now is, or which may at any time hereafter become, a part of Falls Pointe Business Park.

1. DEFINITIONS

The following terms when used or referred to in this Declaration or any amendment or supplement hereto or modification hereof (unless the context clearly indicates otherwise) shall have the following meanings:

(a) "Additional Real Estate" shall mean and refer to the real estate described in Exhibit B attached hereto and by this reference made a part hereof, and any and all improvements thereon.

(b) "Architectural Review Committee" shall mean and refer to the Architectural Review Committee provided for in Paragraph 5 hereof.

(c) "Association" shall mean and refer to an Indiana non-profit corporation, or such other Indiana non-profit corporation, which may hereafter be created by Declarant in its sole discretion for the purpose of owning, maintaining, preserving, and administering Common Area and for such other purposes as are set forth hereinafter.

(d) "Common Area" shall mean and refer to any land, improvement, or easement, designated by the Declarant for the use of, or for the benefit of, the Owners of Parcels in the Property, including, without limitation, the following improvements constructed and installed by or on behalf of the Declarant which may be so designated by Declarant: (i) any or all of the Storm Water Facilities and ponds serving the Property or portions thereof; (ii) the landscaping along the frontage of or within any medians on, the roadways (public or private) within or adjacent to the Property; (iii) fencing or berms constructed along the frontage of any roadways (public or private) within or adjacent to the Property; (iv) any entrance feature and/or signs to the Property, together with any related illumination, landscaping, water feature and related irrigation system

(including, without limitation, any pond, fountain and/or aeration system); and (v) any pedestrian walks or jogging paths; provided, however, Declarant shall only have the right to designate a Common Area on property owned by Declarant or across which Declarant has an easement at the time of such designation or within an area previously designated as a Common Area. Any designation of Common Areas by Declarant be recorded by easement, deed or plat in the Office of the Recorder of Madison County, Indiana. For purposes of this Declaration, Common Area shall not include any portion of any Parcel that the Owner thereof may designate as common area for any purpose or in any other document, unless such other document specifically declares such common area to be a Common Area within the scope of this Declaration, and the Declarant accepts such area as a Common Area by instrument signed by Declarant and recorded in the Office of the Recorder of Madison County, Indiana. Further, nothing stated in this subsection or in this Declaration shall be construed in any manner as creating any obligation, duty or responsibility on Declarant to designate or create any specific Common Areas.

(e) "Declarant" shall mean and refer to the Town of Pendleton Department of Redevelopment, by and through its Redevelopment Commission, and its successors and assigns.

(f) "Design Guidelines" shall mean and refer to the Falls Pointe Business Park Phase I - Park Design Guidelines, a copy of which is attached hereto as Exhibit C and by this reference made a part hereof, as the same may be amended from time to time.

(h) "Development Code" shall mean and refer to the Pendleton Unified Development Code, as the same may be amended from time to time, which by this reference is made as part hereof.

(i) "Expansion Real Estate" shall mean and refer to the Additional Real Estate and any other real estate that is adjoining or adjacent to the Additional Real Estate or the Original Real Estate or to any street right-of-way adjoining or adjacent to the Additional Real Estate or the Original Real Estate.

(j) "Hazardous Materials" shall mean and refer to: (i) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et. seq.), as amended from time to time, and regulations promulgated thereunder; (ii) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et. seq.) ("CERCLA"), as amended from time to time, and regulations promulgated thereunder; (iii) asbestos; (iv) petroleum products and polychlorinated biphenyls; (v) any substance the presence of which on the Property is prohibited by any government requirement; or (vi) any other

substance which by any government regulation requires special handling in its collection, storage, treatment or disposal, including, without limitation, bio-hazard waste.

(k) "Occupant" shall mean and refer to any Person, other than an Owner, and the successors and assigns of any thereof that is in possession of or otherwise occupying all or any part of any Parcel or Parcels, at any particular time or times, whether as a lessee, sublessee, licensee, or pursuant to any lease, sublease, license, or other right of occupancy with or through the Owner of such Parcel or Parcels or part thereof.

(l) "Original Real Estate" shall mean and refer to the real estate described on Exhibit A attached hereto and by this reference made a part hereof, and any and all improvements thereon.

(m) "Owner(s)" shall mean and refer to the owner(s) of record (including Declarant) of fee simple title to any Parcel, as shown by the Records in the Office of the Recorder of Madison County, Indiana (whether or not such Owner shall consist of one or more Persons); provided, however, that the term "Owner(s)" shall not mean or refer to (1) any Occupant of any Owner as hereinabove defined (even if such Occupant holds an option to purchase fee simple title to a Parcel), or (2) any mortgagee under a mortgage or any holder of any other security instrument in the nature thereof (said mortgage and other security instrument being hereinafter collectively referred to as a "security instrument") encumbering the title to any Parcel, unless and until such mortgagee or holder shall have acquired fee simple title to such Parcel pursuant to the foreclosure of such security instrument or any deed or proceeding taken in lieu of the foreclosure of any such security instrument.

parcel (n) "Parcel" shall mean and refer to any improved or unimproved of land within the Property (excluding Common Area) used or intended for use as a site for improvements to accommodate commercial or business enterprises permitted hereunder.

(o) "Person" shall mean and refer to an individual, group of individuals, corporation, partnership, limited liability company, trust, unincorporated business association or such other legal entity as the context in which such term is used may imply.

(p) "Property" shall mean and refer to the Original Real Estate, together with such additional real estate (and the improvements thereon) as may from time to time be made subject to this Declaration in accordance with the terms hereof.

(q) "Storm Water Facilities" shall mean and refer to the storm water system serving the Property, in whole or in part, located within the Property and/or outside the Property (if by easement or agreement such system outside the Property serves the Property or any Parcel), including, without limitation, areas designated "private water detention easement" on any plat of dedication or plat of survey, conduits, inlet and outlet storm sewers and structures, wells (including electrical service and discharge pipes) designed to replenish retention ponds, catch basins, inlets, inlet leads, catch basin leads, detention basins, retention ponds, immediate adjacent table land to such basins and ponds, and irrigation systems serving Common Areas. There shall be excluded from Storm Water Facilities, storm water collecting facilities dedicated to and accepted by or owned by governmental bodies, over which governmental bodies have agreed to maintain, and the storm water collecting sewers and facilities within a Parcel, the principal purpose of which is to serve such Parcel.

2. PURPOSE

The purpose of this Declaration is to insure proper use and appropriate, adequate, and reasonable development of the Property and each Parcel located therein; to preserve and enhance the value of all Parcels; to protect against the erection upon the Parcels of improvements constructed of improper, unsuitable, or undesirable material or design; to encourage the construction and maintenance of attractive improvements upon the Parcels, which are compatible and harmonious as to appearance and location with improvements situated on or planned for other Parcels; to provide for ownership, maintenance preservation, and administration of the Common Area; and in general, to provide for orderly and high quality development and improvement of the Property and for adequate maintenance thereof.

3. TERM

This Declaration and every Covenant contained herein shall be in effect for a period of fifty (50) years from and after the date hereof, and shall automatically be continued thereafter to the extent permitted by Indiana law for successive periods of ten (10) years each, except that upon the commencement of any such ten (10) year period this Declaration may be terminated at the election of the then Owners having ninety percent (90%) of the total votes held by all Owners (as determined in accordance with the terms set forth below in this Paragraph 3), as of the date of such election; provided, however, the Declarant must consent to such termination in writing. Any such termination shall be evidenced by an agreement terminating this Declaration and the Covenants contained herein, executed with the same formality as is required for the execution of deeds, signed by (i) the then Owners having at least ninety percent (90%) of the total number of votes held by all Owners (as determined in accordance with the terms set forth below in this Paragraph 3), and (ii) the Declarant, setting forth therein the total number of votes, and the number of votes held by each signatory to said termination agreement and recorded in the Office of the Recorder of Madison County, Indiana.

