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05/05/2008 02:13:42P 17 PGS  
Jennifer J Hayden  
HAMILTON County Recorder IN  
Recorded as Presented

**STORMWATER DRAINAGE EASEMENT AGREEMENT**

THIS STORMWATER DRAINAGE EASEMENT AGREEMENT (this "Agreement") is entered into this 16<sup>th</sup> day of April, 2008, by and between WOODHALL, LLC, an Indiana limited liability company ("Woodhall"), and E. NICHOLAS KESTNER ("Kestner").

**WITNESSETH:**

WHEREAS, Woodhall is the owner of certain real estate located in Hamilton County, Indiana, more particularly described on Exhibit A, attached hereto and made a part hereof (the "Woodhall Real Estate"); and

WHEREAS, Kestner is the owner of certain real estate located in Hamilton County, Indiana, more particularly described on Exhibit B, attached hereto and made a part hereof (the "Kestner Real Estate"); and

WHEREAS, in connection with Woodhall's development of the Woodhall Real Estate, Woodhall has requested that Kestner grant to Woodhall an easement to lay, install, construct, operate, maintain, repair, and replace drainage facilities in the area described on Exhibit C, attached hereto and made a part hereof (the "Drainage Easement Area").

WHEREAS, Kestner has agreed to grant such an easement to Woodhall subject to the terms and conditions of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Grant of Easement. Kestner hereby grants to Woodhall for the benefit of the Woodhall Real Estate a perpetual, irrevocable, and non-exclusive drainage easement in, under, over, upon and across the Drainage Easement Area for the purpose of laying, installing, constructing, maintaining, operating, repairing and replacing stormwater drainage facilities for the Woodhall Real Estate (the "Woodhall Drainage Facilities") and for connecting the Woodhall Drainage Facilities to drainage facilities currently located within the Drainage Easement Area (the "Existing Facilities").

2. Installation of Woodhall Drainage Facilities. It is understood and agreed that the easement granted herein is for the purpose of granting to Woodhall a non-exclusive easement to lay, install, construct, operate, maintain and repair stormwater drainage facilities, including, but not limited to, a drainage swale, pipes and lines in the Drainage Easement Area, and Woodhall shall have the right, at its sole cost and expense, to excavate and perform necessary work in, under, over, upon and across the Drainage Easement Area as and when required to lay, install, construct, maintain, operate, repair and replace the Woodhall Drainage Facilities and to maintain, operate and replace the Existing Facilities and Woodhall shall have the right to install, construct, operate, maintain, replace and repair all of Woodhall Drainage Facilities within the Drainage Easement Area and to connect to the Existing Facilities. All such costs and expenses for maintaining, repairing and replacing the Woodhall Drainage Facilities and connecting to the Existing Facilities shall be borne by Woodhall, except that Kestner shall fully reimburse Woodhall for all such costs and expenses relating to maintenance, repair or replacement of the Woodhall Drainage Facilities which are necessitated by Kestner's intentional misconduct or negligence. Further, Woodhall, at Woodhall's sole cost and expense, shall maintain and operate the Existing Facilities in good operating condition.

3. Grant of Support Easement. Woodhall, its agents, members, officers, contractors, and employees shall have an ingress and egress easement over, upon and across Kestner Real Estate, as reasonably necessary for purposes of access to the Drainage Easement Area in connection with the laying, installation, construction, operation, maintenance, replacement and repair of the Woodhall Drainage Facilities and the Existing Facilities and the connection of the Woodhall Drainage Facilities to the Existing Facilities.

4. Covenants of Kestner. Kestner shall not, without the prior written consent of Woodhall, erect or maintain any buildings or other structures upon the surface of the Drainage Easement Area. Kestner shall not alter or remove the Existing Facilities or the Woodhall Facilities without the prior written consent of Woodhall except in the case of a bona fide emergency in which case Kestner shall only be required to provide such written notice as is reasonably practicable.

5. Removal of Vegetation. Woodhall may, with the prior approval of Kestner, which approval shall not be unreasonably withheld, from time to time, cut and remove all trees, undergrowth and other obstructions within the Drainage Easement Area which may in the

reasonable judgment of Woodhall injure, endanger or interfere with Woodhall's use and enjoyment of this easement; all of such work shall be at Woodhall's sole cost and expense.

6. Restoration of Easement Area. If the surface of the Drainage Easement Area is disturbed by Woodhall at any time and from time to time by the work in connection with laying, constructing, installing, operating, maintaining, repairing and replacing the Woodhall Drainage Facilities, Woodhall shall, subject to the provisions of paragraph 5, above, repair and restore the Easement Area or surrounding area to substantially the same condition which existed immediately prior to any such disturbance, including, without limitation, the replacement of any trees, shrubs, landscaping, pavement or other hard surface material permitted to be located in the Drainage Easement Area.

