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JENNIFER J HAYDEN
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**DECLARATION OF COVENANTS, RESTRICTIONS AND
EASEMENTS FOR ABNEY GLEN**

THIS DECLARATION is made this ^{24th} day of August, 2006, by Abney Glen, LLC, an Indiana limited liability company (hereafter "Declarant").

RECITALS:

- A. Declarant is the owner of certain Property, located in Hamilton County, Indiana and more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property").
- B. Declarant has laid off, platted and subdivided the Property into lots pursuant to the Plat and the Commitments with the intent of developing the Property as a residential subdivision.
- C. Declarant desires to subject and place upon the Property certain covenants, restrictions, easements, reservations and other conditions set forth herein, in addition to those set forth on the Plat and in the Commitments, in order to ensure that development and use of the Lots are harmonious, to protect the value of the Lots and to promote and safeguard the health, comfort, safety, convenience and general welfare of the Owners, tenants and/or occupants of the Lots and of Declarant and its successors and assigns.
- D. Declarant desires to provide for the maintenance of the Common Areas and, to that end, desires to establish certain obligations of such Owners of the Lots and a system of assessments and charges upon such Owners for certain maintenance and other costs in connection with the operation and maintenance of the Subdivision.

NOW, THEREFORE, Declarant hereby declares that all the Property shall be held, occupied, sold, conveyed, hypothecated or encumbered, leased, rented, used, maintained and improved subject to the Plat, the Commitments and the following covenants, easements, restrictions, reservations and conditions, all of which are declared and agreed to be in furtherance of a plan for improvement and sale of the Property, and are established and agreed upon for the purpose of protecting and enhancing the value and desirability of the Subdivision as a whole and each Lot situated therein. All of the following covenants, restrictions, easements, reservations and other conditions set forth herein shall run with the Property and be binding on all parties having or acquiring any right, title or interest (legal or equitable) in and to the Property, or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof. The Owner of any Lot, by acceptance of a deed conveying title thereto, by the execution of a contract for the purchase thereof (whether from Declarant or a subsequent Owner), or by the act of occupancy or ownership of any Lot, shall accept such deed, execute such contract and/or occupy or own such Lot subject to this Declaration. By acceptance of such deed, execution of such contract and/or occupancy or ownership of such Lot, each Owner acknowledges the rights and powers of Declarant and of the Association with respect to this Declaration, and also for itself, its heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with the Declarant, the Association, and all other Owners of each of the Lots to keep, observe, comply with this Declaration.

ARTICLE I

NAME

Section 1. The platted subdivision of the Property, and all amendments thereto, created by this Declaration shall be known and designated as Abney Glen (hereafter "Subdivision").

ARTICLE II

DEFINITIONS

Section 2. The following are definitions of terms as they are to be used in this Declaration:

- 2.1 "Architectural Review Committee" or "ARC" or "Committee" shall mean the Architectural Review Committee of the Subdivision, as established in accordance with Article VIII.
- 2.2 "Articles" shall mean the Articles of Incorporation of the Association filed, or to be filed, with the Office of the Secretary of State of Indiana, as the same are or hereafter may be amended from time to time.
- 2.3 "Assessment" shall mean collectively or individually one (1) or more of the following: a Common Assessment, a Special Assessment and/or a Violation Assessment.
- 2.4 "Association" shall mean the Abney Glen Homeowners Association (or an organization of similar name), its successors and assigns, which has been or shall be created as an Indiana nonprofit corporation and whose membership shall consist of all Owners.
- 2.5 "Board" shall mean the Association's Board of Directors.
- 2.6 "Builder" shall mean a person or entity regularly engaged in the business of constructing single-family residences for sale and/or remodeling or repairing single-family residences and responsible for the original construction and/or repair or remodeling of a Residence on a Lot or Lots.
- 2.7 "By-Laws" shall mean all by-laws duly adopted by the Association, and all amendments thereto.
- 2.8 "City" shall mean the City of Carmel in Hamilton County, Indiana.
- 2.9 "Commission" shall mean the Plan Commission of the City.
- 2.10 "Commitments" shall mean those commitments made to the City concerning the use and development of the Property, a copy of which is attached hereto and made a part hereof as Exhibit "B", and which have been recorded in the Office of the Recorder of Hamilton County, Indiana, as the same are or hereafter may be amended from time to time.

- 2.11 "Common Area" shall mean all real property, including improvements thereto, facilities and personal property owned, to-be-owned, leased or to-be-leased by the Association from time to time for the common use, benefit and enjoyment of the Owners. Unless expressly stated to the contrary, the term "Common Area" as used herein (whether or not so expressed) shall include all portions of the Property designated on the Plat as a common area, including without limitation as a "Block", "Common Area", "C.A.", "Lake", "Lake Area", "Pond" or "Pond Area", and any other areas designated by the Declarant, and after the Control Transfer Date, the Association, for the common use and enjoyment of the residents of the Subdivision.
- 2.12 "Common Assessment" shall mean the annual share of Common Expenses imposed upon and assessed against each Lot, as determined and levied pursuant to the provisions of Article IX.
- 2.13 "Common Expenses" shall mean the estimated and actual costs for any maintenance, management, operation, repair, improvements and replacement of all or any part of the Common Area, including without limitation any taxes assessed against all or any portion of the Common Area, the costs of insurance for the Common Area as required herein, a reasonable allowance for working capital, contingencies and reserves, the costs of administration and enforcement of the Declaration and/or any rules or regulations promulgated in furtherance thereof, and any other cost or expense incurred for the benefit of the Common Area or the Subdivision generally.
- 2.14 "Control Transfer Date" shall mean the date as defined in Article VI hereof.
- 2.15 "Declarant" shall mean Abney Glen, LLC, an Indiana corporation, or any other person or entity which succeeds to its interest as a matter of law or as evidenced by a written instrument of transfer to such effect recorded in the Office of the Recorder of Hamilton County, Indiana.
- 2.16 "Declaration" shall mean the Plat, the Commitments and this Declaration, collectively.
- 2.17 "Development Plan" shall mean a complete and accurate site plan, drawn to scale, showing the drainage, grading, utility, landscaping and construction plans for the improvement of the Lot and construction of the Residence thereon, including without limitation, elevations, building materials and specifications, interior blueprints and estimated construction schedule, all as further specified in Article VIII hereof and by the ARC from time to time. All building plans and drawings required to be submitted to the ARC shall be drawn to a scale of 1/4"=1' and all plot plans shall be drawn by a professional to a scale of 1"=30' or to such other scale as the ARC shall deem appropriate.
- 2.18 "Drainage Board" shall mean the Drainage Board of Hamilton County, Indiana.
- 2.19 "Drainage, Utility and Sewer Easements" shall mean the strips of ground designated on the Plat (or otherwise granted, created or reserved pursuant to this Declaration) as drainage easements, utility easements, sewer easements, sanitary sewer easements and storm sewer easements, or any combination thereof, which