For purposes of the voting referenced in the preceding paragraph, every person who is an Owner, with the exception of the Declarant, shall be entitled to one vote, or a prorated share thereof, for each ten thousand (10,000) square feet, or portion thereof, of land area within the Parcel(s) owned by such Owner. Where more than one (1) person is an Owner by virtue of an ownership interest in the same Parcel, the vote for such Parcel shall be exercised as they among themselves determine. In the event of disagreement among such persons and an attempt by two (2) or more of them to cast the vote allocated to such Parcel, such persons shall not be recognized and the vote of such Parcel shall not be counted.

4. PUBLIC USE

Declarant reserves unto itself, its successors and assigns, for the benefit of the Property, the right, from time to time hereafter to delineate, plat, grant or reserve within the Property owned by Declarant such public streets, roads, sidewalks, ways and appurtenances thereto, and such easements for drainage and public utilities, as Declarant may deem necessary or desirable for the development of the Property free and clear of this Declaration and the Covenants contained herein, and to dedicate the same to public use or to grant the same to appropriate public utility corporations. Declarant, with the approval of the necessary governmental authorities and/or utilities, may from time to time and at any time relocate any public street or easement for drainage or public utilities if the relocation is necessary or appropriate for (a) compliance with any governmental order, regulation, law or ordinance, (b) compliance with the requirements of any public utility company, (c) the construction, erection or installation of a building or other improvement, (d) the alteration of a building or other improvement, or (e) aesthetic reasons (the rights to relocate provide above being referred to as the "Relocation Rights").

The Relocation Rights shall be subject to the following terms and conditions:

(a) The Declarant shall not, without the prior written consent of the Owner of a Parcel, exercise any Relocation Right which would directly affect, or interfere with, disrupt or prevent ingress to and egress from or access to such Parcel.

(b) The exercise by the Declarant of the Relocation Rights shall not cause any interruption of, or interference with, any utilities or drainage system used by or benefitting a Parcel or which serves a Parcel.

(c) The Declarant shall, at its sole cost and expense, restore any parking area, access way, walkway, lighting, landscape area, or other surface improvements used by or benefitting or which serves a Parcel that are damaged or affected as a direct result of the exercise by the Declarant of any of the Relocation Rights.

(d) Declarant may relocate a utility easement used by or benefitting a Parcel, or which serves a Parcel (including any equipment, line, tile, fixture or facility used in conjunction with such utilities), only if Declarant first installs and/or constructs, at its sole cost and expense, a replacement for each utility which Declarant desires to relocate. A replacement utility must have capacity which is at least equal to the capacity of the utility to be relocated, and must otherwise be built to the specifications of the utility to be relocated. Such replacement utility must also be located in a utility easement benefitting such Parcel.

(e) Declarant may abandon or relocate a surface drainage easement used by or benefitting a Parcel, or which serves a Parcel (including any equipment, fixture or facility used to provide drainage in connection with such surface drainage easement) (collectively, "Drainage Facilities"), only if Declarant first installs and/or constructs, at its sole cost and expense, Drainage Facilities to replace the Drainage Facilities which Declarant desires to relocate. The replacement Drainage Facilities must have capacity which is at least equal to the capacity of the drainage facilities to be relocated, and must otherwise be built to specifications reasonably acceptable to the Owner of the applicable Parcel. Such replacement Drainage Facility must also be located in a surface drainage easement benefitting such Parcel.

5. ARCHITECTURAL REVIEW COMMITTEE

If the Declarant creates the Association and the Declarant transfers to the Association the right and obligation to review plans and specifications as set forth in Paragraph 6, a committee of the Association shall be created and named the Architectural Review Committee. The Architectural Review Committee shall consist of three (3) members who shall be natural persons.

The Association shall have the exclusive right and power at any time and from time to time, by majority vote of the Association, to appoint and remove members of the Architectural Review Committee and to fill vacancies thereon.

6. PLAN APPROVAL REQUIRED

No construction of any kind or nature whatsoever (including, without limitation, construction of those improvements named in Paragraph 17 hereof) shall be commenced upon any portion of the Property until a preliminary set of plans and specifications and a final set of plans and specifications for all buildings, improvements and other structures proposed to be constructed thereon has been submitted to and approved in writing by the Declarant, or if an Architectural Review Committee is established under Paragraph 5, the Architectural Review Committee. (For purposes of this Paragraph 6, the Declarant or the Architectural Review Committee, whichever the case may be, is referred to as the "Reviewing Party".) No addition to,

change to or alteration of the exterior of any existing improvement on the Property (including, without limitation, the improvements named in Paragraph 17 hereof) shall be commenced until a preliminary set of plans and specifications and a final set of plans and specifications for such addition, change and/or alteration has been submitted to and approved in writing by the Reviewing Party. The preliminary plans and specifications required hereunder shall include:

- (a) Topographical plat showing contour grades (with two-foot contour intervals) and showing the location of all improvements, structures, walks, patios, driveways, fences and walls. Existing and finished grades shall be shown at lot corners and at corners of proposed improvements. Site drainage provisions shall be included, as well as cut and fill details, if any applicable change in the lot contours is contemplated;
- (b) Exterior elevations of all proposed buildings and structures;
- (c) Exterior materials, colors, textures and shapes, which if required by the Reviewing Party shall also be identified by manufacturer's name, product name and identifying number where appropriate;
- (d) Landscaping plan, including walkways, berms, fences and walls, elevation changes, watering systems, vegetation and ground cover;
- (e) Parking area and driveway plan;
- (f) Screening, including site, location and method;
- (g) Utility connections, including routing of electrical, gas and telephone cables;
- (h) Exterior illumination, including location, and if required by the Reviewing Party, the manufacturer's fixture number and supporting illumination test data;
- (i) Signs, flags and other horizontal or vertical advertising or identification not necessary for structural purposes, including size, height, shape, color, location and materials;
- (j) Trash containers, storage locations and related screening;
- (k) Ingress and egress design and plan;
- (l) Curbing, including curb cuts and gutters;
- (m) Storm water retention facilities; and

(n) Proposed use of the Parcel and such matters as may be required by the applicable governmental authorities and by the Zoning Ordinances.

After the preliminary plans and specifications have been approved in writing by the Reviewing Party, the final plans and specifications (which shall conform with the approved preliminary plans and specifications) shall be submitted to the Reviewing Party for approval. Such final plans and specifications shall include:

- (a) Construction plans and specifications;
- (b) A site plan showing the location of all buildings or other structures;
- (c) Complete and detailed plans and specifications for all grading, drainage, utility service, paving, exterior lighting and landscaping;
- (d) Drawings showing all elevations for buildings and other structures, including but not limited to front, side, and rear elevations;
- (e) Wall sections;
- (f) Finish details;
- (g) Detailed identification of exterior materials and colors; and
- (h) Details of all signage and landscaping.

Any approval or disapproval by the Reviewing Party as herein described shall, among other things, be based on adequacy of site dimensions, compatibility and harmony of external design with neighboring structures, effect of location and use of improvements on neighboring sites, improvements, operations, and uses; relation of topography, grade, and finished ground elevation of the Parcel being improved to that of neighboring Parcel; proper facing of main elevation with respect to nearby streets; and conformity of the plans and specifications with the purpose and general plan and intent of this Declaration. The Reviewing Party shall have the right to disapprove any such plans and specifications, or any specific aspects thereof, to the extent that the Reviewing Party deems them unsuitable, undesirable, or inappropriate for any reason within the scope of the authority of the Reviewing Party.