7. Delegation by Woodhall. Kestner acknowledges that Woodhall intends to subdivide the Woodhall Real Estate. Woodhall shall have right, upon written notice to Kestner, which written notice may be recorded to delegate any or all of its responsibilities under this Agreement to any property owners' association formed in connection with such subdivision. Upon such delegation Woodhall, its members, officers, attorneys and employees shall be released and discharged from all of its obligations under this Agreement and Woodhall's designee shall be liable for all of Woodhall's obligations hereunder. Notwithstanding such delegation, each person, trust, partnership, corporation or limited liability company purchasing a portion of the Woodhall Real Estate as well as their heirs, devisees, successors, assigns and grantees shall be beneficiaries of this Agreement but shall have no obligation to perform any of Woodhall's responsibilities hereunder.

8. Warranty of Title. Kestner does hereby covenant with Woodhall that he is lawfully seized and possessed of the Drainage Easement Area and that he has the right to grant the easements provided for herein. Kestner represents and warrants that except for the lender identified in the attached Acknowledgement and Consent, no lender or third party's consent is required in order for Kestner to grant the easements set forth in this Agreement.

9. Binding Effect. The terms of this Agreement shall constitute covenants running with the land and shall inure to the benefit of and be binding upon the signatories hereto and their respective grantees, successors and assigns.

10. Entire Agreement; Amendment; Waiver. This Agreement embodies and constitutes the entire understanding with respect to the drainage easement between Kestner and Woodhall and all prior agreements, understandings, representations and statements, oral or written, are merged into this Agreement. Neither this Agreement nor any provisions hereof may be waived, modified, amended, discharged or terminated except by an instrument signed by the party against whom the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument. No delay or omission by any party hereto to exercise any right or power occurring upon any noncompliance or failure of performance by the other party under the provisions of this Agreement shall impair any such right or power to be construed to be a waiver thereof. A waiver by Kestner or Woodhall of any of the terms, covenants, conditions or agreements to be performed by the other party hereunder shall not be construed to be a waiver of any succeeding breach thereof or of any other term, covenants, condition or agreement contained in this Agreement.

11. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana.

12. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall be considered one instrument.

13. Notices. All notices which are required or may be given hereunder shall be in writing and shall be deemed delivered when received it delivered by hand or the following business day after notice is deposited with a recognized national overnight courier or three (3) days after it is sent certified mail, return receipt requested, postage prepaid. Until the parties provide notice of a new address, all notices shall be sent to the following addresses:

Woodhall: 210 East 96<sup>th</sup> Street  
Indianapolis, Indiana 46240  
Attn: Jeffrey B. Cohen

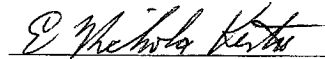
With a copy to: Jeffrey A. Abrams  
Dann Pecar Newman & Kleiman, P.C.  
One American Square, Suite 2300  
Indianapolis, Indiana 46282

Kestner:

2123 W 106<sup>th</sup> Street  
Carmel, IN 46032

IN TESTIMONY WHEREOF, the Kestner and Woodhall have executed this instrument  
this 16<sup>th</sup> day of April, 2008.

KESTNER

  
\_\_\_\_\_  
E. Nicholas Kestner

WOODHALL

WOODHALL, LLC,  
an Indiana limited liability company

By:   
\_\_\_\_\_  
Jeffrey B. Cohen, Member

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF Marion    )

Before me, a Notary Public in and for said County and State, personally appeared E. Nicholas Kestner, who acknowledged the execution of the foregoing Stormwater Drainage Easement Agreement as his voluntary act and deed.

Witness my hand and Notarial Seal this 16th day of April, 2008.

My Commission Expires:  
9-13-2013  
My County of Residence:  
Hamilton



Audrey Lawson  
Audrey Lawson, Notary Public







This instrument prepared by Jeffrey A. Abrams, Attorney at Law, Dann Pecar Newman & Kleiman, P.C., One American Square, Suite 2300, Indianapolis, IN 46282.

