DECLARATION OF COVENANTS, EASEMENTS, RESTRICTIONS AND ASSESSMENTS

OF

BROOKFIELD HEIGHTS, PHASE I AND
BROOKFIELD HEIGHTS, PHASE II, SECTION ONE

THIS DECLARATION is made this 23RD day of MARCH, 1990, by Cedar Run Limited, an Indiana General Partnership (hereinafter referred to as "Developer" or "Declarant"), and

WITNESSES:

WHEREAS, Developer is the owner of all of the lands contained in the area described in EXHIBIT "A", attached hereto and made a part hereof, which lands will be subdivided and known as Brookfield Heights, Phase I, and Brookfield Heights, Phase II, Section One, (together with any additions thereto as herein provided, hereinafter referred to as the "Real Estate" or the "Development"), and will be more particularly described on the plat recorded in Plat Book –, Page – on the 23RD day of MARCH, 1990 as Instrument No. 90-3608 in the Office of the Recorder of Tippecanoe County, Indiana and making reference hereto; and

WHEREAS, Developer intends to sell and convey the residential lots situated within the platted areas of the Development and before doing so desires to subject to and impose upon all real estate within the platted areas of the Development mutual and beneficial restrictions, covenants, conditions and charges (hereinafter referred to as the "Restrictions"), under a general plan or scheme of improvement for the benefit and complement of lots and lands in the Development and the future home owners thereof.

WHEREAS, Developer desires to provide for maintenance of the Common Areas, retention/detention pond(s), and landscaping improvements located or to be located in the Development, and to share in insurance coverage and mutual enforcement of the Restrictions which are of common benefit to the Owners of the various lots within the Development, and to that end desires to establish certain obligations on said Owners and a system of assessments and charges upon said Owners for certain maintenance and other costs in connection with the operation of the retention/detention pond(s).

NOW, THEREFORE, Developer hereby declares that all of the platted lots and lands located within the Development as they become platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said lots and lands in the Development, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of said lots situated therein. All of the Restrictions shall run with the land and shall be binding upon Developer and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of Developer's successors in title to any real estate in the Development.

1. DEFINITIONS.

A. The following are the definitions of the terms as they are used in this Declaration.

(i) "Assessment" means the share of the Common Expenses imposed upon each Lot, as determined and levied pursuant to the provisions of paragraph 18 herein.

(ii) "Association" shall mean Brookfield Heights Association, Inc. or an organization of similar name, its successors and assigns and shall be created as an Indiana not-for-profit corporation and its membership shall consist of lot owners who pay mandatory assessments for retention/detention pond maintenance, liability insurance, private landscape easement maintenance, fertilizing and weed control, and Common Area maintenance or other expenses as determined by the Owners.

(iii) "Builder" shall mean the person constructing the first residence on each Lot (which may be the Developer for one or more Lots).

DULY ENTERED FOR TAXATION
SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER
AUDITOR OF TIPPECANOE CO
3/23/90

(iv) "Committee" shall mean the Brookfield Heights Development Control Committee, composed of three (3) members appointed by Developer who shall be subject to removal by Developer at any time with or without cause. Any vacancies from time to time existing shall be filled by appointment of Developer until such time as the subdivision is completely developed or as provided under Clause 16E herein at which time the Association shall appoint from its membership this Committee.

(v) "Lot" shall mean any parcel of real estate, whether residential or otherwise, described by the recorded plat of the Development which is recorded in the Office of the Recorder of Tippecanoe County, Indiana. No lot may be subsequently subdivided for development purposes.

(vi) "Owner" shall mean a person who has or is acquiring any right, title or interest, legal or equitable, in and to a Lot, but excluding those persons having such interest merely as security for the performance of an obligation.

(vii) "Common Area" shall mean those areas which are shown on the Plat as private landscape easement areas (for entrance landscaping and signage); easements for detention/retention pond(s); and common property.

(viii) "Common Expense" means the actual and estimated cost to the Association for maintenance, management, operation, repair, improvement, and replacement of Common Property, maintenance of the retention/detention ponds, real estate taxes or personal property taxes assessed against any Common Property, and any other cost or expense incurred by the Association for the benefit of the Common Property, and shall also include the costs of insurance as required herein and any entry landscaping, signage, maintenance and legal drain for the overall development. Common Expenses shall not include any costs or expenses incurred in connection with the initial installation or completion of the streets, utility lines and mains, drainage system, or other improvements constructed by Developer.

(ix) "Common Property" means all real and personal property which is owned in fee simple by the Association, specifically outlot 336. Title to "Common Property" will be conveyed by the Developer to the Association prior to the recording of this document.

B. Approvals, Etc. Approvals, determinations, permissions or consents required herein shall be deemed given if they are given in writing and signed, with respect to Developer by an authorized General Partner or agent thereof, and with respect to the Committee by one member thereof.

2. CHARACTER OF THE DEVELOPMENT.

A. In General. Every numbered lot in the Development, except for outlot 336, is a residential lot and shall be used exclusively for single family residential purposes. No structure shall be erected, placed or permitted to remain upon any of said residential lots except a single family dwelling house. Outlot 336 is a non-buildable lot and shall be used only for landscaping and signage by the Developer and the Association.

B. Accessory Outbuildings Prohibited. No accessory outbuildings shall be erected on any of the residential lots without the advance written approval of the Committee. Any outbuilding approved by the Committee shall be constructed in a location such that it is substantially hidden from view from all streets in the Development.

C. Occupancy for Residential Use of Partially Completed Dwelling Houses Prohibited. No dwelling house constructed on any of the residential lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed for occupancy in accordance with the approved building plan. The determination of whether the house shall have been substantially completed in accordance with the approved building plan shall be made by the Committee and such decision shall be binding on all parties.

D. Use of the lake currently existing along County Road 550E and the lake that is to be built along County Road 50 North (as part of the construction plans for Brookfield Heights, Phase I) is restricted to land owners abuting the lakes and their guests.

E. Other Restrictions. All tracts of ground in the Development shall be subject to the easements, restrictions and limitations of record, and to all governmental zoning authority and regulations affecting the Development, all of which are incorporated herein by reference.

