

VANDERBURGH COUNTY
BETTY J. HERMANN, RECORDER

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DECLARATION OF PROTECTIVE COVENANTS

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DECLARATION OF PROTECTIVE COVENANTS

THIS DECLARATION ("Declaration"), made this 13TH day of JANUARY, 1999, by Head Investments, LLC, an Indiana Limited Liability Corporation, hereinafter collectively referred to as the "Declarant."

ARTICLE I

RECITALS

1.01 Declarant is the record titleholder of certain real property situated in the Vanderburgh County, Indiana, more particularly described on "Exhibit A", attached hereto and incorporated by reference herein, which land is referred to herein as the "Property."

1.02 Declarant desires to subject the Property to the conditions, covenants, restrictions and reservations hereinafter set forth to insure proper use and appropriate development and improvement of the Property. The terms, covenants, conditions, restrictions and reservations set forth in this Declaration shall run with the land and shall be binding upon all persons or entities with any interest from time to time in the Property, which persons or entities are referred to herein as "Owner(s)."

ARTICLE II

DEFINITIONS

2.01 Definition of Terms. Unless otherwise specified herein to the contrary, each of the following defined terms or phrases shall be deemed to have such defined meanings in and for the purposes of this Declaration:

- (a) "Architectural Review Committee" or "ARC" means the committee appointed and acting from time to time in accordance with the provisions of Article VI below.
- (b) "Assessment Sum" as defined in Section 12.02.
- (c) "Building Site(s)" means (I) any contiguous parcel of land within the Property, the dimensions of which are established by the legal description in the deed from Declarant to the Owner; (II) any parcel of land within the Property designated as a Building Site by Declarant in any instrument in writing executed, acknowledged and recorded by the Declarant; (III) two or more contiguous Building Sites under common ownership if the Owner elects, by written notice to the Declarant, to treat them as a single Building Site during the time of such Owner's ownership and (IV) all of the Property, with the exception of the Property Used in Common, owned at any point in time by the Declarant.

- (d) "Building" means any structure which (I) is permanently affixed to the Property; (II) has one or more floors and a roof; and (III) is bounded by either an open area or other lot lines of a Building Site.
- (e) "Common Expense(s)," if any, means Declarant's administrative costs incurred in administering its duties hereunder, and any cost or expense incurred for the repair, maintenance and replacement of Improvements to the Property Used in Common.
- (f) "Covenant(s)" means all of the conditions, covenants, restrictions and reservations contained herein, or any one or more of them as the context may require and define in Section 3.01.
- (g) "East Park" means the real estate described in Exhibit "A" and any recorded plat and subdivision of a portion of the Property designated as East Park and shall also be deemed to mean and refer to any further subdivision plat(s) of the Property appearing of record at any time (together with amendments, if any) in the office of the Recorder of Vanderburgh County, Indiana.
- (h) "Head" means Head Investments, LLC, an Indiana corporation or its respective successors and assigns.
- (i) "Declarant" means Head Investments, LLC, an Indiana Limited Liability Corporation, comprised of Fredrick Heseman, Manager, and members Cynthia Heseman, Judith Heseman, Susan Bell and Kaye Mortensen, an Indiana corporation, or their respective successors and assigns.
- (j) "Declarant's Assessment Factor" as defined in Section 12.02.
- (k) "Declaration", "hereof", "herein" and words of similar import have reference to this Declaration as a whole and not to any particular section, subsection or clause hereof.
- (l) "Design Guidelines" means, at any relevant point in time, the guidelines setting forth certain architectural standards and specifications regarding the location and design of Improvements, and their expansion, remodeling, construction materials, lighting, landscaping, signage and other matters. The Design Guidelines are incorporated in this Declaration by reference.
- (m) "Improvements" means any Building, parking areas, sidewalks, loading areas, fences, walls, hedges, landscaping, mass plantings,

poles, signs, structures of any kind, and the permanent result of any other action taken for the improvement of the Property.

- (n) "Mortgage" means any bona fide mortgage, deed of trust or conveyance of a Building Site or any interest therein or portion thereof which secures the performance of an obligation, which, upon completion of such performance, will be released, discharged or reconveyed.
- (o) "Mortgage" means the mortgagee, secured party or other beneficiary or a Mortgage.
- (p) "Owner(s)" means the fee owner or owners, as the context may require, of all or any part of the Property, including a Building Site.
- (q) "Property" means all of the real property described on Exhibit "A" attached hereto.
- (r) "Property Used in Common" means those areas of the Property (including any portion subject to an easement or right-of-way) together with appurtenant Improvements, devoted to the common use and enjoyment of the Owners, including, but not limited to, lakes, retention ponds, parks, sidewalks, median strips, sprinkling systems and lighting, private streets, park signage areas, utility easements across land owned by others but for the benefit of all or any part of the Property, common private utility easement across land owned by others but for the benefit of all or any part of the Property, common private utility services mechanical items including but not limited to private sewer lift stations and traffic controls, entrance parks and drainage areas.
- (s) "Repurchase Option Period" as defined in Section 8.01.
- (t) "Special Assessments" as defined in Section 12.05.

All headings set forth in this Declaration are included for convenience of reference only and shall not affect the interpretation hereof.

ARTICLE III

PURPOSE

3.01 Covenants to Run With Title. The Property is hereby made subject to all of the conditions, covenants, restrictions and reservations (collectively, the "Covenants") and shall be binding upon Owners, jointly and severally, and their successors and assigns, all of which shall be deemed to run with the title to the Property set forth in this Declaration, and each and every Building Site to insure proper use and appropriate development and improvement of the Property so as to (I) protect the Owners and tenants of Building Sites against such improper development and use of surrounding Building Sites as will likely reduce the value and use of their Building sites; (II) prevent the erection on the Property of structures constructed of improper or unsuitable materials or with improper quality and methods of construction; (III) insure adequate and responsible consistent development of the Property; (IV) encourage and insure the erection of attractively designed permanent Improvements appropriately located within the Property to achieve harmonious appearance and function; (V) provide adequate off-street parking and loading facilities; and (VI) generally promote the welfare and safety of the occupants, tenants and Owners of Building Sites.

3.02 Acceptance of Covenants: The Covenants, having been in place at purchase are recognized by the Owners to be desirable and as such the Owners, by their acceptance of title to any Building Site or part thereof, accept these Covenants and agree that the Covenants shall be binding upon them and their respective Building Sites. Every person who now owns or hereafter acquires any right, title or interest in or to any portion of the Property shall be conclusively deemed to have consented and agreed to every term, condition, covenant, restriction and reservation contained in this Declaration, whether or not any reference to this Declaration is contained in any instrument conveying to such person any interest in the Property.

3.03 Binding Effect. The Property shall be held, sold, conveyed, transferred, encumbered, hypothecated, leased, rented, used, occupied and improved subject to this Declaration. All the terms, conditions, covenants, restrictions and reservations contained in this Declaration shall run with the title to every portion of the Property. No portion of the Property may be developed or operated, nor any construction of Improvements commenced thereon, by any Owner except in accordance with the provisions of this Declaration; and any violation of the provisions hereof shall subject the Owner of such portion of the Property to the causes of action and remedies provided in this Declaration.

3.04 Nonbinding Effect on Public Utilities. These covenants shall have no binding effect upon any public utility, nor impair the rights of any public utility with respect to the placement, construction, maintenance or repair of public utility facilities upon, over or through the Property other than to require the proper location of such public utility facilities within the confines of the roadways and public easements dedicated upon any recorded plat of all or any part of the Property from time to time. In no event shall

the term "Owner" or "Owners" be construed as referring to Southern Indiana Gas and Electric Company, its successors or assigns, or any other public utility nor shall the term "Improvements" refer to any of the public utility facilities placed, constructed, maintained or repaired by any such public utility upon, within or through the Property.

ARTICLE IV

PERMITTED USES AND PERFORMANCE STANDARDS

4.01 Building Sites—Design Guidelines. Building Sites, their improvements and use shall not only conform to this Declaration, but also to the Design Guidelines, as amended from time to time. The Declarant reserves and shall have the continuing right, with the prior written approval of the Architectural Review Committee to amend the Design Guidelines from time to time as it may deem appropriate in its sole and absolute discretion. Nevertheless, unless the amendment is required by an applicable governmental authority, no such amendment shall bind Building Sites (including their Improvements and use) acquired by Owner prior to the date of the amendment.

4.02 Restricted Use. Building Sites shall be utilized only for medical, engineering, research facilities, laboratories, office, restaurant, retail, commercial, transient housing such as a hotel, motel or medical extended stay facility, but not for such a period of time which may create a residency status, and such other uses as the Architectural Review Committee shall permit from time to time in its sole and absolute discretion. No site shall be used for the sale of motor fuel. No building site shall be utilized for the sale of motor fuels to the general public.

4.03 No Noxious Use. No noxious or offensive trades, services or activities shall be done thereon which may be or become unsightly or an annoyance or nuisance to any Owner, tenant or occupant of Building Sites, including anything which results in an emission of fumes, odors, glare, vibration, gases, hazardous waste, pollutants, radiation, dust, liquid waste, smoke or noise.