are hereby granted to and/or reserved or created for the appropriate governmental entities, public utilities, private utilities, the Declarant and/or the Association for the installation and maintenance of swales, ditches, pipes, drains, electric lines, gas lines, telephone lines, fiber optic and/or internet lines, sanitary sewers, manholes, detention and retention areas, other drainage areas and/or other facilities or equipment.

- 2.20 "Federal Agencies" means (by way of illustration but not limitation) the Federal Housing Authority, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Veterans Administration or any other governmental agency.
- 2.21 "Finished Living Area" shall mean that portion, measured in square feet, of any Residence that is intended exclusively for (and is suitable and habitable for) permanent occupancy by the Owner, but specifically excluding those portions of the Residence that constitute the garage, the basement (regardless of whether it is finished or not), any enclosed porch, any patio or deck.
- 2.22 "General Easements" shall mean blanket easement(s) in, across and over all or any portion of the Property for drainage, utility and sewer purposes as granted, created or reserved pursuant to this Declaration which are not otherwise shown on the Plat but which are necessary for the installation and/or maintenance of electrical, telephone, water, gas, sanitary and storm sewer, television, transmission facilities, security systems and other utility services (including without limitation all necessary lines, pipes, wires, cables, ducts, antennae and other equipment and facilities) in, on and/or over all or any portion of the Common Area and/or any Lot or Lots in order to serve any Lot(s) or all or a portion of the Common Area.
- 2.23 "Landscape Easement" shall mean any strips of grounds designated on the Plat and a blanket easement in, across and overall or any portion of the Property, as granted, created or reserved pursuant to this Declaration, for the installation and/or maintenance of landscaping including, but not limited to, landscape easements, landscape maintenance easements, and/or landscape maintenance access easements.
- 2.24 "Lot" (and in the plural form, "Lots") shall mean any parcel or parcels of land designated as a lot or lots upon the Plat. Subject to any necessary approval of the appropriate governmental authority, a "Lot" may contain portions of Property greater or less than its originally platted dimensions should the Declarant deem it advisable in order to accommodate the construction of a Residence.
- 2.25 "Mortgagee" shall mean and refer to any person or entity secured by a first mortgage or first deed of trust on any Lot or the Common Area who has notified the Association of this fact in writing. An "Eligible Mortgagee" shall be a Mortgagee who has given notice to the Association of its interest and requested all rights afforded Eligible Mortgagees under Article X.
- 2.26 "Owner" (and in the plural form, "Owners") shall mean the record owner, whether one or more persons or entities, of the fee simple title to a Lot, including

without limitation contract sellers, but excluding those persons and/or entities having such interest merely as security for the performance of an obligation. Unless specifically indicated to the contrary in this Declaration, the term "Owner" shall include the Declarant for as long as Declarant owns any portion of the Property and a Builder for as long as Builder owns any interest in any Lot.

- 2.27 "Person" shall mean an individual, firm, corporation, partnership, association, trust or other legal entity or any combination thereof.
- 2.28 "Plat" shall mean the Final Plat of Abney Glen, recorded in the Office of the Recorder of Hamilton County, Indiana, and any subsequent amendments thereto.
- 2.29 "Pond Area" shall mean any Common Area on which a Pond now exists or is designated on the Plat or is later constructed. "Pond" shall mean any body of water (whether designated as a pond or by another name on the Plat) which now exists or is designated on the Plat or is later constructed in a Pond Area.
- 2.30 "Pond Easement" shall mean any strips of ground designated on the Plat (or otherwise granted, created or reserved pursuant to this Declaration) for the installation and/or maintenance of a Pond Area and/or Pond, including but not limited to, an easement and right-of-way in, over and to any portion of the Common Area and/or Lot(s) on which or adjacent to which a Pond now exists or is designated on the Plat or is later constructed for the retention and detention of surface water to facilitate adequate drainage of the Subdivision.
- 2.31 "Residence" shall mean any structure approved by the ARC and permitted by the City and the Commission for occupancy as a single-family dwelling, together with all appurtenances thereto.
- 2.32 "Sidewalk Easement" shall mean the strips of ground designated on the Plat and a blanket easement in, across and over all or any portion of the Property, as granted, created or reserved pursuant to this Declaration, for the installation and/or maintenance of a Sidewalk. "Sidewalk" shall mean any concrete or asphalt sidewalk installed within any Sidewalk Easement.
- 2.33 "Signage Easement" shall mean a blanket easement in, across and over all or any portion of the Property (as granted, created or reserved pursuant to this Declaration) for the benefit of the Declarant (and after the Control Transfer Date, the Association) to install, erect, construct and maintain an entryway sign(s), directional signs, advertising signs advertising the Subdivision or any Lots therein, lighting, walkways, pathways, fences, walls and any other landscaping, architectural and recreational features or facilities considered useful or convenient for the development, operation and/or marketing of the Subdivision and/or any Lots.
- 2.34 "Special Assessment" shall have the meaning as set forth in Article IX.
- 2.35 "Street" shall mean any street so designated on the Plat.

- 2.36 "Substantial Completion" shall mean the completion of construction of a Residence such that the City can issue a Certificate of Occupancy (or the City's equivalent) for the Residence to allow for the occupancy of the Residence for residential purposes in compliance with all City building codes and ordinances.
- 2.37 "Surveyor's Office" shall mean the Surveyor's Office of Hamilton County, Indiana.
- 2.38 "Violation Assessment" shall have the meaning as set forth in Article IX.

ARTICLE III

CHARACTER OF THE DEVELOPMENT

Section 3.