3. RESTRICTIONS CONCERNING SIZE, PLACEMENT AND MAINTENANCE OF DWELLING HOUSES AND OTHER STRUCTURES.

A. TYPE, SIZE AND NATURE OF CONSTRUCTION PERMITTED AND APPROVALS REQUIRED. No single-family dwelling, greenhouse, porch, garage, swimming pool, basketball court, tennis court or other recreational facility shall be erected, placed or altered on any lot without the prior written approval of the Committee. Such approval shall be obtained prior to the commencement of construction and shall take into account restrictions as to the type of materials, exterior facade, design, layout, location, landscaping and finished grade elevations. Approvals will be considered upon the submission of satisfactory plans, including a plot plan, a building plan showing floor areas and elevations, specifications, a landscaping plan and such other data or information as may be reasonably requested, all subject to the following minimum standards:

(i) Any single-family dwelling erected, placed or altered shall have a minimum area, exclusive of open porches and garages, of 1,200 square-feet in the case of a one story structure and 1,700 square-feet in the case of a structure higher than one story. (Determination of sufficiency and adequacy of the term "ground floor area" with respect to single-family dwellings of tri-level, bi-level and one and one-half story designs shall rest exclusively with the Committee.) Each dwelling shall have a minimum of a two car attached garage with an 16 feet wide paved or concrete drive. The drive will provide a minimum of two (2) parking spaces.

(ii) No single-family dwelling, garage, out building or other structure of any kind may be moved onto any lot. All materials incorporated into the construction of any single-family dwelling, garage or other approved out building shall be new, except that used brick, weathered barn siding, or the like, or interior design features utilizing other than new materials, may be approved by the Committee. No trailer, mobile home, tent, basement, shack, garage, motor home, barn or other structure shall be placed or constructed on any lot at any time for use as either a temporary or permanent residence or for any other purpose, except as reasonably required in connection with the construction of a single-family dwelling on a lot.

(iii) Every single-family dwelling, garage, or other structure permitted to be constructed or to remain on any lot shall be completed on the exterior within one (1) year from the start of construction, including at least one (1) coat of paint, stain or varnish on any exterior wood surfaces. All such structures must be completed and the site graded, sodded or seeded and reasonably landscaped within one (1) year from the date of the commencement of construction thereof. During the period of construction of any structure on any lot, the lot shall be kept and maintained in a sightly and orderly manner. No trash or other rubbish shall be permitted to accumulate unreasonably on any such lot.

(iv) Light Fixtures, and Mailboxes. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Development, outside light fixture, basketball goal or similar structure must be approved by the Committee as to size, location, height, composition, and color, before it may be installed.

(v) All utility facilities in the Development shall be placed underground. When they are installed under finished streets they shall be installed by jacking or boring.

(vi) Each driveway in the Development shall be of concrete or asphalt material;

(vii) No additional parking will be permitted on a Lot other than in the existing driveway;

(viii) Wherever possible, all utility meters and HVAC units in the Development shall be located in places not seen from the street or screened, if located in the fronts of dwellings;

(ix) No outside fuel storage tanks shall be permitted above ground. No gasoline storage shall be permitted above or below ground in the Development;

(x) All gutters and downspouts in the Development shall be painted;

(xi) No metal, fiberglass or similar type material awnings or patio covers shall be permitted in the Development without Committee approval;

(xii) Modular-type construction shall not be permitted in the Development; however, pre-fabricated home components such as walls, roof trusses, etc., shall not be considered modular-type construction.

(xiii) Fences. All fences, except for brick landscape walls to be built by the Developer, shall meet the following standards:

1. *Maximum height of four (4) feet. Pool fences, where required, shall be of greater heights and shall be a decorative type, (black iron or aluminum picket style fencing) with some screen landscaping on the sides exposed to streets.*
2. *No solid face construction.*
3. *Must be shadow box, chain link with green vinyl covered, or black iron or aluminum picket style.*
4. Wooden fences must be painted or stained to blend with the house.
5. *Only a wood shadow-box fence, except for brick landscaping walls to be built by the Developer, shall be allowed on the following lots and no nearer than 30 feet from State Road 26 right-of-way.*
   Phase One:
   Lots 1, 317, 319, 320, 321, 324, 325, 326, 329, 330, 331, and 335.
6. *For non-corner lots no fence shall be installed between the building setback line and the rear face of the house. For corner lots no fence shall be installed between the building setback line and the side and front of the house facing the two respective streets.*
7. *All corner lot fences shall meet the requirements of 3.C of these covenants.*

(xiv) All front elevation of homes shall be fifty percent (50%) brick of the first floor, exclusive of doors, windows and gables. All side elevations of homes on corner lots which face the street shall have a minimum of three (3) feet of brick height, exclusive of doors windows and gables.

B. Sight Obstructions. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above adjoining streets shall be placed or permitted to remain on any corner Lot within a triangular area formed by the street Lot lines and a line connecting points twenty-five (25) feet from the intersection of said street Lot lines (or in the case of a rounded property corner, from the intersection of the street Lot lines extended to form a corner). The same sight-line limitations shall apply to any Lot within ten (10) feet from the intersection of a street Lot line with the edge of a driveway. The owner of any trees or other plants located within said sight line areas shall maintain the foliage line of such trees or other plants at a sufficient height to prevent sight line obstructions.

C. Damaged Structures. No improvement which has partially or totally been destroyed by fire or otherwise damaged shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

D. Maintenance of Lots and Improvements. The Owner of any Lot in the Development shall at all times maintain the Lot and any improvements situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly and, specifically, such Owner shall:

(i) Mow the Lot at such times as may reasonably be required in order to prevent the unsightly growth of grass and weeds.

(ii) Remove any debris or rubbish, which may accumulate;

(iii) Prevent the existence of any other conditions which may detract from or diminish the aesthetic appearance of the Development;

(iv) Remove dead trees and replace with new ones of similar character; and

(v) Keep the exterior of all improvements in such a state of repair or maintenance to avoid an unsightly appearance.

