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#990058014 Page 1

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RECORDER
PATRICIA J CRICK
ALLEN COUNTY, IN

**DECLARATION OF DEVELOPMENT
STANDARDS, COVENANTS AND PROTECTIVE
RESTRICTIONS FOR DAWSON'S CREEK**

AUG 12 1999
AUDITOR OF ALLEN COUNTY

Doc. No. 990058014
Receipt No. 22888

DCFD 3.00
MISL 82.00
Total 85.00

Paragon Land Development, LLC, an Indiana limited liability company, hereby declares and establishes the following standards, covenants and restrictions, which shall be binding upon and run the with Real Estate (defined below) and shall inure to the benefit of and be binding upon the Owners and occupants thereof for purposes of:

- A. Maintaining and implementing minimum standards pertaining to the development, use and maintenance of Dawson's Creek;
- B. Insuring the stability and enhancement of values of the land and improvements within Dawson's Creek;
- C. Furthering development and improvement of Dawson's Creek in an aesthetic and architecturally harmonious manner in accordance with applicable zoning ordinances; and
- D. Establishing and apportioning rights and responsibilities with regard to facilities and services required for the use and operation of Dawson's Creek.

ARTICLE I
Definitions

Section 2.01. Definitions. As used herein, the following terms shall have the meanings indicated:

- a. "Adjacent Tract" shall mean the real property and improvements of an Associate Member that benefit from the easements granted hereunder to Associate Members over the Common Areas.
- b. "Annual Assessment Costs" shall mean the sum of the Common Area Maintenance Costs plus the Association Operating Costs that are incurred by the Association in each respective calendar year and are specifically approved by the board of directors of the Association.
- c. "Appropriate Zoning Authority" shall mean, with respect to any action regarding the administration of the zoning ordinance applicable to Dawson's Creek, the appropriate administrator or agency with authority to administer the zoning laws of Allen County, Indiana, or where such administrator or agency lacks the capacity to take the action or

fails to take such action, the governmental official or body, administrative or judicial, in which authority is vested under applicable law to hear appeals from or review of such action or inaction or has the capacity to administer such zoning ordinance, and such term shall apply to the legal successors in interest to such administrator, agency or bodies.

- d. "Architectural Control Committee" shall mean the entity responsible for conducting the Architectural Review Process.
- e. "Architectural Review Process" shall mean the procedure set forth in Article IV for obtaining the approval or disapproval of the Architectural Control Committee for any proposed plans and specifications for improvements to be constructed on a Parcel.
- f. "Associate Member" shall mean and refer to the owner of any property adjacent and contiguous to Dawson's Creek (herein an "Adjacent Tract") who has the right to use the Common Areas and who has agreed to share in the Common Area Maintenance Costs and Association Operating Costs.
- g. "Association" shall mean the Dawson's Creek Owners Association, Inc., an Indiana non-profit corporation.
- h. "Association Operating Costs" shall mean the necessary and appropriate costs (other than Common Area Maintenance Costs) of operating the Association for the purposes set forth in this Declaration, including, but not limited to: the cost of public liability insurance; officers and directors' insurance; casualty insurance for improvements constituting a part of the Common Areas; and the costs of hiring independent contractors and legal, accounting and other professional advisors.
- i. "Benefitted Parties" shall mean the, from time to time Owners and their respective lessees, occupants, subtenants, assignees, mortgagees and customers, invitees, licensees of all or any portion of the Real Estate; personnel of utility companies in connection with providing any utility service to any part of Dawson's Creek, and personnel of any public or quasi-public body in connection with providing service to Dawson's Creek or any person in Dawson's Creek, including, but not limited to, police and fire protection, ambulance and other emergency traffic, trash and garbage collection, postal service and delivery service.
- j. "Common Areas" shall mean each facility and improvement located within the Common Areas described in the Plot Plan for Dawson's Creek attached hereto as Exhibit "D" for the common use and enjoyment of the Owners and other Benefitted Parties, including, but not limited to dedicated roads, landscaping, signage, lighting, and irrigation systems.

