

SECOND AMENDMENT TO DECLARATION  
OF  
RESTRICTIONS AND COVENANTS  
FOR TUMBLECREEK

ADDITIONS 1-4

THIS SECOND AMENDMENT TO DECLARATION OF RESTRICTIONS AND COVENANTS FOR TUMBLECREEK is made by the undersigned lot owners of Tumblecreek, a subdivision located in the City of Franklin, County of Milwaukee and State of Wisconsin, as of this 11 day of October, 1995.

RECITALS

A. On June 19, 1981, Rawson Joint Ventures, a Wisconsin partnership ("Developer") caused the recordation of a Declaration of Restrictions and Covenants for Tumblecreek (the "Declaration") affecting certain property in the City of Franklin, County of Milwaukee and State of Wisconsin ("Tumblecreek") and recorded in the office of the Register of Deeds of Milwaukee County as Document No. 5483055, Reel No. 1383 and Image No. 270 to 290 inclusive.

B. The Declaration created certain minimum living area square footage thresholds for single-family dwellings erected within the subdivision. These minimum living area square footage thresholds are more particularly described in the Declaration.

C. The undersigned, pursuant to paragraph 17 of the Declaration, now desire to amend the Declaration relative to such minimum living area square footage thresholds for single-family dwellings and such other matters as are contained herein.

NOW, THEREFORE, the undersigned, constituting more than seventy-five percent (75%) of the lot owners of the property affected by the Declaration, do hereby amend the Declaration as follows:

1. Paragraph 4 of the Declaration is amended and restated in it's entirety as follows:

"4. Every type of single-family dwelling hereafter erected shall have a minimum first floor living area in square feet measured from the outside of the exterior walls, including utility rooms, but excluding cellars, basements, open porches, breezeways, garages, and other spaces that are not used frequently or during extended periods for

Recorded  
OCT 2 - 2011  
in  
LOTS 1-246

CRI



living, eating or sleeping purposes in accordance with the following:

Total living area, 3 or less bedrooms:

One story - 2000; Multistory - 2300

Add to total for each additional bedroom:

One story - 150; Multistory - 100

Add to total if basement is under 900 square feet:

One story - 250; Multistory - 100

2. Paragraph 10 of the Declaration is amended and restated in its entirety as follows:

"10. The administration of the within restrictions, the authority to grant approvals hereunder, and the discretionary powers granted in this Declaration, shall be vested in the Architectural Control Committee hereunder.

The Architectural Control Committee, consisting of three (3) members, who each must be lot owners, shall be elected from among the lot owners by plurality vote of the lot owners. The members of the Architectural Control Committee shall serve for three (3) years, or until their successors have been duly elected. The members of the Architectural Control Committee shall not be entitled to any compensation for their services as such members.

In the election of members of the Architectural Control Committee, and in effecting an amendment or taking other actions under this Declaration, each lot (or two (2) or more adjoining lots consolidated as one building site) shall represent one (1) vote only, regardless of the number of owners of a lot (in which case the vote of a majority of such owners shall represent the vote of such lot), and regardless of the number of lots owned by one (1) person, party or entity.

The Architectural Control Committee's consent, approval or disapproval as provided herein shall be in writing. In the event the Architectural Control Committee fails to approve or disapprove any matter described in paragraph 9 hereof within thirty (30) days after plans and specifications and all other required data have been received by it, approval will be deemed to have been obtained insofar as required by paragraph 9 hereof only. None of the other provisions of these restrictions requiring consent, decision or action of the Architectural Control Committee shall be affected by non-action of the Architectural Control Committee.

3. Except as otherwise amended herein, all terms, conditions, covenants, and provisions of the Declaration shall remain in full force and effect.

This instrument was drafted by Viola B. Rowley Hammelman.

This recording shall be returned to:

Viola B. Rowley Hammelman  
6781 South 35 Street  
Franklin, WI 53132

Signatures begin on the following page attached to and made a part hereof.