4. PROPERTY RIGHTS.

A. Utility Easements. Easements are hereby reserved for the purpose of installing and maintaining municipal and public utility facilities and for such other purposes incidental to the development of the property. The easements shall be perpetual hereof, from the date of this instrument by the Developer, its successors and assigns. Utility companies and other authorized agencies shall have full right and authority to lay, operate and maintain such drainage facilities, sanitary sewer and water lines, gas and electric lines, communication lines (which shall include cable television), and such other public service facilities as Developer may deem necessary in any easement area as shown on the plat of the Development. Provided, however, that any area disturbed by installation of utility lines shall be essentially restored to its original condition. No permanent structures shall be constructed within an easement area. Drainage and utility easements along lot lines and rear lot lines of the Development are as shown on the recorded plat of this Development.

B. Annexation to the City of Lafayette. In consideration of the City of Lafayette, Indiana, permitting the Developer to connect at its request to the city sewerage system and for other good and valuable consideration, the Developer being the fee simple owner of all the real estate to be serviced, hereby waive all rights to object to annexation or resist any proceeding for annexation commenced either by the City of Lafayette or others and does hereby consent to any such annexation of such by the City of Lafayette of all or any part of the Real Estate within the serviced area at any time after recording this Declaration.

This waiver shall run with the land and shall be binding upon the heirs, administrators, devisees, assigns, or successors in interest.

C. No Vehicular Access. No vehicular access from State Road 26 shall be permitted to Lots 1, 317, 319, 320, 321, 324, 325, 326, 329, 330, 331, 335, and outlot 336. This no vehicular access requirement shall be irrevocable by the Association and/or lot owners, and is enforceable by the Tippecanoe County Area Plan Commission.

5. MISCELLANEOUS PROVISIONS AND PROHIBITIONS.

A. Nuisances. No outside toilets shall be permitted on any Lot in the Development (except during the period of construction and then only with the consent of the Committee). No sanitary waste or other wastes shall be permitted to enter the storm drainage system. Discharge from any floor drain shall be permitted to discharge into the yard subdrain system. Floor drains, footing drains, and downspouts shall not discharge into the sanitary sewer system. Downspouts shall discharge onto the surface at the ground. Footing drains shall be connected to yard subdrains. By purchase of a Lot, each Owner agrees that any violation of this paragraph constitutes a nuisance which may be abated by Developer, the Association, or any Owner in the Development in any manner provided at law or in equity. The cost or expense of abatement, including court costs and attorneys' fees, shall become a charge or lien upon the Lot, and may be collected in any manner provided by law or in equity for

collection of a liquidated debt. No noxious or offensive activities shall be carried on on any Lot in the Development, nor shall anything be done on any of said Lots that shall become or be an unreasonable annoyance or nuisance to any Owner of another Lot in the Development.

Neither Developer, any officer, agent, employee or contractor thereof, the Association, nor any Owner shall be liable for any damage which may result from enforcement of the provisions of this paragraph.

B. Signs. No signs or advertisements shall be displayed or placed on any Lot or structure in the Development without the prior written approval of the Committee, except for the sale of a Lot or residence.

C. Animals. No animals shall be kept or maintained on any Lot in the Development except usual household pets, namely dogs and cats, and, in such case, such household pets shall be kept reasonably quiet and contained, either on a leash or in a fenced area whenever outside, so as not to become a nuisance. No Owner shall have more than two (2) household pets on any Lot at any one time.

D. Vehicle Parking. No campers, trailers, motor homes, recreational vehicles, boats, commercial vehicles or similar vehicles, other than ordinary family passenger vehicles (including vans), shall be parked on any street or Lot in the Development, unless the same is parked in a garage with the garage door closed so that it is not visible to the occupants of other Lots in the Development or the users of any street in the Development; except for temporary periods not exceeding 48 hours and except as the Committee may otherwise approve. All passenger vehicles shall be parked in garages or in driveways, except for guest vehicles which may be parked on the street for a period not exceeding twenty-four (24) hours.

E. Garbage, Trash and Other Refuse. No Owner of a Lot in the Development shall burn or bury out-of-doors, any garbage or refuse. Nor shall any such Owner accumulate or permit the accumulation out-of-doors of such refuse on his or her Lot.

F. Ditches and Swales. All Owners shall keep unobstructed and in good repair, all open storm water drainage ditches and swales which may be located on their respective lots. No culverts shall be installed by any Lot Owner without the written consent of the Tippecanoe County Drainage Board.

G. Antennas. The Committee shall approve all exposed antennas. The maximum height of such antennae shall not exceed five (5) feet above the roof peak.

H. Solar Heat Panels. Unless otherwise approved by the Committee no solar heat panels shall be allowed on roofs, which may be visible from the front or rear of any residence in the Development. Such panels may be installed on the ground if enclosed within a fenced area within the Lot boundary and shall be located to the rear of the dwelling, and shall be approved by the Committee.

6. DEVELOPMENT CONTROL COMMITTEE.

A. Powers of Committee.

(i) In General. No dwelling, building structure or improvement of any type or kind shall be constructed or placed on any Lot in the Development without prior approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee by the Owner of the Lot requesting authorization from the Committee. Such written application shall be in the manner and form prescribed from time to time by the Committee, and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing all existing conditions upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which the Committee may

require. All plans and drawings required to be submitted to the Committee shall be drawn to a scale of one-quarter (¼) inch equals one foot (1'), or to such other scale as the Committee may require. There shall also be submitted, where applicable, the permits or plot plans which shall be prepared by either a registered land surveyor, engineer or architect. Plot plans submitted for Building Permits shall bear the stamp or signature of the Committee acknowledging the approval thereof.

(ii) <u>Power of Disapproval</u>. The Committee may refuse to grant permission to remove trees, repaint, construct, place or make the requested improvement, when:

(a) the plans, specifications, drawings or other material submitted are inadequate or incomplete, or show the proposed improvevement to be in violation of these Restrictions;

(b) the design or color scheme of a proposed improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures; or

(c) the proposd improvement, or any part thereof, would, in the opinion of the Committee, be contrary to the interests, welfare or rights of all or any part of the other Owners.

