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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
ROSEBROCK ESTATES**

THIS DECLARATION is made this 27th day of February, 1998, by ROSEBROCK DEVELOPMENT, LLC, an Indiana limited liability company ("Developer").

RECITALS

1. Developer is the owner of certain real estate more particularly described in Exhibit A attached hereto and made a part hereof (the "Real Estate").
2. Developer intends to subdivide the Real Estate into residential lots as generally shown on the plat or plats for Rosebrock Estates as hereafter recorded in the office of the Recorder of Marion County, Indiana.
3. Before so subdividing the Real Estate, Developer desires to subject the Real Estate to certain rights, privileges, covenants, conditions, restrictions, easements, assessments, charges and liens for the purpose of preserving and protecting the value and desirability of the Real Estate for the benefit of each owner of all or any part thereof.
4. Developer further desires to create an organization to which shall be delegated and assigned the powers of maintaining and administering certain areas of the Real Estate, administering and enforcing the covenants and restrictions contained in this Declaration and the subdivision plat or plats of the Real Estate as hereafter recorded in the office of the Recorder of Marion County, Indiana, and collecting and disbursing the assessments and charges as herein provided.

NOW, THEREFORE, Developer hereby declares that the Real Estate is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the following provisions, agreements, covenants, conditions, restrictions, easements, assessments, charges and liens, which shall run with the Real Estate and shall be binding upon, and inure to the benefit of, Developer and any other person or entity hereafter acquiring or having any right, title or interest in the Real Estate, of any part thereof.

DECLARATION

ARTICLE I.

DEFINITIONS

The following terms, when used in this Declaration with initial capital letters, shall have the following respective meanings:

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CHICAGO TITLE

1.1. "Association" means Rosebrock Estates Homeowners' Association, Inc., an Indiana nonprofit corporation, which Developer has caused or will cause to be incorporated, its successors and assigns.

1.2. "Committee" means the Rosebrock Estates Architectural Control Committee established pursuant to Article V, paragraph 5.1, of this Declaration for the purposes herein stated.

1.3. "Common Expenses" means (i) expenses of administration of the Association; (ii) expenses of and in connection with the performance of the responsibilities and duties of the Association as set forth herein and in the Restrictive Covenants of Rosebrock Estates set forth on any subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana; (iii) all sums lawfully assessed against the Owners by the Association; and (iv) all sums declared by this Declaration to be Common Expenses.

1.4. "Developer" means Rosebrock Development, LLC, an Indiana limited liability company, and any successors and assigns of it whom it designates in one or more written recorded instruments to have the rights of Developer hereunder, including, without limitation, any mortgagee acquiring title to any portion of the Real Estate pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Developer.

1.5. "Development Period" means the period of time commencing with the date of recordation of this Declaration and ending on the date Developer no longer owns any Lot within or upon the Real Estate.

1.6. "Drainage and Utility Easement" ("D.&U.E.") means the portion of the Real Estate designated on any subdivision plat of the Real Estate now or hereafter recorded in the office of the recorder of Marion County, Indiana as Drainage and Utility Easement.

1.7. "Drainage, Utility & Sanitary Sewer Easement" ("D.U.&S.S.E.") means the portion of the Real Estate designated on any subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, as Drainage, Utility & Sanitary Sewer Easement.

1.8. "Lot" means a numbered parcel of land shown and identified as a lot on any subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana.

1.9. "Mortgagee" means the holder of a recorded first mortgage lien on any Lot.

1.10. "Nonaffiliated Owner" means any "Owner" other than Developer, or any entity or person related to Developer or its principal members.

1.11. "Offsite Drainage Easement" means the drainage easement granted for the benefit of the Real Estate under that certain Grant of Drainage Easement and Agreement recorded as Instrument No. 97-42757 in the Office of the Recorder of Marion County, Indiana to the extent not dedicated to a governmental agency.

1.12. "Owner" means the record owner, whether one or more persons or entities, of fee-simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation unless specifically indicated to the contrary. The term Owner, as used herein, shall include Developer so long as Developer shall own any Lot.

1.13. "Public Street" means the portion of the Real Estate designated on any subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana as R/W.

1.14. "Variable Drainage Easement" means the portion of the Real Estate designated on any subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, as Variable Drainage Easement.

ARTICLE II.

NAME

The name by which the Real Estate shall be known is "Rosebrock Estates".

ARTICLE III.

APPLICATION

All Owners, their tenants, guests, invitees and mortgagees, or any other person using or occupying a Lot or any part of the Real Estate shall be subject to and shall observe and comply with the covenants, conditions, restrictions, terms and provisions set forth in this Declaration and any rules and regulations adopted by the Association as herein provided, as the same may be amended from time to time.

The Owner of any Lot and all other persons, (i) by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from the Developer or a subsequent Owner of such lot, or (ii) by the act of occupancy of such lot, shall conclusively be deemed to have accepted such deed, executed such contract or undertaken such occupancy subject to the terms and provisions of this Declaration. By acceptance of such deed, execution of such contract or undertaking of such occupancy, each Owner and all other persons acknowledge the rights and powers of Developer and the Association provided for by this Declaration, and for himself, his heirs, personal representatives, successors and assigns, covenant, agree and consent to and with



Developer and the Owners from time to time of the Lots, to keep, observe, comply with and perform the covenants, conditions, restrictions, terms and provisions of this Declaration.

ARTICLE IV.

ASSOCIATION

4.1. Membership. Each Owner shall, automatically upon becoming an Owner, be and become a member of the Association and shall remain a member of the Association until such time as his ownership of a Lot ceases, at which time his membership will terminate and the new Owner of his Lot shall be and become a member of the Association.

4.2. Classes of Membership. The Association shall have two (2) classes of membership, as follows:

(i) Class A Members. Class A members shall be all owners other than Developer (unless the Class B membership has been converted to Class A membership as provided in the following subparagraph (ii), in which event Developer shall than be a Class A member). Class A members shall be entitled to one (1) vote for each Lot owned.

(ii) Class B Members. The Class B member shall be Developer. The Class B member shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and terminate and be converted to Class A membership upon the "Applicable Date" (as such term is hereinafter defined in paragraph 4.3).

4.3. Applicable Date. As used herein the term "Applicable Date" shall mean the date which is the earlier of (a) the end of the Development Period; or (b) December 31, 2001.

4.4. Multiple or Entity Owners. Where more than one person or entity constitutes the Owner of a particular Lot, all such persons or entities shall be members of the Association, but the vote in respect of such Lot shall be exercised as the persons or entities holding an interest in such Lot shall determine among themselves, but in no event shall more than one (1) vote (in the case of Class A membership) be cast with respect to such Lot.

4.5. Board of Directors. The Association shall elect a Board of Directors of the Association as prescribed by the Association's Articles of Incorporation and By-Laws. The Board of Directors of the Association shall manage the affairs of the Association.

4.6. Professional Management. No contract or agreement for professional management of the Association, nor any other contract between the Developer and the Association shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause, without any termination fee, on written notice of ninety (90) days or less.

4.7. Responsibilities of the Association. The responsibilities of the Association include, but shall not be limited to:

(i) Management and control of storm or surface water retention (if any) in and upon the easement areas (shown and identified as such on any subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana) for maintenance of the same in a clean, attractive and sanitary condition; installation and replacement of such improvements in and upon said easements as the Association deems necessary or appropriate; and maintenance of any such improvements installed by Developer or the Association in good condition and repair. Without limiting the generality of the foregoing, such maintenance obligations shall include maintenance to protect the easements from erosion, algae control and maintenance of levels, if applicable. It is intended that such actions shall be taken in accordance with recommendations regarding the same from applicable governmental agencies having jurisdiction, but nothing herein shall constitute an undertaking or duty to exceed the requirements of applicable law.