Tumblecreek Homeowners Association  
Rules governing use of Common Areas  
Adopted by the Board of Directors on 9-7-91

**Definitions.** Unless otherwise indicated, the following definitions apply:

a. "Home owner" shall mean and refer to the record owner, whether one or more persons or entities, of the simple title to any lot which is a part of the property described in the Tumblecreek Declaration of Restrictions and covenants, along with any residents of their household.

b. "Association" shall mean and refer to the Tumblecreek Owners Association, Inc., a corporation organized pursuant to Chapter 181 of the Wisconsin statutes.

c. "Common Areas" shall mean and refer to all lots owned by the Association for the common use and enjoyment of the homeowners. It shall include the lakes and the areas surrounding and adjacent to the lake.

**Assumption of Risks.** All persons using any of the common areas do so at their own risk and sole responsibility. The Association does not assume responsibility for any occurrence, accident or injury in connection with such use. There are no life guards on duty, and any swimming or any other use of the lakes is at the user's own risk. No home owner shall make any claim against the Association, its servants, agents, or employees, or on account of any loss or damage to life, limb, or property sustained as a result of or in connection with any such use of any of the Common Areas. Each home owner shall hold the Association harmless from any and all liabilities and any action of whatever nature by any guests, invitees or licensees of such owner growing out of the use of the common areas, except where such loss, injury or damage can be clearly proved to have resulted from and been proximately caused by the active negligence of the Association or its agents, servants or employees in the operation, care or maintenance of such facilities. The use of the common areas by any homeowner, or the invitation to use the common areas, express or implied, to any guest, invitee, or licensee, by any homeowner, expresses the homeowner's intent to be bound by the terms of these rules.

**Parental Supervision.** Parental supervision of children using the common areas is mandatory. It is the responsibility of the parents to provide appropriate supervision of their children, including but not limited to: complying with the rules contained herein, respecting the property and rights of others, and safety in use of the common areas. Neither the Association, nor the homeowners owning lots adjacent to the common areas, will provide supervision.

**Liquid Waste Disposal.** No homeowner shall allow the dumping of oil, gas, paint, solvents, cleaning fluids, or liquids or solids containing chemicals of any kind into the lake, or in any of the common areas. No homeowner shall place, or allow to be placed, any of these materials in the

storm sewers.

5. **Solid Waste Disposal.** All garbage and trash (including lawn or garden clippings) must be placed in a proper receptacle for refuse disposal or collection, and no garbage, trash or litter shall be placed elsewhere on any common areas.

6. **Consumption of alcohol in the common areas.** Organized gatherings of more than six people where alcoholic beverages are served or consumed in the Common Areas shall be prohibited at all times, except by special permission of the Board of Directors.

7. **Damage to Common Areas.** Any damage to the common areas, buildings, or improvements (including trees, shrubs, bushes, or plantings of any kind) caused by a homeowner, guests, invitees or licensees, shall be repaired at the expense of the home owner.

8. **Obstruction of Common Areas.** No home owner shall obstruct any of the common areas nor shall any home owner place or permit anything to be placed on or in any of the common areas without the approval of the board of directors of the association.

9. **Noise.** No home owner shall make or permit any disturbing noises while using any common areas which will interfere with the rights, comforts or convenience of another home owner. The volume of any radio, television, musical instrument or other sound producing device shall be sufficiently reduced at all times so as not to disturb other occupants. Despite such reduced volume, no such sound producing devices shall be operated between the hours of ten o'clock P.M. and the following eight o'clock a.m. if such operation shall disturb or annoy another home owner.

10. **Pets.** When in the common areas, pets must be leashed or carried. Owners of pets walked upon the common areas must promptly clean up their pet's dropping in all areas. Owners of pets are responsible for the actions of their pets.