- 3.1 No structure shall be erected, placed or permitted to remain upon any Lot except a Residence and accessory building(s) and structure(s) incidental to the use of a Residence, subject to the provisions of Articles VII and VIII hereof and in accordance with this Declaration. All Property located within the Plat which has not been designated by numbering shall be used in a manner determined by the Declarant. A Lot shall be used only for single-family residential purposes, subject to the provisions of Article VII hereof, and only one Residence shall be constructed thereon. No portion of any Lot shall be sold or subdivided such that there will be thereby a greater number of Residences in the Property than the number of Lots depicted on the Plat.
- 3.2 All of the Property, including without limitation each Lot and all Common Area, shall be subject to the easements, covenants and restrictions granted, reserved and created pursuant to this Declaration, the easements, restrictions and limitations of record appearing on the Plat (and any amendments thereto), on recorded easements, and rights-of-way, and also to all governmental zoning authority and regulations affecting the Property, all of which are incorporated herein by reference.

ARTICLE IV

EASEMENTS

Section 4. The following are easements, property rights and interests designated on the Plat or granted, created or reserved, in Declarant's sole discretion, pursuant to this Declaration:

- 4.1 The Drainage, Utility and Sewer Easements and the General Easements are hereby reserved unto the Declarant until the Control Transfer Date, and thereafter to the Association, for the development of the Subdivision, and the Association and all Owners of Lots in the Subdivision shall take title subject to the Drainage, Utility and Sewer Easements, the General Easements and such other easements created, granted or reserved herein and subject at all times to the rights of the entities to which the easements are granted or reserved to service and maintain such drainage facilities and easements.

- 4.2 No permanent structure and/or improvement (including without limitation, no landscaping or trees) of any kind, and no part thereof, shall be built, erected or maintained on or within the Drainage, Utility and Sewer Easements, the General Easements or such other easements created, granted or reserved herein, except by the Declarant, (or if after the Control Transfer Date, the Association) unless approved in writing in advance by the entity to which such easement(s) is granted or reserved. In furtherance of the foregoing, no mounding, lighting, fencing, signs, retaining walls, landscaping walls, entrance walls, irrigation lines, landscaping, trees or other permanent structure and/or improvement shall be placed within ten (10) feet of the center of any water or sanitary sewer infrastructure located within the Drainage, Utility and Sewer Easements, General Easements or other such other easements created, granted or reserved herein without the prior written approval of the Declarant (or if after the Control Transfer Date, the Association) and the appropriate entity to which the easements are granted or reserved. Any improvements and/or permanent structures, or any part thereof (including without limitation any landscaping or trees), installed on or within the Drainage, Utility and Sewer Easements, the General Easements or such other easements created, granted or reserved herein (or, in the case of water and sanitary sewer infrastructure, within ten (10) feet of the center of same) are subject to the rights (including the right to remove such improvement and/or structure where necessary without a duty of replacement or reimbursement) of the Declarant (or if after the Control Transfer Date, the Association) and the entities to which the easements are granted or reserved to construct, maintain, repair or remove any necessary facilities.
- 4.3 It shall be the responsibility of the Association and the Owners of the areas enclosed within the Drainage, Utility and Sewer Easements, the General Easements or such other easements created, granted or reserved herein to maintain such areas in such condition that the flow of storm drainage waters on, across and from said areas shall not be impeded, diverted or accelerated. Such use of the Drainage, Utility and Sewer Easements, the General Easements or such other easements created, granted or reserved herein for storm water movement or retention or detention is hereby declared to be an easement and servitude upon said land for the benefit of the Owners of other land included within the Plat affected by such use and for any proper governmental agency or department or any private or public utility. All proper governmental agencies or departments and public and private utilities are hereby given the right to access such areas to perform maintenance and to protect the easement and servitude rights.
- 4.4 Each Owner is responsible for all maintenance, repair and replacement of all grinder/ejector pumps, force mains and gravity laterals from the Residence on the Lot to the Residence's connection to the sanitary sewer main. The discharge of clear water sources, including without limitation foundation drains, sump pumps and roof drains to the sanitary sewers is prohibited. Subject to the terms and conditions contained in this Declaration, any grade changes across sanitary sewer facilities must be approved in advance in writing by the applicable utilities.
- 4.5 It shall be the responsibility of every Builder and the Owner of any Lot or parcel of land within the Plat to comply at all times with the provisions of the drainage plan as approved in conjunction with the Plat by the Drainage Board and/or the

Surveyor's Office and such other applicable agencies and the requirements of all drainage permits for such Plat issued by such agency or department. Failure to so comply shall operate as a waiver and release of the Declarant, the Association, and their respective engineers, agents and contractors, the Drainage Board and/or the Surveyor's Office from all liability as to damage caused by storm waters or storm drainage. Notwithstanding the foregoing, Declarant shall not have any liability to an Owner or to any other Person with respect to drainage on, over or under a Lot or erosion of a Lot, and by acceptance of a deed conveying title thereto, by the execution of a contract for the purchase thereof (whether from Declarant or a subsequent Owner), or by the act of occupancy or ownership of any Lot, each Owner shall be deemed to have agreed to indemnify, defend and hold harmless Declarant from and against all liability arising from, related to, or in connection with the erosion of or drainage on, over and under the Lot described in such deed.

- 4.6 The Sidewalk Easement is hereby reserved unto the Declarant and, after the Control Transfer Date, the Association, and the Association and all Owners of Lots in the Subdivision shall take title subject to the Sidewalk Easement and such other easements created, granted or reserved herein.
- 4.7 The Signage Easement is hereby reserved unto the Declarant and, after the Control Transfer Date, the Association, and the Association and all Owners of Lots in the Subdivision shall take title subject to the Signage Easement and such other easements created, granted or reserved herein. Any signs within the Signage Easement shall comply with any applicable zoning requirements of the City and/or Commission, and all such signs and other facilities installed within the Signage Easement shall be installed and maintained by the Association as a part of the Common Areas.
- 4.8 The Pond Easement is hereby reserved unto the Declarant and, after the Control Transfer Date, the Association, and the Association and all Owners of Lots in the Subdivision shall take title subject to the Pond Easement and such other easements created, granted or reserved herein.
- 4.9 Prior to the date upon which all Streets within the Subdivision are dedicated to the City, each Owner shall have a non-exclusive easement to use the Streets, as designated on the Plat, within the Subdivision for ingress and egress from the Owner's Lot, subject to any and all reasonable and non-discriminatory rules and regulations adopted by the Association.
- 4.10 The Landscape Easement is hereby reserved unto the Declarant and, after the Control Transfer Date, the Association, and the Association and all Owners of Lots in the Subdivision shall take title subject to the Landscape Easement and such other easements created, granted or reserved herein, for the purposes of (a) providing signs which either advertise the Property, the availability of Lots and/or identify the Property; and/or (b) installing landscaping, mounding, and screening. Notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences or other improvements shall be erected or maintained in the area of such easements, except by the Declarant and, after the Control Transfer Date, the Association. Furthermore, notwithstanding anything in this Declaration to the contrary, no planting shall be

done, and no hedges, walls, fences, structures, or other improvements shall be erected between (i) the Landscape Easement and (ii) any perimeter roadway, public highway or right-of-way along the perimeter or boundary of the Property, except by the Declarant and, after the Control Transfer Date, the Association.