- k. "Common Area Maintenance Costs" shall mean the costs necessary for the Association to perform its obligations hereunder to keep the Common Areas in good operating condition and in attractive appearance, including, but not limited to, the cost of all upkeep, maintenance, repair, and replacement of all or any part of the Common Areas; and any other expense reasonably necessary or prudent for the satisfactory operation of the Common Areas. Common Area Maintenance Costs shall in no event include the initial cost of constructing the Common Areas.
- l. "Co-Owners" shall mean two (2) or more persons or entities which together are the record owners of all or any portion of the Real Estate as tenants in common, joint tenants (with or without right of survivorship) or tenants by the entirety.
- m. "Dawson's Creek" shall mean the Real Estate described in Exhibit "A", attached hereto, and the improvements constructed thereon from time to time, together with any additional real estate incorporated into Dawson's Creek by the Developer as provided in Section 9.01.
- n. "Developer" shall mean Paragon Land Development, LLC, an Indiana limited liability company, or any successor in interest or assignee which is expressly designated as a successor Developer in a recorded instrument executed by the preceding Developer.
- o. "GPI" shall mean GPI at Dawson Creek, L.P., an Indiana limited partnership.
- p. "Integrated Project" shall mean a group of two or more buildings which are arranged to share facilities such as parking areas, walkways, driveways or truck loading areas. Each building in an Integrated Project may be owned by a separate Owner and either used by the Owner or leased in whole or in part to separate users. Multiple buildings may be permitted on a Parcel provided that either (i) the applicable zoning ordinance permits such multiple buildings or (ii) if not permitted by such ordinance, such multiple buildings are authorized by the Appropriate Zoning Authority and approved by the Architectural Control Committee.
- q. "Member" shall mean and refer to: (i) each separate owners' association, formed by the Developer or other Owner as each Section of Dawson's Creek is platted, for the Owners of Parcels within each respective Section; (ii) the Owner of a Section, or a Parcel within a Section, for which an owners' association is not appropriate, such as those Sections used for multi-family or commercial purposes; and (iii) each Associate Member. Each Member shall be a member of the Association.
- r. "Owner" shall mean each person or entity, including the Developer and any Co-Owner, which is a record owner of all or any portion of the Real Estate. In the case of a leasehold or contract buyer interest in any portion of the Real Estate, the lessee or

contract buyer shall be considered the Owner for the term of the lease or the purchase contract only if designated as such by the record Owner in a duly recorded instrument.

- s. "Parcel" shall mean a portion of the Real Estate owned by the Developer or any Owner for the erection of and use as a single building or more than one building if it is an Integrated Project, together with the improvements.
- t. "Proportionate Share" shall mean each Member's proportionate share, expressed as a percentage, of the Annual Assessment Costs determined in the proportion that:

- (i) the total acreage of the Parcels situated within the Member's Section (in the case where the Member is an owners' association), or

- (ii) the total acreage of the Parcels owned by a Member (in the case where the Member is not an owners' association), or

- (iii) the total acreage of the Adjacent Tract owned by a Member (in the case where the Member is an Associate Member),

bears to the sum of the total acreage of all Parcels in Dawson's Creek plus the total acreage of all Adjacent Tracts owned by Associate Members.

- u. "Real Estate" shall mean all of the land contained within Dawson's Creek which is described in Exhibit "A" attached hereto, together with any additional land incorporated into Dawson's Creek by (i) the Developer as provided in Section 9.01, or (ii) another Owner as may be permitted hereunder.
- v. "Section" shall mean the separate Sections of Dawson's Creek, platted by the Developer or other Owner from time to time in accordance with the rules and regulations of the Appropriate Zoning Authority.

ARTICLE II Intentionally Left Blank

ARTICLE III Dawson's Creek Owners' Association, Inc.

Section 3.01. Membership. The membership of a Member in the Association shall commence (i) upon the Member being formed (in the case where the Member is an owners'

association), (ii) upon title to the Section or Parcel being conveyed to its Owner (in the case where the Member is not an owners' association and is not an Associate Member), or (iii) when the Common Areas are first available for use (in the case where the Member is an Associate Member), whichever is appropriate.

Section 3.02. Members Rights and Duties. Each Member shall have the rights, duties and obligations set forth in this Declaration and all amendments duly made hereto in accordance with Section 9.01.

Section 3.03. Votes of Members. With respect to each matter on which a Member is entitled to vote, the Member shall have a weighted vote determined in the proportion that:

- a. the total acreage of the Parcels situated within the Member's Section (in the case where the Member is an owners' association), or
- b. the total acreage of the Parcels owned by a Member (in the case where the Member is not an owners' association), or
- c. the total acreage of the Adjacent Tract owned by a Member (in the case where the Member is an Associate Member),

bears to the sum of the total acreage of all Parcels in Dawson's Creek plus the total acreage of all Adjacent Tracts owned by Associate Members.

Section 3.04. Board of Directors. The Association shall be managed by its Board of Directors. The initial Board of Directors shall consist of seven (7) Directors (the "Initial Directors"), six (6) of whom to be designated by the Developer, and one (1) of whom to be designated by GPI. At such time as one hundred percent (100%) of the Real Estate has been developed or dedicated for Common Areas, the Initial Directors shall resign. Thereafter, each Member shall annually designate one (1) person to serve as a Director; and, each such Director shall have a weighted vote identical to that of the Member that designated him.