4.04 Approval of Other Uses. Any use of a Building Site neither specifically permitted nor prohibited hereunder may be authorized by the Declarant, in its sole and absolute discretion, upon written application made by its Owner to Declarant, if:

- (a) the use is permitted by the Building Site's zoning classification and other applicable governmental ordinances and regulations;
- (b) the use is consistent with the intent and purpose hereof;
- (c) the use is compatible with existing uses within the Property and will not adversely affect the Building Sites or neighboring areas;
- (d) the use will not otherwise violate the Covenants, including the prohibitions imposed by Section 4.03; and

- (e) the use is approved by the Declarant in writing in its reasonable discretion exercised in a manner not inconsistent with the other provisions of this Declaration. The application for approval shall be in such form and be accompanied by such data as Declarant may require. Failure to either approve or disapprove the application within thirty (30) days of receipt of the application by the Declarant shall be deemed to be a denial by the Declarant of the application and the proposed use.

4.05 Zoning and Variance Restrictions. No Owner shall be permitted to obtain or make use of a zoning change or reclassification, subdivision waiver or variance, or a special conditional or accessory use or use variance, with respect to a Building site, without the prior written approval Declarant.

4.06 Declarant's Waiver. To encourage good design, innovation and flexibility, Declarant may, with or without request therefor, in writing waive or grant a variance from any of the covenants or Design Guidelines, if, in the sole and absolute judgment of Declarant, such waiver or variance would be consistent with its general intent and purposes as expressed in this Declaration and would not adversely affect the use and value of any other Building Site. Not by way of limiting Declarant's authority, Declaration may waive or grant variances to correct survey errors or unintentional miscalculation of Improvements on a Building Site or where the application of any of the provisions of this Declaration or the Design Guidelines to a particular Building Site or a portion thereof would result in undue hardship. Any Owner desiring a waiver or variance may first submit a written request to Declarant providing all information and material requested by Declarant. If Declarant fails to approve or disapprove in writing any request for a waiver or variance within thirty (30) days after receiving all requested information relating to the waiver or variance, the requested waiver or variance shall be deemed denied. The granting of a variance shall not be deemed to be a precedent for the granting of any other variance request by an Owner.

ARTICLE V

REGULATION OF IMPROVEMENTS

5.01 Improvements, Generally. No improvements shall be constructed, erected, Placed, altered, maintained or permitted on any Building Site until plans and specifications therefor have been approved by the Architectural Review Committee, as more fully set forth in section 6.03 below. If there shall be a conflict between these Covenants, the Design Guidelines and the applicable governmental requirements, the more restrictive shall be deemed controlling.

5.02 Setbacks. No Building shall at any time be erected, placed or permitted on any Building Site within fifty (50) feet from a lot line adjacent to any street or within

twenty-five (25) feet from any other Building site lot line. Any setback variance may be permitted only with the prior written approval of the Architectural Review Committee.

5.03 Sidewalks. At Owner's option and after approval by the Architectural Review Committee, each Building Site may have a four-foot (4') sidewalk (constructed by Owner at its expense in accordance with the Design Guidelines) adjacent to its entire lot line fronting on any street within or servicing the Property.

5.04 Parking. Each Owner shall provide adequate off-street vehicle parking on its Building Site, together with access drives and loading areas as may be required for the business activity to be conducted on or from the Building Site. All parking areas, access drives and loading areas shall be graded, paved and otherwise constructed and maintained in accordance with the Design Guidelines. No vehicle parking shall be permitted on any street or other area of the Property Used in Common, or at any location on a Building site within twenty-five (25) feet of a street boundary. Neither the storage of any tangible property on any street or other area of Property Used In Common, nor the extended parking of vehicles (more than a single uninterrupted period of 24 hours in any calendar month) on any street or other area of Property Used In Common is permitted. The location, number and size of parking spaces within parking areas on a Building Site shall be subject to the approval of the Architectural Review Committee and its procedures set forth in Article VI, but the following minimum parking standards shall be required for each Building Site:

- (a) One parking space for each 250 square feet of gross floor area of a Building used for offices;
- (b) One parking space for each 500 square feet of gross floor area of a Building used for warehouse purposes;
- (c) One parking space for each 500 square feet of gross floor area of a Building used for light industrial purposes; and
- (d) One parking space for each 200 square feet of gross floor area of a Building used for any other permitted purpose. Each Owner, notwithstanding any third party occupancy or possession of a Building Site, shall be responsible for the enforcement of and compliance with these Covenants.

5.05 Loading Areas. Truck loading and receiving areas shall not be permitted in the Front yard of a Building. Proper visual screening must be maintained between any truck loading or receiving area and any street.

5.06 Outside Storage. No materials, supplies, equipment, finished or semi-finished products or articles of any nature shall be displayed, stored or permitted to remain on any Building Site outside its appurtenant Building unless the display or appropriate screening be first approved by ARC. Screening shall be of a permanent

nature and shall be constructed and maintained in accordance with the Design Guidelines. No trash, garbage or waste materials, including but not limited to, scraps, grass, shrub or tree clippings, lumber, metal and plant waste, shall be kept, stored or allowed to accumulate on any portion of the Property except in an ARC approved bin or container within an enclosed structure appropriately screened from view. All trash, garbage and other waste materials shall be regularly removed from each Building Site and the Property. Incineration or burial of trash, garbage or waste materials on the Property is prohibited.

5.07 Landscaping.

(a) All Building Sites shall be landscaped only in accordance with a plan ("Landscape Plan") submitted to and approved in writing by the Architectural Review Committee prior to the commencement of any construction thereon. The Landscape Plan shall include information regarding the type of sodding, the type of seeding, types of trees, hedges and shrubs and information regarding other customary landscape treatment for the entire Building Site, including fences, walls and screening. A Landscape Plan shall include provision for an underground sprinkling system. It shall be the responsibility of each Owner to landscape and maintain the area between the lot lines of its Building Site and the curbs of any adjacent streets. All landscaping shall be undertaken, completed, and maintained in accordance with the approved Landscape Plan without alteration, amendment nor revision unless a revised or amended landscaping plan is submitted and approved by the Architectural Review Committee.

(b) All Building Sites shall have installed metal-halide type roadway lighting which shall be installed and maintained pursuant to the chart set forth in paragraph 5.14. All lighting shall be installed in the manner prescribed and approved by the Architectural Review Committee.

(c) Except for reasons of force majeure, all required or permitted landscaping shall be prosecuted with due diligence and dispatch, completed in accordance with the Landscape Plan, and paid for ("Completed") within sixty (60) days after the substantial completion of the construction of the appurtenant Building. If landscaping is not so Completed, the Declarant may give the Owner notice in writing of Owner's default in respect of landscaping and if the Owner does not thereafter, within a ten (10) day period, proceed to finalize landscaping in accordance with the Landscape Plan with due diligence and dispatch until Completed, Declarant shall have the right, but not the obligation, to complete landscaping in accordance with the Landscape Plan. The cost thereof shall be deemed an assessment enforceable against the Owner and the Building Site in the manner provided for in section 7.03, below.

(d) All Building Sites, including landscaping, shall be maintained in an uniform, high quality, first-class manner. Each Owner shall be responsible for the maintenance of the quality of its Building Site. Landscape maintenance shall include, but not be limited to; the watering; weeding; fertilizing; trimming and replacement of live plantings and replacement of live plantings and the implementation of appropriate procedures to guard

against plant infestation and other hazards. All leaf droppings shall be promptly removed, and other appropriate activities shall be taken to preserve an attractive and pleasing plant environment.

(e) Unimproved Building Sites which are to remain unimproved during any growing season shall be promptly planted and maintained with live ground cover as may be prescribed from time to time by the Architectural Review Committee.

(f) If an Owner defaults in this obligation to maintain its Building Site in accordance with these Covenants, the Declarant may give such Owner notice in writing of Owner's default in respect of such maintenance, and if the Owner does not thereafter, within a ten (10) day period, remedy the default, the Declarant shall have the right but not the obligation to remedy such default, and Declarant's costs incurred, including reasonable attorneys' fees, shall be deemed an assessment enforceable against the defaulting Owner and its Building Site in the manner provided for in Section 7.03 below.

5.08 Maintenance. Each Owner at its sole cost shall keep, service and replace its Building(s), Improvements and appurtenances in a safe, clean, maintained, neat wholesome condition and shall comply in all respect with all governmental statutes, ordinances, regulations, health and police and fire requirements.

5.09 Signs. No signs shall be placed or erected upon or permitted anywhere within the Property without the prior written approval of the Architectural Review Committee. All signs shall be not only subject to regulation by applicable governmental authority, but shall conform to sign standards for the Property as contained in the Design Guidelines and as prescribed from time to time by the Architectural Review Committee.

5.10 Utility Connections. All utility service facilities and connections, including all electrical and telephone connections and installation of wires to Buildings shall be made underground from the nearest available source. No placement may be made above the surface. Transformers, gas and electric meters and any similar or related utility service apparatus may be placed either on or below the surface of the Property, but where placed on the surface shall be adequately screened and fenced by the Owner of the affected Building Site. All such screening and fencing shall be subject to prior written approval of the Architectural Review Committee and the public utilities providing installation of such service. The Declarant reserves and shall have the continuing right to grant easements for the installation, maintenance, repair and replacement of public utilities within the area between the adjacent street(s) and the building set-back line of any Building Site. Nevertheless, the Declarant shall indemnify the Owner against any loss or damage to Improvements resulting from the grant of any such easement.