- 4.11 Declarant reserves unto itself and, after the Control Transfer Date, the Association, the right: (a) to relocate, alter or otherwise change the location of any Drainage, Utility and Sewer Easement, General Easement, Signage Easement, Sidewalk Easement, Landscape Easement, Pond Easement and/or such other easements created, granted or reserved herein, or any facility at any time located therein; (b) to create, grant or reserve such further easements, licenses and rights-of-way within the Property as Declarant or Association may deem necessary or appropriate for the benefit of the Property or any portion thereof; and (c) to describe more specifically or to change the description of any Drainage, Utility and Sewer Easement, General Easement, Signage Easement, Sidewalk Easement, Landscape Easement, Pond Easement and/or such other easements created, granted or reserved herein, or easement, license or right-of-way now or hereafter created on the Property, by written instrument or by amendment to the Plat recorded in the Office of the Recorder of Hamilton County, Indiana.
- 4.12 Title to the Common Areas and any and all Lots shall be subject to the rights and easements created, granted or reserved herein.
- 4.13 Notwithstanding any architectural approval under Article VIII below, during the course of any maintenance, service, repair or work upon any easement, the Declarant (or if after the Control Transfer Date, the Association), any private utility, any public utility, and/or any governmental entity to which an easement has been granted or reserved herein shall have the right and the authority, without any obligation or liability whatsoever to any Owner, to remove, damage, or destroy any permanent improvement, facility, fence or other structure or landscaping built, erected, maintained or planted in any easement described in Section 4 hereof above and without any obligation of replacement therefor.
- 4.14 For a period of ten (10) years from the date hereof, Declarant (and after the Control Transfer Date, the Association) shall have a blanket easement and right on, over and under the Property to maintain and to correct drainage of surface water on, under, over and/or across the Property in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes, in addition to the rights in Section 4.13 above, the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary, following which Declarant (or the Association if after the Control Transfer Date) shall restore the affected property to its original condition as nearly as practicable and provide reasonable notice of its intention to take such action to all affected Owners, unless in the opinion of Declarant (or the Association if after the Control Transfer Date) an emergency exists which precludes such notice.

ARTICLE V

COMMON AREAS

Section 5.

- 5.1 Subject to such terms, conditions, rules and regulations as promulgated from time to time by the Declarant (or the Association if after the Control Transfer Date), Declarant hereby grants a non-exclusive easement to Owners for the use and enjoyment of the Common Areas, which non-exclusive easement shall be appurtenant to and pass with the title of each Lot, subject to (a) all rights of the Association herein regarding the Common Areas, and (b) all easements created, granted or reserved in this Declaration.
- 5.2 Declarant shall, at its sole discretion on or before the Control Transfer Date, convey the Common Areas by quitclaim deed to the Association, and upon such conveyance, the Common Areas shall be deemed to have been accepted by the Association. Upon conveyance of the Common Areas to the Association, the Association shall have all of the rights regarding the Common Areas as are herein reserved to the Declarant.
- 5.3 Declarant hereby reserves the following rights regarding the Common Areas, and upon conveyance of the Common Areas to the Association, the Association shall have the following rights regarding the Common Areas:
- (a) To dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes, subject to such conditions as may be adopted by the Association;
 - (b) To suspend the voting rights of any Owner for any period during which any assessments against the Owner's Lot and/or Lots remain unpaid, or an Owner is in violation of this Declaration, the Articles, the By-Laws, and/or published rule of the Association; and
 - (c) To create, grant and/or reserve an easement in any portion of the Common Areas for the benefit of the Declarant or a third-party in accordance with Article IV hereof.
- 5.4 No boats shall be permitted upon any part of any Pond or Pond Area. No dock, pier, wall or other structure may be extended into a Pond or Pond Area. No swimming, fishing, ice skating or other recreational activity will be permitted in, on or around any Pond or Pond Area. Each Owner of a Lot abutting any Pond or Pond Area within the Subdivision shall indemnify and hold harmless the Declarant, the Association, the Drainage Board, the Surveyor's Office and every other Owner against all loss or damage incurred as a result of injury to any Person or damage to any property (personal or real), or as a result of any other cause or thing, arising from or related to use of, or access to, such Pond or Pond Area by any Person who gains access thereto from, over or across the Owner's Lot. Neither the Declarant, nor the Association, Drainage Board and/or Surveyor's Office shall have any liability to any Person with respect to any Pond or Pond Area, the use thereof or access thereto, or with respect to any damage to any Lot resulting from any Pond or Pond Area or the proximity of a Lot thereto, including without limitation loss or damage arising from erosion, accretion, flooding or failure to drain properly. Notwithstanding anything to the contrary

contained herein or in any other document or instrument or any marketing materials, Declarant and the Association make no representation or warranty with respect to the level of water in any Pond or Pond Area from time to time, which level may fluctuate and to extremes. Without limiting the generality of the foregoing, any "pond elevation" shown on the Plat shall be as estimated for engineering purposes only and shall not be deemed a representation or warranty.