ARTICLE IV

Architectural Review Process

Section 4.01. Composition of Architectural Control Committee. Until the close of business on December 31, 2004, the Architectural Control Committee shall consist of five (5) persons, four (4) to be designated by the Developer, including a specifically designated representative of the Developer, and one (1) to be designated by GPI. The specifically designated representative of the Developer shall have the right to overrule the decisions of the other four (4) persons serving on the Architectural Control Committee on any matter.

After the last Parcel has been developed, the Architectural Control Committee shall consist of five (5) persons designated by the Board of Directors of the Association.

Section 4.02. Architectural Review Process. All buildings, structures, alterations, additions, improvements, construction or remodeling on any Parcel, including any signs, lighting, landscaping, driveways, parking area or other changes in the character of the Parcel, must be approved by the Architectural Control Committee prior to commencement of construction. Such approval may be obtained in the following manner:

- a. Prior to obtaining detailed architectural plans, the Owner of the Parcel and its architect or engineer shall submit to the Architectural Control Committee preliminary renderings of elevations, a preliminary grading plan and a plot plan. The Architectural Control Committee shall within thirty (30) days after receipt of such plans, either give written approval indicating such plans comply with the Declaration ("Initial Approval") or give written disapproval specifically stating the reasons for such disapproval. Failure by the Architectural Control committee to act within said thirty (30) day period shall be deemed to be approval of the Site Development Plan.
- b. After obtaining the Initial Approval of the Architectural Control Committee, the Owner shall submit to the Architectural Control Committee a site plan and a stamped set of final plans and specifications ("Site Development Plan") showing the size and location of each building and other improvements, building elevations, parking areas, driveways, exterior signage, exterior lighting, green areas and other landscaping, grading, site drainage, utilities, trash storage and handling facilities, vehicular access to and from the Parcel, and the types, quality and color of exterior building materials, no later than the date upon which such Site Development Plan is submitted to the appropriate governmental agency for its approval. Within thirty (30) days after receipt of the Site Development Plan, the Architectural Control Committee shall either give its written approval thereof ("Final Approval") or give written disapproval specifically stating the reasons for such disapproval. Failure by the Architectural Control Committee to act within said thirty (30) day period shall be deemed to be approval of the Site Development Plan.
- c. Final Approval by the Architectural Control Committee will be based on the acceptability of the Site Development Plan with respect to all factors which, in the opinion of the Architectural Control Committee, affect the desirability or suitability of the proposed construction or alteration. Factors to be considered shall include, but not be limited to, compatibility of the proposed construction or alteration with the general nature and theme of Dawson's Creek; quality of workmanship and materials; quality, color and texture of exterior materials and harmony of external design with surrounding structures; location with respect to topography; effect of the construction or alteration on the outlook from surrounding property (whether

from within or outside Dawson's Creek); the adequacy and location of on-site parking; percentage of building and parking area to total area of the Parcel; height of buildings, setbacks from boundary lines; traffic flow; safety and health hazards; and appropriateness of landscaping, drainage and design. In each case, the proposed improvements, construction and other site work as well as the Owner's use of the Parcel must comply with all applicable laws, ordinances, and regulations and with any specific standards or restrictions contained in this Declaration. In addition, all actual construction, improvements and other site work shall substantially comply with the Site Development Plan for which Final Approval is given.

ARTICLE V

Common Areas; Maintenance and Grant of Easements

Section 5.01. Grant of Easements over Common Area. Developer hereby grants a perpetual, non-exclusive easement over the Common Areas in favor of the Members, their representatives, employees, tenants, licensees and invitees. The Common Areas shall be maintained by the Association in accordance with this Declaration until such time as the Common Areas are dedicated to and accepted by Allen County.

Section 5.02. Rights of Owners. Each Owner and other Benefitted Party shall have a perpetual, non-exclusive easement and right to use, in common with every other Owner and Benefitted Party, the Common Areas created pursuant to a duly recorded instrument which designates the land as a Common Area or which provides for the common use and enjoyment thereof by all Owners and Benefitted Parties.

Section 5.03. Maintenance of Common Areas and Improvements. Except any repair, maintenance or replacement which is the responsibility of any utility company or public or quasi-public body, the Association shall maintain the Common Areas in good order and repair. The Association shall not, however, be liable to any Owner, Benefitted Party or other person or entity for damages to property or injury or death to persons arising out of any failure to repair and maintain the Common Areas. Maintenance, repair or replacement by the Association of the Common Areas shall be performed in a manner which does not unreasonably delay or interfere with the Benefitted Parties' use of the Common Areas or an Owner's use of its Parcel. The Association shall have reasonable access over and across any Parcel to the Common Areas to the extent necessary to permit the Association to maintain, repair or replace such Common Area. Maintenance by the Association of the Common Areas shall include, but not be limited to, the following:

- a. Any sidewalks within the Common Areas shall be swept and, to the extent reasonably possible, snow and ice shall be removed therefrom.