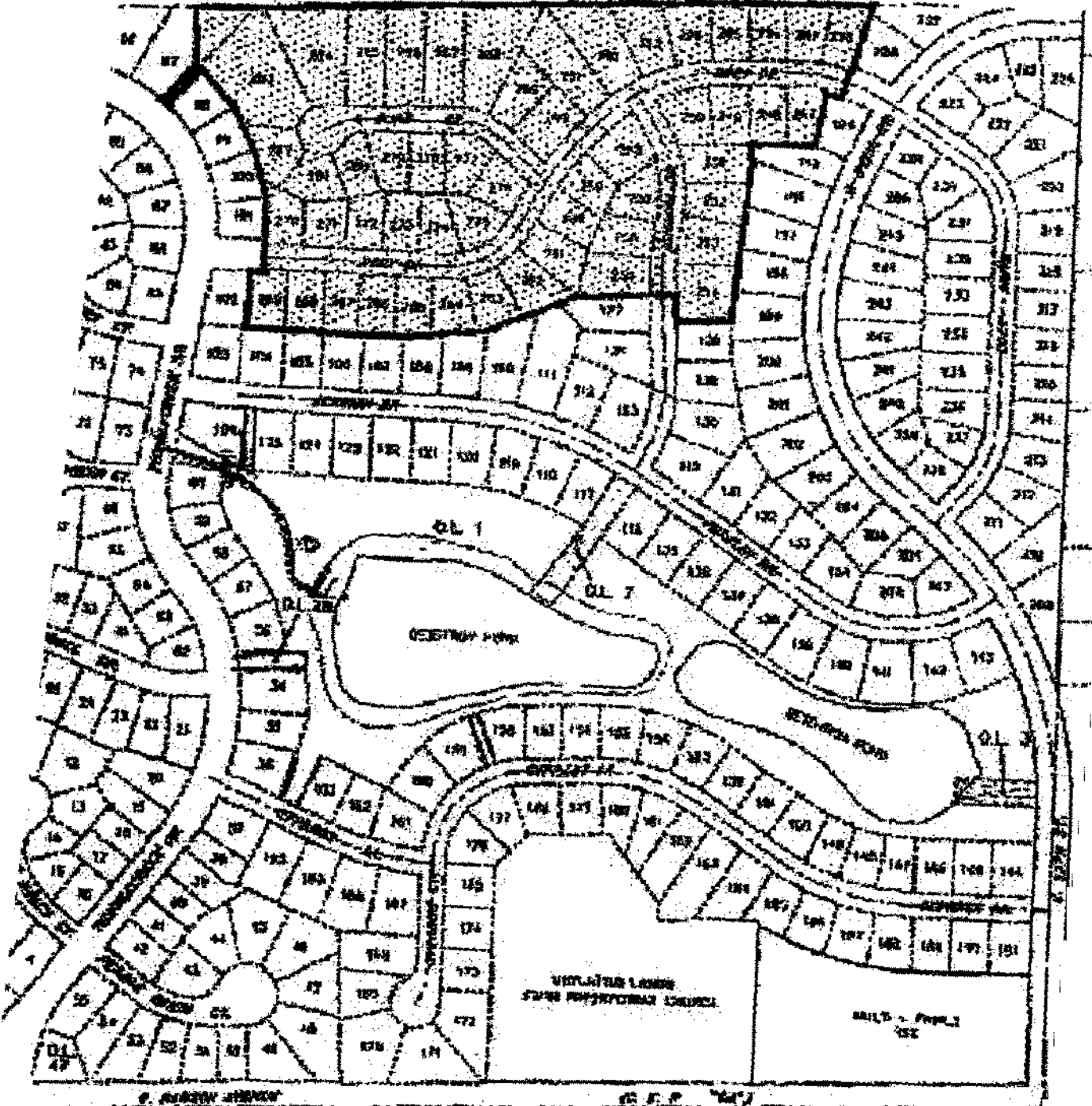
11. **Motorized Vehicles.** Motorized vehicles, including, but not limited to snowmobiles, go carts, mopeds, motor cycles, motorized cycles, ATV's, jet ski's, motor powered boats or water craft, or other petroleum or gasoline powered devices, are not allowed on the common areas at any time.