(ii) Except as may be the responsibility of any governmental agency, replacement of a drainage system in and upon the drainage and utility easements, including D.&U E's, D.U.&S.S.E's and Variable Drainage Easements, (shown and identified as such on any subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana) or in and upon the Offsite Drainage Easement, as the Association deems necessary or appropriate and the maintenance of any drainage system installed in or upon said Drainage and Utility Easements or the Offsite Drainage Easement by Developer or the Association in good condition and repair, subject, however, to the obligation of the Owner of a Lot subject to a drainage and utility easement to keep the portion of the drainage and utility easement on his Lot free from obstructions so that the surface water drainage will be unimpeded.

(iii) Maintenance, repair and replacement of a private sanitary sewer lift station and all appurtenances thereto located or to be located upon the Real Estate. Developer shall transfer title to the sanitary sewer lift station and its appurtenances to the Association upon completion thereof.

(iv) Maintenance, repair and replacement of signage identifying the subdivision and landscaping within any D.U.&S.S.E. located at the entrance to the Real Estate along Epler Avenue.

(v) Procuring and maintaining for the benefit of the Association, its Board of Directors and the Owners the insurance coverages required under this Declaration and such other insurance as the Association deems necessary or advisable.

(vi) Payment of taxes, if any, assessed against and payable with respect to property of the Association. ®

(vii) Assessment and collection from the Owners of Regular or Special Assessments, sufficient in amount to pay the Common Expenses.

(viii) Contracting for such services as management, snow removal, security control, trash removal or other services as the Association deems necessary or advisable.

(ix) From time to time, adopting, amending or rescinding such reasonable rules and regulations (not inconsistent with the provisions of this Declaration) governing the management and administration of the Association, as the Association deems necessary or advisable, and enforcement of the same. As part of such rules and regulations, the Association may provide for reasonable interest and late charges on past due installments of any Regular or Special Assessments or other charges against any Lot. Copies of such rules and regulations shall be furnished by the Association to the Owners prior to the time when the same shall become effective.

(x) Replacement and maintenance of any street identification signs within and upon the Real Estate designated as street signs, except to the extent the same is the responsibility of any governmental agency or subdivision.

(xi) Procuring and maintaining for the benefit of the Association, its Board of Directors, Developer, and the Owners, a general liability insurance policy in an amount not less than One Million Dollars (\$1,000,000.00) providing coverage for injury to person or property arising out of the easement areas.

(xii) Insuring compliance with each and every commitment set forth in that certain "Commitments Concerning the Use and Development of Real Estate made in Connection with Rezoning of Property", recorded as Instrument No. 95-35972 in the office of the Recorder of Marion County, Indiana.

4.8. Compensation. No Director of the Association shall receive compensation for his services as such Director, except to the extent expressly authorized by a majority vote of the Owners.

4.9. Non-Liability of Directors and Officers. The Directors and Officers of the Association shall not be liable to the Owners or any other persons for any error or mistake of judgment in carrying out their duties and responsibilities as Directors or Officers of the Association, except for their own individual willful misconduct or gross negligence. The Association shall indemnify and hold harmless and defend each person, his heirs, assigns or legal representatives, who is or was a Director or Officer of the Association against any and all liability to any person, firm or corporation arising out of contracts made by or at the direction of the Board of Directors (or the managing agent, if any) of the Association, unless any such contract shall have been made in bad faith. It is intended that the Directors and Officers of the Association shall have no personal liability with respect to any contract made by them on behalf of the Association except in their capacity as Owners. ®

4.10. Additional Indemnity of Directors and Officers. The Association shall indemnify, hold harmless and defend any person, his heirs, assigns and legal representatives (collectively, the "Indemnatee"), made or threatened to be made a party to any action, suit or proceeding by reason of the fact that he is or was a Director or Officer of the Association, against all costs and expenses,

including attorneys' fees, actually and reasonably insured by the Indemnitee in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except (unless otherwise specifically provided herein) in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Indemnitee is liable for gross negligence or willful misconduct in the performance of his duties. The Association shall also reimburse any such Indemnitee for the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such Director or Officer was not guilty of gross negligence or willful misconduct. In making such findings and notwithstanding the adjudication in any action or suit of proceeding against an Indemnitee, no Director or Officer shall be considered or deemed to be guilty of or liable for gross negligence or willful misconduct in the performance of his duties where, acting in good faith, such Director or Officer relied on the books and records of the Association or statements or advice made by or prepared by the managing agent of the Association (if any) or any officer or employee of the Association, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service, unless such Director or Officer had actual knowledge of the falsity or incorrectness thereof, nor shall a Director be deemed guilty of or liable for gross negligence or willful misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors of the Association. The costs and expenses incurred by an Indemnitee in defending any action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Indemnitee to repay the amount paid by the Association if it shall ultimately be determined that the indemnitee is not entitled to indemnification as provided in this paragraph 4.10.

4.11. Bond. The Board of Directors of the Association may provide surety bonds and may require the managing agent of the Association (if any), the treasurer of the Association, and such other officers as the Board of Directors deems necessary, to provide surety bonds, indemnifying the Association against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors, and any such bond shall specifically include protection for any insurance proceeds received by any reason by the Board of Directors. The expense of any such bonds shall be a Common Expense.

ARTICLE V.

ROSEBROCK ESTATES ARCHITECTURAL CONTROL COMMITTEE

5.1. Creation. There shall be, and hereby is, created and established the Rosebrock Estates Architectural Control Committee to perform the functions provided for herein. Until the Applicable Date, the Committee shall consist of up to three (3) members appointed, from time to time, by Developer and who shall be subject to removal by Developer at any time with or without cause. After the Applicable Date, the Committee shall be a standing committee of the Association, consisting of three (3) persons appointed from time to time, by the Board of Directors of the Association.

5.2. Purposes and Powers of Committee. The Committee shall regulate the external design, appearance and location of residences, buildings, structures or other improvements placed on any Lot, and the installation and removal of landscaping on any Lot, in such a manner as to preserve and enhance the value and desirability of the Real Estate for the benefit of each Owner and to maintain a harmonious relationship among structures and the natural vegetation and topography.

(i) In General. No residence, building, structure or improvement of any type or kind shall be constructed or placed on any Lot, or repainted, without the prior written 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, in the case of construction or placement of any improvement, 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 the location of all improvements existing 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. When required by the Committee, plot plans shall be prepared by either a registered land surveyor, engineer or architect. Plot plans submitted for the Building Permit shall bear the stamp or signature of the committee acknowledging the approval thereof.

(ii) Power of Disapproval. The Committee may refuse to grant permission to 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 improvement to be in violation of any restrictions in this Declaration or any subdivision plat of the Real Estate recorded in the office of the Recorder of Marion County, Indiana;

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

(c) The proposed repainting or improvement, or any part thereof, would, in the opinion of the Committee, be contrary to the interests, welfare or rights of any other Owner.

(iii) Rules and Regulations. The Committee may, from time to time, make, amend and modify such additional rules and regulations as it may deem necessary or desirable to guide Owners as to the requirements of the Committee for the submission and approval of items to it. Such rules and regulations may set forth additional requirements to those set forth in this Declaration or any subdivision plat of the Real Estate recorded in the office of the Recorder of Marion County, Indiana, as long as the same are not inconsistent with this Declaration or such subdivision plat(s).

5.3 Duties of Committee. The Committee shall approve or disapprove proposed repainting, construction or improvements within fifteen (15) days after all required information shall have been submitted to it. One (1) 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.

5.4 Liability of Committee. Neither the Committee, Developer, the Association nor any agent of any of the foregoing 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.

5.5 Inspection. The Committee may inspect work being performed to assure compliance with this Declaration and the materials submitted to it pursuant to this Article V. However, no such inspection, or failure to inspect, by the Committee shall result in any liability on the part of the Committee, nor shall the Owner be relieved of any obligation to painting, construction or improvements in accordance with the approved plans therefor.