- b. The lighting, signs, islands and irrigation system located within a Common Area shall be maintained in good repair.
- c. Landscaping, including lawn areas, trees and shrubbery within any Common Area at any entrance to Dawson's Creek, shall be maintained in a first-class condition by cutting, trimming, feeding and weeding.

Section 5.04. Replacement; Restoration. The Association shall be entitled to replace any improvement constituting a part of the Common Areas when necessary for the proper functioning of the Common Areas. In the event of damage to or destruction of any of the Common Areas due to fire or any other casualty or disaster, the Association shall promptly cause the same to be repaired or reconstructed. The proceeds of insurance carried by the Association, if any, shall be applied to the cost of such repair and reconstruction. In the event the insurance proceeds, if any, received by the Association as a result of any such fire or other casualty or disaster are not adequate to cover the cost of repair and reconstruction of the Common Areas, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Areas so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Association against all of the Owners and Associate Members in accordance with their respective Proportionate Shares. Any such amounts assessed against the Owners and Associate Members shall be assessed as part of the Common Area Maintenance Costs and shall constitute a lien from the time of assessment as provided herein.

For purposes of this Section 5.04, repair, reconstruction and restoration shall mean construction or rebuilding the Common Areas to as near as possible the same condition as existed immediately prior to the damage or destruction.

ARTICLE VI

Certain Use and Development Standards

Section 6.01. Setback Requirements. No building shall be located on any Parcel in violation of any applicable building set-back requirements imposed by the Appropriate Zoning Authority or otherwise applicable pursuant to any law, statute, code, ordinance, rule or regulation or any special exception or variance thereto. The open areas located between property lines and the applicable building setback lines shall be maintained and preserved as green areas and landscaped or paved as parking or driveway areas, in accordance with the Site Development Plan originally approved by the Architectural Control Committee.

Section 6.02. Driveways and Parking. All driveways and parking areas located within a Parcel shall be paved in accordance with the specifications originally approved therefor by the Architectural Control Committee. Each Owner shall designate parking spaces on its Parcel

and shall use reasonable efforts to require all persons coming onto its Parcel to park in the designated spaces. All parking facilities on a Parcel must comply with the applicable zoning ordinance unless a waiver of the parking requirements is obtained from both the Appropriate Zoning Authority and the Architectural Control Committee. Each Owner shall be responsible for constructing the driveways and parking areas on its Parcel and shall maintain such areas including, but not limited to, keeping such areas clean and promptly removing ice and snow therefrom. Each Owner shall extend any driveway on its Parcel to the then existing access road upon or adjacent to the Owner's Parcel even though a portion of the extension may extend beyond its Parcel and into the right-of-way of the access road.

Section 6.03. Parcel Lighting. Site lighting shall be of a type to minimize light pollution, and shall have a maximum height of twenty-five (25) feet.

Section 6.04. Mounding and Landscaping Buffer. Any mounding shall be configured and landscaped in a manner acceptable to the Architectural Control Committee.

Section 6.05. Building Heights and Roof Tops. No building, structure or other improvement on any portion of the Real Estate shall exceed forty-two (42) feet in height above grade.

Section 6.06. Outside Storage. Outside storage of trash and trash receptacles must be visually screened on three (3) sides. The location and screening of all trash storage shall be subject to the approval of the Architectural Control Committee.

Section 6.07. Signs. The location, size and construction of signs shall be in accordance with all applicable laws and ordinances and shall be subject to the prior approval of the Architectural Control Committee. All wall signs must be mounted flat on the surface of the walls and may not project above the roof line. No hand-painted, animated or flashing signs will be permitted.

Section 6.08. Maintenance of Parcels. Each Owner shall be responsible for the maintenance of its Parcel and the improvements thereon and shall keep the exterior of its building painted and in a sightly condition. All parking areas and driveways shall be paved with asphalt or concrete and maintained in good condition and repair. Without limiting the generality of the foregoing, (i) each Owner shall maintain each of its buildings in good condition and repair and keep the exterior of each building as well as all other portions of its Parcel in an attractive condition; (ii) no nuisance shall be maintained within Dawson's Creek; (iii) each Owner shall keep its Parcel free of litter, weeds, trash and debris; (iv) landscaping on the Owner's Parcel shall be maintained in the locations and in at least the quality and quantity originally approved by the Architectural Control Committee; (v) the pavement of all parking areas and driveways within the Owner's Parcel shall be maintained in good condition and repair, free of potholes and shall be restriped as needed; and (vi) each Parcel and the

improvements thereon shall at all times comply with governmental, health and police requirements.