(iii) <u>Developer Improvements</u>. The Committee shall have no powers with respect to any improvements or structures erected or contructed by the Developer (or any Builder, if Developer has approved the plans therefor).

B. <u>Duties of Committee</u>. The Committee shall approve proposed improvements within fifteen (15) days after all required information is submitted to it. One copy of submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons for such disapproval. In the event that a written approval is not received from the Committee within fifteen (15) days from the date of receipt of the information required to be submitted by these Subdivision Restrictions, the failure to issue such written approval shall be construed as the <u>disapproval</u> of any such plans submitted.

C. <u>In General</u>. Any party to whose benefit these restrictions inure, including Developer, Association and any Owner in the Development, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, but neither Developer nor Association shall be liable for damages of any kind to any person for failing to abide by, enforce or carry out any of these Restrictions.

D. <u>Liability of Committee</u>. Neither the Committee nor any agency thereof, nor the Developer, 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.

E. <u>Inspections</u>. The Committee may inspect work being performed with its permission to assure compliance with these Restrictions and applicable regulations.

7. *<u>RULES GOVERNING BUILDING ON SEVERAL CONTIGUOUS LOTS HAVING ONE OWNER</u>.*

Whenever two or more contiguous Lots in the Development shall be owned by the same person, and such Owner shall desire to use two or more of said Lots as a site for a single dwelling, he shall apply in writing to the Committee for permission to so use said Lots. If permission for such a use shall be granted, the Lots constituting the site for such single dwelling shall be treated as a single Lot for the purpose of applying these restrictions to said Lots, so long as the Lots remain improved with one single dwelling and comply with all requirements of Tippecanoe County Unified Subdivision Ordinance, including replatting, if necessary. No double family houses shall be constructed in the development.

8. REMEDIES.

A. Remedies for Failure to Comply. *In the event that any Owner fails to fully observe and perform the obligations set forth in paragraphs 2, 3 or 5 hereof, and in the further event that such failure is not remedied within thirty (30) days after written notice of the same is given by the Association, the Association and any Owner shall have the right to commence judicial proceedings to abate or enjoin such failure, and to take such further action as may be allowed at law or in equity to correct such failure after commencement of such proceedings. In the event that such failure causes or threatens to cause immediate and substantial harm to any property outside of such defaulting Owner's Lot or to any person, the Association shall have the right to enter upon such Lot for the purpose of correcting such failure and any harm or damage caused thereby, without any liability whatsoever on the part of the Association. All costs incurred by the Association in connection with any act or proceeding undertaken to abate, enjoin, or correct such failure including attorney fees and court costs shall be payable by the defaulting Owner upon demand by the Association, and shall immediately become a lien collection of assessments by the Association. The rights in the Owners and the Association under this paragraph shall be in addition to all other enforcement rights hereunder or at law or in equity.*

B. Government Enforcement. *The Tippecanoe County Area Plan Commission, its successors and assigns, shall have no right, power, or limitations contained herein other than those convenants, commitments, restrictions, or limitations that expressly run in favor of the Plan Commission, provided further, that nothing herein shall be construed to prevent the Plan Commission from enforcing any provisions of the Unified Subdivision Ordinance as amended, or any conditions attached to approval of the plat of Brookfield Heights Subdivision by the Plan Commission.*

C. Delay or Failure to Enforce. No delay or failure on the part of any *aggrieved party to invoke any available remedy with respect to a violation of any one or more of these Restrictions shall be held to be a waiver by that party (or any estoppel of that party to assert) of any right available to him upon the occurrence, recurrence or continuation of such violation or violations of these Restrictions.*

9. EFFECT OF BECOMING AN OWNER.

The Owners of any Lot subject to these Restrictions, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Developer or a subsequent Owner of such Lot, shall accept such deed and execute such contract subject to each and every Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the Owner acknowledges the rights and powers of Developer and Association with respect to these Restrictions, and also, for themselves, their heirs, personal representatives, successors and assigns, such Owners, convenant and agree and consent to and with Developer and to and with the Owners and subsequent Owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreements.

10. TITLES.

The underlined titles preceding the various paragraphs and subparagraphs of the Restrictions are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provisions of the Restrictions. 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 the neuter.

11. DURATION AND AMENDMENT.

A. This Declaration shall be effective for an initial term of twenty (20) years from the date of recording of this Declaration and shall automatically renew for additional terms of ten (10) years each, in perpetuity, unless at of the end of any term the Owners of seventy five percent (75%) of the Lots vote to terminate this Declaration, in which case this Declaration shall terminate as of the

end of the term during which such vote was taken. Notwithstanding the preceding sentence, all easements created or reserved by this Declaration shall be perpetual unless otherwise expressly indicated herein.

B. Developer hereby reserves the right to make such amendments to this Declaration as may be deemed necessary or appropriate by Developer without the approval of any other person or entity, in order to bring this Declaration into compliance with the requirements of any public agency having jurisdiction thereof or any agency guaranteeing, insuring, or approving mortgages, so long as Developer owns any Lots within the Development; provided that Developer shall not be entitled to make any amendment which has a materially adverse effect on the rights of any Mortgagee, nor which substantially impairs the benefits of these Restrictions to any Owner or substantially increases the obligations imposed by these Restrictions on any Owner.

12. 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.

13. DEDICATED STREETS.

The streets are hereby dedicated to the public.

14. REGULATED DRAIN:

The Development's water surface drainage system, including the public storm sewer pipes; the open channel at the rear of Lots 237, 238, 245, 246, 262, 263, 282, 283, 302, 303, 310, and 311; the offsite drainage easements described in Document No. 89-17198, as recorded in the Office of the Recorder of Tippecanoe County, Lafayette, Indiana, and the open channel located within an easement described in Document No. 90-03071, as recorded in the Office of the Recorder of Tippecanoe County, Lafayette, Indiana, on property currently owned by Charles Curtis, et al, will be part of the Brookfield Regulated Drain. Each Lot Owner will receive an annual assessment from the County of Tippecanoe for the upkeep of this regulated drain.