5.6 Nonapplication to Developer. Notwithstanding the provisions of this Article V or any other provisions of this Declaration requiring the approval of the Committee, Developer and any entity related to Developer shall not be required to apply for or secure the approval of the Committee in connection with any construction, installation, painting or repainting by Developer, or any entity related to Developer of any residence, building, structure, or other improvement On the Real Estate or the installation or removal of any trees, shrubs or other landscaping on the Real Estate.

ARTICLE VI.

ASSESSMENTS

6.1 Creation of Lien and personal Obligations. Developer, for each Lot now or hereafter conveyed by it, hereby covenants, and each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (i) regular assessments for Common Expenses ("Regular Assessments") and (ii) special assessments for capital improvements and operating deficits and for special maintenance and repairs ("Special Assessments"). Such assessments shall be established, shall commence upon such dates and shall be collected as hereinafter provided. All such assessments, together with interest, costs of collection and reasonable attorneys' fees, shall be continuing lien upon the Lot against which such assessment is made prior to all other liens except only (i) tax liens on any Lot in favor of any unit of government or special taxing district and (ii) the lien of any first mortgage of record. Each such assessment, together with interest, costs of collection and reasonable attorneys' fees, shall also be the personal obligation of the Owner of the Lot at the time such assessment became due and payable. Where Owner constitutes more than one person, the liability of such persons shall be joint and several. The personal obligation for delinquent assessments (as distinguished from the lien upon the Lot) shall not pass to such Owner's successor(s) in title unless expressly assumed by such

successor(s). The Association shall, upon request of a proposed Mortgagee or proposed purchaser having a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of any unpaid Regular Assessment, Special Assessment and other charge of the Association against the Lot. Such statement shall be binding upon the Association as of the date of such statement.

6.2. Purpose of Assessments. The Regular or Special Assessments levied by the Association shall be used exclusively (i) to promote the health, safety and welfare of the residents occupying the Real Estate, (ii) for the performance of the responsibilities and duties of the Association (iii) for such other purposes as are specifically or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of any capital improvements which the Association is required to maintain.

6.3. Regular Assessments. The Board of Directors of the Association shall have the right, power and authority, without any vote of the members of the Association, to fix, from time to time, the Regular Assessment against each Lot at any amount not in excess of the maximum Regular Assessment hereinafter provided.

(i) Until January 1, 1999, the maximum Regular Assessment on any Lot shall not exceed Twenty and no/100 Dollars (\$20.00) per month, and

(ii) From and after January 1, 1998, the maximum Regular Assessment on a Lot may not be increased by more than fifteen percent (15%) above the annual Regular Assessment for the previous calendar year without the approval of two-thirds (2/3) of those members of each class of members of the Association who cast votes in person or in proxy at a meeting of the members of the Association duly called for such purpose.

6.4. Special Assessments. In addition to Regular Assessments, the Association, except as provided below, may make Special Assessments against each Lot for the purpose of reconstructing, repairing or replacing any capital improvement which the Association is required to maintain or to recover any operating deficits which the Association may from time to time incur only with the assent of two-thirds (2/3) of the members of each class of members of the Association who cast votes in person or by proxy at a meeting of the members of the Association duly called for such purpose.

6.5. Uniform Rate of Assessment. The Regular Assessments and Special Assessments levied by the Association shall be uniform for all Lots except that all of the provisions of this Declaration notwithstanding, Developer shall not be liable for the payment of Regular Assessments and Special Assessments.

6.6. Date of Commencement of Regular Assessments; Due Dates. The Regular Assessment shall commence as to each Lot on the first day of the first calendar month following the first conveyance of such Lot to a Nonaffiliated Owner and shall be payable immediately upon the

conveyance of such Lot in an amount of the annual Regular Assessment for such year prorated for the number of whole months remaining in the calendar year following such conveyance.

The Board of Directors of the Association shall fix the amount of the Regular Assessment at least thirty (30) days in advance of each annual assessment period, provided that the Regular Assessment for the initial calendar year may be established by the Board of Directors at any time. Written notice of the assessment notices as the Board of Directors shall deem appropriate shall be sent to each Owner subject thereto. The due date(s) for all assessments shall be established by the Board of Directors of the Association. The Board of Directors may provide for reasonable interest and late charges on past due installments of assessments.

6.7. Assessments Prior to Applicable Date. During the period that residences are being constructed within the Real Estate, it is difficult to accurately allocate the Common Expenses to the individual Lots. The purpose of this section is to provide the method for the payment of the Common Expenses during the period prior to the Applicable Date to enable the Association to perform its duties and functions. Accordingly and notwithstanding any other provision contained in the Declaration, the Articles or the By-Laws or otherwise, prior to the Applicable Date, the annual budget and all Regular Assessments and Special Assessments shall be established by the Board of Directors without any meeting or concurrence of the Owners, provided, however, that the amount of the Regular Assessment shall be determined by the Board substantially in the manner provided in the By-Laws.

6.8. Failure of Owner to Pay Assessments.

(i) No Owner may exempt himself from paying Regular Assessments and Special Assessments, or from contributing toward the Common Expenses and toward any other expense lawfully agreed upon, by abandonment of the Lot belonging to him. If any Owner shall fail, refuse or neglect to make any payment of any assessment (or periodic installment of an assessment, if applicable) when due, the lien for such assessment on the Owner's Lot may be filed and foreclosed by the Board of Directors of the Association for and on behalf of the Association in the same manner as a mortgage on real property or as otherwise provided by law. Upon the failure of any Owner to make timely payments of any assessment (or a periodic installment of an assessment, if applicable) when due, the Board may in its discretion accelerate the entire balance of any unpaid assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. In any action to foreclose the lien for any assessment, the Owner and any occupant of the Lot shall be jointly and severally liable for the payment to the Association of reasonable rental for such Lot, and the Board of Directors shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid assessments. The Board of Directors of the Association may, at its option, bring a suit to recover a money judgment for any unpaid assessment without foreclosing or waiving the lien securing the same. In any action to recover an assessment, whether by foreclosure or otherwise, the Board of Directors of the Association, for and on behalf of the Association, shall be entitled to recover from the Owner of the respective Lot costs and expenses of such action

incurred (including but not limited to reasonable attorneys' fees) and interest from the date such assessments were due, until paid.

(ii) Notwithstanding anything contained in this paragraph 6.7 or elsewhere in this Declaration, any sale, or transfer of a Lot to a Mortgagee pursuant to a foreclosure of its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid assessments (or periodic installments, if applicable) which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior Owner from personal liability therefor.

6.9. Developer's Exemption. Notwithstanding anything contained herein to the contrary, the Developer shall not be liable for Regular Assessments or Special Assessments with respect to Lots it owns, nor shall such lots be subject to the lien for such assessments.

ARTICLE VII.

INSURANCE

7.1. Casualty Insurance. The Association shall purchase and maintain fire and extended coverage insurance in an amount equal to the full replacement cost of all improvements, if any, which the Association is required to maintain hereunder. If the Association can obtain such coverage for a reasonable amount, it shall also obtain "all risk coverage." The Association may also insure any other property, whether real or personal, owned by the Association against loss or damage by fire and such other hazards as the Association may deem desirable. Such insurance coverage shall name the Association as the insured. Such insurance policy or policies shall contain provisions that (i) the insurer waives its rights to subrogation as to any claim against Developer, the Association, its Board of Directors, officers, agents and employees, any committee of the Association or of the Board of Directors, and all Owners and their respective agents and guests and (ii) waives any defense based on invalidity arising from the acts of the insured. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried.