Section 6.09. Landscaping and Site Work. Landscaping plans shall be submitted to the Architectural Control Committee at the same time as the Site Development Plan is submitted. Each Owner shall be required to demonstrate that its use of the Parcel in designing and constructing improvements thereon preserves to the greatest extent possible the natural condition of the Parcel. Lawns, trees and shrubs shall be maintained by the Owners of each Parcel. Unpaved sections of each Parcel shall be maintained in grass and landscaping, including any portion of the Parcel within a public or street right-of-way.

Section 6.10. Private Roadways in the Common Area. Any roadways constructed by the Developer in Dawson's Creek shall be constructed at the Developer's expense in accordance with the specifications required by the appropriate governmental agency.

Section 6.11. Parking Prohibition. Parking of any vehicles on Dawson's Creek Boulevard shall be prohibited.

Section 6.12. Prohibited Uses. The following uses shall be prohibited in Dawson's Creek:

- a. The manufacture, storage or distribution of products which increase fire, explosion or radioactive hazards or cause a dangerous or hazardous condition;
- b. Any business or operation which creates a public or private nuisance by reason of noise, or excess emissions of odors, dust, fumes, smoke, liquid waste, glare, vibration or radiation;
- c. Adult book store, night club or discotheque, massage parlor, or any other establishment which provides live adult entertainment or which sells, rents or exhibits pornographic or obscene materials;
- d. Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation (provided that any Owner that goes out of business shall be entitled to hold one (1) going out of business sale not exceeding four (4) weeks in duration);
- e. Masseur, reducing salon, bowling alley, billiard or pool hall, indoor theater, hotel, motel, private club or lodge, advertising sign or billboard, telephone exchange, animal hospital or kennel, manufactured home or mobile home;
- f. A second-hand store, flea market, pawn shop, government surplus store, goodwill store, salvage store, Salvation Army store, surplus store or liquidation store; and

- g. Any building, improvement or use which violates the applicable zoning ordinance or any other applicable law or regulation.

Section 6.14. Applicable Zoning Ordinance. The building lines, setbacks, permitted uses and other matters relating to the construction, maintenance or use of improvements in Dawson's Creek shall be subject to the applicable zoning ordinance and building codes, as amended from time to time, and all other applicable laws, rules, regulations and ordinances, each of which shall remain fully enforceable by the proper governmental authority notwithstanding any provision of this Declaration. No Owner shall seek or obtain any variance, special use permit, change, modification, deletion or addition to the existing zoning ordinance or building code which would impose standards, restrictions, limitations or other encumbrances upon all or any portion of the Real Estate not contained within such Owner's Parcel, except with the prior written consent of each such affected Owner.

Section 6.15. No Multi-Family Projects. Except for that portion of the Real Estate described in Exhibit "B" hereto, which is exempt from the provisions of this Section 6.15, the Real Estate shall not be used for multi-family apartment projects, defined as any multi-family structure designed to be leased to the general public. For purposes of this Section 6.15, the term "multi-family project" shall not include assisted living project which may be constructed within Dawson's Creek.

Section 6.16. Minimum Selling Price. Except for that portion of the Real Estate described in Exhibit "B" hereto, which is exempt from the provisions of this Section 6.16, the Real Estate shall not be improved with any single family residential unit having a selling price of less than \$125,000.00, as of the date a certificate of occupancy for such single family residential unit is issued by the appropriate governmental authority.

Section 6.17. Association to Approve Residential Structures. The Association or its successor shall have the exclusive power to approve the residential structures built upon the Real Estate, and such power shall be exercised in accordance with this Declaration and the By-Laws of the Association.

Section 6.18. Restrictions and Covenants in Favor of Benefitted Parties. The protective restrictions and covenants set forth in this instrument are imposed upon the Real Estate for the benefit of the Benefitted Parties, including, without limitation, GPI which owns that portion of the Real Estate within Dawson's Creek described in Exhibit "B" hereto, and upon which it intends to build a multi-family apartment project.

Section 6.19. Restrictions and Covenants Binding upon Developer. The protective restrictions and covenants set forth in this Article VI are binding upon the Developer, its successors and assigns, and shall run with the Real Estate for a period of fifty (50) years from the date hereof, at which time the said protective restrictions and covenants shall be

automatically extended for successive periods of ten (10) years unless sooner released by Owners holding a majority in interest of the Proportionate Shares of all Owners.

Section 6.20. Enforceability. In the event the Developer or any Owner, lessee, occupant or other user of any part of the Real Estate violates or threatens to violate any of the protective restrictions or covenants set forth herein, any Benefitted Party shall be entitled to institute an action for enforcement of said protective restrictions and covenants and for damages or injunctive relief, or both. In any such enforcement action, such Benefitted Party shall be entitled to recover all costs and charges, including reasonable attorneys' fees, incurred in such enforcement action from any person or entity found to have violated or to be in violation of any of these protective restrictions and covenants. The validity and enforceability of any standard, restriction or condition under this Declaration which is more stringent than, or is in addition to, any standard or restriction imposed under any other declaration, restrictions or covenants applicable to a Parcel, or under applicable law shall remain valid and fully enforceable in accordance with the terms of this Declaration.