The Reviewing Party shall not arbitrarily or unreasonably withhold its approval of any such plans or specifications, or any portions thereof. In the event of disapproval of any such plans or specifications, or any portions thereof, the Reviewing Party shall give to the Owner submitting such plans and specifications written notice thereof, together with the reasons for

such disapproval, within thirty (30) days after such plans and specifications are submitted to the Reviewing Party. In the event the Reviewing Party fails to approve or disapprove said plans and specifications within said thirty (30) days, the plans and specifications shall be deemed approved; provided, however, that any such failure of the Reviewing Party to approve or disapprove any such submitted plans and specifications shall not be deemed a waiver of any Covenant contained herein, and in any event, plans and specifications shall not violate the Covenants contained herein. The decision of the Reviewing Party shall be final as to any such approval or disapproval of plans and specifications. None of the Architectural Review Committee, the Declarant nor the Association shall be liable in damages to any person or entity submitting plans and specifications for approval or to any other person or entity, by reason of error or mistake in judgment, negligence or nonfeasance of the Architectural Review Committee or Declarant or their respective members, beneficiaries, directors, agents or employees, arising out of or in connection with the approval, disapproval, or failure to approve or disapprove any such plans and specifications. Nothing contained herein, nor any actions of the Architectural Review Committee or Declarant, are intended to be, nor shall they be construed to be, approval by the Architectural Review Committee or Declarant of the adequacy, reasonableness, safety, or fitness for intended use of submitted plans and specifications, materials, products, or construction.

The review and approval process by the Reviewing Party set forth herein is to ensure conformity to the requirements of this Declaration, compliance with the general plan of construction and general overall aesthetic quality of the Property, compliance with the Design Guidelines, and consistency of materials used and compatibility of uses so that the Property will fulfill the purposes set forth in Paragraph 2 hereof.

Any authorized agent of the Reviewing Party may from time to time at any reasonable hour enter upon and inspect any portion of the Property to insure that construction and/or maintenance of any improvements located thereon comply with the provisions of this Declaration. Notwithstanding the foregoing provisions of this Paragraph 6, the Reviewing Party shall have no right to review and approve interior walls and interior finishes within any improvements constructed upon any portion of the Property.

As a prerequisite of approval of such plans and specifications, the Reviewing Party shall have the power to require the Owner who has submitted such plans and specifications to grant reasonable utility, roadway and/or drainage easements as may be required for Falls Pointe Business Park for the enjoyment and benefit of the Owners and users of Parcels within Falls Pointe Business Park. Wherever possible, the Reviewing Party shall attempt to locate any such required easements along the perimeter of the Parcel, within the existing or proposed rights-of-way, within other existing or proposed easements, or in such a manner as not to impair materially the proposed use of the Parcel.

The Reviewing Party, in the exercise of the reasonable judgment of the members thereof, may from time to time approve proposed plans and specifications for an improvement which, after completion, produces an effect and/or gives an appearance which, in retrospect, does

not seem to fully comport with the intentions of this Declaration. Therefore, the construction of an improvement pursuant to proposed plans and specifications approved by the Reviewing Party will not be deemed to create any right whatsoever on the part of any party to demand or require, either by legal proceedings or otherwise, that the Reviewing Party approve other proposed plans and specifications which are either identical to or substantially the same as plans and specifications previously approved by the Reviewing Party for other improvements, and the right to disapprove subsequently presented plans and specifications similar or identical to those previously approved is hereby reserved to the Reviewing Party.

In addition to the proposed plans and specifications, the Owner shall set forth separately and in specific detail any and all variances it desires from the Covenants. The Reviewing Party may waive and/or grant variances, both temporary and permanent, from the Covenants if the Reviewing Party deems such waiver or variance warranted in a particular instance, provided that no consent by the Reviewing Party to waive or grant a variance from any of the Covenants pertaining to the construction or maintenance of any improvement will be effective when the result of such consent would be contrary to or inconsistent with the Zoning Ordinances or any other applicable subdivision control ordinance, annexation or zoning agreement, approved planned unit development or other law, ordinance, rule, or regulation of a public authority, unless the consent thereto is also granted by the appropriate public authority.

All approvals issued by the Reviewing Party as provided for in this Paragraph 6 shall be effective for a period of nine (9) months from the date approval is given or deemed to have been given as provided herein. In the event construction of the work called for by the approved plans and specifications has not substantially commenced within said nine-month period, then such approval shall expire and no construction shall thereafter commence until a renewal is granted by the Reviewing Party.

No subdivision plat, zoning change or variance, condominium declaration, or other change in the nature or use of the Property may be filed, recorded, or requested by any Person, other than Declarant, without, in each case, the prior written consent of the Reviewing Party.

Anything herein to the contrary notwithstanding, if any improvement is erected or constructed on any Parcel or part thereof without prior compliance with the provisions of this Declaration, or if any improvement is erected or constructed other than in accordance with the approval process set forth herein, including, without limitation, the approvals set forth in the Development Code, then and in either of such events, the Owners, Declarant, and/or the Architectural Review Committee may enforce the provisions of this Declaration. Each Owner is required promptly to commence and diligently to prosecute to completion the construction of all approved improvements in accordance with the plans and specifications theretofore approved by the Reviewing Party and in accordance with the approved construction schedule (and to secure additional approval for any delay). Nothing herein shall be construed as a waiver of an Owner's obligation to comply with all statutes, ordinances, codes, rules and regulations of all public authorities having jurisdiction, or of an Owner's obligation to secure all required permits and licenses required by such public authorities at such Owner's sole cost and expense. Owner shall

be required to maintain its Parcel in an orderly and workmanlike manner and all trash from construction shall be removed periodically so as not to be offensive to the other Owners or Occupants of the Property.

Each action taken or determination made by the Reviewing Party of any nature shall be in writing and signed by a member thereof. Each and every decision of the Architectural Review Committee as to any matter within its authority as set forth herein shall be final and binding upon the Property and upon each and every Owner, Occupant, and their respective successors and assigns, of any portion of the Property.

7. PERMITTED USES

The Property shall be developed as a mixed use commercial and industrial park, and the Parcels, subject to satisfying the requirements and limitation of the applicable sections of the Development Code, may be utilized for the uses permitted by the Development Code, provided such uses are determined by Declarant to be harmonious with the intent of this Declaration and consistent with the uses of other Parcels within the Property. Notwithstanding anything contained herein to the contrary, no noxious or offensive trade, business or activity shall be carried on, and nothing shall be done on any portion of the Property which may be or become an annoyance or nuisance to the Owners or Occupants of any other portion of the Property by reason of noxious, offensive, unhealthy, or harmful odors, fumes, dust, smoke, waste, glare or excessive light, noise, or vibration. All business-related operations, activities, and functions of the Owners and/or Occupants of any portion of the Property shall be carried on entirely within fully enclosed buildings, excepting only the parking, loading or unloading of motor vehicles.

8. PROHIBITED USES

The operation and use of drilling for and/or removal of oil, gas or other hydrocarbon substances on the Property is hereby specifically prohibited. No portion of the Property shall be used for residential purposes (except short-term rental units which are a part of a hotel, motel or extended stay hotel shall be permitted); cemeteries; jails or other correctional facilities; trailer courts; junk yards; commercial excavation of building or construction materials or minerals; distillation of bones; dumping, disposal, incineration or reduction of garbage, sewage, offal, dead animals or refuse; fat rendering; stockyards or slaughter or processing of animals; refining of petroleum or its products; smelting of iron, tin, zinc or other ores; breeding, raising or keeping of pets, livestock or other animals; kennel or dog pound; or adult bookstores, cabarets, dance club, drive-in theater, or live entertainment arcade entertainment business. Unless specifically authorized in writing by the Declarant, the use, placement, holding, locating, disposal, manufacture, storage or dumping of Hazardous Materials is specifically prohibited on the Property. With specific written authorization by the Declarant, which may be withheld, in its sole discretion, Hazardous Materials may be placed, held, located, stored, and disposed of on and from a Parcel within the rules, regulations and requirements of all applicable governmental authorities. The granting by the Declarant of authority to place, hold, locate, store or dispose of Hazardous Materials on or from a Parcel shall not make or be deemed to make the Declarant liable or responsible in any way for, and shall not require or be deemed to require the Declarant to indemnify, protect or hold harmless any Person from, any loss, liability, claim, action, cause of action, damage, cost (including, without limitation, reasonable attorneys' fees and consultants' fees), expense, obligation, penalty, demand, suit or proceeding arising out of or attributable to the activity so authorized by the Declarant.