5.11 Height Restrictions. No Building or appurtenance, including but not limited to, water towers, satellite reception "dishes", standpipes, penthouses, elevators or elevator equipment, stairways, ventilating fans or similar equipment required to operate and maintain any Building, fire or parapet walls, skylights, tanks, cooling or other towers, wireless radio or television masts or flagpoles shall exceed a height of fifty (50) feet

above the finished building grade of a Building Site established by the Architectural Review Committee. The Owner shall see to the permanent screening of such appurtenances at all times. Screening shall be of a permanent nature and shall be constructed and maintained in accordance with the Design Guidelines or as may be prescribed from time to time by the Architectural Review Committee.

5.12 Drainage. On-Site drainage facilities shall be constructed and established at Owner's expense and shall be consistent with the overall drainage control of the Property and consistent with good and prudent overall drainage practices. Each Owner shall utilize such swales, ditches, lakes, retention basin and outlet control structures consistent with the aesthetic designs of the Property and taking into consideration the adjacent Building Sites and subject to approval by the ARC.

5.13 Construction Period Maintenance. During the period of any construction upon a Building Site, the Building Site (and all streets used by construction equipment or trucks) shall be kept in a clean and neat condition by Owner of all trash, rubbish, debris, mud and dirt shall be removed daily. The Owner shall also take all measures necessary or appropriate to control fugitive dust, blowing sand and erosion, whether by wind or water. Damage to roadways, utilities or any of the Property Used in Common caused by construction and construction traffic shall be repaired to the satisfaction of the Declarant. All construction and construction traffic shall be conducted so as not to interfere with free and ready access to existing Buildings and neighboring Building Sites and in accordance with the direction of the Declarant made from time to time.

5.14 Landscaped/Grassed Areas. Landscaping and grass shall be installed and maintained according to the Design Guidelines and overall landscaping plan for the Property prepared or approved by Declarant. These landscaped and grassed areas shall be maintained by the Owner (at its sole expense) who owns the Building Site. For example:

Landscaped and Grassed Areas

Maintenance Responsibility

All Streets, frontage, side and back yards, adjoining drainage and utility easements

Owners

The installation and maintenance of landscaping and landscape materials in these areas shall be accomplished in accordance with the overall landscape plan for the Property prepared by Declarant and amended from time to time by Declarant. All landscaping plans shall include an underground watering system and automatic timer approved by Declarant.

5.15 Maintenance Easement. Declarant hereby reserves to itself perpetual easements for reasonable access over and across all areas of the surface of each Building

Site for the purposes of installation, maintenance and repair of the Property Used in Common. Declarant shall indemnify and hold harmless the Owners and occupants of Building Sites from and damage to property or person resulting from the exercise of such reserved rights. Such access shall be during normal business hours with 24-hours' advance notice to the affected Owner of such access. Access during times of an emergency, as determined by the Declarant, may be at any time and shall to require advance notice.

ARTICLE VI

APPROVAL OF PLANS

6.01 Architectural Review Committee. There is hereby established an Architectural Review Committee ("ARC") whose members shall initially be appointed by the Declarant. ARC shall consist of two representatives appointed by the Declarant. Its members shall serve at the pleasure of the Declarant. The concurrence of the members shall constitute the action of the Architectural Review Committee without the necessity of a formal meeting.

6.02 Subdivision Approval. No subdivision plat or replat of all or any portion of the Property may be submitted to any governmental authority or placed of record unless such plat or replat has been approved in writing by Declarant prior to submission or recording.

6.03 ARC Approval. No Improvements may be constructed, erected, placed, altered, maintained or permitted on any Building Site until plans and specifications with respect thereto in content and form satisfactory to the Architectural Review Committee showing the proposed construction, plot layout and all exterior elevations, sample materials and colors, signs and landscaping, traffic engineering, number and size and layout of parking spaces, grading, easements and utilities, proposed building use and number of employees and such other information as may be requested by ARC have been submitted by the Owner or its authorized representative to and approved in writing by ARC.

6.04 Approval Procedures. Approval by ARC shall be based on, among other things, adequacy of Building Site size, conformity and harmony of external design with the Design Guidelines and neighboring structures, effect of location and use of Improvements on Building Sites, operations and uses; relation of and enhancement to the topography, grade and finished ground elevation of the Building Site to that of neighboring Building Sites; proper facing of main elevation with respect to nearby streets; and conformity of the plans and specifications to the purpose and general plan and intent of these Covenants. Approval by ARC of such plans and specifications shall not constitute a recommendation, certification or other verification by it of the worthiness, suitability of integrity of the plans and specifications.

6.05 Presumed Disapproval. If the Architectural Review Committee fails either to oppose or to disapprove such plans and specification (including resubmission or disapproved plans and specifications which have been revised) within thirty (30) days after the same have been last submitted to it, it shall be conclusively presumed that said plans and specifications have been disapproved. The Architectural Review Committee shall notify the Owner of the date of ARC's receipt of all required plans and specifications, and the aforesaid 30-day period shall commence on the date of such notification. If, however, ARC fails to make such notification, the 30-day period shall be deemed to have commenced on the first day of the first calendar month following the date which the Owner submits the last relevant document,.

6.06 ARC's Nonliability. Neither the Architectural Review Committee nor Declarant nor their respective successors or assigns shall be liable in damages to anyone submitting plans or other data to them for approval, nor to any affected Owner by reason of mistake in judgment, negligence or nonfeasance by ARC or any of its members, arising out of or in connection with the approval or disapproval or failure to approve any plans, specifications, application or request; and each Owner, by its acceptance of title to a Building site, releases the Architectural Review Committee from any liability to it, its successors and assigns, growing out of any loss or damage sustained as the result of the performance or any nonperformance of ARC's duties hereunder, and agrees to indemnify ARC and its members, both jointly and severally, without limit as to time or amount, against any such liability, regardless of by whom asserted, including all costs of defense and attorney's fees.

ARTICLE VII

ENFORCEMENT

7.01 Abatement and Suit. The conditions, covenants, restrictions and reservations herein contained shall run with title to the Property and be binding upon and inure to the benefit of the Declarant, the Owners and their respective successors and assigns. These Covenants may be enforced by Declarant, any Owner of real estate within East Park and/or Declarant's successor in interest. Each Owner, by acquiring an interest in the Property, appoints irrevocably, as a power coupled with an interest, the Declarant as its attorney-in-fact for such purpose; provided, however, that if an Owner notifies Declarant of a claimed violation of these Covenants, and Declarant fails to act within thirty (30) days after receipt of such notification, then and in that event only, an Owner may separately, at its sole cost and expense, bring suit to enforce the violated covenant in like manner as permitted the Declarant. In enforcing these Covenants, the Declarant shall have all remedies available to it or the Owners at law or in equity, and as may be appropriate under the circumstances, have the right to demand injunctive relief and specific performance. In all instances, Declarant shall be entitled to recover all of its costs incurred in maintaining any such action regardless of the outcome thereof, including its attorney's fees.

7.02 Deemed to Constitute a Nuisance. Every violation of these Covenants or any part thereof is hereby declared to be and to constitute a nuisance and every public or private remedy allowed therefor by law or in equity against an Owner, tenant or occupant, including inductive relief, shall be available to Declarant.

7.03 Declarant's Right to Perform. In addition to the Declarant's other rights to remedy defaults of an Owner, if Declarant reasonably determines that an Owner has failed to comply with any of the obligations and responsibilities imposed upon it hereunder, the Declarant shall give such Owner written notice specifying the default and the action required of the Owner to correct the default. If the default is not corrected to Declarant's reasonable satisfaction within a period of thirty (30) days from the date of such notice or, where the condition relating to the default is not susceptible of being corrected within such period of time, the Owner has not, within such thirty (30) day period, commenced correcting the default with due diligence and dispatch, the Declarant shall have the right, but not the obligation, to correct or cause to be corrected the default, and in connection therewith it and its agents and subcontractors shall have the right to enter upon the affected Building Site and any of its Improvements for the performance of all acts deemed necessary by the Declarant for the purpose of correcting or remedying the default.

7.04 Declarant's Performance. If the Declarant elects to correct or remedy any default as permitted it by the provisions of section 7.03 above, it will thereafter submit to the affected Owner a written statement of all costs incurred by the Declarant in connection therewith. The Declarant shall have a lien upon the Building site for the purpose of securing such costs and all of Declarant's other related costs incurred by the Declarant in connection therewith. The Declarant shall have a lien upon the Building Site for the purpose of securing such costs and all of Declarant's other related costs incurred by it in connection with the collection thereof, including costs of litigation and attorney's fees. If Declarant's statement for its actual costs incurred in connection with the remedying of such default is not paid within a period of thirty (30) days from the date of the statement, Declarant may collect the same and have all the rights in respect thereof as provided in section 13.07 below.

7.05 Enforcement. The failure of the Declarant to enforce any of these Covenants shall in no event be deemed to be a waiver of the right to do so for the current or subsequent violations or of the right to enforce any of the other Covenants, nor shall the Declarant incur any liability to anyone whomsoever for any failure from time to time to enforce the Covenants.

7.06 Certification of Compliance. Upon payment of a reasonable fee fixed from time to time by Declarant, and upon written request of any Owner, Mortgagee, prospective Owner, tenant or prospective tenant of a Building Site, Declarant shall within twenty (20) days of such request issue a certificate in recordable form setting forth (I) the amounts of unpaid assessments, if any; (II) whether or not the provisions of Article VIII hereof relating to right of repurchase have been exercised; and (III) setting forth generally whether or not the Owner is in violation of any of the Covenants. Said written statement

shall be conclusive upon Declarant in favor of all persons with either actual or constructive notice thereof who rely thereon in good faith. In the event Declarant fails to furnish such statement within said period of twenty (20) days, it may be conclusively presumed by the person requesting the certificate that there are no unpaid assessments relating to the Building Site as to which the request was made, that the Owner has fully complied with the terms and provisions of Article VIII hereof, and that said Building Site is in conformance with the terms and conditions of these Covenants.

