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Subdivision Covenants and Restrictions

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19

MARION COUNTY AUDITOR
DECLARATION OF RESTRICTIONS
Of Sections 9 & 11
FOR FRANKLIN PARKE ESTATES

359861 FEB 22 2001

NOT SUBJECT TO TAXATION
SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER

THIS DECLARATION, made this 8th day of December, 2000, by WHEELER DEVELOPMENT CORPORATION (hereinafter referred to as the "Developer").

WITNESSETH:

WHEREAS, the Developer is the owner of all the land contained in the area shown on Exhibit "A," attached hereto and made a part hereof, which lands have been subdivided as FRANKLIN PARKE ESTATES SECTIONS 9 & 11 (hereinafter referred to as the "Development"), as more particularly described on the plat thereof recorded in the office of the Recorder of Marion County, Indiana, as Instrument No. 2001-0026809; and 2001-0026810

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

NOW, THEREFORE, the Developer hereby declares that all of the platted lots and lands located within the Development as they become platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied, and improved, subject to the following Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said lots and lands in the Development, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Development as a whole and of each of said lots situated therein. All of the Restrictions shall run with the land and shall be binding upon the Developer and upon the parties having or acquiring any right, title, or interest, legal or equitable, in and to the real property in the Development or to any part or parts thereof, and shall inure to the benefit of the Developer and every one of the Developer's successors in title to any real property in the Development. The Developer specifically reserves unto itself the right and privilege, prior to the recording of the plat of a particular lot or tract within the Development as shown on Exhibit "A," to exclude any real estate so shown from the Development, or to include additional real estate.

FILED
FEB 22 2001
FRANKLIN TOWNSHIP
ASSESSOR

DEPT. OF METROPOLITAN ADMINISTRATION
DATE 2-22-01
REC. [Signature]

1. DEFINITIONS. The following are the definitions of terms used in this Declaration:

A. "Committee" shall mean the FRANKLIN PARKE ESTATES Development Committee composed of three (3) members appointed by the Developer who shall be subject to removal by the Developer at any time. The Developer may, at its sole option, at any time hereafter, relinquish to the Association the power to appoint and remove one or more members of the Committee. The Committee shall terminate at such time as every lot in the Development is occupied by a dwelling house.

B. "Association" shall mean the FRANKLIN PARKE ESTATES Homeowners Association, Inc., a not-for-profit corporation.

C. "Lot" shall mean any parcel of residential real estate described by the plat of the Development, which is recorded in the office of the Recorder of Marion County, Indiana.

D. Approvals, determinations, permissions or consents required herein shall be deemed given if they are given in writing signed, with respect to the Developer of the Association, by the President or Vice-President thereof; and with respect to the committee, by two (2) members thereof.

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

2. CHARACTER OF THE DEVELOPMENT.

A. In General. Every numbered lot platted as part of the Development is for residential purposes. No structure shall be erected, placed or permitted to remain upon any of said residential lots except a single-family dwelling house. No double occupancy dwelling shall be permitted on any part of the Development. All tracts of land located within the Development, which have not been designated by numbering as residential building lots in the recorded Plat shall be used in a manner generally consistent with the zoning and use designed in the plan filed by the Developer in a rezoning proceeding before the Metropolitan Development Commission of Marion County, Indiana, under Docket No. 89-Z-125. However, the Developer reserves unto itself the right to change the character of such designated use at any time in the future by applying to the Metropolitan Development Commission and its staff for modifications of the plan, and, where necessary, to apply to any other necessary governmental body for such reclassification, rezoning or variance of use needed to accommodate the Developer's planned use.

B. Prohibited Improvements. No sheds, outbuildings, above ground pools, antennae, satellite disks, lawn ornaments in side or front yards, nor clothes lines shall be erected or placed on any lot.

C. Occupancy or Residential Use of Partially Completed Dwelling House Prohibited. No dwelling house constructed on any of the residential lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed.