I affirm, under penalties of perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law. Jeffrey A. Abrams

EXHIBIT "A"

Legal Description of Woodhall Real Estate

Stormwater Drainage Easement Agmt \_ Woodhall \_ Kestner

**EXHIBIT A****PARCEL 1:**

Part of the East Half of the Northeast Quarter of the Northwest Quarter of the Northwest Quarter of Section 9, Township 17 North, Range 3 East Clay Township, Hamilton County, Indiana, more particularly described as follows:  
Commencing at the Northwest corner of the Northwest Quarter of Section 9, Township 17 North, Range 3 East Clay Township, Hamilton County, Indiana; thence North 88 degrees 52 minutes 28 seconds East (assumed bearing) 1331.05 feet on the North line of said Northwest Quarter to the POINT OF BEGINNING of this description, said point being the Northeast corner of the Northwest Quarter of said Northwest Quarter, said point being equidistant from and collinear with the Northwest and Northeast corners of said Northwest Quarter; thence South 00 degrees 26 minutes 45 seconds East 436.55 feet on the East line of the Northwest Quarter of said Northwest Quarter to a 5/8 inch rebar w/cap; thence North 88 degrees 33 minutes 27 seconds West 278.02 feet to a 5/8 inch rebar w/cap; thence North 00 degrees 38 minutes 19 seconds West 424.07 feet to a PK Nail set on the North line of said Northwest Quarter at a point located South 88 degrees 52 minutes 28 seconds West from the point of beginning of this description; thence North 88 degrees 52 minutes 28 seconds East 279.32 feet on the North line of said Northwest Quarter to the Point of Beginning, containing 2.75 acres, more or less.

**PARCEL 2:**

Part of the East Half of the Northwest Quarter of the Northwest Quarter of Section 9, Township 17 North, Range 3 East Clay Township, Hamilton County, Indiana, more particularly described as follows:  
Commencing at the Northwest corner of the Northwest Quarter of Section 9, Township 17 North, Range 3 East Clay Township, Hamilton County, Indiana; thence North 88 degrees 52 minutes 28 seconds East (assumed bearing) 998.28 feet on the North line of said Northwest Quarter to the northwest corner of the East Half of the Northeast Quarter of the Northwest Quarter of said Northwest Quarter, being the Northwest corner of the real estate described as Parcel I of a Third Corrective Warranty Deed recorded as Instrument No. 9909909362 in the Office of the Recorder, Hamilton County, Indiana, being the POINT OF BEGINNING of this

description; thence continuing North 88 degrees 52 minutes 28 seconds East 53.45 feet on the North line of said Northwest Quarter to the Northwest corner of the real estate described in a Warranty Deed recorded as Instrument No. 9134171 in said Recorder's Office; the following two (2) courses are on the perimeter of the real estate described in said Instrument No. 9134171; 1.) thence South 00 degrees 38 minutes 19 seconds East 424.07 feet; 2.) thence South 88 degrees 33 minutes 27 seconds East 278.02 feet to the East line of the Northwest Quarter of said Northwest Quarter; thence South 00 degrees 26 minutes 45 seconds East 898.62 feet on the East line of the Northwest Quarter of said Northwest Quarter to the Southeast corner of the Northwest Quarter of said Northwest Quarter; thence South 88 degrees 51 minutes 52 seconds West 423.08 feet on the South line of the Northwest Quarter of said Northwest Quarter to a 5/8 inch diameter rebar with yellow cap marked WEIHE ENGR 0012; thence North 00 degrees 25 minutes 58 seconds West 667.62 feet to a 5/8 inch diameter rebar with yellow cap marked WEIHE ENGR 0012 on the North line of the South Half of the Northwest Quarter of said Northwest Quarter; thence North 88 degrees 52 minutes 10 seconds East 90.01 feet on the North line of the South Half of the Northwest Quarter of said Northwest Quarter to the Southwest corner of the East Half of the Northeast Quarter of the Northwest Quarter of said Northwest Quarter; thence North 00 degrees 25 minutes 56 seconds West 667.61 feet on the West line of the East Half of the Northeast Quarter of the Northwest Quarter of said Northwest Quarter to the POINT OF BEGINNING, containing 8.83 acres, more or less

EXHIBIT "B"

Legal Description of Kestner Real Estate

Stormwater Drainage Easement Agmt \_ Woodhall \_ Kestner

DULY ENTERED FOR TAXATION C  
Subject to final acceptance for transfer

29 day of September, 2004

Robin W. Mills Auditor of Hamilton County

Parcel # 17-13-09-00-00-004.000

13.00  
③ \*

STATE OF INDIANA )  
                          )SS:  
COUNTY OF HAMILTON )

200400067782  
Filed for Record in  
HAMILTON COUNTY, INDIANA  
JENNIFER J HAYDEN  
09-29-2004 At 02:06 pm.  
AFFID SURVI 13.00

AFFIDAVIT OF SURVIVORSHIP

COMES NOW E. Nicholas Kestner, as surviving spouse, being duly sworn upon his oath, and states as follows:

That Affiant is the surviving spouse of KATHERINE M. KESTNER and joint owner of real estate located in Hamilton County, Indiana, more particularly described as follows:

See Attached Schedule A for legal description

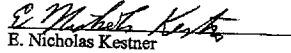
Commonly known as 2123 West 106th Street, Carmel, Indiana 46032 .