7.2. Liability Insurance. The Association shall also purchase and maintain a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time, but in any event with a minimum combined limit of One Million Dollars (\$1,000,000.00) per occurrence. Such comprehensive public liability insurance shall cover all of the easement areas (shown and identified as such upon any subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana) and the Offsite Drainage Easement and shall insure Developer, the Association, its Board of Directors, officers, agents and employees of any of the foregoing with respect to the Real Estate, all Owners and all other persons entitled to occupy any Lot. Such public liability insurance policy shall include a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association, Developer or other Owners.

7.3. Other Insurance. The Association shall also purchase and maintain any other insurance required by law to be maintained, including but not limited to workmen's compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including but not limited to officers' and directors' liability insurance.

ARTICLE VIII.

MAINTENANCE AND DECORATION

8.1. Maintenance of Lots and Improvements. Except to the extent such maintenance shall be the responsibility of the Association under any of the foregoing provisions of this Declaration, it shall be the duty of the Owner of each Lot to keep the grass on the Lot properly cut and keep the Lot free of weeds and trash and otherwise neat and attractive in appearance, including, without limitation, the proper maintenance of the exterior of any structures on such Lot. In the event the Owner of any Lot fails to do so in a manner satisfactory to the Association, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right (but not the obligation), through its agents, employees and contractors, to enter upon said Lot and to repair, maintain and restore the Lot and the exterior of the improvements erected thereon. The cost of such exterior maintenance shall be an additional assessment against such Lot and the Owner thereof, to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general. Neither the Association nor any of its agents, employees or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

8.2. Additional Restrictions Concerning Residences and Other Structures.

(i) No change shall be made in the exterior color of any residence or accessory buildings located on a Lot, including the roofs thereof, without the prior written approval of the Committee;

(ii) Existing or newly planted trees on any Lot shall not be removed by an Owner after his occupancy, without the prior written approval of the Committee; provided, however, that nothing herein shall prevent the removal of trees by Developer, or any entity related to Developer, during the development of the Real Estate and during the construction by Developer, or any entity related to Developer, of a residence or accessory building on any Lot; and

(iii) In order to preserve the aesthetic appearance of the Real Estate, any mailbox must be approved by the Committee as to size, location, height or appearance before it is installed.



ARTICLE IX.

MORTGAGES

9.1. Notice to Association. Any Mortgagee who places a first mortgage lien upon a Lot may notify the Secretary of the Association of the existence of such mortgage and provide the name and address of such Mortgagee. A record of such mortgage and name and address shall be maintained by the Secretary of the Association and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws of the Association or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, as herein provided, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws of the Association or otherwise shall be required, and no Mortgagee shall be entitled to vote on any matter to which it otherwise may be entitled by virtue of this Declaration, the By-Laws of the Association, a proxy granted to such Mortgagee in connection with the mortgage or otherwise.

9.2. Notice to Mortgagees. The Association, upon request, shall provide to any Mortgagee a written certificate or notice specifying unpaid assessments and defaults of the Owner of such Lot, if any, in the performance of such Owner's obligation under this Declaration or any other applicable documents, which defaults have not been cured within sixty (60) days.

ARTICLE X.

AMENDMENT

10.1. By the Association. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner.

(i) Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting of the members of the Association at which the proposed amendment is to be considered.

(ii) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or by any Owner who is in good standing with the Association. An Owner shall be deemed in good standing if he has paid all assessments that are then due and payable.

(iii) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting of the members of the Association duly called and held in accordance with the provisions of the By-Laws. ®

(iv) Adoption. Any proposed amendment to this Declaration must be approved by a two thirds (2/3) majority vote of all Owners; provided however, that any such amendment shall require

the prior written approval of Developer so long as Developer or any entity related to Developer owns any Lots within and upon the Real Estate. In the event any Lot is subject to a first mortgage, each Mortgagee shall be notified of the meeting and the proposed amendment in the manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors of the Association in accordance with the provisions of the foregoing paragraph 10.1.

(v) Special Amendments. No amendment to this Declaration shall be adopted which changes any provision of this Declaration which would be deemed to be of a material nature by the Federal National Mortgage Association under Section 402.02 of Part V, Chapter 4, of the Fannie Mae Selling Guide or any similar provision of any subsequent guidelines published in lieu of or in substitution for the Selling Guide, without the approval of all Mortgagees who have given prior notice of their mortgage interest to the Board of Directors of the Association in accordance with the provisions of the foregoing paragraph 10.1.

Any Mortgagee which has been duly notified of the nature of any proposed amendment shall be deemed to have approved the same if said Mortgagee or a representative thereof fails to appear at the meeting in which such amendment is to be considered (if proper notice of such meeting was timely given to such Mortgagee). In the event that a proposed amendment is deemed by the Board of Directors of the Association to be one which is not of a material nature, the Board of Directors shall notify all Mortgagees whose interests have been made known to the Board of Directors of the nature of such proposed amendment, and such amendment shall be conclusively deemed not material if no Mortgagee so notified objects to such proposed amendment within thirty (30) days of the date such notices are mailed and if such notice advises the Mortgagees of the time limitation contained in this provision.

10.2. By Developer. Developer hereby reserves the right, so long as it, or any entity related to Developer, owns any Lot within and upon the Real Estate, to make such amendments to this Declaration as may be deemed necessary or appropriate by Developer in its sole discretion, without the approval of any other person or entity, 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 increases the obligations imposed by this Declaration on any Owner.

10.3. Recording. Each amendment to the Declaration shall be executed by Developer only in any case where Developer has the right to amend this Declaration without any further consent or approval, and otherwise by the President or Vice President and Secretary of the Association; provided, that any amendment requiring the consent of Developer shall contain Developer's signed consent. All amendments shall be recorded in the office of the Recorder of Marion County, Indiana and no amendment shall become effective until so recorded.

ARTICLE XI.

GENERAL PROVISIONS

11.1. Right of Enforcement. Violation or threatened violation of any of the covenants, conditions or restrictions enumerated in this Declaration or in any subdivision plat of all or any part of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, shall be grounds for an action by Developer, the Association, any Owner, and all persons or entities claiming under them, against the person or entity violating or threatening to violate any such covenants, conditions or restrictions. Available relief in any such action shall include recovery of damages or other sums due for such violation, injunctive relief against any such violation or threatened violation, declaratory relief and the recovery of costs and attorneys' fees incurred by any party successfully enforcing such covenants and restrictions; provided, however, that neither Developer nor the Association shall be liable for damages of any kind to any person for failing to enforce or carry out any such covenants, conditions or restrictions.

11.2. Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to any violation or threatened violation of any covenants, conditions or restrictions provided in this Declaration or in any subdivision plat of all or any part of the Real Estate shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, recurrence or continuance of such violation or violations of such covenants, conditions or restrictions.

11.3. Duration. These covenants, conditions and restrictions and all other provisions of this Declaration (as the same may be amended from time to time as herein provided) shall run with the land and shall be binding on all persons and entities from time to time having any right, title or interest in the Real Estate, or any part thereof, and on all persons claiming under them, until January 31, 2030, and thereafter shall be automatically extended for successive periods of the ten (10) years each, unless prior to the commencement of any such extension period, by a vote of a majority of the then Owners of Lots within and upon the Real Estate, it is agreed that this Declaration shall terminate in its entirety. In the event the Association shall vote to terminate this Declaration as provided above, the Secretary of the Association shall record in the office of the Recorder of Marion County a copy of the adopting resolution and the original signatures thereto of the majority of the Owners voting to terminate.

11.4. Severability. Invalidation of any of the covenants, restrictions or provisions contained in this Declaration by judgment or court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect.

11.5. Titles. The underlined titles preceding the various paragraphs and subparagraphs of this Declaration are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provisions of this Declaration. Wherever and whenever applicable, the

singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

11.6. Applicable Law. This Declaration shall be governed, interpreted, construed and regulated by the laws of the State of Indiana.