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

A. Minimum Living Space Areas. The minimum square footage of living space of dwelling constructed on various residential lots in the Development, exclusive of porches, terraces, garages or basements, or portions thereof, or similar facilities not modeled and decorated for regular and continuous habitation, shall be designated on the recorded plat within the Development, but shall in no case contain less than one thousand six hundred (1,600) square feet of living area for a one-story ranch or for more than one story, one thousand two hundred (1,200) square feet for the first floor and six hundred (600) square feet for the second floor.

B. Residential Setback Requirements.

(i) Front Setbacks. Unless otherwise provided in these Restrictions or on the recorded plat, all dwelling houses and above-grade structures shall be constructed or placed on residential lots in the Development so as to comply with the setback lines, as established on the plat of the Development.

(ii) Side Yards. The aggregate side yard setbacks shall total not less than nineteen (19) feet, and the minimum side yard setback shall be seven (7) feet.

(iii) Rear Yards. The rear setback line shall be at least twenty-five (25) feet from the rear lot line.

C. Fences and Tree Preservation. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Development, any fence or post lamp must be approved by the Committee as to size, location, height, and composition before it may be installed. No live tree with a trunk diameter of four (4) inches or more when measured four (4) feet above the ground or any community planting installed by the Developer may be removed without the prior written consent of the Committee.

D. Landscaping. Each lot shall have a planting and mulching plan approved by the Committee prior to development. Such plan shall include a minimum of six (6) shrubs, with at least one (1) being an ornamental shrub of twenty-four (24) inches or more in size and all other shrubs being a minimum of eighteen (18) inches; and a minimum of two (2) trees, with shade trees at least two and one-quarter (2 1/4) inches in caliper and ornamental trees at least

six (6) feet in height. The front and side yard plans for each lot shall include sod and the rear yard plans shall include grass seed.

E. Exterior Construction. The finished exterior of every building constructed or placed on any lot in the Development shall be of brick or stone to eave height of first floor and balance of exterior may be solid wood siding. Efflorescent brick shall not be used, nor shall irregular brick patterns be used. No plywood, aluminum, vinyl or composition siding will be permitted. No house shall have metal prefabricated flues that extend above the highest roof-line. All driveways must be paved with concrete. The minimum roof pitch shall be 6/12. There shall be a separation of two (2) lots before a house type and elevation or color shall be repeated. The same house type and elevation or color cannot be located directly across the street from one another.

F. Committee Approval. All houses in the Development shall be first approved by the Committee. Prior to construction, the builder or owner shall submit to the Committee plans and specifications and a plan showing the location of the structure with all existing trees identified, and the elevations. All fences, awnings, lawn ornaments and other improvements shall be approved by the Committee prior to erection.

G. Garages Required. All residential dwellings in the Development shall include a minimum enclosed, two (2) car garage.

H. Heating Plants. Every house in the Development must contain a heating plant installed in compliance with the required codes and capable of providing adequate heat and cooling for year-round human habitation of the house.

I. Diligence in Construction. Every building whose construction or placement on any residential lot in the Development is begun shall be completed within six (6) months after the beginning of such construction or placement. No improvement which has partially or totally been destroyed by fire or otherwise shall be allowed to remain in such state for more than sixty (60) days from the time of such destruction or damage.

J. Sidewalks Required. Each lot shall have a sidewalk parallel to the street, or streets in the case of corner lots, on which the lot fronts. The sidewalk shall meet Indianapolis Department of Transportation Standards 14-03. Sidewalks must be completed by the owner of a lot at the time the driveway on the lot is constructed, but in no case later than eighteen (18) months after the lot is first conveyed by Developer.

K. Prohibition of Used Structures. All structures constructed or placed on any numbered lot in the Development shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such lot.

L. Maintenance of Lots and Improvements. The owner of any lot in the Development

shall at all times maintain the lot and any improvements situated thereon in such a manner as to prevent the lot or improvements from becoming unsightly; and, specifically, such owner shall:

- (i) Mow the lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds with a four (4) inch maximum height.
- (ii) Remove all debris or rubbish.
- (iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development.
- (iv) Cut down and remove dead trees.
- (v) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.
- (vi) Continue all construction activity and materials to the lot being improved; and at no time shall the street or adjacent lots (including drainage easements) be used for the delivery or storage of construction materials or construction debris.