12. **Enforcement.** Homeowners violating the rules and regulations set forth herein shall be notified of the violation by the board of directors in writing. Should the violations of these rules reoccur, the Board of directors may revoke the privileges of the homeowner to use the common areas. Continued use of the common areas following revocation of these privileges constitutes trespassing.

13. **Trespassers.** The common areas are reserved for the homeowners and their guests. Trespassers will be reported to the Franklin Police department for appropriate action.

CROSBY PARK

ADDITION # 5



1034

ADDITION 1 - 4

*Examined*

...ions, covenants, conditions, provisions  
recorded on June 19, 1981, in Reel 1383, at Images 270 to 271, as Document No. 5483055.

DECLARATION OF RESTRICTIONS AND COVENANTS

FOR

TUMBLECREEK

City of Franklin, Milwaukee County,  
Wisconsin

1981

WHEREAS, the undersigned RAWSON JOINT VENTURE, a Wisconsin partnership, of Milwaukee, Wisconsin, hereinafter called the "Developer", owns a certain tract of land known as "TUMBLECREEK", being part of the Southwest one-quarter of Section One, Township Five North, Range Twenty-one East, in the City of Franklin, Milwaukee County, Wisconsin; and

WHEREAS, the City of Franklin has approved Planned Development District No. 2, known as the Tumblecrack Development by adopting Ordinance No. 76-501 on August 17, 1976, as amended; and

WHEREAS, Developer desires to set forth certain restrictions and covenants for part of said Planned Development District No. 2; now therefore, by recording of this Declaration, the lands described in Exhibit A attached hereto are herewith made subject to all of the provisions herein set forth and Developer expressly reserves the right to subject the lands described in Exhibit B, attached hereto, to additional similar restrictions at such time in such manner and in such document as may be submitted for recording by Developer after each has received the approval of the City of Franklin; and

WHEREAS, The undersigned, all of the record title holders and mortgagees of all property described in Exhibits A and B, wish to express their consent and approval of the within Declaration of Restrictions and Covenants,

NOW, THEREFORE, Know all men by these presents, that for the purpose of establishing a general plan for the use, occupancy and enjoyment of the lands described in Exhibit A and Exhibit B, and for the purpose of establishing a specific plan for the land described in Exhibit A, the undersigned developer hereby enters into the following Declaration of Restrictions and Covenants with the approval of all record title holders and mortgagees of all property described in Exhibit A and B:

1. All lots shall be used for single family residential purposes only.
2. Every single family detached dwelling hereafter erected shall be located on a lot having an area of not less than 8,400 square feet and a width at the established building line of not less than 70 feet, except corner lots shall have a minimum width at the building line of 85 feet.
3. No building shall be erected or enlarged unless the following yard areas are provided and maintained in connection with such building, structure or enlargement.
  - A. A front yard of not less than 25 feet.
  - B. The combined width of the side yard between two adjacent lots shall be not less than 20 feet and

no side yard shall be less than 5 feet, except where a side yard adjoins a street the minimum shall not be less than 25 feet.

C. A rear yard of not less than 25 feet.

4. Every type of single-family dwelling hereafter erected shall have a minimum first floor living area in square feet measured from the outside of the exterior walls, including utility rooms, but excluding cellars, basements, open porches, breezeways, garages, and other spaces that are not used frequently or during extended periods for living, eating or sleeping purposes in accordance with the following:

First floor living area, 3 or less bedrooms;  
One story - 1250; Multistory - 950

Total living area:  
One story - 1250; Multistory - 1550

Add to total for each additional bedroom:  
One story - 150; Multistory - 100

Add to total if basement is under 600 square feet:  
One story - 250; Multistory - 100

NOTE  
SEE 1995  
SECOND  
AMENDMENT  
TO  
DECLARATION  
in

5. The height of any structure shall not exceed 35 feet.

6. All telephone and electric service to any building on any lot shall be from the underground utility system, and no overhead service shall be allowed.