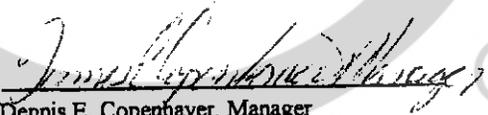
11.7. Sales Offices and Models. Notwithstanding anything to the contrary contained in this Declaration or any subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, Developer, and any entity related to the Developer, during the Development Period, shall be entitled to construct, install, erect and maintain such facilities upon any portion of the Real Estate owned by Developer as, in the sole opinion of Developer, may be reasonably required or convenient or incidental to the development of the Real Estate and the sale of Lots and the construction of residences thereon. Such facilities may include, without limitation, storage areas, parking areas, signs, model residences, construction offices and sales offices.

11.8. Developer's Reservation of Rights. Until the earlier of the date that the Association is formed or the end of the Development Period, Developer reserves the right to manage the Real Estate, to establish the Common Expenses, to collect Assessments from the Owners of Lots as provided in this Declaration, and to exercise all rights and powers of the Architectural Central Committee and of the Association under this Declaration.

11.9. Supplemental Plat Covenants and Restrictions. In addition to the covenants and restrictions set forth on the subdivision plat or plats of the Real Estate, the Real Estate shall also be and is hereby made subject to the "Supplemental Plat Covenants and Restrictions" set forth on Exhibit B attached hereto and incorporated herein by this reference. The Association shall be entitled to enforce such Supplemental Plat Covenants and Restrictions in the manner provided in paragraph 11.1 hereof.

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

ROSEBROCK DEVELOPMENT, LLC
an Indiana limited liability company

By:  

Dennis E. Copenhaver, Manager

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

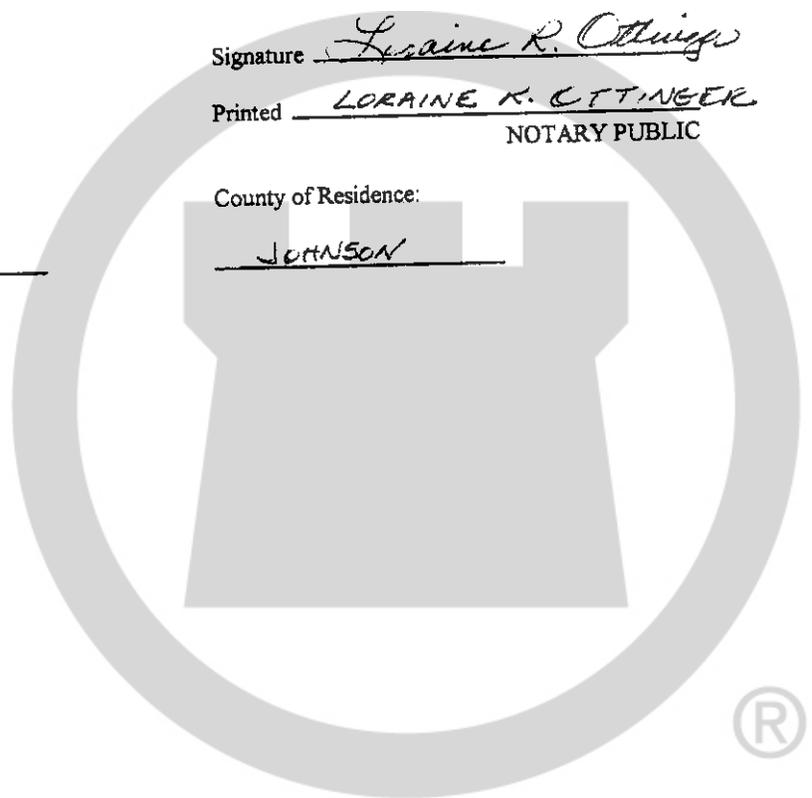
Before me, a Notary Public in and for the State of Indiana, personally appeared Dennis E. Copenhaver, the Manager of Rosebrock Development, LLC, an Indiana limited liability company, who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions of Rosebrock Estates for and on behalf of said limited liability company.

WITNESS my hand and Notarial Seal this 20th day of FEBRUARY, 1998.

Signature Lorraine K. Cttinger
Printed LORRAINE K. CTTINGER
NOTARY PUBLIC

My Commission Expires:
11/16/2001

County of Residence:
JOHNSON



110874.2 - 18 - CHICAGO TITLE

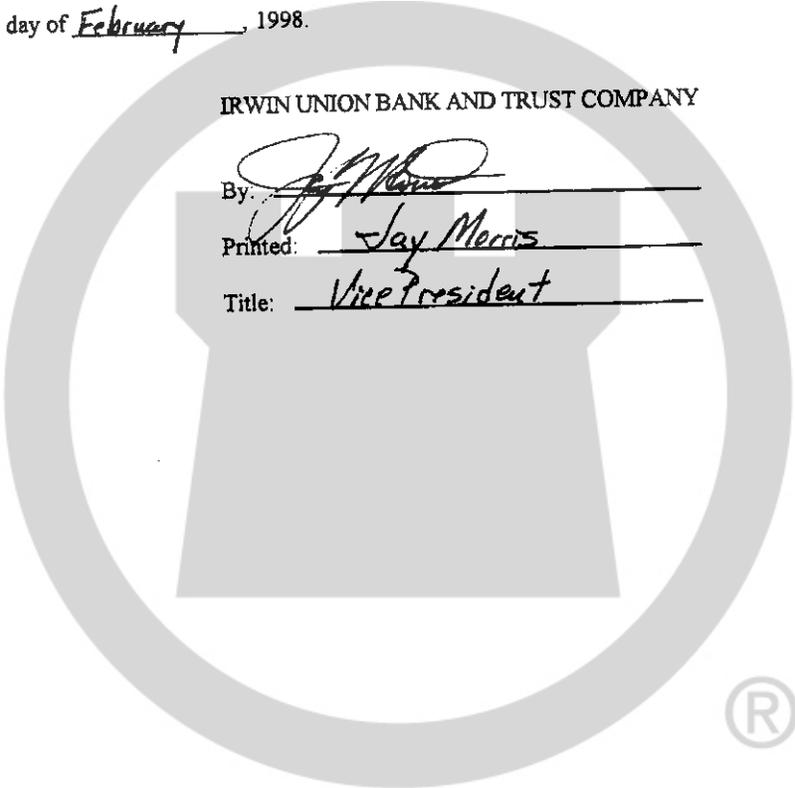
CONSENT AND SUBORDINATION AGREEMENT

IRWIN UNION BANK AND TRUST COMPANY, (the "Bank") hereby agrees and consents that its Mortgage (the "Mortgage"), executed by ROSEBROCK DEVELOPMENT, LLC, an Indiana limited liability company, in favor of the Bank, dated July 21, 1997 and recorded July 30, 1997 as Instrument Number 1997-0105007 in the Office of the Recorder of Marion County, Indiana, is hereby made subject and subordinate in all manner and respect to the foregoing Declaration and to the plat or plats of Rosebrock Estates hereafter recorded in the Office of the Recorder of Marion County, Indiana (the "Plat"). This Agreement shall in no way affect any other rights of the Bank pursuant to the Mortgage nor is it intended to affect or modify the Mortgage as it relates to the property which is the subject of the Declaration and the Plat.

Executed this 6th day of February, 1998.

IRWIN UNION BANK AND TRUST COMPANY

By: Jay Morris
Printed: Jay Morris
Title: Vice President



110874.2 - 19 - CHICAGO TITLE

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public, in and for said County and State, personally appeared JAY MORRIS, the VICE PRESIDENT of Irwin Union Bank and Trust Company, who acknowledged the execution of the foregoing Consent and Subordination Agreement for and on behalf of said bank.

Witness my hand and notarial seal this 6th day of FEBRUARY, 1998.