M. Association's Right to Perform Certain Maintenance. In the event that the owner of any lot in the Development shall fail to maintain his lot and any improvements situated thereon in accordance with the provisions of these Restrictions, the Association shall have the right, by and through its agents or employees or contractors, to enter upon said lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such lot and improvements situated thereon, if any, conform to the requirements of the Restrictions. The cost therefore to the Association shall be added to and become a part of the annual charge to which said lot is subject, and may be collected in any manner in which such annual charge may be collected. Neither the Association nor any of its agents, employees or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

N. Mailboxes and Address Blocks. All mailboxes shall be of a uniform design as furnished by the Committee. All homes in the Development shall have an 8" by 16" limestone address block on the front-side (sample - Riverside Stone).

O. Solar Panel Installation. Solar panel installation shall be allowed only when the location, type, and size have been approved by the Committee.

P. Sight Line Obstructions at Street Intersections. No fence, wall, hedge, shrub planting or other object which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or be permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting points twenty-five

(25) feet from the intersection of said street lines, or in the case of a rounded property corner, from the intersection of the street lines extended. The same sight line limitations shall apply to any lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement. No tree shall be permitted to remain within such instances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight line.

4. PROVISIONS RESPECTING DISPOSAL OF SANITARY WASTE.

A. Outside Toilets. No outside toilets shall be permitted on any lot in the Development (except during a period of construction).

B. Construction of Sewage Lines. All sanitary sewage lines on the residential building lots shall be designed and constructed in accordance with the provisions and requirements of the Marion County Board of Health. No storm water (subsurface or surface) shall be discharged into sanitary sewers.

5. GENERAL PROHIBITIONS.

A. In General. No noxious or offensive activities shall be permitted on any lot in the Development, nor shall anything be done on any of said lots that shall become or be an unreasonable annoyance or nuisance to any owner of another lot in the Development.

B. Signs. No signs or advertisements shall be displayed or placed on any lot or structures in the Development, except entry signs and home or lot sales signs.

C. Animals. No animals shall be kept or maintained on any lot in the Development except the usual household pets, and, in such case, such household pets shall be kept reasonably confined so as not to become a nuisance.

D. Vehicle Parking. No trucks, campers, trailers, boats or similar vehicles shall be parked on any street or on any lot in the Development, except for the parking of such vehicle by a visiting house guest for a period not to exceed one (1) week; or the parking of such vehicle for a period not to exceed twenty-four (24) hours while it is being loaded, unloaded or prepared for use by the owner.

E. Garbage and Other Refuse. No owner of a lot or builder on a lot in the Development shall burn or permit the burning out of doors of garbage or other refuse, including building materials, nor shall any such owner accumulate or permit the accumulation out of doors of such refuse on his lot, except as may be permitted in subparagraph "F" below. All houses built in the Development shall be equipped with a garbage disposal unit.

F. Fuel Storage Tanks and Trash Receptacles. No tank for the storage of fuel or oil

shall be allowed on any lot. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be installed underground or shall be so placed and kept as not to be visible from any street within the Development at any time, except at the times when refuse collections are being made.

G. Model Homes. No owner of any lot in the Development shall build or permit the building upon said lot any dwelling house that is to be used as a model home or exhibit house without permission to do so from the Developer.

H. Temporary Structures. No temporary house, trailer, tent, garage or other outbuilding shall be placed or erected on any lot.

I. Utility Services. No utility services shall be installed under finished streets, except by jacking, drilling or boring.

J. Wells and Septic Tanks. No water wells for domestic consumption shall be drilled on any of the lots; nor shall any septic tanks be installed on any of the lots in the Development, unless public sewer tap-in is unavailable. Wells for irrigation or for the operation of geo-thermal heating and cooling systems shall be allowed only upon approval of the Committee.