ARTICLE VIII

RIGHT OF REPURCHASE

8.01 Repurchase Procedures. Declarant shall have the right and option to repurchase any Building Site if the construction of a Building has not been commenced thereon within a period ("Repurchase Option Period") of twenty-four (24) full calendar months (or such greater period as the Declarant may agree upon) from the date of its purchase from the Declarant. Such option may be exercised by the Declarant by the giving of written notice of such exercise to the Owner of the Building Site at any time within a period of six (6) calendar months following the expiration of the Repurchase Option Period. If, however, the Declarant fails to give timely written notice of the exercise of its option to repurchase the Building Site, the option shall terminate, and the Declarant shall be deemed to have waived its right to repurchase. If the Declarant exercises such option, the Building Site shall be conveyed to Declarant free and clear of any and all liens and encumbrances other than those which may have encumbered the Building Site at the time of Declarant's conveyance to the Owner. The purchase price to be paid the Owner for the Building Site shall be the same price to be paid by the Owner to the Declarant at the time such Owner initially acquired the Building Site. Nevertheless, the Declarant may set off against the purchase price all amounts necessary to release such lien or other encumbrance against the Building Site attaching at or subsequent to Owner's initial acquisition thereof, and any other costs required to insure that title to the Building Site is conveyed in accordance with the intent hereof. In addition to any of Declarant's other rights available to it either at law or in equity, it may, at its election, file suit for a specific performance demanding that the court enforce its right to purchase the Building Site, and shall in all events be entitled to its attorney's fees and related costs whenever it is required to enforce the rights available to it under this Article VIII. Notwithstanding anything herein contained, construction shall be deemed to have been commenced when the Owner has (I) obtained ARC's approval to its plans and specifications as required in Article V above; (II) obtained all necessary building permits from the appropriate governmental authorities authorizing the construction approved by ARC; and (III) entered into a contract for the construction of the Improvements. Nevertheless, construction shall be prosecuted diligently and with due dispatch except for reasons of force majeure, and any cessation of construction activity for more than a continuous period of thirty (30) days, subsequent to the expiration of the aforesaid twenty-four (24) calendar month period following purchase, shall immediately

result in Declarant having the option to repurchase the Building Site for a period of six (6) months in like manner as though construction had not been timely commenced.

ARTICLE IX

TERM, TERMINATION, MODIFICATION AND ASSIGNMENTS

9.01 Term. This Declaration, and every provision hereof and every covenant, condition, restriction and reservation contained herein shall continue in full force and effect for a period of fifty (50) years from the date hereof, and shall thereafter be renewed automatically from year to year unless and until terminated as provided in section 9.02 below.

9.02 Termination and Modification. This Declaration or any provision hereof or any covenant, condition, restriction or reservation contained herein, may be terminated, extended, modified or amended, as to the whole of the property or any portion thereof, with the written consent of the Owners of seventy-five percent (75%) in area of the Property (other than Property Used in Common); provided, however, that during the initial fifty (50) year term of these Covenants, no such termination, extension, modification or amendment shall be effective without also the written approval of Declarant. Such termination, extension, modification or amendment shall be immediately effective upon recording an appropriate written instrument in recordable form, executed by the requisite Owners (and by Declarant if required) in the office of the Recorder of Vanderburgh County, Indiana.

9.03 Assignments of Declarant's Right and Duties. Any and all, or any portion and part, of the rights, powers and reservations of Declarant herein contained may be assigned by Declarant to any one or more persons, corporations or associations on condition that the assignee(s) undertake in writing to assume all of the relevant duties of Declarant hereunder. To the extent of such assignment, the assignee shall have the same rights and power and be subject to the same obligations and duties as are incumbent on Declarant, and to the extent of those duties assumed by the assignee, Declarant shall be relieved from all further responsibility. If at any time the Declarant, as Limited Liability Corporation, is liquidated or dissolved or for any reason fails to perform its duties hereunder, within thirty (30) days after the effective date of such liquidation or dissolution then the Owners of seventy-five percent (75%) in area of the Building Site shall appoint a successor to the Declarant by a written instrument in recordable form filed for record in the office of the Recorder of Vanderburgh County, Indiana.

9.04 Mortgagee's Approval. The written approval of all Mortgagees must be obtained to all amendments, modifications or terminations which would (I) affect any of their rights under their Mortgages or hereunder or (II) change the manner of determining assessments.

ARTICLE X

INSURANCE

10.01 **Owner's Insurance.** Each Owner shall obtain and continue in effect all risk insurance, including fire, extended coverage, malicious mischief and vandalism insurance in amounts equal to the replacement value of its Buildings. Each Owner shall also obtain and continue in effect public liability insurance to cover such Owner's individual liability for claims for personal injury (including death) and property damage arising out of a single occurrence occurring upon such Owner's Building Site or elsewhere upon the Property, in any manner arising out of use of such Owner's Building Site. Such liability insurance coverage shall initially be in an amount not less than a \$2 million combined single limit, but may be increased or changed from time to time by the Declarant in its discretion. All Owners agree to utilize reasonable efforts to obtain waiver of subrogation as to claims against the Declarant, the Architectural Review Committee, or any of their respective successors and assign and all other Owners, their tenants and employees. Each Owner shall name Declarant as an additional insured on policies of insurance carried by such Owner and shall furnish the Declarant and keep it furnished with current certificates of such insurance. All such policies of insurance shall contain a provision that they shall not be canceled, terminated, or transferred to a new party nor expire by their terms, without thirty (30) days' prior written notice to Declarant. If any loss intended to be covered by insurance carried by the Declarant shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by it to the Declarant, to the extent of such reduction, for application to the same purposes as the reduced proceeds were to be applied. The rights of the Declarant to the proceeds of any insurance carried by an Owner shall be subordinate to the rights of any Mortgagee to such insurance proceeds.

ARTICLE XI

GENERAL PURPOSES OF DECLARANT AND ITS SUCCESSORS

11.01 **General Purposes and Powers.** The Declarant is charged with preservation, maintenance, repair and restoration of the Property Used in Common, and all appurtenant Improvements. Head may make such regular and special assessments as may be elsewhere provided for in this Declaration.

11.02 **Declarant Indemnity.** Each Owner is required hereby to indemnify and hold the Declarant, its agents, shareholders, employees and affiliates harmless, without limit as to time or amount, from all losses, claims, damages or liabilities in any way arising out of any activity conducted on or from its Building Site, including all cost of defense and attorney's fees.

11.03 Head as Attorney-in-Fact for Owners. Head is hereby, as a power coupled with interest, irrevocably appointed by each of the Owners to manage, control and deal with their common interests in the Property, whether joint or several, and where applicable with the Property Used in Common, in such manner and to such extent as may permit Head to more fully perform and discharge its powers, duties and responsibilities hereunder. Each Owner's acceptance of title to a Building Site, or any portion thereof, shall be deemed to be its full designation and appointment as herein provided.

11.04 Head as Attorney-in-Fact for Declarant. Head is hereby, as a power coupled with an interest, irrevocably appointed by the Declarant, and each joint venture partner therein, to manage, control and deal with their common interests in the Property, whether joint or several, and where applicable with the Property Used in Common, in such manner and to such extent as may permit Head to more fully perform and discharge the powers, duties and responsibilities hereunder on behalf of the Declarant.

ARTICLE XII

ASSESSMENTS

12.01 Assessments for Common Expense. All Owners shall be obligated to pay the assessments imposed hereunder by Declarant to pay the Common Expenses. The Owners shall not be assessed for the costs of initial construction of the Improvements to the Property Used in Common or repairing defects in such initial construction, which costs shall be borne by Declarant. Subject to the provisions of this Declaration, Declarant shall have the power and authority to determine all matters in connection with assessments, including power and authority to determine where, when and how assessments are paid to Declarant.

12.02 Assessment Proration. All assessments against the Owners made by Declarant for payment of the Common Expenses shall be prorated among the Owners based upon the Owners's Building Site acreage as a percentage of the total acres to be assessed ("Assessment Sum"). The Assessment Sum shall be determined by taking the total number of acres of all Building Sites of all Owners at the date of the assessment and adding said amount to Twenty-five (25%) of the Building Site acreage still owned by Declarant ("Declarant's Assessment Factor"). Each Owner's resulting obligation for the assessment shall be an amount equal to the product obtained by multiplying the total of the Common Expenses by a fraction, the numerator of which is equal to the Owner's Building Site acreage and the denominator of which is equal to the Assessment Sum. All acreage computations shall be made to the nearest one hundredth (100th) of an acre. As an example only and as an illustration of the foregoing and not in amplification thereof: If the total acreage is 50 acres and 6 acres have been purchased by Owners and the Declarant still owns 44 acres, then the total acreage to be assessed is 6 acres plus 25% of what the Declarant still owns or 11 acres. Therefore, the Assessment Sum, in such example, is 17 acres and the total of the Common Expenses would be divided by 17 acres to equal a quotient that is the per acre assessment to the Owners.