- 5.5 In addition to any other insurance required to be maintained by the Association herein, the Association shall (for as long as such Association exists) maintain public liability and casualty insurance at all times for all Ponds within the Subdivision with an aggregate coverage of not less than One Million Dollars (\$1,000,000). The Drainage Board and the Surveyor's Office shall be additional insureds on such policies, and such policies shall contain a provision that the policies may not be cancelled without thirty (30) days' prior written notice to the Drainage Board and the Surveyor's Office.
- 5.6 The Association shall be required at all times (for as long as the Association exists) to maintain public liability and casualty insurance for the Common Areas in an aggregate amount of not less than One Million Dollars (\$1,000,000), naming the Declarant as an additional insured for as long the Declarant has owns at least one (1) Lot or any interest in any of the Property of the Subdivision and providing that such insurance shall not be cancelled without at least thirty (30) days' prior written notice to Declarant.
- 5.8 In each instance in which this Declaration imposes on the Association a maintenance obligation with respect to the Common Area or a part thereof, the Association shall maintain the Common Area in good condition, order and repair comparable to its condition when originally constructed, installed or planted and compatible with other first-class residential subdivisions immediately adjacent to the Subdivision.
- 5.9 By acceptance of a deed conveying title to a Lot, by the execution of a contract for the purchase thereof (whether from Declarant, Builder or a subsequent Owner), or by the act of occupancy or ownership of any Lot, each Owner shall be deemed to have acknowledged, accepted and agreed to any changes made now or hereafter by Declarant, in its sole discretion, regarding the layout of the Streets (including without limitation changes to any cul-de-loops) and ingress to and egress from the Subdivision to the immediately adjacent public streets surrounding the Subdivision, including without limitation, changes to make any access points to the Subdivision only "right-in, right-out" access points or to otherwise restrict or limit the flow of traffic from or to the Subdivision as Declarant determines in its sole discretion, regardless of what is designated on the Plat. Without limiting the generality of the foregoing, any public or private driveway, street, access point, turn lane or other roadway shown on the Plat shall be for preliminary engineering purposes only and shall not be deemed a representation or warranty that the Subdivision shall either contain such public or private driveway, street, access point, turn lane or other roadway or contain same at such locations as shown on the Plat.
- 5.10 By acceptance of a deed conveying title to a Lot, by the execution of a contract for the purchase thereof (whether from Declarant, Builder or a subsequent

Owner), or by the act of occupancy or ownership of any Lot, each Owner shall be deemed to have acknowledged, accepted and agreed that: (a) the legal description of the Lot may not correspond to the apparent boundaries of the Lot and/or what appears to be the boundaries of the Lot from a visual inspection thereof; (b) there is a significant portion of Common Area and/or easements surrounding and immediately adjacent to the Lot which are not a part of the Lot; and (c) Owner shall not rely upon any verbal representations by Declarant and/or any Builder, broker or subsequent Owner in regarding the boundaries of any Lot or location of any Common Area or easement and shall waive any and all claims against Declarant for any misrepresentations, inaccuracies and/or omissions regarding the boundaries of a Lot or location of any Common Area or easement.

ARTICLE VI

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 6.

- 6.1 The duties of the Association shall include the following: (a) the promotion of the recreation, health, safety, and welfare of the residents in the Property; (b) the maintenance and repair of the Common Areas; (c) the performance of any other obligations and duties of the Association specified herein; and (d) the exercise of all rights and privileges specified herein or derived from same. The Association shall have such powers as are set forth in this Declaration and in the Articles, together with all other powers that belong to it by law.
- 6.2 Each Owner shall automatically be a member of the Association and shall enjoy the privileges and be bound by the obligations contained in this Declaration and in the Articles and By-Laws. Membership shall be appurtenant to and may not be separated from ownership of any Lot. If a Person would realize upon his security and become an Owner, he shall then be subject to all the requirements and limitations imposed by this Declaration, the Articles and by-Laws on other Owners, including those provisions with respect to the payment of Assessments.
- 6.3 The Association shall have the following single class of voting membership: All Owners within the Subdivision shall be "Class A" members of the Association. Class A members shall be entitled to one (1) vote for each Lot owned. When more than one Person holds an interest in any Lot, all such Persons shall be members of the Association. The vote for such Lot shall be exercised as the members holding an interest in such Lot determine among themselves, but in no event shall more than one (1) vote be cast or counted with respect to any one (1) Lot.
- 6.4 Upon acceptance of a deed or other instrument conveying title to or any interest in a Lot, each Owner of such Lot shall automatically confer, does hereby confer and shall be deemed to have conferred upon Declarant an irrevocable proxy to vote in such Owner's name, place and stead on any and all matters on which an Owner is entitled to vote under this Declaration, the Articles or the By-Laws. The proxy shall be a right, coupled with an interest, which shall be irrevocable until the earliest to occur of the following events (hereinafter referred to as the "Control Transfer Date"):

- (a) the date that Declarant voluntarily surrenders and terminates the proxies; or
- (b) the date that the number of Lots representing seventy-five percent (75%) of the total Lots of the Subdivision have been conveyed from Declarant to others.

Upon the Control Transfer Date, the aforementioned proxies shall terminate and be of no force or effect thereafter.

- 6.5 After the Control Transfer Date, the Owners shall elect the Board as prescribed by the By-Laws. The Board shall manage the Association's affairs. The initial Board shall be appointed by the Declarant and shall manage the Association's affairs until the Control Transfer Date. Prior to the Control Transfer Date, the Directors of the Board need not be members of the Association.
- 6.6 Prior to the Control Transfer Date, the Association may not use its resources, nor take a public position, in opposition to future phases of the Subdivision or changes to current phases proposed by the Declarant.

ARTICLE VII

COVENANTS AND RESTRICTIONS

Section 7. Each Owner hereby covenants and agrees to abide by the following covenants and restrictions in the construction and maintenance of the Owner's Lot and Residence located thereupon:

- 7.1 Lots may be used only for single-family residential purposes, except as otherwise permitted herein, and only one (1) Residence may be constructed upon a Lot. No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of Residences on the Property than the number depicted on the Plat.
- 7.2 The numbers representing the address of each Residence will be engraved into stone material set within masonry on the corner of the front exterior elevation of the Residence closest to the street or will otherwise be of a uniform appearance and displayed in a uniform location and manner, as determined by the ARC. All mailboxes and posts must be uniform and standard in size, location, design, height, material, color and design, as determined by the ARC.
- 7.3 Each Residence shall have at least one (1) photoelectric dusk-to-dawn light located on each side of the garage door(s). The dusk-to-dawn lights for each Residence shall be of a uniform appearance and will be displayed in a uniform location and manner, as determined by the ARC, and shall be installed and maintained by the Owner of the Lot. Unless approved in writing by the ARC, no other exterior light other than the aforementioned shall be permitted to be installed so as to shine or reflect directly upon another Lot. Street lights may be installed by Declarant in any easement created in, across or over a Lot or Common Areas by the Plat, the Commitments or this Declaration. Street lights,

if any, shall be operated and maintained by the Association. The Association reserves the right to remove street lights no longer deemed necessary by the Board of Directors.