K. Preservation of Field Tile. Any field tile or underground drain which is encountered in construction of any improvements within this subdivision will be preserved, and all owners of lots in this subdivision and their successors will comply with the Indiana Drainage Code 1965 and all amendments thereto.

6. UTILITY AND DRAINAGE EASEMENTS. There are areas of ground on the plat of the Developer marked "Drainage Easements" and "Utility Easements" (D. & U.E.), and Sanitary Sewer Easements (S.S.E.) either separately or in combination. The Utility Easements are hereby created and reserved for the use of all public utility companies (not including transportation companies) and governmental agencies for access to and installation, maintenance, repair or removal of poles, mains, ducts, sanitary sewers, storm sewers, drainage swales, lines, wires, cables and other equipment and facilities for the furnishing of utility services, including cable television services and fountains in the ponds.

The Drainage Easements are hereby created and reserved: (i) for the use of Developer during the development of the Subdivision for access to and for the installation, repair or removal of a drainage system, either by surface drainage or appropriate underground installations, for the Development and adjoining property and (ii) for the Department of Public Works of the City of Indianapolis for access to maintenance, repair and replacement of such drainage system, provided, however, that the owner of any lot in this Subdivision subject to a Drainage Easement shall be required to keep the portion of said Drainage Easement on his lot free from obstructions so that the surface water drainage will be unimpeded.

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

It shall be the responsibility of the owner of any lot or parcel of land within the area of this plat to comply at all times with the provisions of the drainage plan as approved for this plat by the Department of Public Works of the City of Indianapolis and requirements of all drainage permits for this plat issued by said Department.

It shall be the responsibility of every owner of every lot in the Development on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon his lot continuously unobstructed and in good repair.

7. DEDICATION OF STREETS. The rights-of-way of the streets as shown on this plat, if not heretofore dedicated to the public, are hereby dedicated to the public for use as a public right-of-way, subject, however, to a reservation of ingress-egress for the maintenance of medians, if any, in any entranceways to the Subdivision.

8. OWNERSHIP, USE AND ENJOYMENT OF COMMON FACILITIES. Common Facilities, if any, depicted on the recorded plat of the Development, shall remain private, and neither the Developer's execution or recording of the plat nor the doing of any other act by the Developer is, or is intended to be, or shall be construed as, a dedication to the public of the common facilities. Ownership of the common facilities shall be conveyed in fee simple title, free of financial encumbrances to the Association upon their completion as provided in the Declaration of Covenants, Conditions and Restrictions of FRANKLIN PARKE ESTATES. Such conveyance shall be subject to easements and restrictions of record, and such other conditions, as the Developer may at the time of such conveyance deem appropriate. Such conveyance shall be deemed to have been accepted by the Association and those persons who shall from time to time be members thereof upon the recording of a deed or deeds conveying such common facilities to the Association.

9. REMEDIES.

A. In General. The Association or any party to whose benefit these Restrictions inure, including the Developer, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, but neither the Developer nor the Association shall be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any of these Restrictions.

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

C. Enforcement by Metropolitan Development Commission. The Metropolitan Development Commission, its successors and assigns, shall have no right, power or authority to enforce any covenants, commitments, or limitations contained in this plat other than those covenants, commitments, or limitations that expressly run in favor of the Metropolitan Development Commission; provided further, nothing herein shall be construed to prevent the Metropolitan Development Commission from enforcing any provisions of the subdivision control ordinance, 58-AO-3, as amended, or any conditions attached to approval of this plat by the Plat Committee.

10. EFFECT OF BECOMING AN OWNER. The owners of any lot subject to these Restrictions, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from the Developer or a subsequent owner of such lot, shall accept such deed and execute such contract subject to each and every Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the owner acknowledges the rights and powers of the Developer and of the Association with respect to these Restrictions, and also, for themselves, their heirs, personal representatives, successors and assigns, such owners covenant, agree and consent to and with the Developer, the Association and to and with the owners and subsequent owners of each of the lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreements.