7. Each dwelling unit shall be provided with an individual garbage disposal unit.

8. Each lot shall be landscaped and seeded or sodded within one (1) year after the substantial completion of the construction of the dwelling thereon.

9. In order to maintain harmony in appearance and for the protection of the owners of the lots, no building or other structure shall be erected, constructed, altered, placed, maintained, or permitted upon any lot, unless the complete plans and specifications thereof, a sketch or view of such building, structure or alteration shall have been submitted to and approved in writing by the Architectural Control Committee. The Architectural Control Committee shall have the right to refuse to approve any plans or specifications which, in its conclusive judgment, are not in conformity with these restrictions or are not desirable for aesthetic or other reasons. In passing upon such plans and specifications, the Architectural Control Committee may take into consideration, among other things, the suitability of the proposed building or other structure, its design and the materials of which it is to be constructed, the harmony thereof with the surrounding buildings, and the view or outlook from the adjacent properties.

10. The administration of the within restrictions, the authority to grant approvals hereunder, and the discretionary powers granted in this Declaration, shall be vested in the Architectural Control Committee hereunder.

*NOTE  
SEE 1975  
SECOND AMENDMENT  
TO DECLARATION*

*hm*



So long as the Developer, or its successors and assigns, shall own any lots within Exhibits A or B, the authority and functions of the Architectural Control Committee shall be lodged in and exercised solely by the Developer, or its successors and assigns. When the Developer, or its successors and assigns, no longer owns any lots, it shall promptly select five (5) lot owners as a nominating committee, which nominating committee shall nominate between three (3) and five (5) lot owners (who may be one or more of their number) for election to serve on the Architectural Control Committee. The Architectural Control Committee, consisting of three (3) members, shall thereupon be elected from such nominees by all of the lot owners, by plurality. The members of the Architectural Control Committee shall serve for three (3) years, or until their successors have been duly elected. The members of the Architectural Control Committee shall not be entitled to any compensation for their services as such members.

In the election of members of the Architectural Control Committee, and in effecting an amendment or taking other actions under this Declaration, each lot (or two (2) or more adjoining lots consolidated as one building site) shall represent one (1) vote only, regardless of the number of owners of a lot (in which case the vote of a majority of such owners shall represent the vote of such lot), and regardless of the number of lots owned by one (1) person, party or entity.

The Architectural Control Committee's consent, approval or disapproval as provided herein shall be in writing. In the event the Architectural Control Committee fails to approve or disapprove any matter described in paragraph 9 hereof within thirty (30) days after plans and specifications and all other required data have been received by it, approval will be deemed to have been obtained insofar as required by paragraph 9 hereof only. None of the other provisions of these restrictions requiring consent, decision or action of the Architectural Control Committee shall be affected by non-action of the Architectural Control Committee.

11. In addition to the provisions hereof, all lots shall be subject to all ordinances, zoning laws and other restrictions of the City of Franklin, Milwaukee County, and the State of Wisconsin which are applicable thereto.

12. The Developer, as part of its development of the land described in Exhibit A, has created various private common open areas denominated as outlots 1 through 6 inclusive. Additional private common open areas within the land described in Exhibit B, which will be individually denominated as outlots, are described in Exhibit C, annexed hereto. Developer reserves the right, when submitting proposed plats to the City of Franklin, to modify and relocate any outlots provided in Exhibit C. Said outlots may be used only for park, recreation and play areas and for the installation of underground sewer and water facilities and

public utilities. Developer expressly retains a permanent easement for the right of access for the purpose of installing and maintaining such facilities. At such time as eighty percent (80%) of the lots in each phase of development have been sold, the Developer will then improve the outlots in such phase by grading and seeding said outlots and by complying with the Development Agreement heretofore entered into with the City of Franklin, and will thereupon convey title to said outlots to the Tumblecreek Owners' Association, Inc.