12.03 Owner's Obligation for Payment. Each Owner's share of Common Expenses shall from date of assessment be the personal and individual debt of such Owner. If there are multiple Owners of a Building Site, each is jointly and severally liable. Suit to recover a money judgment for unpaid assessments and all costs of suit (including attorney's fees) shall be maintainable by the Declarant and/or its successors and assigns without foreclosing or waiving any lien securing the same. No Owner may exempt itself from liability for assessments by waiver of the use or enjoyment of any of the Property Used in Common or by abandonment of its Building Site.

12.04 Lien for Assessments. Declarant shall diligently attempt to collect all assessments and shall have a lien against each Building Site to secure payment by its Owner of any assessment, charge, fine, penalty or other amount due and owing hereunder, plus interest at the rate of eighteen percent (18%) per annum from the due date of payment and all costs incident to collection, including attorney's fees and other costs of litigation. Whenever any amount due Declarant remains unpaid for a period of thirty (30) days from due date, the Declarant may at any time thereafter file a statement of its lien claim in the office of the Recorder of Vanderburgh County, Indiana, substantially in the form called for and with all rights and remedies provided by the mechanic's lien laws of the State of Indiana.

Nevertheless, any such lien shall be deemed to be subordinate to all recorded liens against or encumbrances of the Building Site of record as of the date of the filing of the lien claim. The Lien may thereafter be foreclosed, and Declarant shall have the same rights and remedies as provided for by the mechanic's lien laws of the State of Indiana.

ARTICLE XIII

PROTECTION OF MORTGAGES AND DECLARANT

13.01 Effect on Mortgage Lien and Ground Lease. No breach of these Covenants nor the enforcement of any lien provided contained in this Declaration, shall affect, impair, defeat or render invalid (I) the lien or charge of any Mortgage made in good faith and for value encumbering any Building Site' or (II) any ground lease between Declarant and an Owner. All of the Covenants and lien provisions hereof shall be binding upon and effective against any Owner whose title is derived pursuant to judicial foreclosure or by power of sale provided in such Mortgage or by deed (or assignment) in lieu of foreclosure.

13.02 Notice of Default. Each Mortgagee, regardless of its interest in such Building Site, upon filing a written request for such notification, is entitled to receive written notification from Declarant of any uncured default by the Owner in the performance of its obligations under this Declaration.

13.03 Curing Defaults. Except as otherwise provided in section 14.06 below, a Mortgagee or its immediate transferee who acquires title to a Building Site through

judicial foreclosure or a deed in lieu of foreclosure, shall not be obligated to cure any breach of the provisions of this Declaration which occurred prior to the date such Mortgage or transferee acquired such title if in the Board's good faith determination (I) such breach is incurable or of a type which is not practical or feasible to cure; such Mortgagee did not have notice of such breach at the time of its Mortgage.

13.04 Relationship of Mortgage and Assessment Liens. Any lien provided for herein for the purpose of securing the payment of Declarant of any assessment or other sums shall be subordinate to (I) the lien of any Mortgage recorded in the mortgage records of the Recorder of Vanderburgh County, Indiana, prior to recordation of Declarant's lien claim; and (II) any ground lease between Declarant and Owner

ARTICLE XIV

MISCELLANEOUS

14.01 Owner's Liability Subsequent to Sale. Upon sale of a Building Site, its Owner shall have no further liability for assessments or other obligations hereunder becoming due subsequent to recordation of the transfer in the office of the Recorder of Vanderburgh County, Indiana; provided, however, that nothing herein shall be construed to relieve an Owner from any preexisting liquidated liabilities or obligations. Furthermore, no such sale shall operate to enlarge or extend or modify any of the construction time constraints imposed in Section 8.01, above.

14.02 Benefits and Burdens. The terms and provisions contained in this Declaration shall bind and inure to the benefit of the Declarant, the Owners and their respective heirs, successors, personal representatives and assigns.

14.03 Notice. Any notices required or permitted herein shall be in writing and mailed, postage prepaid by registered or certified mail, return receipt requested, and shall be directed as follows: If intended for an Owner (I) to the address of the Building Site if improved; or (II) if the Building Site is not improved, to the Owner's last address known to the Declarant. If notice is to be given Declarant, it shall be given to Declarant or its successors or assigns.

14.04 Singular and Plural. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

14.05 Severability. All the terms, conditions, covenants, restrictions and reservations contained in this Declaration shall be construed together, but if it shall at any time be held that any one of said terms, conditions, covenants, restrictions and reservations, or any part thereof, is invalid, or for any reason becomes unenforceable, no other terms, conditions, covenant, restrictions and reservations of any part thereof shall be thereby affected or impaired, but shall continue in full force and effect.

14.06 No Waiver. No waiver of, or failure to enforce, any of the conditions, covenants, restrictions or reservations contained within this Declaration shall be deemed to constitute a waiver of any right to enforce the same or to her conditions, covenants, restrictions or reservations thereafter.

IN WITNESS WHEREOF, the Declarant has executed this Declaratory the day and year first above written.

Head Investments, LLC
A Limit Liability Corporation

By Frederick A. Heseman
Frederick Heseman, Manager

By Cynthia A. Heseman
Cynthia Heseman, Member

By Judith Heseman
Judith Heseman, Member

By Susan Bell
Susan Bell, Member

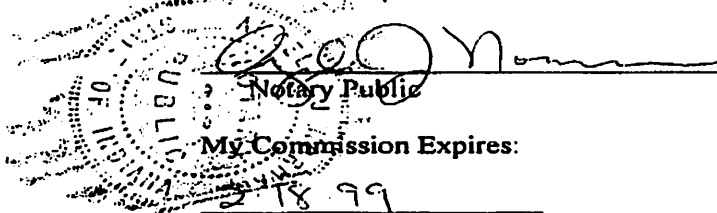
By Kaye Mortensen 1/11/99
Kaye Mortensen, Member

STATE OF INDIANA)
) SS:
COUNTY OF VANDERBURGH)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared before be all persons on previous page, personally known to me to be the member, a general partner, and acknowledged has execution of the above and foregoing Declaration of Protective Covenants as his voluntary act and deed.

WITNESS my hand and Notarial seal this 13th day of

January, 1999.



Printed Name

Angela J. Norman

My County of Residence:

Vanderburgh

THIS INSTRUMENT PREPARED BY: FREDERICK HESEMAN

EXHIBIT A

The following described real estate in Vanderburgh County, in the State of Indiana, to wit:

A part of the East Half of the Northeast Quarter of Section 24, Township 6 South Range 10 West, more particularly described as follows:

Beginning at the northwest corner of the East Half of the Northeast Quarter of Section 24, Township 6 South, Range 10 West; thence South 89 degrees 43 minutes 29 seconds East 921.79 feet along the north line of said half quarter section to a point South 89 degrees 43 minutes 29 seconds West 398.50 feet from the northeast corner of said half quarter section; thence south 00 degrees 26 minutes 29 seconds West 124.70 feet along the west line of the property conveyed to Dean R. and Cheryl L. Brinker in Deed Drawer 9, Card 2120; thence South 89 degrees 43 minutes 29 seconds East 180.50 feet along the south line of said Brinker property to a point also being the northwest corner of that parcel conveyed to Ronnie Edward & Cherrel H. Underwood, as recorded in Vol. 536, page 270; thence South 00 degrees 26 minutes 29 seconds West 371.77 along the west line of said Underwood parcel and also along the west line of the property conveyed to David W. and Donna S. Hirsch, as recorded in Vol. 53, Pages 180 and 181; thence South 89 degrees 33 minutes 31 seconds East along the south line of said Hirsch property 218.00 feet to a point on the east line of said half quarter section 497.10 feet south 00 degrees 26 minutes 29 seconds West of the northeast corner of said half quarter section; thence South 00 degrees 26 minutes 29 seconds West along the east line of said half quarter section 306.22 feet to the north line of Waterford Park Subdivision, as recorded in Plat Book P, page 12; thence North 89 degrees 48 minutes 37 seconds West 1329.10 feet along said north line to a point at the northwest corner of said subdivision where it intersects the west line of the East Half of the Northeast Quarter; thence North 01 degree 04 minutes 02 seconds East along said west line 805.38 feet to the point of beginning, containing 21.457 acres (934,651 square feet).

DESIGN GUIDELINES

A. INTENT

The purpose of these Guidelines is to establish the quality standards for East Park, a multi-use development located on North Burkhardt Road in Evansville, Indiana. Illustration 1. shows the location of East Park. These guidelines are provided per certain covenants recorded upon East Park. The recorded Covenants shall prevail in any conflict between these Guidelines and the recorded Covenants. The terms used in these Guidelines shall have the definitions set forth in the Covenants. These Guidelines may be amended or changed per the A.R.C. Review Committee. Per the recorded Covenants, there is a corporation known as Head Investments, LLC whose function shall be to administer the operations of East Park.

B. REVIEW PROCESS

Introduction

Signed plan approval by Architectural Review Committee, hereinafter referred to as "A.R.C.", for East Park, is required prior to the undertaking of any site improvements, construction or to installation, including, but not limited to clearing, grading, paving, signs, structures, landscaping, building additions or alterations and subdivisions. A.R.C. is located at Head Investments, LLC, Joseph A. Ream, Developer, 10287 Wexford Court, Newburgh, Indiana 47630; Telephone: (812) 853-9453. Following A.R.C. review, plan approval should also be coordinated with required public agencies.