15. HOMEOWNERS ASSOCIATION.

The Association shall be created as a not-for-profit corporation under the laws of the State of Indiana. The Association shall be incorporated and run in accordance with paragraph 16 through 18 of these Subdivision Restrictions.

16. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS.

A. Membership. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Additionally, the Association, and/or members therein, may be members in any one or more umbrella or joint homeowner's associations, if any, composed of associations and/or members from surrounding areas.

B. Classes of Membership. The Association shall have one class of voting membership which shall be comprised of all Owners who shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no such event shall more than one vote be cast with respect to any Lot.

C. Board of Directors. The members shall elect a Board of Directors of the Association as prescribed by the Association's By-Laws. The Board of Directors shall manage the affairs of the Association. The initial Board of Directors shall be appointed by Developer and shall manage the affairs of the Association until Developer transfers control of the Association to the Owners as required herein.

D. Responsibilities of the Association. The Association is hereby authorized to act and shall act on behalf of, and in the name, place, and stead of, the individual Owners in all matters pertaining to the maintenance, repair, and replacement of the Common Areas, the determination of Common Expenses, the collection of annual and special Assessments, and the granting of any approvals whenever and to the extent called for by the Declarations for the common benefit of all such Owners. The Association shall also have the right, but not the obligation, to act on behalf of any Owner or Owners in seeking enforcement of the terms, covenants, conditions and restrictions contained in the Declarations. Neither the Association nor its officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color of authority of the Declarations or for any failure to take any action called for by the Declarations, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fradulent, or reckless misconduct. The Association shall procure and maintain casualty insurance for the Common Areas, liability insurance (including directors' or officers' insurance) and such other insurance as it deems necessary or advisable. The Association may contract for management services and such other services as the Association deems necessary or advisable.

E. Transfer of Control of Association. Developer must transfer control of the Association to the Owners no later than the earlier of: a) four (4) months after three-fourths (3/4) of the Lots in the Development have been conveyed to Owners; or b) five (5) years after the first Lot is conveyed to an Owner in the Development.

17. INSURANCE.

A. The Assocation shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury occurring on or in connection with any and all of the Common Property, as the Board of Directors shall deem appropriate.

B. The Association also shall obtain comprehensive public liability insurance and such other liability insurance, with such coverages and limits, as the Board of Directors shall deem appropriate. All such policies of insurance shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, the Board of Directors, the Developer, any Managing Agent, their respective employees and agents, or the Owners, and shall further contain a clause whereby the insurer waives any defenses based on acts of individual Owners whose interests are insured thereunder, and shall cover claims of one or more insured parties against other insured parties. All such policies shall name the Association, for the use and benefit of the Owners, as the insured; shall provide that the coverage thereunder is primary even if an Owner has other insurance covering the same loss; shall show the Association or insurance trustee, in trust for each Owner and Mortgagee, as the party to which proceeds shall be payable; shall contain a standard mortgage clause and shall name Mortgagees as mortgagee; and shall prohibit any cancellation or substantial modification to coverage without at least thirty (30) days' prior written notice to the Association and to the Mortgagees. Such insurance shall inure to the benefit of each individual Owner, the Association, the Board of Directors, and any managing agent or company acting on behalf of the Association. The individual Owners, as well as any lessees of any Owners, shall have the right to recover losses insured for their benefit.

C. A professional management firm must provide insurance to the same extent as the Association would be required to provide if it were managing its own operation and must submit evidence of such coverage to the Association.

D. Each Owner shall be solely responsible for loss of or damage to the improvements and his personal property located on his Lot, however caused. Each Owner shall be solely responsible for obtaining his own insurance to cover any such loss and risk.

18. COVENANT FOR MAINTENANCE ASSESSMENTS.

A. Purpose of the Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of preserving the values of the Lots within the Development, as the same may be platted from time to time, and promoting the health, safety, and welfare of the Owners, users, and occupants of the same and, in particular, for the improvement, repairing, operating, and maintenance of the Common Area, including, but not limited to, the payment of taxes and insurance thereon, for the cost of labor, equipment, material, landscaping, plantings, repairing or replacing subdivision signage and monuments, and management furnished with respect to the Common Area, and any and all other Common Expenses. Each Owner covenants and agrees to pay the Association:

(i) A Pro-rata Share (as hereinafter defined) of the annual Assessments fixed, established, and determined from time to time as hereinafter provided.

(ii) A Pro-rata Share (as hereinafter defined) of any special Assessments fixed, established, and determined from time to time, as hereinafter provided.

B. Pro-rata Share. The pro-rata share of each Owner for purposes of this paragraph shall be the percentage obtained by one over the current developed lots. Lake lot owners shall pay an additional assessment based on the annual lake maintenance costs divided by the lake lots.

C. Liability for Assessments. Each Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall be a charge on each Lot and shall constitute a lien upon each Lot from and after the due date thereof in favor of the Association. Each such Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall also be the personal obligation of the Owner of each Lot at the time when the Assessment is due. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. The lien for any Assessment shall for all purposes be subordinate to the lien of any Mortgagee whose mortgage was recorded prior to the date such Assessment first became due and payable. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof, nor shall any sale or transfer relieve any Owner of the personal liability hereby imposed. The personal obligation for delinquent Assessments shall not pass to any successor in title unless such obligation is expressly assumed by such successor.

D. Basis of Annual Assessments. The Board of Directors of the Association shall establish an annual budget prior to the beginning of each fiscal year, setting forth all anticipated Common Expenses for the coming fiscal year, together with a reasonable allowance for contingencies and reserves for periodic repair and replacement of the Common Area. A copy of this budget shall be delivered to each Owner within thirty (30) days prior to the beginning of each fiscal year of the Association.

E. Basis of Special Assessments. Should the Board of Directors of the Association at any time during the fiscal year determine that the Assessments levied for such year may be insufficient to pay the Common Expenses for such year, the Board of Directors shall call a special meeting of the Association to consider imposing such special Assessments as may be necessary for meeting the Common Expenses for such year. A special Assessment shall be imposed only with the approval of two-thirds (2/3) of the Owners, and shall be due and payable on the date(s) determined by such Owners, or if not so determined, then as may be determined by the Board of Directors.