13. Developer deems it desirable for the effective preservation of the values and amenities of the lands described in Exhibits A and B, to create an entity to which will be delegated and assigned the responsibility of maintaining and administering the outlots therein and any facilities, and administering and enforcing the covenants and restrictions relative to said outlots and collecting and disbursing all assessments and charges. To accomplish this purpose, a non-profit corporation, known as Tumblecreek Owners' Association, Inc. will be created under the laws of the State of Wisconsin.

14. Each member is obligated to pay to said Corporation annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency

at the rate of twelve (12) percent per annum. The Corporation may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. Each Owner shall be liable for the assessments provided for herein without regard to use.

15. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

16. Any of the foregoing restrictions, covenants or other provisions of this Declaration may be annulled, waived, changed, modified or amended at any time by a written Declaration, executed in recordable form, setting forth such annulment, waiver, change, modification or amendment, executed by the owners of at least seventy-five percent (75%) of the lots. In order to be effective, any such Declaration shall be recorded in the Office of the Register of Deeds for Milwaukee County, Wisconsin.

17. The restrictions and covenants herein contained shall be deemed to be covenants running with the land and shall be binding upon all persons, parties and entities having an interest in the lands affected hereby or claiming under them for a period of fifty (50) years from the date hereof, at which time the Declaration shall be automatically extended for successive periods of ten (10) years each unless, prior to the end of the initial (or

any such successive) period, an instrument signed by the owners of at least seventy-five percent (75%) of the lots has been recorded terminating or amending the same in whole or in part.

This Declaration shall be binding upon and inure to the benefit of the Developer, its successors and assigns, and all persons, parties or entities who or which now are or hereafter may be, an owner of any lot, and their respective legal representatives, heirs, successors and assigns.

Dated this 17th day of June, 1981.

EXHIBIT A

(Initial Single Family Phase)

TUMBLECREEK, being a subdivision of a part of the Southwest One-quarter of the Southwest One-quarter of Section One (1), Township Five (5) North, Range Twenty-one (21) East, in the City of Franklin, Milwaukee County, Wisconsin.

EXHIBIT B

(Future Single Family and Duplex Phases)

That part of the South West One-quarter (1/4) of Section 1, Town Five (5) North, Range Twenty-one (21) East, in the City of Franklin, Milwaukee County, Wisconsin, which is bounded and described as follows: Beginning at the Southeast corner of said 1/4 Section; thence South 87°40'54" West along the South line of said 1/4 Section 690.86 feet to a point; thence North 00°28'22" East 453.75 feet to a point; thence South 87°40'54" West 240.00 feet to a point; thence North 00°28'22" East 199.65 feet to a point; thence South 87°40'54" West 400.00 feet to a point; thence South 00°28'22" West along the West line of the East 1/2 of said 1/4 Section 653.37 feet to a point on the South line of said 1/4 Section; thence South 87°40'54" West 1330.86 feet to the Southwest corner of said 1/4 Section; thence North 00°42'26" East 2639.81 feet to the Northwest corner of said 1/4 Section; thence North 87°25'00" East 2640.70 feet to the Northeast corner of said 1/4 Section; thence South 00°14'21" West 2650.99 feet to the point of beginning. Excepting therefrom those parts heretofore taken for road purposes, excepting therefrom all of the lands described in Exhibit A.

Articles of Incorporation of Tumblecreek Owners' Association, Inc.  
were recorded on June 22, 1981 as Document No. 5483458.

Correction and Clarification of Signatories to Declaration  
of Restrictions was recorded on June 26, 1981 as Document No. 5484675.