1. **One-Step Process:** Plans must be submitted to A.R.C. at the following stages of planning and design:
 - a. Schematic/Preliminary
 - b. Construction Documents

At each stage the following elements will be considered:

- (1) Site Plan
- (2) Building Design
- (3) Landscaping
- (4) Signage

2. **Plan Submittal Checklist:** In order to simplify and expedite the approval process, preliminary three dimensional renderings, plans and specifications are required. One (1) set of blueprints will be submitted for each review. The final plans and specifications will be submitted at least 30 days prior to submission for local approvals required by the City of Evansville and Vanderburgh County. This will allow for a 30 day review and approval (or approval) process. If A.R.C. does not approve the final plans and specifications within the 30 days time period, they are to be deemed disapproved.

a. **Preliminary Approval:** Preliminary review will be concerned with building material, colors, finishes and A.R.C. treatment of roof lines, site and landscape design. At the initial or schematic/preliminary review, the following material will be submitted:

(1) Site Plan

- (a) Site location
- (b) Site survey
- (c) Building location, orientation, overall dimensions and height
- (d) Setbacks
- (e) Site Circulation
- (f) Landscape areas
- (g) Site lighting plan
- (h) Connections to existing utility lines
- (i) Proposed easements
- (j) Site drainage
- (k) Grades, existing and proposed
- (l) Projected number of employees
- (m) Amount and location of employee and guest parking
- (n) Truck loading service areas
- (o) Street Lighting

(2) Building Design

- (a) Floor plans
- (b) Elevators, in color or with color samples
- (c) Perspective rendering (optional)
- (d) Building materials

(3) Landscape Design

- (a) Quality
- (b) Location
- (c) Common and botanical name
- (d) Caliper of proposed trees
- (e) Height of ornamental trees
- (f) Evergreen trees
- (g) Size and spacing of shrubs
- (h) Ground cover
- (i) Irrigation Layout

(4) Signage

b. **Final Construction Documents Approval:** At the second review, engineering,

architectural, site development and landscape working drawings and specifications will be submitted for review. In addition, samples of all exterior building materials will be submitted for review and approval. A sample panel of exterior material may be required.

3. **Basis for Approval:** Review and approval will be based on standard set forth in these design Guidelines. Plans will be reviewed not only for the quality of the specific proposal, but also for the development's effect and impact on its neighbors and on the general surroundings. Evaluation will be made of spatial relationships among buildings and between buildings and other surrounding elements.

With the intent of minimizing detrimental visual impact, careful concern will be given to location and treatment of utility and service facilities.

Site ingress and egress may be limited to permit efficient flow of traffic on abutting streets.

4. **Interpretation and Waiver:** A.R.C.'s interest in reviewing the above items is to assure that quality compatible development is consistently achieved. When questions of judgment or interpretation arise, the decision of A.R.C. is final. All issues not covered specifically by these Design Guidelines will be resolved by A.R.C. on a case-by-case basis in the sole discretion of A.R.C.

In order to meet special unforeseen situations, it may be desirable from time to time for A.R.C. to allow variances of certain requirements. Any variance granted is made with the welfare of the overall development in mind and is not precedent setting.

C. PUBLIC APPROVALS

All pertinent requirements of public agencies must be adhered to in the development of this property. All plans must be approved by the Area Plan Commission and any other appropriate agency having jurisdiction. Prior to development, each purchaser must verify the current code requirements as they may be amended. Although based on local zoning and subdivision regulations, East Park's Design Guidelines may be more restrictive in land use, site development standards, landscape requirements, or in other matters. In every case in which these guidelines are at variance with public agency requirements, the more restrictive regulations will govern.

D. LAND USE RESTRICTIONS

Permitted uses are as established by the Protective Covenants, as recorded and the appropriate zoning authority.

E. SITE DEVELOPMENT STANDARDS

1. **Building Height:** As permitted per zoning ordinance, but restricted to sections Specified in 4.4. and 5.11 of the Declaration of Protective Covenants.

2. **Required Plot Area:** The minimum lot area is .60 acres; however, the project is designed to accommodate parcels of more than .60 acres.

3. **Lot Coverage:** Each lot must provide yard as specified herein and parking must respect setbacks and other criteria set forth in Illustrations 2 and 3.

4. **Summary Requirements:**

(a) **Build Setbacks**

Front yard Setback with Road Frontage - 50'-0"
Side Yard Setback with Road Frontage - 25'-0"
Rear & Side Yard Setback without Road Frontage - 25'-0" min.

(b) **Landscape Areas:**

Side & Rear Yards (without parking) - 5'-0" min.
Side & Rear Yards (with parking) - 10'-0" min.
Area Between Front Building Face & Parking - 10'-0" min.
Area Between Side Building Face & Parking - 5'-0" min.
Street Frontage - 25'-0"

(c) **Parking:**

Parking Quantities shall meet local requirements for intended use as well as recorded covenants.

5. **Vehicular and Pedestrian Circulation:** Vehicular and pedestrian circulation within all parcels will be designed to function in a safe and efficient manner.

The number of vehicular access points per site will be based upon size of development and its relationship to public health, safety, and welfare. In all instances, access points will be kept to a minimum. Curb cuts along the boundary of lots will be restricted to the minimum requirements of the appropriate local authority. Joint cuts may be developed to serve abutting parcels. In addition, multiple entry drives will not be located closer than 150 feet and will be aligned directly across and sharing the street right of way. All distances will be measured from centerline to centerline. All access and entrances must be approved by Area Planning Commission.

6. **Curbs:** It will be the responsibility of the purchaser to remove the curbs for their entrance drives. The purchaser will use the same style of curbs throughout the project. Proposed entrance drives will match existing road pavement grades and adequate drainage will

be provided by the purchaser in this area. Only the approved slabs will be allowed to drain onto the streets. All other storm runoff from the parcel must be handled internally.

7. Parking: The overall parking layout will be designed to function in a safe and efficient manner in accordance with the requirements of the local ordinances.

The minimum allowable stall dimensions will be peer appropriate local authority. All parking lot striping and other markings will be white. Landscaped islands will be 10 feet wide and provided every 15 parking spaces in an alternating pattern. Exterior, or perimeter, parking islands may be provided every 15 parking spaces (See Illustration 5).

All separator island parking areas, drives and edges of all paving must be curbed.

Parking spaces for the physically handicapped will be provided in proximity to building entrances.

The parking requirements and related curb cuts and ramps for the physically handicapped will comply with the Indiana Handicapped Accessibility Code and appropriate local authority (See Illustration 6).

8. Paving: All driveways, service and parking areas will be constructed with bituminous paving or concrete. Service areas subject to abuse, such as loading a dumpster service areas, will be constructed with concrete paving. The above mentioned construction methods will be reviewed approved (or disapproved) by A.R.C. Paved walks or pedestrian areas near or adjacent to buildings will be of appropriate materials other than bituminous paving.

9. Loading, Service and Outside Storage:

- a. **Off-Street:** Each site development will provide sufficient on-site loading facilities to accommodate site activities. All loading movements, including turn-around; will be made off of the right-of-way.
- b. **Visibility:** Loading docks will be located and screened as to minimize the visibility from any street or building entrance. Dumpsters, trash receptacles, compactors, condensers and like items must be also screened.
- c. **Screening:** Screening of service area dumpster and like items may consist of an approved combination of A.R.C. elements and materials, mounds and landscaping.
- d. **Outside Storage:** No materials, supplies, or equipment will be permitted to remain outside any building unless an adequate screen is provided.
- e. **Rubbish and Garbage:** Rubbish and garbage facilities will be screened so as not to be visible from any streets, adjacent lot, or building entrance.

10. Site Grading:

- a. **Site grading will be planned to address the following objectives:**
 - (1) Satisfactory drainage of open areas.
 - (2) Minimum soil erosion and siltation.
- b. **The following measures are recommended to reduce soil erosion and sediment deposits in downstream areas:**
 - (1) Retain as much vegetation ground cover as possible.
 - (2) Install temporary mulching on areas to be left bare of plant material for an extended period of time.
 - (3) Provide de-silting basins to remove sediment from runoff water during development.
 - (4) Straw bales and other erosion control measures must be removed within 12 months of placement.
 - (5) Install permanent landscaping as soon as practical, per Covenants.

11. Drainage and Water Retention Lakes: Development of East Park land is intended to achieve a high degree of water management through the use of internal storm sewers and water retention areas. A drainage plan must be submitted for each site as part of the Plan Review Process.

The drainage system plan was designed to conform with the local requirements.

There shall be no fill placed in any existing drainage easements. Any paved inverts disturbed during construction of the Building Site shall be repaired by purchaser. Any work performed within the designated drainage easements must be approved in advance by A.R.C. Any areas disturbed during construction shall be put back to its original condition by purchaser. Repairs must be inspected by A.R.C.

It is the responsibility of the Owner of the Building Site to provide drainage retention.