- 7.4 No trailer, shack, tent, boat, basement, garage or other outbuilding shall be used at any time on a Lot as a dwelling, temporary or permanent, nor may any structure of a temporary character be used as a dwelling at any time.
- 7.5 Each Residence shall have a continuous five (5)-foot wide by a minimum of four (4) inches thick concrete Sidewalk installed parallel to all interior dedicated Street frontage. Sidewalks shall be installed by the Builder within the designated Sidewalk Easement located on the Lot and shall be included in the purchase price of the Residence. If an asphalt bike/walking path is approved by the City in lieu of the Sidewalk, no additional concrete Sidewalk will be required; provided, however, that such asphalt bike/walking path is installed within the designated Sidewalk Easement as provided herein and is included in the purchase price of the Residence. The Sidewalk shall be installed and completed prior to or simultaneously with Substantial Completion of the Residence and shall be insured and maintained at all times by the Owner.
- 7.6 Each Residence shall have a concrete driveway a minimum of sixteen (16) feet in width and least four (4) inches thick, which driveway shall be uniform in appearance and construction, as determined by the ARC and shall not be constructed within any side yard building setback for the Lot (as such side yard setback is specified on the Plat and in this Declaration). The driveway shall be installed and completed by the Owner prior to or simultaneously with Substantial Completion of the Residence and shall be maintained at all times by the Owner.
- 7.7 Prior to Substantial Completion of the Residence, each Owner shall connect to all utilities located within the Drainage, Utility and Sewer Easements and/or General Easements and shall pay all connection, availability, hook-up, lateral extension or other charges lawfully established with respect to connections thereto.
- 7.8 In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of such downstream Lot to permit such drainage to continue, without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, although no specific drainage easement for such flow of water is provided on the Plat. To the extent not maintained by the Drainage Board, Drainage, Utility and Sewer Easements reserved as drainage swales shall be maintained by the Owner of the Lot upon which such easements are located such that water from any adjacent Lot shall have adequate drainage along such Swale. Lots within the Property may be included in a legal drain established by the Drainage Board. In such event, each Lot in the Property will be subject to assessment by the Drainage Board for the costs of maintenance of the portion of the drainage system and the pond control structures included in such legal drain, which assessment will be a lien against the Lot. The elevation of a Lot shall not be changed so as to materially affect the surface elevation or grade of surrounding Lots. Perimeter foundation drains and sump pump drains shall be connected whenever feasible into a subsurface drainage tile. Down spouts and drains shall be designed to disperse runoff for overland flow to street or swale collection systems. Each Owner shall maintain

the subsurface drains and tiles located on his Lot and shall be liable for the cost of all repairs thereto or replacements thereof.

- 7.9 Except as permitted pursuant to the Signage Easement, no sign of any kind shall be displayed to the public view on any Lot except that one (1) sign of not more than four (4) square feet, and otherwise in compliance with all ordinances of the City, may be displayed at any time for the purpose of advertising the Lot for sale, or may be displayed by a Builder to advertise the Lot during construction and sale. Notwithstanding anything to the contrary contained herein, Declarant may, in its absolute discretion, display any sign on the Property in connection with the development and marketing of the Property until the Control Transfer Date.
- 7.10 This subsection is applicable to all Lots except those Lots which are used for a sales office or model home by the Declarant or a Builder. No fence, wall, hedge, or shrub planting higher than twenty-four (24) inches shall be permitted between the front property line and the front building setback line except where such planting is part of Residence landscaping approved by the Architectural Review Committee and the prime root thereof is within six (6) feet of the Residence. Corner Lots shall be deemed to have two (2) front property lines. Trees shall not be deemed "shrubs" unless planted in such a manner as to constitute a "hedge". All fencing on a Lot shall be of a wrought-iron material no higher than five (5) feet in height and otherwise uniform in style, color and material and harmonious with surrounding Residences and fences, as determined by the sole discretion of the ARC; provided, however, that such fencing shall also conform to the City's ordinances and regulations. No fence shall be erected or maintained on or within any Landscape Easement except such as may be installed by Declarant and subsequently replaced by the Association in such manner as to preserve the uniformity of such fence. No fence may be erected on a Lot without prior approval of the ARC; provided, however, that all fencing erected on a Lot must be erected within six (6) inches of the property line of such Lot and shall not be erected beyond the rear building setback line of the Residence into any side yard of the Lot. The ARC may establish further restrictions with respect to fences, including limitations on (or prohibition of) the installation of fences in the rear yard of a Lot abutting a Pond and design standards for fences. All fences shall be kept in good repair. No fence, wall, hedge, or shrub planting, or tree foliage which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the Lot lines at the streets and a line connecting points twenty-five (25) feet from the intersection of said street Lot lines; and, the same rule shall apply to the intersection of a driveway with a Street, in which case the edge of the driveway pavement shall be substituted for one of the Street Lot lines.
- 7.11 No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the Subdivision. Violation of any ordinance governing noise, building or lot maintenance, or any other public nuisance, shall be deemed to be a nuisance creating rights in every affected Owner, the Declarant and/or the Association to enforce the provisions hereof against the offending Owner. Barking dogs shall constitute a nuisance. In the event of a successful enforcement by an Owner, the Declarant and/or the Association of the provisions hereof, the

offending Owner shall be liable to the prevailing party for attorneys' fees, court costs, and all other costs and expenses of litigation and collection in connection therewith.