F. <u>Fiscal Year; Date of Commencement of Assessments; Due Date</u>. The fiscal year of the Association shall be the calendar year and may be changed from time to time by action of the Association. The annual Assessments on each Lot in the Development shall commence on the first day of the first month following the month in which Declarant/Builder first conveys ownership of any Lot to an Owner; provided, that if any Lot is first occupied for residential purposes prior to being conveyed by Declarant, full Assessments shall be payable with respect to such Lot commencing on the first day of the first month following the date of such occupancy. The Declarant shall have the right, but not the obligation, to make up any deficit in the budget for the Common Expenses for any year in which Declarant controls the Association, subject to its right to be reimbursed therefor as provided herein. The first annual Assessment shall be made for the balance of the fiscal year of the Association in which such Assessment is made and, with respect to particular Lots, shall become due and payable on the date of initial transfer of title to a Lot to the Owner thereof. The annual Assessment for each year after the first assessment year shall be due and payable on the first day of each fiscal year of the Association. Annual Assessments shall be due and payable in full as of the above date, except that the Board of Directors may from time to time by resolution authorize the payment of such Assessments in monthly, quarterly, or semi-annual installments. The Declarant shall not pay an assessment on Lots which are not sold.

G. <u>Duties of the Association</u>.

(i) The Board of Directors of the Association shall cause proper books and records of the levy and collection of each annual and special Assessment to be kept and maintained, including a roster setting forth the identification of each and every Lot and each Assessment applicable thereto, which books and records shall be kept by the Association and shall be available for the inspection and copying by each Owner (or duly authorized representative of any Owner) at all reasonable times. Except as may be otherwise provided in the Association's By-Laws, the Association shall cause financial statements to be prepared at least annually for each fiscal year of the Association, and shall furnish copies of the same to any Owner or Mortgagee upon request. The Board of Directors of the Association shall cause written notice of all Assessments levied by the Association upon the Lots and upon the Owners to be mailed to the Owners or their designated representatives. Notices of the amounts of the annual Assessments and the amounts of the installments thereof shall be sent annually within thirty (30) days following the determination thereof. Notices of the amounts of special Assessments shall be sent as promptly as practicable and in any event not less than thirty (30) days prior to the due date of such Assessment or any installment thereof. In the event such notice is mailed less than thirty (30) days prior to the due date of the Assessment to which such notice pertains, payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual mailing of such notice.

(ii) The Association shall promptly furnish upon request to any Owner, prospective purchaser, title insurance company, or Mortgagee a certificate in writing signed by an officer of the Association, setting forth the extent to which Assessments have been levied and paid with respect to any Lot in which the requesting party has a legitimate interest. As to any person relying thereon, such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

(iii) The Association shall notify any Mortgagee from which it has received a request for notice: (a) of any default in the performance of any obligation under this Declaration by any Owner which is not remedied within sixty (60) days; (b) of any condemnation of casualty loss that affects either a material portion of the Development or the Lot securing its mortgage; (c) of any lapse, cancellation, or material modification of any insurance policy required to be maintained by the Association; and (d) any proposed action which requires the consent of the Mortgagees or a specified percentage thereof, as set forth in the Declarations.

H. Non-Payment of Assessments; Remedies of the Association.

(i) If any Assessment is not paid on the date when due, then such Assessment shall be deemed delinquent and shall, together with any interest thereon and any cost of collection thereof, including attorneys' fees, become a continuing lien on the Lot against which such Assessment was made, and such lien shall be binding upon and enforceable as a personal liability of the Owner of such Lot as of the date of levy of such Assessment, and shall be enforceable against the interest of such Owner and all future successors and assignees of such Owner in such Lot; provided, however, that such lien shall be subordinate of any mortgage on such Lot recorded prior to the date on which such Assessment becomes due.

(ii) If any Assessment upon any Lot is not paid within thirty (30) days after the due date, such Assessment and all costs of collection thereof, including attorneys' fees, shall bear interest from the date of delinquency until paid at a rate of eighteen percent (18%) per annum and the Association may bring an action against the delinquent Owner in any court having jurisdiction to enforce payment of the same and/or to foreclose the lien against said Owner's Lot, and there shall be added to the amount of such Assessment all costs of such action, including the Association's attorneys' fees, and in the event a judgment is obtained, such judgment shall include such interest, costs, and attorneys' fees.

I. Adjustments. In the event that the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for Assessments for the following year, except that so long as the Declarant controls the Association, Declarant may, in its sole discretion, make up such deficit; provided, however that Declarant shall be reimbursed by the Association for such funded deficits, together with interest at 18% per annum until so reimbursed, from available surpluses in later years or through a special assessment at the time of transfer of control of the Association to Owners.

J. Initial Assessments. During the first year following the date of recordation of the Declaration for the Development the total Assessments for the first year shall not exceed Forty Dollars ($40.00). This first year's assessment is based on the attached budget, see EXHIBIT "B". Lot Owners are put on notice that the budget items and their amounts are estimates and future annual assessments will probably be higher and the scope of budget items could be expanded. Lake Lot Owners shall be assessed an additional assessment for lake maintenance costs.

K. Notice and Quorum for Any Action to Increase Assessments. Written notice of any meeting called for the purpose of increasing the regular or special Assessments of the Association shall be sent to all Owners not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Owners or of proxies entitled to cast sixty percent (60%) of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum.

L. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Provided, however, the sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer.

IN WITNESS WHEREOF, witness the signature on behalf of the Developer this 15th day of March, 1990.

CEDAR RUN LIMITED
(An Indiana General Partnership)

By: Roy L. Prock
Signature

Roy L. Prock - General Partner

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Roy L. Prock, a General Partner of Cedar Run Limited, an Indiana General Partnership, who acknowledged the execution of the foregoing Declaration of Covenants and Restrictions as such General Partner acting for and on behalf of said Partnership, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 15th day of March, 1990.