ARTICLE VII

Assessments

Section 7.01. Covenant for Assessments. Each Owner (including the Developer) covenants and agrees, by the execution of this Declaration in the case of the Developer, by acceptance of a deed for the Owner's Parcel in the case of each subsequent Owner (regardless of whether expressly stated in such deed), to timely pay the Association, or its assignee, each payment of the Owner's Proportionate Share of Annual Assessment Costs which becomes due and payable during the period when such Owner owns its Parcel. Each Associate Member covenants and agrees, by its use of the Common Areas, to timely pay the Association, or its assignee, each payment of the Associate Member's Proportionate Share of Annual Assessment Costs which becomes due and payable during the period when such Associate Member is entitled to use the Common Areas.

Section 7.02. Establishing Annual Assessments; Payment. Prior to February 28 of each calendar year, the Board of Directors of the Association shall adopt an estimated budget of Annual Assessment Costs for the calendar year (the "Annual Budget") and provide a copy of the Annual Budget to each Owner and Associate Member on or before March 15 of such calendar year. Each Owner and Associate Member shall then pay its Proportionate Share of the estimated Annual Assessment Costs set forth in the Annual Budget on or before April 30. In the event any extraordinary item of Annual Assessment Costs is incurred by the Association during a calendar year, but is not included in the Annual Budget for such year, each Owner and Associate Member shall pay its Proportionate Share of each such item within thirty (30) days after receiving a statement therefor from the Association. On or before March 15 of each calendar year, the Association shall furnish to each Owner and Associate

Member a statement (the "Annual Statement") setting forth the total amount of Annual Assessment Costs incurred by the Association for the preceding calendar year, the Owner's and Associate Member's Proportionate Share thereof and the amount thereof previously paid by the Owner or a predecessor Owner, or by the Associate Member or a predecessor Associate Member, as the case may be. The Association shall credit any overpayment to the Owner's or Associate Member's Proportionate Share of the Annual Assessment Costs for the following year at the time the Annual Statement is furnished, and in the case of an underpayment, the then Owner or Associate Member, as the case may be, shall pay the amount thereof to the Association within thirty (30) days after receipt of the Annual Statement. In the event the Association fails to provide any Owner or Associate Member with an Annual Budget or Annual Statement on or before the applicable dates specified above, the Owner or the Associate Member shall not be relieved from its obligation to pay its Proportionate Share of Annual Assessment Costs, but in such event, the Owner's or Associate Member's payment shall not be due and payable until thirty (30) days after receipt from the Association of an appropriate statement of the amount due from the Owner or the Associate Member.

Section 7.03. Personal Obligation. The amount of each payment of Annual Assessment Costs for each calendar year attributable to ownership of a given Parcel or of an Adjacent Tract, shall constitute the personal obligation of the person or entity which is the record owner of such Parcel or Adjacent Tract on the date the payment of Annual Assessment Costs becomes due and payable. No Owner or Associate Member shall be personally obligated to pay any payment of Annual Assessment Costs which becomes due and payable either before or after the period during which it is the record owner of such Parcel or Adjacent Tract.

Section 7.04. Assessment Liens. The Annual Assessment Costs for the current fiscal year of the Association shall become a lien on each separate Parcel or Adjacent Tract, as the case may be, as of the first day of each fiscal year of the Association, even though the final determination of the amount of such Annual Assessment Costs may not have been made by that date. Such lien shall encumber the Owner's and the Associate Member's entire interest in its Parcel or Adjacent Tract, as the case may be, run in favor of the Association and be enforceable in the same manner as a mortgage, provided that any such lien shall be subordinate to the lien of any bona fide first mortgage to an unrelated third party then existing on the Parcel or Adjacent Tract. The sale, conveyance or other transfer of any Parcel or Adjacent Tract, or interest therein, shall not in any manner alter or impair any assessment lien on the Parcel or Adjacent Tract or the right hereunder of the Association to enforce or impose an assessment lien upon the Parcel or Adjacent Tract. Without limiting the generality of the foregoing, in the event a delinquency arises with respect to which the Association is entitled hereunder to enforce a lien upon a Parcel or Adjacent Tract, such right shall continue notwithstanding that the Parcel or Adjacent Tract or any interest therein is sold, conveyed or otherwise transferred after such delinquency arises but before the assessment lien therefor is imposed as provided herein.

Section 7.05. Additional Costs. Each sum owed hereunder by an Owner or Associate Member shall be due and payable by such Owner or Associate Member without relief from valuation and appraisal laws and together with costs of collection, reasonable attorney fees and, if delinquent for more than thirty (30) days, with interest at eighteen percent (18%) per annum from the date due until paid. The related collection costs, reasonable attorney fees and interest on such delinquent sum shall constitute a further lien upon the Parcel or Adjacent Tract, as the case may be.