12. Site Furnishing Requirements: It is the intent that site furnishings will be coordinated through East Park. This section establishes the standards for the site furnishings which will include, but not limited to, benches, trash receptacles, planters, drinking fountains and picnic tables.

a. **Street Furnishings Standards and Selections:** The following are the approved styles and models for street furnishings and site furnishings to be used in East Park:

A.R.C. Precast, Inc.
2021 Longwood Avenue
P.O. Box 23110
Columbus, Ohio 43223
Telephone: (614) 875-0963

Neenah Foundry Company
5950 West 82nd Street
Indianapolis, IN 46278
Telephone: (800) 382-1359
(317) 875-7245

Fax: (614) 875-4195 Fax: (317) 875-8637

- (1) Benches: A.R.C. Precast, Inc.
Models: BE-8416, BE-7216, BE-6016, BE-4816 Smooth Finish
- (2) Tables: A.R.C. Precast, Inc.
Models: TA-8433, TA-7233, TA-6033, TA-4833 Smooth Finish
- (3) Trash Receptacles: A.R.C. Precast, Inc.
Models: TR-27-RC, TR-22-S, TR-22-RC Smooth Finish
- (4) Tree Grates: A.R.C. Precast, Inc.
TG48S, Tg725 Aggregate

Tree Grates: Neenah
R861 1 or approved equivalent

Flagpoles are allowed in East Park, and A.R.C. Retains the right to approve location of said furnishings.

b. **Maintenance:** All of the above street or site furnishings will be maintained in a safe and attractive manner so as to preserve the aesthetic qualities established for East Park. In the event street or site furnishings are not maintained and become in need of repair, a notice of said disrepair will be delivered to the responsible owner. If repair is not initiated within seven (7) days, A.R.C. will undertake repairs at owner's expense.

F. BUILDING DESIGN

Introduction

Building design will be of a unified and integrated character that fits the preferred image of this quality business and retail center. Compliance with this image will be reviewed and approved by A.R.C.

1. Design

a. Ancillary building areas, i.e., office areas, storage buildings, equipment rooms And so on will be integrated with the overall building character. There will be no noticeable attachments or appendages to the primary buildings, with the exception of screen walls for loading docks, dumpsters or ground mounted mechanical equipment.

b. Generally, there shall be no out-buildings, with the exception of those requested out-buildings, with the exception of those requested and approved.

c. All screen walls for such items as ground mounted mechanical equipment,

Loading docks, dumpsters, etc., will be attached to the building and integrated with the overall building character. Preferably, these will be constructed of same materials as used on the primary structure.

d. **Building-mounted signage.** Permanent building-mounted signage is subject to the review and written approval of A.R.C. All signage shall conform to local government agencies. Temporally signage, "supergraphics", and so on are prohibited on the building. Reference Signage and Graphic Requirements.

e. **Building mounted site lighting and loading dock lighting** will be shielded to minimize glare and spillage.

1. Materials

a. **Materials for building facades** will be limited in number to three, one of which Will be the predominant material.

b. **Preferred major exterior materials** include brick, ceramic tile, and natural stone masonry; A.R.C. stone such as granite, marble or slate; and A.R.C. precast panels of marble or granite aggregate. Exterior stucco systems such as DRY-VIT or STO may be used as trim and accent features in walls which are predominantly of brick masonry.

c. **Glass** will not be the predominant exterior wall material on any given structure; however, liberal use of glass is encouraged.

d. **Glass** may be tinted glass (green, bronze, or gray) or reflective glass (green, blue, or silver) with an outdoor reflectance of no more than 20%.

e. **Exterior building (siding) materials** will not include painted or stained wood, preformed steel, aluminum or vinyl siding, metal fascia, simulated materials such as plastic or metal siding, roofing riles or adhesive applied brick. Preformed steel and aluminum panel systems shall be permitted upon individual product basis by A.R.C. Example exterior metal wall panel systems are:

1. Consolidated Aluminum Company: Alucobond and Steel-O-Bond.
2. H. H. Robertson: Formawall 1000 and 2000.
3. Kawneer Panel Products.
4. Smith Construction Products: Formwall and Custom Formwall.
5. Alliance Wall: Semi Gloss Porcelain and New Matte Insulated Steel Panels.

f. **All materials used** will reflect a high degree of quality, durability and craftsmanship.

g. Building coloration will consist predominantly of a neutral overall color that compliments the building's surroundings. Accent colors are encouraged and will be reviewed by A.R.C. along with the overall building color scheme.

1. Roof and Roof Appurtenances

a. Sloping roofs will be screened by flat parapets and sloped to interior drains. Exterior gutters and downspouts will not be permitted except on pitched roofs. Pitched roofs with a minimum slope of 8 in 12 will be permitted.

b. Permissible materials for pitched roofs will be limited to standing seam or flat seam configuration metals, slate or tile. Non-weathering metals (i.e., galvanized steel) will be painted with finish approved A.R.C.

c. All roof appurtenances projecting above the roof, such as exhaust fans, heating and air conditioning units, condensers, electrical equipment, plumbing vents and stacks, will be screened from view. Such screening may be achieved by extending exterior walls above the roof to form a parapet or through the use of other opaque walls to be constructed of materials compatible in texture, color and quality with exterior walls of the building.

E. UTILITY AND SERVICE REQUIREMENTS

Introduction

This section will establish the standards pertaining to utilities and services. A Utility Plan, including connections to existing utility lines and proposed easements, must be submitted for each site as part of the Plan Review Process.

1. **Location of Lines and Connections:** Excepting overhead feeder lines and other lines which A.R.C. may approve for service, all utility lines will be located underground within a systematic manner. It is the design intent to have one primary utility corridor from which secondary utility corridors are directed to each individual parcel as necessary. In order to minimize visual disruption brought about by repair or alteration, all secondary utility lines will be located within side yards; under no circumstances, will a visible utility line be located within a front yard. All transformers, air conditioning equipment, meters and other necessary equipment will be screened from public view. Utility easements are shown in Illustration 8.

2. **Security:** Utility lines, connections and regulated functions will be designed and constructed with regard to public safety, health, and welfare.

3. **Maintenance:** All of the above utility and service requirements will be maintained in a safe and attractive condition so as to preserve the aesthetic qualities established for East Park. In the event utility services are not maintained and become

in need of repair, a notice of disrepair will be delivered to the responsible owner. If repair is not initiated within seven (7) days, East Park will undertake repairs at the owner's expense.

H. SIGNAGE AND GRAPHIC REQUIREMENTS

Introduction

This section will establish the guidelines for the design of signage and graphics within East Park. In general, signage and graphics will be designed for a sense of continuity as an additional unifying element within the overall business center development.

Only those signs as addressed within this section will be allowed in East Park unless otherwise approved. No sign will be erected until location, plans, elevations, sections, details and specifications have been reviewed and approved.

1. **Overall Design:**
 - a. **Concept:** All signs in East Park will be one family or type.
 - b. **Form:** As appropriate in Illustrations 9, 11, 12.
 - c. **Lighting:** Lit where applicable.
2. **Location and Character:** A hierarchy of signs will be established as follows:
 - a. **Special Entry Signs:** These signs will be installed by East Park and maintained as part of the common area of East Park
 - b. **Building Identification Sign:** Each building, assuming one building per parcel, will have 1 identification sign (See Illustration 9). If the building houses several businesses, a building identification sign with additional identification for each business will be considered on an individual basis by submission to East Park

It is recognized that many businesses have their corporate identities expressed in signage and graphics; information allowed on the identification sign will be the name of the business and the identifying corporate symbol and colors. In no case will the corporate identity or logo occupy more than 25% of the total area of the sign wall.

- c. **Temporary Signs and Locations:** Each parcel may have 2 signs designated for leasing or project construction identification, as applicable (See Illustration 10).

- d. **Other Signs:** Traffic signs such as Stop, One Way, Speed Limit and Incidental signs will be incorporated and designed as a part of the overall signage concept (See Illustration 11 and 12).

All signs will conform to the appropriate local signage authority requirement.

3. **Manufacturing and Installation Standards:** All signs will be manufactured and installed by competent professions. Graphics will be accomplished in a professional manner; no hand lettering will be permitted. Under no circumstances will conduits, ballasts, transformers, manufacturer labels and the like be located within public view. Upon completion of installation, the affected construction site will be restored to a finish condition.

4. **Maintenance:** All of the above signage requirements will be maintained in a safe and attractive condition so as to preserve the aesthetic qualities established for East Park in the event signage is not maintained and becomes in need of repair, a notice of said disrepair will be delivered to the responsible owner. If repair is not initiated within seven (7) days, East Park will undertake repair at the owner's expense.

I. **SITE LIGHTING REQUIREMENTS**

Introduction

The following section will provide guidelines in reference to site lighting. The overall use of site lighting will be designed as a unifying and aesthetic element in terms of lighting fixture for each site as part of the Plan Review Process.

1. **Lighting Standards and Selections:**

- a. **Concepts:** Site lighting is intended to be low-key. Exterior building lights may be used to accent entrances and special features. Overall high levels of light are not desired; intensity should be no greater than required for automobile and pedestrian safety. To minimize the number of lighting standards, overflow light from inside the building should be used wherever possible. Only discrete ground mounted lighting of buildings will be permitted.
- b. **Fixtures:** Fixtures will be a height of 25' and located in such a manner as to minimize potential vehicular damage; lighting poles in parking lots will be located within parking medians or islands. The fixture shall be surface mounted to an appropriate concrete base flush with the existing grade. The lighting fixture will be manufactured by Kim Lighting, Inc., EKG501, Finish: DB-P, or equivalent (Gardco). The lamp type will be metal halide.