- 7.12 No trash, leaves or other materials shall be accumulated and/or burned upon a Lot at any time, including without limitation, composting. No Lot shall be used or maintained as a dumping ground for trash. Garbage and all other waste shall be kept in sanitary containers out of the public view except not more than twenty-four (24) hours prior to its removal thereof, when it may be placed at the curb of the Lot.
- 7.13 No above- or below-ground fuel storage tanks, with the exception of gas storage tanks used solely in connection with gas grills, shall be allowed to be kept or stored on any Lot or Residence at any time.
- 7.14 No septic tank, absorption field, or any other on-site sewage disposal system shall be installed or maintained on any Lot. Water wells shall not be drilled on any of the Lots except as required to irrigate Common Areas.
- 7.15 Except on Lots on which there is maintained a sales office or model home by the Declarant or a Builder, or as approved by the ARC, no metal, wood, fabric, fiberglass or similar type material awnings or patio covers will be permitted anywhere on any Lot.
- 7.16 No trucks one (1) ton or larger in size and/or campers, trailers, motor homes, boats, snowmobiles, jet skis or similar vehicles shall be parked on any Street within the Subdivision at any time or shall be permitted to remain on any driveway, yard or Lot at any time except within a closed garage. No outside storage of any commercial vehicles or trucks, trailers, boats, inoperable vehicles or fuel tanks shall be permitted at any time on any Lot or Street.
- 7.17 No antenna, satellite dish or other device for the transmission or reception of radio, television, telephone or satellite signals shall be permitted on any Lot without the prior written approval of the ARC, which approval shall not be unreasonably withheld if: (a) such device is not visible from the neighboring Lots, Streets and/or Common Areas; (b) the Owner, prior to installation, has received the written consent of the Owners of all Lots who would have views of the device from their Lots; (c) the device is a satellite dish one (1) meter or less in diameter and not affixed to the roof of the Residence; or (d) if prohibition of the installation, use and maintenance of such device is specifically preempted and superseded by applicable governmental authority.
- 7.18 Except on Lot(s) on which there is maintained a sales office or model home by the Declarant or a Builder, no exterior lights shall be erected or maintained between the building line and the Lot's boundary lines so as to shine or reflect directly upon another Lot.
- 7.19 Electric bug killers, "zappers" and other similar devices shall not be installed in a location or operated in a manner so as to create a nuisance.

- 7.20 It shall be the duty and obligation of the Owner of a vacant Lot to maintain such Lot and mow the lawn thereof. Declarant and the Association shall have the right, but not the duty, to enter upon each vacant Lot and to maintain the appearance thereof by cutting weeds, mowing grass, trimming trees, removing debris, installing erosion control devices, and performing any other act reasonable under the circumstances. The Owner shall be responsible for payment of all such expenses upon demand and the Declarant and/or the Association, shall have a lien on such Lot for the payment of such expenses, together with attorneys' fees and all other costs and expenses of litigation and collection which may be incurred in connection therewith.
- 7.21 In the event that the Owner of any Lot shall fail to maintain its Lot and any improvements situated thereon in accordance with the provisions of this Declaration, the Declarant and/or the Association shall have the right, but not the obligation, 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 these restrictions. The costs incurred by the Declarant or the Association shall be assessed to the Owner. The Owner shall reimburse the Declarant or the Association, as the case may be, within thirty (30) days of the date on which the Owner is invoiced by the Declarant or the Association. The Declarant or the Association, as the case may be, shall have the right to collect any outstanding Assessments in the manner described in this Declaration. Neither the Declarant nor the Association or any of its agents, employees, or contractors, respectively, shall be liable for any damage that may result from any maintenance work performed hereunder.
- 7.22 No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot. Dogs, cats and other household pets may be kept on a Lot provided that they are not raised, bred or kept for commercial purposes and provided that all such household pets kept on a Lot are confined to the Lot in such a manner that none of the household pets is or becomes a nuisance, a danger to children or annoys or disturbs adjoining Owners. Owners of dogs shall so control or confine them so as to avoid barking which will annoy or disturb adjoining Owners. Unless permitted by the Board of Directors of the Association, no Owner shall maintain more than four (4) total pets; provided, however, that fish which are located in indoor aquariums and which pose no risk to the public health shall not be considered pets for the purpose of this restriction. No dangerous or potentially dangerous pets, such as exotic animals (large wild cats, wolves, alligators, snakes which are poisonous or longer than two feet, poisonous spiders, etc.) shall be permitted to exist in a Residence or on a Lot without the unanimous consent of the Board of Directors; provided, however, that the decision of the Board of Directors to permit such animal or animals may be overturned by a majority vote of the Owners at any meeting.
- 7.23 Only permanent, in-ground pools and in-ground hot tubs with professional construction, approved in writing in advance by the ARC, shall be permitted on any Lot within the Subdivision. All Development Plans submitted to the ARC for approval of a pool or hot tub shall include landscape and/or fence plans. All pools and hot tubs should be oriented to minimize the potential effect on neighboring Lots and shall be adequately screened from public view with fence

and/or landscaping, as determined by the ARC, and otherwise in compliance with the City's ordinances and regulations.

- 7.24 Children's play equipment, such as sandboxes, temporary swimming pools having a depth of eighteen (18) inches or less, and swing and slide sets shall not require prior written approval by the ARC; provided, however, that (a) such equipment is not more than eight (8) feet in height at its highest point and is properly painted and maintained by Owner in good repair, (b) such equipment is located in the rear yard of the Lot between the parallel lines defined by extending the side lines of the Residence into the rear yard of the Lot, and (c) such swing and slide sets are constructed of wood or plastic. Aluminum and/or metal swing and slide sets and/or play equipment are prohibited. Tennis courts, racquetball courts, paddle ball courts, basketball courts, squash courts and other sporting facilities will not be permitted without the prior written approval of the ARC. No basketball goal or backboard shall be permitted to hang from or be affixed to the Residence or garage. Lighted courts of any kind are not permitted. Temporary or portable basketball courts will not be permitted in the Streets of the Subdivision. No trampoline(s) shall be permitted to be stored outside in public view on any Lot.
- 7.25 Other than as may be necessary or incident to the Declarant's, Builder's or Association's business or activities upon the Property (for which no ARC approval shall be required), any and all forms of an outbuilding, including but not limited to, storage shed, pool house, animal quarters, kennel, play house or other accessory building to a Residence shall not be installed or constructed on a Lot without the prior written approval of the ARC, which approval may be withheld in its sole discretion if the color, design and material of the proposed outbuilding is not substantially similar to that of the Residence and if the size and location are not harmonious and in keeping with the Residence, adjacent Residences and any other outbuildings located within the Subdivision. ®
- 7.26 No Owner or Builder shall install or maintain a heat pump, air conditioning unit or gas meter in the front yard of its Residence, or in the case of any corner Lot, in the back yard of its Residence. No room air conditioning unit shall be installed so as to protrude from any structure located on a Lot (including but not limited to the window of any Residence or garage).
- 7.27 Subsurface drains have been provided in certain areas within the Drainage, Utility and Sewer Easements, General Easements and/or other easements provided herein as additional storm and ground water drainage sources and are part of the public storm drainage system. Subsurface drain laterals have been provided on specific Lots, and the Builder on such Lots shall connect all sump pump discharge lines to such laterals in accordance with the City's and the County's standards and as further specified in this Declaration. All maintenance, replacement and repair of all sump pump discharge lines and subsurface drain laterals shall be the responsibility of each Owner in accordance with the following:
- (a) Owner's responsibility includes maintenance, repair and replacement of all sump pump lines and subsurface drain laterals, to be buried from the Residence to the Street according to the City's and the County's

standards between the connection at the sump pump within the Residence and the connection with the publicly maintained storm sewer or subsurface drain within the drainage easement;