Signature

Lorraine R. Ctinger

Printed

LORRAINE R. CTINGER
Notary Public

My Commission Expires:

11/16/2001

County of Residence:

JOHNSON

This Instrument was prepared by James B. Burroughs, Ice Miller Donadio & Ryan, One American Square, Box 82001, Indianapolis, Indiana 46282-0002, (317) 236-2100.



110874.2 - 20 - CHICAGO TITLE

Exhibit A

Real Estate

A part of the West Half of the Northeast Quarter of Section 2, Township 14 North, Range 3 East of the Second Principal Meridian, Marion County, Indiana, more particularly described as follows:

COMMENCING at a PK nail (found) marking the Southwest Corner of said West Half Northeast Quarter; thence North 89 degrees 17 minutes 03 seconds East (assumed bearing) 974.30 feet with the South line of said West Half Quarter to a Pk nail (set) marking the POINT OF BEGINNING of the property herein described; thence North 00 degrees 20 minutes 52 seconds East 1366.48 feet parallel with the West line of said West Half Quarter to a capped rebar (set) on the South line of Bixler's Perry Park as shown on the certificate of survey of said Bixler's Perry Park recorded in Deed Record 1590, Page 98 in the office of the Recorder of Marion County, Indiana; thence North 89 degrees 12 minutes 44 seconds East 369.50 feet with said South line to a capped rebar (set) on the East line of said West Half Quarter as shown on the plat of survey of Schumaker's Homesites recorded in Town Lot Record 1211, page 625 in said recorder's office; thence South 00 degrees 17 minutes 59 seconds West 806.94 feet with said East line to a capped rebar (set) marking the Northeast corner of a tract of land as described in a deed recorded as Instrument No. 94-14115 in said recorder's office; thence South 89 degrees 17 minutes 03 seconds West with the North line of said Instrument No. 94-14115 and parallel with the South line of said West Half Quarter to a rebar (found) marking the Northwest corner of said Instrument No. 94-14115; thence South 00 degrees 02 minutes 52 seconds 559.99 feet with the West line of said Instrument No. 94-14115 and with the West line of a tract of land as described in a deed recorded as Instrument no. 94-14114 in said Recorder's Office and parallel with the West line of said West Half Quarter to a Pk nail (set) on the South line of said West Half Quarter; thence South 89 degrees 17 minutes 03 seconds West 268.70 feet with said South line to the POINT OF BEGINNING, containing 10.302 acres, more or less.

504335.1

CHICAGO TITLE

Exhibit B

**SUPPLEMENTAL
PLAT COVENANTS AND RESTRICTIONS
OF
ROSEBROCK ESTATES**

Pursuant to Section 11.9 of the foregoing Declaration of Covenants, Conditions and Restrictions of Rosebrock Estates (the "Declaration"), the Developer makes these Supplemental Plat Covenants and Restrictions of Rosebrock Estates. Developer intends to plat and subdivide the Real Estate (as defined in the Declaration) for Rosebrock Estates, as hereafter recorded in the office of the Recorder of Marion County, Indiana ("Plat"), and desires to subject the Real Estate to the provisions of these Supplemental Plat Covenants and Restrictions. The subdivision created by the Plat (the "Subdivision") shall be known and designated as Rosebrock Estates, an addition in Marion County, Indiana. In addition to the covenants and restrictions hereinafter set forth, the Real Estate is further subject to the restrictions and agreements contained in the Declaration of Covenants, Conditions and Restrictions of Rosebrock Estates, to which this Supplemental Plat Covenants and Restrictions is attached (the "Declaration"), to the rights, powers, duties and obligations of Rosebrock Estates Homeowners' Association, Inc. (the "Association"), as set forth in the Declaration and to the restrictive covenants set forth in the Plat. If there is any irreconcilable conflict between any of the covenants and restrictions contained herein and any of the covenants and restrictions contained in the Declaration or in the Plat, the conflicting covenant or restriction contained herein shall govern and control only to the extent of the irreconcilable conflict, it being the intent hereof that all such covenants and restrictions shall be applicable to the Real Estate to the greatest extent possible.

In order to provide adequate protection to all present and future owners of lots in the Subdivision, the following covenants and restrictions, in addition to those set forth in the Declaration and on the Plat, are hereby imposed upon the Real Estate:

1. There are areas of ground on the Plat marked "Utility Easements" and "Drainage Easements" (including, also Variable Drainage Easements") either separately or in combination. The Utility Easements are hereby created and reserved for the use of all public utility companies (not including transportation companies), governmental agencies and the Association, for access to and installation, maintenance, repair or removal of poles, mains, ducts, drains, lines, wires, cables and other equipment and facilities for the furnishing of utility services, including cable television services, to the lots on the Real Estate. The Drainage Easements are hereby created and reserved: (i) for the use of Developer during the "Development Period" (as such term is defined in the Declaration) for access to and installation, repair or removal of a drainage system, either by surface drainage or appropriate underground installations, for the Real Estate and adjoining property and (ii) for the use of the Association and the City of Indianapolis, Department of Capital Asset Management for the access to and maintenance, repair and replacement of such drainage system; provided, however, that the owner of any lot in the Subdivision subject to a Drainage Easement shall be required to keep the portion of said Drainage Easement of his lot free from obstructions so that the surface water drainage

will be unimpeded. The delineation of the Utility Easement and Drainage Easement areas on the plat shall not be deemed a limitation on the rights of any entity for whose use any such easement is created and reserved to go on any lot subject to such easement temporarily to the extent reasonably necessary for the exercise of the rights granted to it by this paragraph 1. No permanent structures shall be erected or maintained upon said easements. The owners of lots in the Subdivision shall take and hold title to the lots subject to the Utility Easements and Drainage Easements herein created and reserved.

2. There is an area of ground on the plat marked "Landscape Easement". The Landscape Easement is hereby created and reserved:

- (i) solely for the common visual and aesthetic enjoyment of Owners; and
- (ii) for the use by Developer during the Development Period and the Association for the installation, maintenance, repair and replacement of landscaping and signage identifying the Subdivision.

3. Building set-back lines are established on the plat. No building or structure shall be erected or maintained between said set-back lines and the front or rear lot line (as the case may be) of said lot. Where two or more contiguous lots are used as a site for a single dwelling, this side yard restriction shall apply to the combined lots as if they were a single lot.

4. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting points twenty-five (25) feet from the intersection of said lines, or in the case of a rounded property corner, from the intersection of the street lines extended. The same sight-line limitations shall apply to any lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight line.

5. No residence constructed on a lot in the Subdivision shall have less than Twelve Hundred (1200) square feet of floor area, exclusive of garages, basements, open porches and other accessory structures. The minimum ground floor area for structures containing more than one story on a lot shall be Eight Hundred (800) square feet, exclusive of garages, porches, and other accessory structures.

6. All lots in the Subdivision shall be used solely for residential purposes. No business buildings shall be erected on said lots, and no business may be conducted on any part thereof, other than the home occupations permitted in the Zoning Ordinance of the City of Indianapolis, Indiana. No structure shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family residence not to exceed two and one-half (2 1/2) stories or thirty-five (35) feet in height and permanently attached residential accessory buildings. Any attached garage, attached tool shed, attached storage building or any other attached building erected or used as an accessory

building to a residence shall be of a permanent type of construction and shall conform to the general architecture and appearance of such residence.

7. No garage shall be erected on any lot in the Subdivision which is not permanently attached to the residence, and no unenclosed storage area shall be erected. No enclosed storage area shall be erected on any lot which is not permanently attached to the residence.

8. No trailers, shacks, outhouses, detached storage sheds or tool sheds of any kind shall be erected or situated on any lot in the Subdivision, except that used by a builder during the construction of a residential building on the property, which temporary construction structures shall be promptly removed upon completion of construction of the building.

9. No trailer, shack, tent, boat, garage or other outbuilding may be used at any time as a residence, temporary or permanent; nor may any structure of a temporary character be used as a residence.