11. TITLES. The titles preceding the various paragraphs and subparagraphs of the Restrictions are for convenience of reference only, and none of them shall be used as an aid to the construction of any provisions of the Restrictions. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

12. DURATION. These covenants shall run with the land and shall be binding on all persons or entities from time to time having any right, title or interest in the Real Estate, or any part thereof, and on all persons or entities claiming under them, until twenty (20) years after the date of recording hereof. In the last fifteen (15) years thereof seventy percent (70%) of the lot owners may amend these covenants in whole or in part. After said twenty (20) years, said covenants shall be automatically extended for successive periods of ten (10) years each, unless prior to the commencement of any such extension period, by a vote of a majority of the then owners of the lots in the Subdivision it is agreed that said covenants shall terminate in whole or in part; provided, however, that no termination of said covenants shall affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall consent thereto. Any such

amendment or termination shall be evidenced by a written instrument, signed and acknowledged by the lot owner or owners concurring therein, which instrument shall set forth facts sufficient to indicate compliance with this paragraph and shall be recorded in the office of the Recorder of Marion County, Indiana.

13. AMENDMENT. This Declaration may be amended at any time by an instrument recorded in the Office of the Recorder of Marion County, Indiana, executed by the Association and at least seventy-five percent (75%) of the lot owners.

14. SEVERABILITY. Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of any from every other one of the Restrictions, and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability, or "_____ng" quality of any other one of the Restrictions.

IN TESTIMONY WHEREOF, witness the signature of the Declarant this 8th day of December, 2000.

WHEELER DEVELOPMENT CORP.

By: James K. Wheeler
James K. Wheeler, President

DANIEL A. RUSHING AND KATHRYN R.
RUSHING, owners of Lot #207
by Instrument No. 2000-_____.

By: James K. Wheeler
James K. Wheeler, their attorney in fact

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public, in and for said County and State, personally appeared JAMES K. WHEELER, as President of Wheeler Development who, having first been duly sworn, stated that he has read the foregoing and that the facts and representations contained therein are true, and he also appears as attorney in fact for Daniel A. Rushing and Kathryn R. Rushing, and on their behalf agrees that the real estate described as lot No. 207 in the recorded plat of Section 9, Franklin Parke Estates, shall also be bound by the above stated Declaration of Restrictions.

WITNESS my hand and Notarial Seal this 8th day of December, 2000.