Signature Edith L. Pearson

Printed EDITH L. PEARSON, Notary Public
My Commission Expires July 2, 1990
Residing in Marion County
Notary Public

County of Residence:

Marion

My commission expires:

July 2, 1990

RECORDED IN RECORD
90-03609
2:25 O'CLOCK P M FEE 23.50
MAR 2 3 1990
Dottie High
RECORDER TIPPECANOE CO., IN

This instrument prepared by: William T. Rees, Attorney at Law, 8355 Rockville Road, Indianapolis, Indiana 46234.

BROOKFIELD HEIGHTS SUBDIVISION
PHASES I AND II, SECTIONS 1&2

AMENDMENT TO RESTRICTIVE COVENANTS

The undersigned are all the owners of record, as reflected in the current records of the Tippecanoe County Auditor, of lots or other tracts of land included in Brookfield Heights Subdivision, Phases I and II, Sections 1 and 2; and

WHEREAS, the Restrictive Covenants (hereinafter the "Restrictive Covenants") for Brookfield Heights Subdivision, Phases I and II, Section 1, were recorded March 23, 1990 under Document No. 90-03609 in the Office of Recorder, Tippecanoe County, Indiana; and

WHEREAS, a Final Plat (hereinafter the "Plat") of Brookfield Heights Subdivision, Phases I and II, Sections 1 and 2 was recorded on March 23, 1990 under Document No. 90-03608, Plat Cabinet D, Slide 55, in the Office of Recorder, Tippecanoe County, Indiana;

WHEREAS, the Plat incorporates said Restrictive Covenants as applicable to all the platted lots of said Brookfield Heights Subdivision, Phases I and II, Section 1; and

WHEREAS THE undersigned being all of the current owners of record of the lots in Brookfield Heights Subdivision, Phases I and II, Section 1, agree and desire to amend said Restrictive Covenants to prohibit erection of satellite dishes with a diameter in excess of thirty (30) inches in this Development;

NOW, THEREFORE, the undersigned agree and declare that the Restrictive Covenants previously recorded, as incorporated into the Plat are hereby amended to prohibit erection of satellite dishes with a diameter in excess of thirty (30) inches in this Development;

IN WITNESS WHEREOF, the undersigned owners execute the foregoing Amendment to Restrictive Covenants as of the 10th day of October, 1990.

Lot No.	Owner	Owner
9	John J. Zelinksy	Pamela S. Zelinsky

ALL REMAINING LOTS

Cedar Run Limited,
Roy L. Prock,
General Partner

RECORDED IN RECORD
90-14394
9:25 O'CLOCK A M FEE 9.00
OCT 10 1990
Dottie High
RECORDER TIPPECANOE CO, IN

DULY ENTERED FOR TAXATION SUBJECT TO FINAL ACCEPTANCE FOR TRANSFER.

AUDITOR OF TIPPECANOE CO
10-10-90

RECORDED IN RECORD
91-05179
12:05 O'CLOCK P M FEE 9.00
APR 1 7 1991
Ruth E. Shedd
RECORDER TIPPECANOE CO., IN

RECEIVED APR 2 2 1991

ENTERED FOR TAXATION
TO FINAL ACCEPTANCE
R.
[signature]
AUDITOR OF TIPPECANOE CO.
4-17-91

BROOKFIELD HEIGHTS SUBDIVISION
PHASES I AND II, SECTIONS 1 & 2

AMENDMENT TO RESTRICTIVE COVENANTS

The undersigned, CEDAR RUN LIMITED, is the Developer of lots or other tracts of land included in Brookfield Heights Subdivision, Phases I and II, Sections 1 and 2; and

WHEREAS, the Restrictive Covenants (hereinafter the "Restrictive Covenants") for Brookfield Heights Subdivision, Phases I and II, Section 1, were recorded March 23, 1990 under Document No. 90-03609 and amended as recorded on October 10, 1990 under Document No.90-14394 in the Office of Recorder, Tippecanoe County, Indiana; and

WHEREAS, a Final Plat (hereinafter the "Plat") of Brookfield Heights Subdivision, Phases I and II, Sections 1 and 2 was recorded on March 23, 1990 under Document No. 90-03608, Plat Cabinet D, Slide 55, in the Office of Recorder, Tippecanoe County, Indiana;

WHEREAS, the Plat incorporates said Restrictive Covenants as applicable to all the platted lots of said Brookfield Heights Subdivision, Phases I and II, Section 1; and

WHEREAS the undersigned Developer has been notified by the U.S. Department of Housing and Urban Development ("HUD") that there is an inconsistency between Clause 18C and 18L as to the subordination of the Assessment to any first mortgage and HUD has requested the Developer to amend Clause 18L of the Restrictive Covenants. The Developer hereby exercises its right cited in Section 11B of the Restrictive Covenants to amend Section 18L;

THEREFORE Section 18L is hereby modified by the addition of the following sentence to the end of this paragraph:

> "If and to the extent this paragraph is inconsistent with any other paragraph in the Declaration, then this paragraph shall prevail."

IN WITNESS WHEREOF, the undersigned Developer executes the foregoing Amendment to Restrictive Covenants as of the 10th day of April, 1991.

CEDAR RUN LIMITED

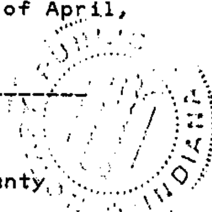
[signature]
Roy L. Prock, General Partner

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Roy L. Prock, General Partner, Cedar Run Limited, who acknowledged the execution of the foregoing Amendment to Restrictive Covenants and swore to the truth of the statements made therein.

Witness my hand and Notarial Seal this 10th day of April, 1991.

[signature]
Jo E. Roach,
Notary Public



My Commission Expires: 8-3-91 Residing in Marion County

This instrument prepared by: William T. Rees, Attorney-at-Law, 8355 Rockville Road, Indianapolis, IN 46234. (317) 271-8888.