10. No farm animals, fowls or domestic animals for commercial purpose shall be kept or permitted on any lot or lots in the Subdivision. Dogs shall be confined to their Owner's respective lots or restrained on a leash, and each Owner shall be responsible for cleaning up after their dogs. No noxious, unlawful, or otherwise offensive activity shall be carried out on any lot in the Subdivision; nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

11. No camper, motor home, truck, trailer, boat or recreational vehicle of any kind shall be stored on any lot in the Subdivision in open public view.

12. No sign of any kind shall be displayed to the public view on any lot, except that one (1) sign of not more than six (6) square feet may be displayed at any time for the purpose of advertising the property for sale or rent, except Developer may use larger signs during the sale and development of the Subdivision.

13. No lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers. All equipment for storage or disposal of such materials shall be kept clean and shall not be stored on any lot in open public view. All rubbish, garbage or other waste shall be regularly removed from a lot and shall not be allowed to accumulate thereon.

14. Any gas or oil storage tanks used in connection with a lot shall be either buried or located in a garage or house such that they are completely concealed from public view.

15. No private or semi-private water supply and/or sewage disposal system may be located upon any lot in the Subdivision which is lot in compliance with regulations or procedures as provided

by the Indiana State Board of Health, or other civil authority having jurisdiction. No septic tank, absorption field, or other method of sewage disposal shall be located or constructed on any lot.

16. Each driveway in the Subdivision shall be of concrete or asphalt material and shall not exceed in width the side boundaries of the garage. No additional parking shall be permitted on a lot other than the existing driveway.

17. No roof antenna shall be installed or permitted in the Subdivision.

18. No satellite dishes shall be installed or permitted in the Subdivision except as installed by Developer and after the end of the Development Period except as approved by the Association.

19. No trapelines or clotheslines permitted on any lot.

20. No metal, fiberglass or similar type material awnings or patio covers shall be permitted in the Subdivision.

21. No fence placed on a Lot abutting an area designated on the plat as Landscape Easement shall exceed three (3) feet in height beyond the point fifteen (15) feet from the house constructed on such Lot.

All fencing, and its placement, shall be subject to approval by the Developer until the end of the Development Period and thereafter by the Architectural Control Committee. All fencing that abuts the areas designated Landscape Easement, and interior street or another Lot shall be constructed of wood.

All metal fencing used in the Subdivision, where permitted, must have a factory finish of either brown or black vinyl. No fence shall be higher than six (6) feet. No fencing shall extend forward of the furthest back corner of the residence. Fencing style and color shall be consistent with the Subdivision.

22. No above-ground swimming pools shall be permitted in the Subdivision.

23. No solar heat panels shall be permitted in the Subdivision.

24. All lots shall be accessed from the interior streets of the Subdivision. No access to any lot is permitted from Epler Avenue.

25. These covenants and restrictions (as the same may be amended from time to time as provided in the Declaration) shall run with the land and shall be binding upon all persons or entities from time to time having any right title or interest in the Real Estate, or any part thereof, and on all persons or entities claiming under them; provided, however, that no termination of said covenants and

restrictions shall effect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall consent thereto.

26. Invalidation of any of the foregoing covenants and restrictions by judgment or court order shall in no way effect any of the other covenants and restrictions, which shall remain in full force and effect.

27. The lots in Rosebrock Estates, where applicable shall be conveyed with easements over the adjacent lot or subject to easements for the benefit of the adjacent lot, as more particularly depicted on the Plat. The following rules, in addition to those set forth on the Plat, prescribe the terms, conditions and use of such easements, both by the owner of the easement (the dominate tenement) and the owner of the fee under the easement (the servient tenement):

a. The dominant tenement shall have the right to use the easement for landscaping, fencing and as general recreational and garden area. The dominant tenement shall have the obligation of maintaining the easement.

b. The dominant tenement shall not use the easement for any other use including permanent installation of any sort (except fencing).

c. The servient tenement shall have the right at all reasonable times to enter the easement area, including crossing over the dominant tenement for such entry, in order to perform work related to the usage of the servient tenement.

d. The servient tenement shall have the right of drainage over, across and upon the easement for water resulting from the normal usage of the servient tenement and the dominant tenement shall maintain the easement area in such manner as will not interfere with such drainage.

e. The owner of the dominant tenement shall not attach any object to a wall or building belonging to the owner of the servient tenement.

f. The dominant tenement, except as otherwise provided in this paragraph, shall have the exclusive use of the surface of the easement area subject to the rights of any other easement holders (utilities, sewers, etc.), if any, and subject to minor encroachments, if any, existing at the time of the creation of the easement including overhangs, eaves, etc. over the easement area which are part of the structure located on the servient tenement.



restrictions shall effect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall consent thereto.

26. Invalidation of any of the foregoing covenants and restrictions by judgment or court order shall in no way effect any of the other covenants and restrictions, which shall remain in full force and effect.

27. The lots in Rosebrock Estates, where applicable shall be conveyed with easements over the adjacent lot or subject to easements for the benefit of the adjacent lot, as more particularly depicted on the Plat. The following rules, in addition to those set forth on the Plat, prescribe the terms, conditions and use of such easements, both by the owner of the easement (the dominate tenement) and the owner of the fee under the easement (the servient tenement):

a. The dominant tenement shall have the right to use the easement for landscaping, fencing and as general recreational and garden area. The dominant tenement shall have the obligation of maintaining the easement.

b. The dominant tenement shall not use the easement for any other use including permanent installation of any sort (except fencing).

c. The servient tenement shall have the right at all reasonable times to enter the easement area, including crossing over the dominant tenement for such entry, in order to perform work related to the usage of the servient tenement.

d. The servient tenement shall have the right of drainage over, across and upon the easement for water resulting from the normal usage of the servient tenement and the dominant tenement shall maintain the easement area in such manner as will not interfere with such drainage.

e. The owner of the dominant tenement shall not attach any object to a wall or building belonging to the owner of the servient tenement.

f. The dominant tenement, except as otherwise provided in this paragraph, shall have the exclusive use of the surface of the easement area subject to the rights of any other easement holders (utilities, sewers, etc.), if any, and subject to minor encroachments, if any, existing at the time of the creation of the easement including overhangs, eaves, etc. over the easement area which are part of the structure located on the servient tenement.



SURVEYOR'S CORRECTION

ROSEBROCK ESTATES
Marion County, Indiana

JOHN E. VON ARX
144 | 47 SEP -98

SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER

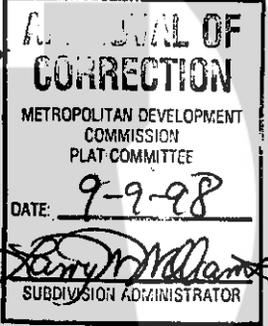
I, Christopher H. Phillips, being duly sworn upon his oath, desposes and says:

That I am a Registered Land Surveyor in the State of Indiana, Registration No. 8800096, and that I prepared the Final Plat of Rosebrock Estates, recorded as Instrument No. 980055517, in the Office of the Marion County Recorder. Said plat was prepared by Major Land Surveying, Inc.

- Item No. One : The lead in call of North 80 degrees 17 minutes 03 seconds East as shown on the recorded plat is incorrect and should read North 89 degrees 17 minutes 03 seconds East. (SEE EXHIBIT "A")
- Item No. Two : A dimension of 101.47 feet was omitted from the Land Description on the recorded plat. This dimension should be added as shown on Exhibit "A".
- Item No. Three : A call of South 00 degrees 02 minutes 52 seconds as shown within the Land Description on the recorded plat is incorrect and should read South 00 degrees 20 minutes 52 seconds West as shown on Exhibit "A".

FURTHER AFFIANT SAYETH NOT:

Christopher H. Phillips
Christopher H. Phillips, Registered Land Surveyor



SUBSCRIBED AND SWORN to before me on this 9th day of SEPTEMBER 1998.