Notwithstanding anything to the contrary contained herein, no portion of the Property shall be used for any purpose except as specifically permitted hereunder and under the Development Code.

9. COMPLIANCE WITH GOVERNMENTAL REGULATIONS

In addition to any other requirements herein provided, all buildings and other structures and improvements shall be constructed, operated and maintained in accordance with all applicable rules, regulations, laws, ordinances, and codes of the applicable governmental authorities, including federal, state, and local. Declarant and its successors, assigns, agents and employees shall not have any responsibility whatsoever to insure compliance by any Owner or Occupant, their respective heirs, successors and assigns, of any portion of the Property with any applicable governmental regulation, and any approval of plans or specifications by the Declarant shall not be deemed a representation or warranty that such plans and specifications comply with any such regulations. Compliance by a Parcel with all such regulations is solely the responsibility of each Owner and Occupant of such Parcel, their respective heirs, successors and assigns.

10. MINIMUM SIZE OF PARCEL

The minimum size of each Parcel shall be subject to the approval of the Reviewing Party, but in any event shall conform to the requirements, if any, of the applicable section of the Development Code in effect on the date the Parcel is conveyed to the Owner thereof, and the Design Guidelines.

11. MINIMUM BUILDING SIZE

The minimum size of each building located on a Parcel shall be subject to the approval of the Reviewing Party, but in any event shall conform to the requirements, if any, of the applicable section of the Development Code in effect on the date building permits are issued for such building, and the Design Guidelines.

12. MAXIMUM BUILDING HEIGHT

The maximum height of buildings and structures erected on any Parcel shall conform to the requirements, if any, of the applicable sections of the Development Code in effect on the date building permits are issued for such building and/or structures, and the Design Guidelines.

13. COVERAGE OF PARCEL

The ratio of building coverage to the area of each Parcel shall be subject to the approval of the Reviewing Party but in any event shall conform to the requirements, if any, of the applicable sections of the Development Code in effect on the date building permits are issued for such building, and the Design Guidelines.

14. EXTERIOR CONSTRUCTION; PERMITTED MATERIALS

All exterior walls of any building or other structure erected on any Parcel must be finished with architectural masonry units, natural stone, precast concrete, aluminum or glass materials or their equivalent, but in any event shall conform to the requirements, if any, of the applicable sections of the Development Code in effect on the date building permits are issued for such building or structure, and the Design Guidelines. Colors of such exterior walls shall be harmonious and compatible with colors of the natural surroundings and adjacent buildings and are further subject to the Design Guidelines.

15. NUMBER OF BUILDINGS PER PARCEL

Subject to the prior written approval of the Reviewing Party, more than one building may be erected on each Parcel.

16. MINIMUM SETBACK LINES

All building and improvements shall comply with the setback requirements set forth in the Design Guidelines.

17. AUXILIARY STRUCTURES

Water towers, storage tanks, processing equipment, skylights, cooling towers, communication towers, vents, and any other similar structures or equipment placed upon any Parcel shall be adequately screened from public view and from the view of other Parcels by a screening method approved in writing by the Reviewing Party prior to the construction or erection of said structures or equipment.

18. UTILITIES

No antenna for transmission or reception of television signals, cellular/digital phone signals or any other form of electromagnetic radiation shall be erected, used or maintained on the Property outside any building whether attached to an improvement or otherwise, unless otherwise approved in writing by the Declarant. The Declarant may authorize the erection, use and maintenance of such an antenna on a Parcel or on Common Area; provided, however, the Declarant may permit the erection, use and maintenance of such an antenna on Common Area only if the same is permitted by the Development Code. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals, shall be constructed, placed or maintained anywhere in or upon the Property unless the same shall be contained in conduits or cables constructed, placed and maintained underground or concealed in, under or on buildings or other improvements approved by the Declarant, provided electrical transformers may be permitted if properly screened and approved by the Declarant. All other utilities and utility connections shall be located underground. Nothing herein shall be deemed to forbid the erection and use of temporary electric or telephone

service incident to the construction of approved improvements. No HVAC equipment which is visible on the exterior of any improvement shall be permitted on the Property unless such is properly screened and approved by the Declarant. No Owner shall connect or tap into any sanitary sewer line or facility or storm sewer line located within any Common Area unless approved in writing by the Declarant. The Declarant shall not arbitrarily or unreasonably withhold its approval of such a connection or tap.

19. SIGNS

For purposes of this Declaration, a "sign" is defined as any surface, material, or device depicting any letters, words, numerals, figures, devices, designs, logos, or trademarks by which anything is made known, and which is visible to the general public or other Owners or Occupants of Parcels. Only signs identifying the name, business, and/or product of the person or persons occupying the Parcel upon which said signs are to be located shall be permitted upon a Parcel. All such signs must conform with the Development Code and the Design Guidelines. Without in any way limiting the generality of the foregoing, all signs located on a Parcel shall be specifically subject to the following limitations:

- (a) No exposed neon signs (unless approved in writing by the Declarant) or exposed fluorescent tubing, incandescent lamps, raceways, ballast boxes, electrical transformers, crossovers, conduit, or sign cabinets shall be permitted;
- (b) No flashing, flickering, or blinking illumination shall be permitted;
- (c) No animated or moving light forms of illumination shall be permitted;
- (d) The name and/or stamp or other identifying mark of the sign contractor or sign company shall not be exposed to view;
- (e) Crests, corporate shields, symbols, logos, and/or trademarks may be incorporated in signs only with the express prior written consent of the Declarant;
- (f) All signs shall be fabricated and installed in compliance with all applicable building and electrical codes and, except as otherwise expressly provided herein, shall conform to setback line requirements;
- (g) The letters on all signs shall be either in script or block;
- (h) No sign may be located within a public right of way or an area required to be maintained as a front, side or rear yard pursuant to the

Development Code, except as expressly permitted by the Declarant, the Development Code and the Design Guidelines;

- (a) No advertising signs or billboards shall be permitted.
 - (j) The following types of signs are specifically prohibited within the Property:
 - (i) Any sign that, by reason of its shape, position or color may be confused with a traffic sign or signal authorized by the Town of Pendleton, Indiana or Madison County, Indiana;
 - (ii) Any sign that contains the wording "stop", "look", "danger", or other similar wording that may confuse or mislead traffic; and
 - (iii) Any temporary sign that is attached to a tree or utility pole or is attached to or painted on a building or any natural feature on the site.

The provisions of this Paragraph 19 shall not be applicable to any signs erected by Declarant, its agents or assigns, in connection with the development and sale of the Property or portions thereof, nor shall it apply to decorative signs or monuments erected or constructed by Declarant identifying the Property. Temporary signs advertising a Parcel and the improvements located thereon as being "for sale" or "for lease" may be permitted, subject to the prior written approval of the Declarant as to size, design, content and location. Written exception to the provisions of this Paragraph 19 concerning the design, size, content, location and number of signs may be granted by the Declarant in its reasonable discretion, provided that such written exception is in compliance with the Development Code and the Design Guidelines.