Section 7.06. Certificate of Unpaid Assessments. Within fifteen (15) days after written request by the owner of a Parcel or Adjacent Tract or the holder of a mortgage on a Parcel or Adjacent Tract, the Association shall provide the Owner, the Associate Member or holder of such mortgage with a certificate stating the delinquent amount, if any, of Annual Assessment Costs with respect to such Parcel or Adjacent Tract.

ARTICLE VIII **Enforcement**

Section 8.01. General. The Association shall be entitled to enforce the covenants, condition and restrictions imposed in this Declaration, and may pursue the rights and remedies provided in this Article and any other rights and remedies available to the Association under this Declaration or at law or in equity. The rights and remedies of the Association shall be cumulative; no one right or remedy by the Association shall preclude it from exercising any other right or remedy at the same or any subsequent time. The foregoing dedication, restriction and protective covenants are to run with the Real Estate and shall be binding on all parties and all persons claiming under them until fifty (50) years from the date hereof, at which time said covenants or restrictions shall be automatically extended for successive periods of ten (10) years unless changed by the affirmative action of a majority of the Owners. Invalidation of one or more of these covenants by judgment of a court of competent jurisdiction shall in no way affect any other covenant or restriction, which shall remain in full force and effect.

Section 8.02. Nonpayment of Assessments. If payment of an Owner's or Associate Member's Proportionate Share of Annual Assessment Costs is not timely made, the Association shall be entitled to recover the delinquency, together with collection costs, reasonable attorney fees and interest provided in Section 7.05, by instituting legal action against the person or entity personally obligated to pay the delinquency, together with collection costs, reasonable attorney fees and interest as provided in Section 7.05, by foreclosing the lien therefor imposed pursuant to this Declaration upon the Parcel or Adjacent Tract to which the delinquency relates.

Section 8.03. Enforcement of Other Covenants. In the event an Owner, lessee, occupant or other user of a Parcel violates or fails to perform any covenant, condition or restriction of this Declaration (other than the covenant to pay Annual Assessment Costs) and such failure continues for (30) days after written notice thereof from the Association to the Owner, the Association shall be entitled to institute an action for enforcement of this Declaration and for damages or injunctive relief, or both.

Section 8.04. Substituted Performance. At any time after thirty (30) days written notice to an Owner of a violation under this Declaration, the Association or its designee shall be entitled to enter upon the Owner's Parcel and to cure such violation. The cost incurred by the Association in curing such violation shall be immediately due and payable, together with collection costs, reasonable attorney fees and interest as provided in Section 7.05, in the same manner as a delinquent payment of Annual Assessment Costs.

Section 8.05. Limitation on Personal Liability. The Owner of a Parcel shall be personally obligated to pay a sum of money payable under the terms of this Declaration by the Owner of such Parcel only if such sum becomes due and payable on a date during the period in which such Owner is the record Owner of the Parcel; and an Owner of a Parcel shall be personally obligated to perform any other obligation imposed hereunder upon the Owner of such Parcel only if and to the extent that such obligation is required to be performed during the period in which such Owner is the record Owner of such Parcel. An Associate Member shall be personally obligated to pay a sum of money payable under the terms of this Declaration by an Associate Member only if such sum becomes due and payable on a date during the period in which such Associate Member is the record titleholder of the Adjacent Tract.

Section 8.06. No Forfeiture. There shall be no right of reversion or forfeiture of title resulting from any violation of this Declaration.

ARTICLE IX **General Provisions**

Section 9.01. Amendments. This Declaration may be amended subject to the following terms and conditions:

- a. Until the close of business on December 31, 2004, the Developer, with the consent of seventy-five percent (75%) of the Owners, whose voting rights shall be equal to their Proportionate Share percentages, shall have the right to amend and revise the standards, covenants and restrictions contained in this Declaration. Any such amendment shall be effective when executed by the Developer and Owners and recorded in the Office of the Recorder of Allen County, Indiana. No such amendment

shall, however, (i) restrict or diminish the rights, nor disproportionately increase the obligations, of any Owner or Associate Member at the time the amendment becomes effective, or (ii) restrict or grant or establish any easement through, across, or over any Parcel not owned by the Developer when the amendment becomes effective. The Developer shall be entitled unilaterally to amend this Declaration to include additional adjacent real estate as a part of the Real Estate subject to the covenants, restrictions and standards contained herein.

- b. Commencing January 1, 2005, this Declaration may be amended by the action of seventy-five percent (75%) of the Owners, whose voting rights shall be equal to their Proportionate Share percentages. Any such amendment shall become effective when executed by the Owners and recorded in the Office of the Recorder of Allen County, Indiana.