J. E. Roach 1.

RECEIVED AUG 6 1992

BROOKFIELD HEIGHTS SUBDIVISION
PHASES I AND II, SECTION ONE
THIRD AMENDMENT TO RESTRICTIVE COVENANTS

The undersigned are all the owners of record, as reflected in the current records of the Tippecanoe County Auditor, of lots or other tracts of land included in Brookfield Heights Subdivision, Phases I and II, Sections 1; and

WHEREAS, the Restrictive Covenants (hereinafter the "Restrictive Covenants") for Brookfield Heights Subdivision, Phases I and II, Section 1, dated March 23, 1990, were recorded March 23, 1990 under Document No. 90-03609 and amendment dated October 10, 1990 was recorded on October 10, 1990 under Document No. 90-14394 in the Office of Recorder, Tippecanoe County, Indiana and amendment dated April 10, 1991 was recorded on April 17, 1991 under Document No. 91-05179 in the Office of Recorder, Tippecanoe County, Indiana; and

WHEREAS, a Final Plat (hereinafter the "Plat") of Brookfield Heights Subdivision, Phases I and II, Section 1 dated March 15, 1990, was recorded on March 23, 1990 under Document No. 90-03608, Plat Cabinet D, Slide 55, in the Office of Recorder, Tippecanoe County, Indiana;

WHEREAS, the Plat incorporates said Restrictive Covenants as applicable to all the platted lots of said Brookfield Heights Subdivision, Phases I and II, Section 1; and

WHEREAS, the percentage of homeowners required to amend the Restrictive Covenants was omitted from Section 11 of the original Restrictive Covenants; and

WHEREAS THE undersigned being all of the current owners of record of the lots in Brookfield Heights Subdivision, Phases I and II, Section 1, agree and desire to amend said Restrictive Covenants to include a required percentage for amendment to the Restrictive Covenants;

NOW, THEREFORE, the undersigned agree and declare that Section 11 of the Restrictive Covenants previously recorded, as incorporated into the Plat is hereby amended to read as follows:

> C. These Covenants may be amended upon the approval of two-thirds (2/3) of the Lot Owners.

ALL OTHER TERMS, conditions, recitals, and statements made in the Restrictive Covenants to which reference herein has been previously made are unaffected by this Third Amendment to Restrictive Covenants.

THIS THIRD AMENDMENT may be executed in multiple counterparts which, when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned owners execute the foregoing Third Amendment to Restrictive Covenants as of the 21st day of January, 1992.

RECORDED IN RECORD
92-16996
11:40 O'CLOCK A M FEE 185.00
AUG 04 1992
Ruth E. Shedd
RECORDER TIPPECANOE CO, IN

BROOKFIELD HEIGHTS SUBDIVISION
PHASE I AND PHASE II, SECTION ONE,
FOURTH AMENDMENT TO RESTRICTIVE COVENANTS

WHEREAS, the Restrictive Covenants (hereinafter the "Restrictive Covenants") for Brookfield Heights Subdivision, Phase I and Phase II, Section One, dated March 23, 1990, was recorded March 23, 1990 under Document No. 90-03609; and a First Amendment dated October 10, 1990, was recorded on October 10, 1990, under Document No. 90-14394 in the Office of Recorder, Tippecanoe County, Indiana; and a Second Amendment dated April 10, 1991, was recorded on April 17, 1991, under Document No. 91-05179 in the Office of Recorder, Tippecanoe County, Indiana; and a Third Amendment dated January 21, 1992, was recorded on August 4, 1992 under Document No. 92-16996 in the Office of Recorder, Tippecanoe County, Indiana; and

WHEREAS, a Final Plat (hereinafter the "Plat") of Brookfield Heights Subdivision, Phase I and Phase II, Section One, dated March 15, 1990, was recorded on March 23, 1990, under Document No. 90-03608, Plat Cabinet D, Slide 55, in the Office of Recorder, Tippecanoe County, Indiana;

WHEREAS, the Plat incorporates said Restrictive Covenants as applicable to all the platted lots of said Brookfield Heights Subdivision, Phase I and Phase II, Section One;

THEREFORE, a vote of two-thirds (2/3) members of the Homeowners' Association was obtained on August 1, 1993, to bring amend Section 3, Paragraph A of the Restrictive Covenants to read as follows:

xiii. Fences. All fences, except for brick landscape walls to be built by the Developer, shall meet the following standards:

a. Pool fences, where required, shall be a decorative type (black iron or aluminum picket style) with some screen landscaping on the sides exposed to streets.

b. No solid face construction without approval of the Committee.

c. Must be shadow box, chain link, split rail, black iron, or aluminum picket style, unless approved by the Committee.

d. Wooden fences must be painted or stained to blend with the house.

e. For non-corner lots, no fence shall be installed between the front yard building setback line and the rear face of the house. For corner lots, no fence shall be installed between the building setback line and the side and front of the house facing the two respective streets.

f. All corner lots fences shall meet the requirements of 3.B of these covenants.

RECORDED IN RECORD
93-20717
1:00 O'CLOCK P M FEE 12.00
SEP 16 1993
Wuth E. Shedd
RECORDER TIPPECANOE CO. IN

g. The height of all shadow box fences may not exceed six (6) feet. The height of any other type of fence may not exceed four (4) feet, except for pool fences described in (a) above. Any fence must be maintained in good condition by the owner, including repainting and restaining, as needed, removal of rust and repainting and repair of structural defects and deterioration.

IN WITNESS WHEREOF, the undersigned Officers of the Homeowners' Association execute the foregoing Fourth Amendment this 29 day of August, 1993.

BROOKFIELD HEIGHTS HOMEOWNERS' ASSOCIATION

Witness: Rick Foster

By: [signature]

Title: President

STATE OF INDIANA)
) SS:
COUNTY OF TIPPECANOE)

Before me, a Notary Public in and for said County and State, personally appeared Dirk Hilt, the President of the Brookfield Heights Homeowners' Association who acknowledged the execution of the foregoing Fourth Amendment to the Declaration of Covenants and Restrictions acting for and on behalf of said Homeowners' Association, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 13 day of Sept, 1993.

[signature]
Signature, Notary Public
Ronny S Carmichael-Shaffer
Typed name, Notary Public

My Commission Expires: 6-16-97

Residing in Tippecanoe County

This instrument prepared by: William T. Rees, Attorney at Law, 8355 Rockville Road, Indianapolis, Indiana 46234.