20. LOADING FACILITIES

Loading docks and other loading and unloading facilities shall be provided for in buildings constructed on Parcels at locations which do not face onto any public street and shall be in compliance with the Development Code and the Design Guidelines.

Loading and unloading areas shall be designed so as to permit pick-up and delivery of materials from a Parcel by motor vehicle without the necessity of vehicle maneuvering within any public street abutting the Property or within public or private streets within the Property. All loading docks and other loading facilities shall be suitably screened so that all loading and unloading operations are not conspicuous either from public or private streets or from other Parcels. Written exception to the provisions of this Paragraph 20 concerning the placement and screening of loading and unloading facilities may be granted by the Declarant in its discretion; provided that such written exception is in compliance with the Development Code.

21. WASTE MATERIALS

Waste materials, rubbish, trash, and discarded matter of all kinds shall be stored in containers and at locations in accordance with the Design Guidelines. All such containers shall be screened from public view and from the view of other Parcels by landscaping or a screening wall as set forth in the Design Guidelines. Any screening wall shall be made of material similar to and compatible with that of the building being served by a container. Any such screening shall be an integral part of the building plan and shall be designed so as not to be conspicuous. No incinerators shall be kept, used, or maintained on any portion of the Property.

22. OUTSIDE STORAGE

No Owner or Occupant of any Parcel shall keep articles, goods, materials, or other equipment (including company owned or operated vehicles) or any junk, scrap, rubbish, trash, refuse, or litter in the open or exposed to public view or to view from adjacent buildings; provided, however, that this Covenant shall not apply to temporary storage of any items or materials in connection with and during the construction of any building or other improvement upon such Parcel if the prior written consent of the Declarant is first obtained and if all such items and materials are screened from public view and view from adjacent Parcels by a method approved by the Declarant.

23. EXCAVATIONS

No excavation work shall be done on, and no sand, gravel or soil shall be removed from, any Parcel except in connection with the construction of improvements thereon, and then only when proper protection is afforded adjacent property. Upon completion of such construction, all exposed openings shall be back-filled and all disturbed ground shall be graded, leveled, and either paved or landscaped by the Owner of such Parcel in accordance with plans and specifications previously approved pursuant to the provisions of this Declaration.

24. LANDSCAPING

Each Parcel shall be landscaped in compliance with the Development Code and the Design Guidelines. In addition, all open and unpaved space within a Parcel, including, but not limited to, building setback areas shall be planted and landscaped in accordance with landscape plans approved for such Parcel (including the plans for the irrigation system for such Parcel). Each Parcel shall be required to have an irrigation system. Landscaping of a Parcel shall be completed within sixty (60) days after occupancy or completion of the building, whichever shall first occur, subject to weather conditions and seasonal restrictions. Such approved landscaping thereafter shall be properly maintained by the Owner or Occupant of a Parcel.

25. PARKING

No parking will be permitted on any public or private right-of-way in the Property. Each Owner of a Parcel shall provide adequate off-street parking facilities so as to eliminate any need for vehicle parking on public streets adjoining the Property, on public or private streets within the Property, or on any other Parcel (except in cases where parking on abutting Parcels is specifically authorized in writing by the Declarant and permitted by a recorded easement agreement). Such off-street parking facilities shall comply in all respects with the provisions of the Development Code and the Design Guidelines in force on the date building permits are issued in respect of a Parcel. The location and adequacy of all parking areas shall be approved by the Declarant. All parking areas shall be paved with asphalt, concrete, exposed aggregate concrete, or other suitable surfacing material, and curbed with concrete curbs, and shall be landscaped in accordance with the Design Guidelines. All parking spaces within a Parcel shall be in compliance with the Development Code and the Design Guidelines.

26. PROPERTY RIGHTS IN THE COMMON AREA

Legal title in and to Common Area (or if such Common Area is created and exists by virtue of grant of easement, then the easement right and the benefit of use in and to the Common Area) shall be vested in the Declarant, and the benefit, use and enjoyment of the Common Area shall be determined and controlled by the Declarant.

The Declarant shall have the right, at any time, to dedicate or transfer all or any part of Common Area to any public agency or authority for such purposes and subject to such conditions as it determines in its sole and absolute discretion.

27. ASSESSMENTS

The Declarant shall have the right, at any time, upon thirty (30) days' prior written notice to all of the then Owners of a Parcel, to collect assessments from the Owners in accordance with the provisions set forth in this Section 27. Notwithstanding the foregoing, the Declarant shall not collect any assessments until such time as Declarant has delivered such notice to each Owner as provided in the preceding sentence. In the event Declarant exercises its right to collect assessments:

(a) Each Owner shall be deemed to covenant and agree to pay to the Declarant: (a) regular annual assessments and charges and (b) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Parcel and the improvements thereon against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof, as hereinafter provided, shall also be the personal

obligation of such Owner. In the case of co-ownership of a Parcel, each co-owner shall be jointly and severally liable for the entire amount of the assessment. Should the Declarant employ an attorney to collect any assessment, it shall be entitled to collect, in addition thereto, all costs of collection, including, without limitation, reasonable attorney's fees.

(b) The assessments levied hereunder shall be used for the purpose of paying all costs and expenses incurred by the Declarant in connection with providing the services set forth in Paragraph 28(b) hereof and other related services, including but not limited to, the payment of taxes and insurance on the Common Area, if any, construction of improvements thereon, repairs, replacements, and additions thereto, and payment of legal fees and the cost of labor, equipment, materials, management (including any manager or firm retained to carry out the duties of the Declarant or to manage the affairs and property of the Declarant (a "Third Party Manager")), and supervision necessary to carry out the authorized functions of the Declarant with respect to the Property.

(c) The annual assessments payable to the Declarant, as provided for herein, shall be established on a calendar year basis. The Declarant shall on or before January 15 of each calendar year (but subject to extension as the Declarant may elect) prepare an operating budget setting forth an itemized statement of the anticipated disbursements for the new calendar year and shall fix the amount of the annual assessment payable to the Declarant against each Parcel (which shall be calculated on a per acre (prorated to the nearest one-hundredth of an acre) basis for land area comprising each Parcel)) and shall, at that time, prepare a roster of the Parcels and assessments applicable thereto, which shall, with the aforesaid itemized statement, be kept in the office of Declarant at 119 W. State Street, Pendleton, Indiana 46064, and shall be open to inspection at reasonable times by any Owner upon forty-eight (48) hours' written notice. Unless otherwise provided by the Declarant, the Declarant shall send written notice of the annual assessment to every Owner subject thereto at least thirty (30) days in advance of the due date (as hereinafter defined). Unless otherwise provided by the Declarant, the entire annual assessment shall become due and payable, in advance, on or before February 15th (said date or other date established by the Declarant sometimes hereinafter referred to as "due date") of the calendar year for which such annual assessment is levied and shall be collected by the Declarant.

Within ninety (90) days after the end of each calendar year, the Declarant shall deliver to each Owner a final statement (the "Final Cost Statement") of the total costs and expenses incurred by the Declarant during such year (the "Final Costs"). Such Final Cost Statement shall include a calculation of the pro rata share of the Final Cost which is allocable to the Parcel owned by such Owner and the amount of the annual assessment actually paid by such Owner in

respect of such Parcel during such year. If such Owner's pro rata share of the Final Costs for such year is greater than the amount of the annual assessment actually paid by such Owner during such year, then such Owner shall pay the amount of the deficit to the Declarant within thirty (30) days after the Declarant delivers to such Owner the Final Cost Statement for such year. If such Owner's pro rata share of the Final Costs for such year is less than the amount of the annual assessment actually paid by such Owner then the Declarant shall retain such excess and credit it against the annual assessment due from such Owner for the current calendar year. A Owner's failure to pay any amount hereunder shall be subject to the terms of Paragraph 27(f).