Kathlene Maurer
Notary Public: KATHLENE MAURER

MY COMMISSION EXPIRES: 3-26-2000
RESIDING COUNTY: JOHNSON

THIS INSTRUMENT PREPARED BY:

MAURER & ASSOCIATES, INC.
3425 West County Line Road, Greenwood, Indiana 46142

SHEET ONE OF TWO

APPROVED THIS 9th DAY OF October 19 98
PERRY TOWNSHIP ASSESSOR
John R. George DRAFTSMAN

10/23/98 09:36AM JOHN H. ROMEIL MARION CITY RECORDER JSH 14.00 PAGES: 2
Inst # 1998-0183499

Inst # 1998-0183499

CHICAGO TITLE

EXHIBIT "A"

LAND DESCRIPTION

A part of the West Half of the Northeast Quarter of Section 2, Township 14 North, Range 3 East of the Second Principal Meridian, Marion County, Indiana, more particularly described as follows:

COMMENCING at a Pk nail (found) marking the Southwest Corner of said West Half Northeast Quarter; thence North 89 degrees 17 minutes 03 seconds East (assumed bearing) 974.30 feet with the South line of said West Half Quarter to a Pk nail (set) marking the POINT OF BEGINNING of the property herein described; thence North 00 degrees 20 minutes 52 seconds East 1366.48 feet parallel with the West line of said West Half Quarter to a capped rebar (set) on the South line of Bixler's Perry Park as shown on the certificate of survey of said Bixler's Perry Park recorded in Deed Record 1590, Page 98 in the office of the Recorder of Marion County, Indiana; thence North 89 degrees 12 minutes 44 seconds East 369.50 feet with said South line to a capped rebar (set) on the East line of said West Half Quarter as shown on the plat of survey of Schumaker's Homesites recorded in Town Lot Record 1211, page 625 in said recorder's office; thence South 00 degrees 17 minutes 59 seconds West 806.94 feet with said East line to a capped rebar (set) marking the Northeast corner of a tract of land as described in a deed recorded as Instrument No. 94-14115 in said recorder's office; thence South 89 degrees 17 minutes 03 seconds West with the North line of said instrument No. 94-14115 and parallel with the South line of said West Half Quarter to a capped rebar (set) marking the Northwest corner of said instrument No. 94-14115; thence South 00 degrees 02 minutes 52 seconds 359.99 feet with the West line of said instrument No. 94-14115 and with the West line of said tract of land as described in a deed recorded as Instrument no. 94-14114 in said Recorder's Office and parallel with the West line of said West Half Quarter to a Pk nail (set) on the South line of said West Half Quarter; thence South 89 degrees 17 minutes 03 seconds West 268.70 feet with said South line to the POINT OF BEGINNING, containing 10.302 acres, more or less.

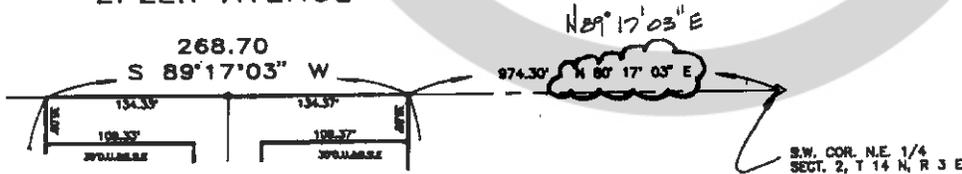
Subject to all pertinent easements, rights-of-way, and restrictions.

All monuments shown hereon will exist and this plat complies with provisions of the Subdivision Ordinance. The size of lots and width of streets and easements are shown in figures denoting feet and decimal parts thereof.

ITEM No. TWO - OMITTED DIMENSION

ITEM No. THREE

EPLER AVENUE



S.W. COR. N.E. 1/4
SECT. 2, T 14 N, R 3 E

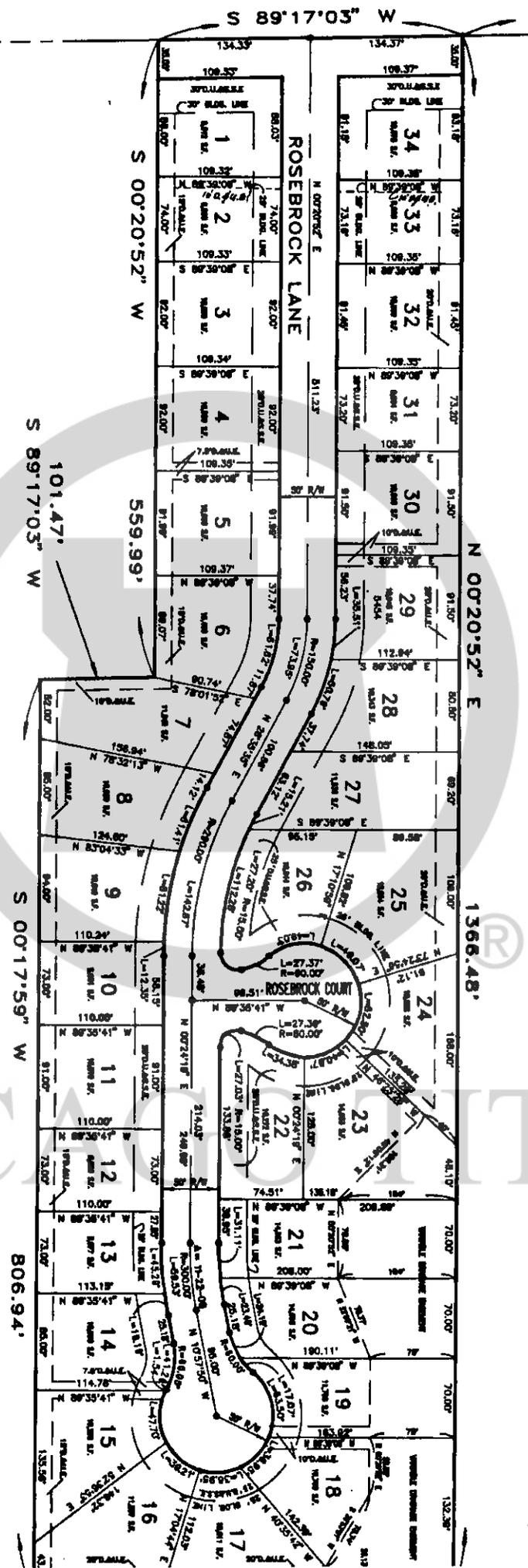
SHEET TWO OF TWO

CHICAGO TITLE

S&W COR. NE 1/4 SECT. 2, T14 N, R3 E

S 89°17'03" W 974.30' N 80°17'03" E

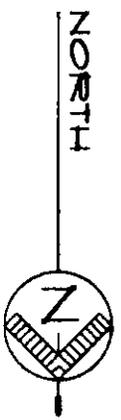
SOUTH LINE N.E. 1/4 SECT. 2, T14 N, R3 E



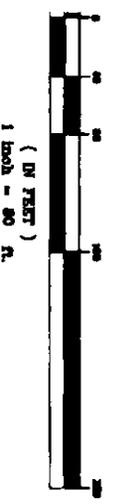
419550086

LEGEND

- CENTERLINE MONUMENT
- DRILLAGE, UTILITY & SANITARY SEWER EXHIBENT
- BUILDINGS LINE
- DRILLAGE, UTILITY EXHIBENT
- LOT NUMBER



GRAPHIC SCALE



98005517

APPROVED THIS 24th DAY OF December 19 97
PENNY TOWNSHIP ASSESSOR



98065517



FINAL PLAT

ROSEBROCK ESTATES

PERRY TOWNSHIP
MARION COUNTY INDIANA

419930086

- LOT 81
- LOT 82
- LOT 83
- LOT 84
- LOT 85
- LOT 86
- LOT 87
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