Section 9.02. Binding Effect. The covenants, restrictions and conditions contained in this Declaration shall run with the Real Estate and inure to the benefit of and bind the Developer and each immediate and remote successor Owner of any Parcel and their respective legal representative, successors and assigns subject, however, to the limitation on personal liability set forth in Sections 7.03 and 8.05.

Section 9.03. Interpretation. The Article and Section headings or titles used in this Declaration are inserted and included solely for convenience and shall in no manner be considered or given any effect in construing this Declaration. All references in this Declaration to Articles and Sections are to Articles and Sections contained in this Declaration unless a different document is expressly specified. All pronouns used herein shall include the other genders whether used in the masculine, feminine or neuter gender, and the singular shall include the plural whenever and as often as may be appropriate.

Section 9.04. Severability. If any covenant, condition, restriction or other term of provision of the Declaration, or the application thereof to any person, Parcel, Adjacent Tract or circumstance, is ever held to be invalid or unenforceable, then in each such event the remainder of this Declaration or the application of such covenant, restriction, condition or other term or provision to any other person, Parcel, Adjacent Tract or other circumstance (other than the extent to which it shall have been held invalid or unenforceable) shall not be thereby affected, and each covenant, restriction, condition or other term and provision of this Declaration shall remain valid and enforceable to the fullest extent permitted by law.

Section 9.05. Entire Agreement. This Declaration, including any recitals and any attached Exhibits, all of which are made a part of this Declaration, contains the entire agreement concerning this subject matter. No other terms or oral promises concerning the subject matter of this Declaration, which are not in the Declaration, may be legally enforced, and no promises, projections, inducements, or representations concerning the subject matter of this Declaration made before the date of this Declaration will change the terms of this

Declaration of be binding on any party. No promises or other terms shall be implied in the Declaration.

Section 9.06. Waiver. A party shall not be deemed to have made a waiver, consent or approval under this Declaration unless it does so in writing, and the mere failure of a party to act to enforce any provision of this Declaration shall not be considered a waiver, consent or approval and shall not prevent any party from enforcing any provision of this Declaration in the future. Wherever this Declaration requires obtaining the waiver, consent or approval, such waiver, consent or approval may be granted or withheld in such party's sole discretion unless this Declaration expressly provides otherwise. Any waiver, consent or approval under this Declaration shall apply only to the matter expressly waived, consented to or approved, and shall not be deemed to be a waiver, consent or approval of any subsequent breach or of any other provision of this Declaration.

EXECUTED this 10 day of AUGUST, 1999.

**PARAGON LAND DEVELOPMENT, LLC
AN INDIANA LIMITED LIABILITY
COMPANY**

By: Glenn G. Conkling, Jr. Managing Member
Glenn G. Conkling, Jr., Managing Member

THIS INSTRUMENT PREPARED BY Richard E. Fox, Attorney, Barrett & McNagny, 215 East Berry Street, Fort Wayne, Indiana 46802.

MAIL TO:

CONSENT AND APPROVAL

Comes now GPI at Dawson Creek, L.P., an Indiana limited partnership, and consents to and approves this Declaration of Development Standards, Covenants and Protective Restrictions for Dawson's Creek, and hereby agrees to subject its real estate within Dawson's Creek and more particularly described in Exhibit "B" attached hereto to all the terms and conditions thereof and to be bound thereby.

Executed this 9th day of August, 1999.

GPI AT DAWSON CREEK, L.P., an Indiana
limited partnership

By Gibraltar Properties, Inc., an Indiana
corporation, Its Sole General Partner

By: Harry F. Todd
Harry F. Todd, Secretary and General
Counsel of Gibraltar Properties, Inc.

STATE OF INDIANA)

) SS:

COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said County and State, this 10 day of August, 1999, personally appeared Glenn G. Conkling, Jr., the Managing Member of Paragon Land Development, LLC, an Indiana limited liability company, who acknowledged the execution of the foregoing instrument. In witness whereof, I have hereunto subscribed my name and affixed my official seal.

My commission expires: 12-17-01

Resident of Allen County

Richard E. Stephens

(Signature)

Richard E. Fox

(Printed) Notary Public



STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, the undersigned, a Notary Public in and for said County and State, this 9th day of August, 1999, personally appeared Harry F. Todd, the Secretary and General Counsel of Gibraltar Properties, Inc., an Indiana corporation and the general partner of GPI at Dawson Creek, L.P., an Indiana limited partnership, who acknowledged the execution of the foregoing instrument. In witness whereof, I have hereunto subscribed my name and affixed my official seal.

My commission expires: June 28, 2001

Dorothy Nan D'Orso
(Signature)

Resident of Marion County

DOROTHY NAN D'ORSO
(Printed) Notary Public