(d) In addition to the annual assessments authorized hereinabove, the Declarant may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected maintenance or repair and replacement of Common Area and capital improvements thereon, if any, including the necessary fixtures, facilities, equipment and personal property related thereto. The amount of such special assessment to be paid by each Owner shall be equal to the special assessment multiplied by a fraction the numerator of which is the annual assessment payable by such Owner in the year during which such special assessment is approved and the denominator of which is the total annual assessment for all Owners in the year during which such special assessment is approved.

(e) Upon payment of a reasonable fee established by the Declarant and upon written request by the Owner of a Parcel, a mortgagee under any Mortgage (as hereinafter defined) or a prospective Owner of a Parcel, the Declarant shall issue a certificate in writing setting forth the amounts of any unpaid assessments, if any. Said written statement shall be conclusive upon the Declarant in favor of the persons who rely thereon in good faith. Such statements shall be furnished by the Declarant within a reasonable time, but not to exceed twenty (20) business days from the receipt of a request for such written statement, accompanied by the required fee, mailed to the Declarant at 119 W. State Street, Pendleton, Indiana 46064. In the event the Declarant fails to furnish such statement within said twenty (20) business days, it shall be conclusively presumed that there are no unpaid assessments relating to the Parcel as to which the request was made.

(f) If an assessment is not paid on or before the due date and after notice as aforesaid, then such assessment shall become delinquent and shall, together with interest thereon at the rate of Twelve Percent (12%) per annum, but not to exceed the highest rate permitted by the laws of the State of Indiana, from the due date, and cost of collection thereof, be a charge and continuing lien on such Parcel, and all improvements thereon, against which each such assessment is made. In addition to the lien rights, the personal obligation of the then Owner to

pay such assessment and costs shall remain its personal obligation and shall further pass as a personal obligation to its successors in title to such Parcel whether or not expressly assumed by them.

(g) If an assessment is not paid within thirty (30) days after the due date, the Declarant may bring legal action (in the manner in which mechanic's liens are recorded and/or foreclosed) against the Owner personally obligated to pay the same to foreclose its lien against such Owner's Parcel and all improvements thereon, in which event there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and reasonable attorneys' fees, together with the costs of the action. Each Owner, by its acceptance of a deed or other conveyance to a Parcel, vests in the Declarant, or its agents, the right and power to bring action against it personally for the collection of such charges as a debt and to foreclose the aforesaid lien in any appropriate proceeding at law or in equity.

(h) The liens and permanent charges of all assessments (annual, special, or otherwise) provided for herein are hereby made subordinate to the lien of any bona fide first mortgage (a "Mortgage") placed on such Parcel if, and only if, all assessments and charges with respect to such Parcel authorized herein and having a due date on or prior to the date such Mortgage is filed for record have been paid. The liens and permanent charges hereby subordinated are only such liens and charges as relate to assessments and charges authorized hereunder having a due date subsequent to the date such Mortgage is filed for record and prior to the satisfaction, cancellation, or foreclosure of such Mortgage or the sale or transfer of the Parcel. Such subordination shall not relieve the Owner of the mortgaged Parcel of its personal obligation to pay all assessments and charges coming due at a time when it is the Owner of such Parcel; shall not relieve such Parcel from the liens and permanent charges provided for herein (except to the extent a subordinated lien and permanent charge are extinguished as a result of subordination as against a mortgagee or such mortgagee's assignee or transferee by foreclosure or by sale or transfer in any proceeding in lieu of foreclosure). No sale or transfer of such Parcel to the mortgagee, or to any other person, pursuant to a decree of foreclosure, or pursuant to any other proceeding in lieu of foreclosure, shall relieve any existing or previous Owner of such Parcel of any personal obligation, or relieve such Parcel, or the then Owner or such Parcel, from liability for any assessments or charges authorized hereunder coming due after such sale or transfer. Notwithstanding the foregoing, the Declarant may at any time, either before or after any Mortgage or Mortgages are placed on such Parcel, waive, relinquish, or quitclaim, in whole or in part, the right of the Declarant to assessments and other charges collectible by the Declarant hereunder with respect to such Parcel coming due during the period while such Parcel is or may be held by the prior mortgagee or mortgagees which have become an Owner

as the result of a sale or transfer pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure.

(i) Common Area and all parts of the Property dedicated to and accepted by the Town of Pendleton for public use, or any other public authority for use as a public property shall be exempt from assessments, charges and liens created under this Declaration.

28. ADMINISTRATION OF COMMON AREA

(a) The administration of the Common Area and the maintenance, repair, replacement, and operation thereof, and those acts required of the Declarant by this Declaration shall be the duty and responsibility of the Declarant. Such administration shall be governed by this Declaration, as amended from time to time.

(b) The Declarant shall be authorized to and may, as determined by the Declarant in its sole but reasonable discretion, provide the following services:

(1) provide landscaping of roads and parkways, sidewalks and walking paths, ponds, and streams situated upon Common Area and any other portion of the Property.

(2) provide lighting of roads, sidewalks, and walking paths throughout the Property.

(3) provide insect and pest control to the extent that it is necessary to supplement the service provided by the state and local governments.

(4) take any and all actions necessary to enforce all covenants and restrictions affecting the Property and perform any of the functions or services delegated to the Declarant in any covenants or restrictions applicable to the Property.

(5) maintain and landscape any public rights-of-way and easements (including without limitation, street islands and medians, sidewalks, and walking and jogging paths) within the Property to the extent necessary to supplement the service provided by the local government.

(6) provide administrative services, including, but not limited to legal, auditing, accounting, and financial support, incident to the above listed services.

(7) provide liability and hazard insurance covering improvements and activities on the Common Area.

(8) maintain the Common Area in good condition and repair, including, without limitation, any entrance features, park identification signs and related landscaping, if any, and any or all portions of the Storm Water Facilities within or serving the Property and designated by the Declarant for maintenance, repair and replacement by the Declarant, for the Property (but not specific Parcels).

(9) provide security service.

If any road constituting Common Area or otherwise within the Property is damaged as a result of construction traffic to or from a Parcel, the Owner of such Parcel shall be solely responsible for repairing such roadway and restoring it to its condition prior to such damage, and if any utility line or facility is damaged as a result of any excavation or demolition or other construction activity by the Owner of a Parcel, or its agents, employee or contractor, such Owner shall be solely responsible for repairing such damage and restoring such utility line and/or facility to its condition prior to such damage. In addition, if, due to the willful, intentional or negligent acts or omissions of an Owner or Occupant of such Owner's Parcel or a visitor, damage shall be caused to the Common Area or if maintenance, repairs or replacements shall be required thereby which would otherwise be at the expense of the Declarant, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Declarant, unless such loss is covered by the Declarant's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Declarant, the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's Parcel is subject.

29. AUDIT

The Declarant shall have its books, records, and accounts to be audited once each calendar year, the cost and expense of such audit to be borne by the Declarant and paid for out of the annual assessments as provided in Paragraph 27 hereof. Such audit shall be conducted and certified by the Clerk-Treasurer of the Town of Pendleton, or an independent certified public accountant. Such audit shall be completed and certified copies thereof furnished to all Owners on or before one hundred twenty (120) days after the end of each calendar year, unless otherwise extended by the Declarant.