If pedestrian circulation lighting is not sufficiently illuminated by parkway or parking lot lighting as per foot-candle minimums stated below, the following requirements will apply. Pedestrian circulation lighting will use a bollard type light unit. Bollard lighting will have a uniform height of 3 feet. The bollard will be surface mounted to an appropriate concrete base flush with the existing grade. A minimum of 1 foot-candle will be maintained along pedestrian circulation between building and parking lot whereas all other pedestrian circulation lighting will be a minimum of one-half (1/2) foot-candle. The bollard light fixture will be manufactured by Kim Lighting, Inc. B30 or equivalent. Signage mounted on a building will be by internal illumination if lighted. Other signage lighting will be by flood lighting.

- c. **Maintenance:** The site lighting will be maintained in a safe and attractive manner so as to preserve the aesthetic qualities established for East Park.

In the event site lighting is not maintained and becomes in need of repair, a notice of said disrepair will be delivered to the responsible owner. If repair is not initiated within seven (7) days, East Park will undertake repairs at owner's expense.

J. LANDSCAPING REQUIREMENTS

Introduction

The following section will provide guidelines for the use of plant materials within East Park. A Landscape Design Plan must be submitted for each site as part of the Plan Review Process. Please make note of the lighting on the landscape plan as plant placement impacts light distribution and lighting for building identification signs. (See Illustration 9)

1. **Design Concept:** The overall intention is the creation of a simple, strong landscape setting, in scale with the buildings, streets and parking area of a business center. This result can be achieved through the use of a limited plant palette with skillfully arranged massing of similar plant materials, especially along street frontages and at vehicular entries. Except for internal courtyards, small scale, residential garden landscaping will not be acceptable. The character of landscaping at East Park is meant to be informal; however, a limited use of formal planting may, in some cases, be acceptable.

2. **Landscape Continuity:** Because a variety of A.R.C. designs are permitted, it is necessary that the landscaping approach be kept consistent in order to maintain overall visual continuity throughout East Park. All open unpaved space including, but not limited to, front, side and rear yard setback areas will be planted and landscaped according to an approved plan.

3. **Plant Material:** The basic plant materials to provide overall landscape continuity are trees, shrubbery, ground cover and lawn. As a rule, all trees should be of the minimum size indicated on the Recommended Plant List at the time of planting (See Appendix). The basic lawn plantings will be supplemented by appropriate trees, shrubs and ground cover selected from the Recommended Plant List. Plants will be arranged to highlight building entries, soften and provide scale to building masses and site development. To insure an adequate buffer, landscape easements (setbacks) may be required of parcel adjacent to the main entries.
4. **Minimum Building Setback:** A minimum of 50 feet setback from a street right-of-way is required on all Building Sites.
5. **Responsibility of Street Tree Implementation:** Roadside landscaping from the edge of the road to the property line will be installed and maintained by the frontage lot owner. All landscape installation within the individual parcel are the responsibility of the parcel owner.
6. **Parking Areas:** Parking lot entries consist of single road or divided road driveways. Intended landscape character is shown in Illustrations 13 & 15. The parking lot layout requirements are shown in Illustration 5.
7. **Lake Edge:** Lakes, if any, are intended to provide a visual amenity as well as storm water management. Generally, lake edges are to be treated with a soft landscape edge with informal tree planting. The planting scheme will be in a loose arrangement to allow views to the lakes from buildings and roads. Normally, no building will be allowed within 15' of the lake edge; however, in certain circumstances, a hard edge or bulkhead may be a more appropriate shoreline and in special cases a building may be placed at the water's edge or even overhang the water.
8. **Side Yard Landscaping:** Typical side yard landscaping will consist of accent framing or screening, depending on specific circumstances (See Illustration 14). Truck access side or rear yard areas will consist of informal tree planting approved species; a screen of at least 6' on the property line is required, through the use of a combination of shrubs of approved species and mounding.
9. **Front Yard Landscaping:** Front yards must be sodded.
10. **Landscape Mounding:** Where mounding or earth contouring is required, smooth transitions with soft natural forms are desired (See Illustration 16). Trees are not to be planted directly on top of mounds.
11. **Suggested Plant Materials:** To maintain continuity and a sense of order, the following plant list will comply with the American National Standards Institute (ANSI): 60.1 Nursery Stock design as established by the American Association of Nurserymen.

12. **Edging:** Where mulches abut grass areas, steel edging or an approved equivalent will be installed in order to maintain a proper material separation. Plastic or aluminum edging will not be acceptable.

13. **Landscape Maintenance:** The Owner will maintain, at parcel owner's expense, all individual parcel within East Park including, but not limited to, irrigation, lawn mowing, tree and shrub trimming (including replacement of dead trees or shrubs), fertilization and weed and insect control.

K. IRRIGATION

It is the responsibility of the individual parcel owner to provide irrigation for all planting areas within the parcel. The irrigation system will provide 100% coverage and will use water which will not cause undo stain on paving, walls and so on.

In the landscaped areas adjacent to roadways, it is the responsibility of the parcel owner to install the sprinkler irrigation system.

L. REVIEWS AND APPROVALS

Prospective parcel owners are encouraged to review and understand the criteria established within these Design Guidelines. Inquiries are advised to prevent needless and costly delays.

All plans for development within East Park are to be submitted to A.R.C. Each submission will consist of 1 print.

Review of all submissions will be completed and returned in writing to the prospective parcel owner within thirty (30) working days. Preliminary coordination/reviews can be accomplished either through mailed submissions or meetings with the reviewing firm or agency.

The professional organizations which review these submissions include, but may not be limited to:

BOTANICAL NAME	COMMON NAME	SIZE
Shade Trees:		
Acer platanoides	Norway Maple	
Acer rubrum	Red Maple	
Acer Saccharum	Sugar Maple	
Fraxinus pennsylvanica	Gree Ash	
Celtis occidentalis	Hackberry	2 1/2" --- 3"
Liquidambar styraciflua	Sweet Gum	
Plantanus occidentalis	American Sycamore	2 1/2" --- 3"
Quercus alba	White Oak	
Quercus palustris	Pin Oak	
Gleditsia triacanthos	Honey Locust	

Betula nigra	River Birch	
Acer plantanoides	"Crimson King" Maple	2 ½" --- 3"

Ornamental Trees		
Acer ginnala	Amur Maple	8' Ht.
Acer palmatum	Japanese Maple	5' Ht.
Salix matsudana 'Tortuosa'	Corkscrew Willow	8' Ht.
Cornus florida	Flowing Dogwood	6' Ht.
Crataegus phaenopyrum	Washington Hawthorne	1 ½" Cal.
Magnolia x soulangiana	Saucer Magnolia	6' Ht.
Magnolia stellata	Star Magnolia	6' Ht.
Malus floribunda	Japanese Flowering	
	Crabapple	6' Ht.
Malus sargentii	Sargent Crabapple	1 ½" Cal.
Malus x zumi	Zumi Crabapple	1 ½" Cal.
Pyrus calleryana 'Bradford'	Bradford Pear	1 ½" Cal.

Evergreen Trees		
Picea abies	Norway Spruce	6' - 8' Ht.
Picea pungens	Colorado Spruce	6' - 8' Ht.
Pinus densiflora	Japanese Red Pine	6' - 8' Ht.
Pinus nigra	Black Pine	6' - 8' Ht.
Pinus resinosa	Red Pine	6' - 8' Ht.
Pinus strobus	Eastern White Pine	6' - 8' Ht.
Pinus sylvestris	Scots Pine	6' - 8' Ht.

Shrubs		
Cotoneaster apiculata	Cranberry Citibcaster	18" - 24"
Cotoneaster divaricata	Spreading Cotoncaster	18" - 24"
Euonymus alata	Burning Bush	18" - 24"
Juniperus chinensis	Chinese Juniper	15"
Juniperus horizontailis	Creeping Juniper	12"
Rhododendron catawbiense	Catawba Rhododendron	18" - 24"
Spiraea x bumalda	Bumalda Spirea	18" - 24"
Taxus x media 'Densiformis'	Densiform Yew	18" - 24"
Viburnum x burkwoodii	Burkwood Viburnum	30"
Viburnum carlesii	Korean Spice Viburnum	18" - 24"
Viburnum	Arrowwood	30"
Viburnum lantana	Wayfaring Tree	30"
Viburnum opulus	European Cranberry Bush	30"
Viburnum plicatum	Japanese Snowball	36"
Cornus sericea	Redtwig Dogwood	30"

<i>Cornus sericea</i> 'Flaviramea'	Yellowtwig Dogwood	30"
<i>Berberis thunbergii</i>	Crimson Pygmy	
'Atropurpurea Nana'	Barberry	15"
<i>Berberis thunbergii</i> 'Aura'	Golden Barberry	18" - 24"
<i>Spiraea x bumalda</i> Gold		
'Gold Flame'	Flame Spirea	17" - 18"
<i>Juniperus chinensis</i>		
'Sargentii'	Sargent Juniper	15"
<i>Juniperus horizontalis</i>		
'Bar Harbor'	Bar Harbor Juniper	15"
<i>Juniperus horizontalis</i>		
'Wiltonii'	Blue Rug Juniper	15"

Ground Covers		
<i>Euonymus fortunei</i>	Wintercreeper	2 ½" Peat Pots
<i>Liriope spicata</i>	Liriope	2 ½" Peat Pots
<i>Pachysandra terminalis</i>	Japanese Spurge	2 ½" Peat Pots
<i>Vinca minor</i>	Periwinkle	2 ½" Peat Pots
<i>Hosta</i> SPP	<i>Hosta</i> , all varieties	1 Gal. Container

Recommended Sod and Seed Mixture: Will be addressed at final review as part of landscape plans.