Diana Jo Switzer
Notary Public

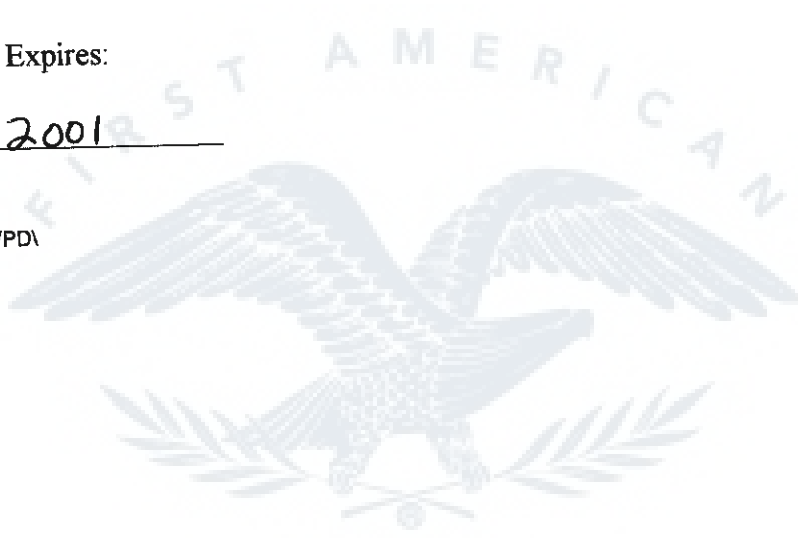
DIANA Jo SWITZER
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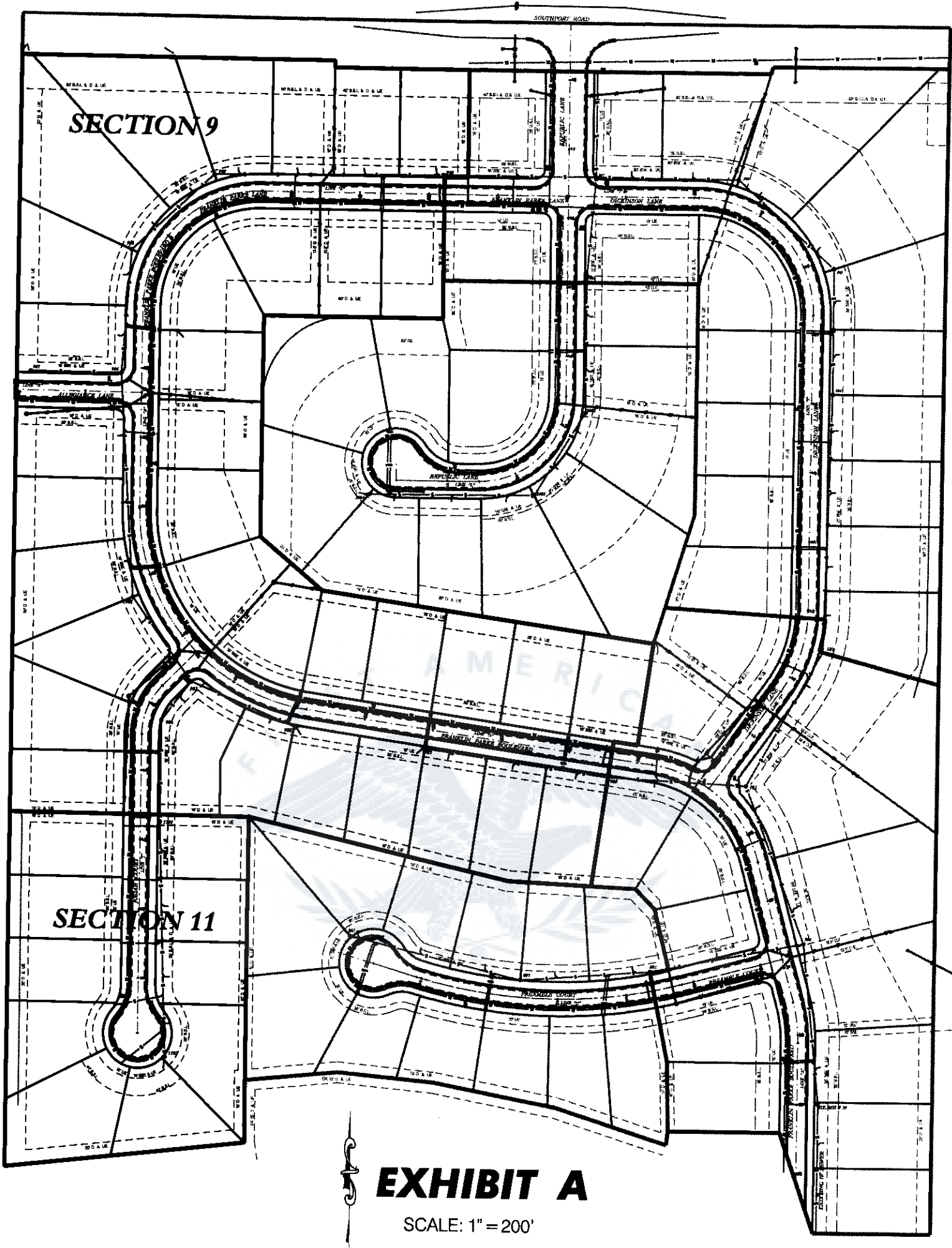
Hamilton
County of Residence

My Commission Expires:

01-08-2001

M:\JKW\FRANKPA.WPD\





SECTION 9

SECTION 11

EXHIBIT A

SCALE: 1" = 200'