That the Decedent, Katherine M. Kestner and E. Nicholas Kestner, Affiant, acquired title as husband and wife with right of survivorship and jointly held title to said real estate until the death of Katherine M. Kestner on April 26, 2004, at which time E. Nicholas Kestner acquired title to the real estate as the surviving joint tenant pursuant to property law.

That the gross value of the estate of the Decedent as determined for the purposes of federal estate taxes was less than the value required for the filing of a Federal Estate Tax Return; therefore, the Decedent's estate was not subject to the federal estate tax.

That the Decedent's estate was subject to Indiana inheritance tax, and the inheritance tax assessed as a result of this specific transfer has been paid to the Treasurer of Hamilton County by the Personal Representative of the Decedent's estate.

This Affidavit is made to induce the Hamilton County officials to remove the name of Katherine M. Kestner as owner of the above described real property, showing E. Nicholas Kestner as sole owner of said real property.

  
E. Nicholas Kestner

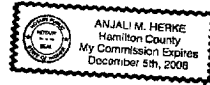
Subscribed and sworn to before me, a Notary Public, this 16 day of JUNE, 2004.

  
\_\_\_\_\_  
Notary Public

ANJALI M. HERKE  
\_\_\_\_\_  
Printed

Commission Expires: \_\_\_\_\_

County of Residence: \_\_\_\_\_



Prepared by:

Anjali M. Herke  
Attorney No. 19107-49  
GALBRAITH ASSOCIATES, P.C.  
10150 Lantern Road, Suite 250  
Fishers, IN 46038  
317-578-1400

**Exhibit A**

**5.00 Acres**

Part of the Northwest Quarter of the Northwest Quarter of Section 9, Township 17 North, Range 3 East Hamilton County, Indiana, more particularly described as follows:

Beginning 665.625 feet North 89 degrees 18 minutes 00 seconds East (assumed bearing) of the Northwest corner of the Northwest Quarter of Section 9, Township 17 North, Range 3 East, and on the North line thereof; thence south 00 degrees 01 minutes 05 seconds east 667.53 feet to the south line of the Northwest Quarter of the Northwest Quarter; thence north 89 degrees 18 minutes 05 seconds east on and along aforesaid south line 332.80 feet; thence north approximately 667.54 feet, thence south 89 degrees 18 minutes 00 seconds west on and along north line 332.80 feet to point of beginning. Containing 5.00 acres more or less. Subject to all legal easements and rights of way.

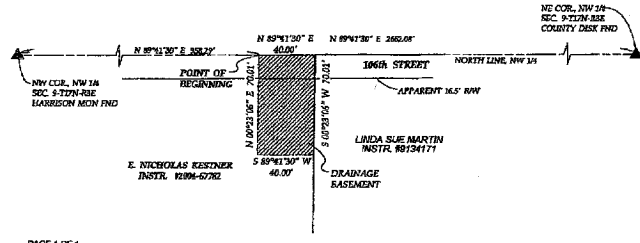
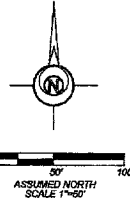




**DRAINAGE EASEMENT**

*That portion of the East Half of the Northwest Quarter of the Northwest Quarter of Section 9, Township 17 North, Range 5 East, Clay Township, Hamilton County, Indiana, and being a portion of the land of E. Nicholas Kestner as described in Instrument Number 2004-07782 in the Office of the Recorder of said county, were particularly described as follows:*

*Commencing at the Northwest corner of the Northwest Quarter of Section 9, Township 17 North, Range 5 East, Clay Township, Hamilton County, Indiana; thence North 89 degrees 42 minutes 50 seconds East along the North line of said Northwest Quarter 554.29 feet to the POINT OF BEGINNING; thence eastbearing North 89 degrees 41 minutes 30 seconds East along said line 60.00 feet to the northeast corner of said land; thence South 00 degrees 23 minutes 05 seconds West along the east line thereof 70.00 feet; thence South 89 degrees 41 minutes 30 seconds West parallel with the north line of said Northwest Quarter 40.00 feet; thence North 01 degree 22 minutes 05 seconds East 70.00 feet to the POINT OF BEGINNING, containing 0.064 acres, more or less.*



PAGE 1 OF 1  
JOB #07068  
00082908  
BAW

PROPOSED DRAINAGE EASEMENT  
PREPARED FOR JBC1, LLC

BANNING ENGINEERING, P.C.  
855 COLUMBIA ROAD, SUITE 101  
PLAINFIELD, IN 46198  
PHONE: (317)-707-3700  
FAX: (317)-707-3800

EXHIBIT "C"

Stormwater Drainage Easement Agmt \_ Woodhall \_ Kestner