30. EASEMENTS

Declarant reserves unto itself, its successors and assigns, for the benefit of the Property, a perpetual, alienable, and releasable easement and right on, over and under a strip of land (i) fifteen (15) feet in width along the boundary lines of each Parcel which abuts a street right-of-way, (ii) twenty (20) feet in width along the boundary lines of each Parcel which do not abut another Parcel or a street right-of-way, and (iii) ten (10) feet in width along all other boundary lines of each Parcel. Such easement areas shall be for the purpose of providing access for fire control and for the construction, installation, maintenance, and repair of lines, wires, poles, pipes, and related necessary or appropriate facilities for telephone, gas, sewer, storm drainage, sanitary sewer, water, electricity, and other public or private utility service, together with a temporary nonexclusive easement over and across such portions of each Parcel adjacent to the aforesaid easement areas as may be necessary or appropriate for initial construction and installation of such utilities, provided that with respect to such easement which abuts a street right-of-way, such easement areas may additionally be used for the purposes of landscaping, irrigation, the installation and maintenance of street lights, and permanent building identification signage. This reservation of right and easement expressly includes the right to cut and remove any trees, bushes or shrubbery, to excavate, remove, and relocate any soil, to remove and replace driveways, curbing and paved areas and to take any other similar action reasonably necessary for reasonable construction, installation, maintenance, and repair of such utilities; provided, however, that the area in which such action occurs shall be restored to good condition. In the event that two or more adjoining Parcels are owned by the same owner, and said Owner submits plans for construction of a structure across the property lines common to the Parcels owned by said Owner pursuant to Paragraph 31 hereof, Declarant shall release the easements along said common property line(s) reserved under this Paragraph 30.

If it becomes clear that additional utility or drainage easements, whether or not contemplated or mentioned in this Declaration, between or across portions of the Property are reasonably necessary and desirable to effectuate the purposes of this Declaration, then, upon request of Declarant, and provided such proposed additional easements will not unreasonably interfere with the development, use and occupancy of any Parcel, unreasonably affect access to, or operation of, any such Parcel, or materially increase the operating cost of any Parcel, each Owner agrees to grant such additional easements across its Parcel, without charge therefor, subject to such reasonable terms and conditions as shall be agreed upon between Declarant and such Owner. Any such new easement or easements shall be signed by Declarant and/or all Owners of portions of the Property which comprise the land within such new easements and shall be recorded in the office of the Recorder of Madison County, Indiana.

31. SUBDIVISION AND CONSOLIDATION

From and after the initial conveyance of a Parcel by Declarant to any Person, that Parcel shall not thereafter be subdivided, whether by plat, deed, lease, or otherwise, until a written plan for such proposed subdivision shall have been submitted to and approved in writing by the Declarant. Should two or more adjoining Parcels be owned by the same or substantially

the same Owner, said Owner shall be permitted to construct a structure across the property lines common to the Parcels owned by said Owner, and such construction shall not be deemed a violation of any side or rear setback restrictions set forth herein so long as such improvements or structures consist of one integrated and continuous building and provided written consent thereto by the Declarant is first obtained, which consent shall be in the sole discretion of the Declarant. Except as expressly approved in writing by the Declarant, the immediately preceding sentence shall in no way affect or change the requirements for side or rear setback lines as herein set forth, and each setback line requirement shall continue to apply to any Parcel or Parcels owned by the same Owner.

32. MAINTENANCE OF PROPERTY

The Owner of a Parcel, at its sole cost and expense, shall maintain all buildings, landscaping, fences, drives, parking lots, open drainage easements and other structures and improvements located thereon in good, sufficient and satisfactory condition and repair, free of litter, trash, refuse and waste, and shall keep such premises planted, the lawns cut, shrubbery trimmed, windows cleaned and glazed, and shall otherwise maintain such Parcel in an aesthetically pleasing state and in such safe, clean, and attractive condition as is reasonably satisfactory to the Declarant, reasonable wear and tear only excepted. Any improvements, planting, driveway, or parking lot located on a Parcel which are damaged by the elements, by vehicles, by fire or by any other cause or are otherwise in disrepair, shall be repaired promptly by Owner of such Parcel. Any building or other structure located upon any Parcel which should become vacant for any reason shall be locked and completely secured in order to prevent access thereto by unauthorized persons. In the event of violation of any of the provisions of this Paragraph 32, the Declarant shall have the right to go upon any such Parcel, without liability or trespass therefor and, at the Owner's expense, to eliminate any nuisance, to mow lawns, to trim shrubbery or to do anything necessary or appropriate to maintain uniform aesthetic standards for the Property for the benefit of other Owners; the cost of such work shall be promptly paid by such Owner upon receipt of a statement therefor, and, until paid in full, such cost shall be a lien on the Parcel involved.

33. INTERRUPTION OF CONSTRUCTION OF IMPROVEMENTS

In the event construction of improvements is commenced upon any Parcel and is subsequently interrupted for a period exceeding six (6) months, the Owner of such Parcel shall promptly remove the partially completed improvements and restore the Parcel to the condition in which it existed prior to commencement of construction. In the event of violation of the provisions of this Paragraph 34, the Declarant shall have the right to go upon any such Parcel, without liability or trespass therefor and, at the Owner's expense, to remove said partially completed improvements and restore the Parcel to its prior condition. The cost of such work shall be promptly paid by such Owner upon receipt of a statement therefor, and, until paid in full, such cost shall be a lien upon the Parcel involved.

34. INSURANCE/CONDEMNATION

The Declarant shall keep any insurable improvements and fixtures of the Common Area owned by the Declarant insured for one hundred percent (100%) of their insurable value against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as are customarily covered for similar types of projects, including those covered by the standard "all risk" endorsements. The Declarant may also insure any other property whether real or personal, owned or maintained by the Declarant, against loss or damage by fire and such other hazards as the Declarant may deem desirable, with the Declarant as the owner and beneficiary of such insurance. The insurance coverage with respect to such Common Area owned by the Declarant shall be written in the name of, and the proceeds thereof shall be payable to the Declarant. Insurance proceeds shall be used by the Declarant for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Declarant shall be common expenses included in the regular monthly assessments made by the Declarant.

The Declarant shall purchase a master comprehensive general liability insurance policy in such amount or amounts as the Declarant shall deem appropriate from time to time. Such comprehensive general liability insurance policy shall cover the Declarant, any other committee or organ of the Declarant, all persons acting or who may come to act as agents or employees of the Declarant with respect to the Owners and shall contain in the policy or an endorsement thereto a "severability of interest" endorsement precluding the insurer's denial of an Owner's claim because of negligent acts by the Declarant or other Owners. It shall also cover all Common Area and any other areas under the Declarant's control or supervision.

Any management agent that handles funds for the Declarant shall be covered by its own fidelity bond, which must provide the same coverage required of the Declarant. The Declarant shall be named as an additional obligee in the management agent's bond. The fidelity bond shall cover the maximum funds that will be in the custody of the Declarant or its management agent at any time while the bond is in force, but must be no less than the sum of three (3) months of monthly regular assessments, plus reserves. If available, the fidelity bonds must include a provision that provides for ten (10)' days written notice to the Declarant or insurance trustee before the bond can be canceled or substantially modified for any reason.

The Declarant shall obtain any other insurance required by law to be maintained, including but not limited to worker's compensation insurance, and such other insurance and additional coverage as the Declarant shall from time to time deem necessary, advisable or appropriate. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of the Declarant, and any managing agent acting on behalf of the Declarant. The insurance required hereunder or by the Declarant shall have deductibles in amounts determined in the reasonable discretion of the Declarant. The Declarant may, in its discretion, require that funds for any such deductibles be set aside or otherwise allocated in a reserve fund so designated from the monthly regular assessments in amounts determined in the reasonable discretion of the Declarant.

Damage to or destruction of any Common Area owned by the Declarant due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Declarant and the proceeds of insurance, if any, shall be applied for that purpose. For purposes of this Paragraph, repair, reconstruction and restoration shall mean construction or rebuilding of the damaged property to as near as possible the same condition as it existed immediately prior to the damage or destruction, with the same or a similar type of architecture.

If the insurance proceeds received by the Declarant as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by the Declarant which shall then have the right to levy a special assessment against all Parcels for such deficiency.

In the event that there is any surplus of insurance proceeds after the reconstruction or repair of the damage to Common Area has been fully completed and all costs paid, such sums may be retained by the Declarant as a reserve or may be used in the maintenance and operation of the Common Area. The action of the Declarant in proceeding to repair or reconstruct damage shall not constitute a waiver of any rights against any Owner for committing willful or malicious damage.

The Declarant shall be designated to represent the Owners in any proceedings, negotiations, settlements or agreements for the handling of any losses or proceeds from condemnation, destruction or liquidation of all or a part of the Common Area or from the termination of this Agreement. Each Owner, by the acceptance of a deed to a Parcel, appoints the Declarant as its attorney-in-fact for this purpose. Proceeds from the settlement will be payable to the Declarant for the benefit of the Owners. Any distribution of funds in connection with the termination of this Agreement shall be made on a reasonable and an equitable basis.

35. ASSIGNABILITY OF DECLARANT'S RIGHTS AND DUTIES

Declarant may assign all of its rights, powers, reservations; and obligations and duties, if any, hereunder to any person or entity whatsoever to which Declarant simultaneously conveys its interest in all or substantially all of the Property owned by Declarant as of the date of such assignment and conveyance. By the acceptance of the aforesaid conveyance, the grantee thereunder shall be conclusively deemed to have accepted such assignment and shall thereafter have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein and, thereupon, Declarant shall be released and relieved thereof. The term "Declarant" as used herein includes all such assignees and their respective heirs, successors and assigns. Declarant may at any time and from time to time assign any or all of its rights, powers, reservations, and obligations and duties, if any, hereunder to the Association (if established) whereupon the Association shall accept such assignment and shall thereafter have such rights and powers and be subject to such obligations and duties as are so

assigned by the Declarant to the Association, and thereupon, Declarant shall be released and relieved thereof.

36. CONSTRUCTIVE NOTICE AND ACCEPTANCE

Every person or entity who now or hereafter acquires any right, title, estate, or interest in or to any Parcel is and shall conclusively be deemed to have consented and agreed to every covenant, condition, and restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person or entity acquires its interest in such Parcel.

37. INTERPRETATION

It is expressly provided, and the acceptance by any person or entity of title to or any other interest in any Parcel shall constitute the agreement of such Person or entity, that, in the event of disagreement as to the meaning of any term or condition contained herein, the interpretation thereof by Declarant shall be final, provided that such interpretation is a reasonable and customary construction of such term or condition. In this connection it is specifically provided and agreed that the customary rule requiring documents to be construed most strictly against the party preparing such documents shall not apply to this Declaration.

38. ENFORCEMENT

Violation or breach of any Covenant herein contained shall give Declarant the right, after thirty (30) days' advance written notice of such violation or breach has been given to the Owner of any Parcel as to which a breach or violation of these Covenants exists (or without notice if Declarant in its sole discretion determines that such violation or breach has resulted in an emergency situation), to enter upon such Parcel and summarily abate and remove at the expense of the Owner or Occupant thereof, any structure, thing or condition that may be or exist thereon contrary to the intent and meaning of the provisions hereof, or to prosecute a proceeding at law or in equity against the person or persons who have violated or are attempting to violate any of the Covenants herein contained, and to enjoin or prevent them from doing so or to cause said violation to be remedied or to recover damages for said violation. Any person or persons who have violated or are attempting to violate any of the Covenants herein shall be liable to Declarant for Declarant's attorneys fees and court costs related to any enforcement actions taken by Declarant under this Paragraph 38, whether related to filing an action in court or otherwise. The result of every action or omission whereby any Covenant contained herein is violated in whole or in part (other than where an express exception to and/or variance from said Covenant has been granted in writing by the Declarant) is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity for the abatement thereof may be exercised by any other Owner. The Declarant may from time to time at any reasonable hour or hours and after not less than forty eight (48) hours' prior notice, enter and inspect any Parcel to ascertain compliance herewith. Any failure by the Declarant to enforce any Covenant herein contained, as permitted hereby, shall in no event be deemed to be a waiver of its right to do so thereafter nor of

its right to enforce any other covenant hereof. Wherever in this Declaration the consent or approval of Declarant is required, such consent shall be effective only if in writing. All remedies provided for herein or at law or in equity shall be cumulative and not exclusive.

39. PARAGRAPH HEADINGS

Paragraph headings are inserted for convenience only and are not intended to be a part of this Declaration or in any way to define, limit, or describe the scope or intent of the particular paragraph to which they refer.

40. EFFECT OF INVALIDATION

If any provision of this Declaration is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof, and for the purposes hereof all Covenants as contained herein shall be deemed to be severable each from the other without qualification.

41. AMENDMENTS; VARIANCE

Any amendment shall be effective immediately upon the filing thereof in the Office of the Recorder of Madison County, Indiana, regardless of whether actual notice thereof has been given to any person or entity having an interest in the Property or any portion thereof.

Notwithstanding any other provisions contained hereunder to the contrary Declarant shall have the absolute right to make minor changes or amendments to this Declaration in order to correct or clarify any errors or omissions.

Declarant retains the right for itself and for the Architectural Review Committee (if created) to grant in writing to individual Owners exceptions to and/or variances from the Covenants contained herein as Declarant or the Architectural Review Committee shall, from time to time, in their sole discretion, deem appropriate.

42. ADDITIONAL LAND

Declarant shall have the right, privilege and option at any time, and from time to time, to subject to this Declaration all or any portion of the Expansion Real Estate by executing and recording a supplement to this Declaration containing a description of the land to be added; a statement that Declarant is the owner in fee simple of such real estate, or in lieu thereof, a statement that all other persons, firms or corporations having an interest in such real estate have joined in such supplement; a statement of the additional restrictions or burdens to which such real estate shall be subjected, if any; and a statement of the restrictions, burdens or provisions of this Declaration which shall be applicable to such real estate in modified form, if any. Following the execution, delivery and recording of such supplement, but subject to its terms, such real estate and the then and future Owners, Occupants and mortgagees of all or any part thereof shall

in all respects be fully subject to this Declaration and all rights, privileges, duties, liabilities, responsibilities, burdens and restrictions contained herein, including, but not limited to, the obligation for payment of assessments, as though such real estate had originally been included in and subject to this Declaration.

43. APPLICABLE LAW

This Declaration shall be construed and interpreted in accordance with the laws of the State of Indiana.

44. SUCCESSORS AND ASSIGNS

This Declaration shall be binding upon, and shall inure to the benefit of Declarant and Owners and the respective heirs, personal representatives, successors and assigns of Declarant and Owners.

[The remainder of this page is intentionally blank]

IN WITNESS WHEREOF, Declarant has caused these presents to be executed and its corporate seal to be affixed hereunto as of the day and year first above written.

"DECLARANT"

TOWN OF PENDLETON DEPARTMENT
OF REDEVELOPMENT BY AND
THROUGH ITS REDEVLOPEMENT
COMMISSION

By: _____

Printed: _____

Title: _____

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____, known to be _____ of the Town of Pendleton, Indiana, and acknowledged the execution of the foregoing for and on behalf of said Town.

WITNESS my hand and notarial seal this ____ day of _____, 2000.

Notary Public - Signature

Notary Public - Printed

My Commission Expires:

My County of Residence:

This instrument was prepared by and after recording should be returned to John B. Baxter, Attorney At Law, JOHNSON, SMITH, PENCE & HEATH, LLP, One Indiana Square, Suite 1800, Indianapolis, Indiana 46204.