- (b) In cases where subsurface drain laterals are connected along a common property line before connecting to the storm sewer, maintenance, replacement and repair of the common lateral will be shared equally by the adjacent Owners unless an individual Owner caused the lateral to be damaged, changed or altered;
- (c) Any Owner or Builder damaging, changing, or altering these subsurface drains and/or common subsurface drain laterals will be held responsible for such action and will be given ten (10) days' notice, by registered mail, to repair and/or replace said damage, after which time, if no action is taken, the appropriate jurisdictional agency, the Declarant and/or the Association will cause said repairs and/or replacement to be accomplished and the invoice for such repairs and/or replacement will be sent to the responsible Owner(s) and/or Builder(s) for immediate payment. If immediate payment is not received, the Declarant and/or the Association, as the case may be, shall have all the rights and remedies to collect any outstanding amounts as outlined hereafter in this Declaration;

7.28 Each Owner shall at all times maintain the Lot, the Residence and any other improvements located on the Lot in good condition and repair, in compliance with all Laws (as hereinafter defined) and shall, including without limitation:

- (a) Mow and trim the Lot and all landscaping located thereon regularly in the Spring, Summer and Fall months as required to prevent the unsightly growth of vegetation and weeds;
- (b) Regularly remove all debris and rubbish from the Lot;
- (c) Regularly prevent existence of any other condition that reasonably tends to detract from or diminish aesthetic appearance of the Subdivision;
- (d) Regularly keep the windows in such a state of repair or maintenance so as to avoid their becoming unsightly;
- (e) Regularly maintain any painted trim on the Residence and any accessory buildings so as to avoid unsightly peeling of the painted trim;
- (f) Cut down and remove any dead trees from the Lot in a timely manner;
- (g) Clear and shovel any snow accumulation of two (2) inches or greater from any Sidewalks on the Lot in a timely manner;
- (h) Regularly maintain (without altering or otherwise changing) any drainage structures and/or swales located on the Lot and repair and replace any damage to such drainage structures and/or swales within thirty (30) days from the date the Owner is made aware of such damage; and
- (i) For each Owner of a Lot that abuts a Pond Area and/or Pond Easement, at all times maintain the portion of the bank of the Pond Area and/or Pond Easement above the water surface level as constitutes a part of, or abuts, the Owner's Lot and keep that portion of the Pond Area and/or Pond Easement abutting such Lot free of debris and otherwise in reasonably clean condition.

7.29 Each Owner hereby acknowledges that, in order to further ensure that development and use of the Lots are harmonious and to protect the value of its

Lot and the other Lots, all Residences and other improvements within the Subdivision must be constructed in a timely and orderly manner, and therefore, each Owner hereby covenants and agrees to complete construction of its Residence and/or any other improvement (including without limitation landscaping) on its Lot in accordance with the following terms and conditions and to take all steps necessary to ensure that any agent, Builder, general contractor, contractor and/or independent contractor engaged by the Owner to construct, remodel and/or repair a Residence or other improvement on its Lot is made aware of and adheres to all Laws (as hereinafter defined), all rules and regulations regarding construction contained in this Declaration or otherwise adopted by the Declarant or the Association, including without limitation the following terms and conditions:

- (a) Prior to commencing construction, repair or remodel of a Residence or other improvement upon a Lot, the Owner shall have submitted a complete and accurate application and Development Plan for the proposed Residence or other improvement and received written approval for same from the ARC in accordance with the Declaration;
- (b) Construction of a Residence on a Lot shall commence no later than twelve (12) months from the date of Owner's initial purchase of the Lot, subject to inclement weather;
- (c) Construction or remodel of an improvement or remodel of a Residence on a Lot shall commence no later than twelve (12) months from the date of Owner's receipt of prior written approval from the ARC for same;
- (d) Construction, repair and/or remodel of a Residence or other improvement on a Lot must be diligently and continuously pursued and shall not cease for more than thirty (30) consecutive days, subject to inclement weather;
- (e) No Residence or other improvement which has partially or totally been destroyed by fire or other cause shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage or, if approval of the applicable casualty insurance is pending, then within three (3) months after such approval is forthcoming;
- (f) Upon commencement of construction, remodel or repair of a Residence or other improvement on a Lot, the Owner shall diligently and continuously pursue Substantial Completion of the Residence or completion of the improvement, subject to inclement weather, within twelve (12) months from the date of commencement of construction, remodel or repair of the Residence or improvement;
- (g) Within sixty (60) days following Substantial Completion of the Residence, subject to inclement weather (but in no event any later than June 30th of the same year in which Substantial Completion has occurred), the Owner shall completely landscape the Lot and install all trees within the Street right-of-way on, abutting or nearest its Lot as required by the Plat, the Commitments and all Laws and in accordance with the approved Development Plan;
- (h) Prior to Substantial Completion of the Residence, the Owner shall have completed the installation of the required Sidewalk, the required driveway and connection to all required utilities, all in accordance with this Declaration;
- (i) Upon commencement of construction, repair or remodel of a Residence or other improvement on any Lot and thereafter at all times while any

construction activity is on-going (even after a Certificate of Occupancy or its equivalent has been issued by the City) on such Lot, construction activity shall only be permitted to occur on any Lot between the hours of 6 a.m. and 6 p.m., local time, Monday through Saturday, and not at any time on Sundays ("Permitted Construction Hours");

- (j) No construction vehicles, equipment, trailers and/or the trucks and cars of any contractors or construction workers shall be parked or stored on any Street within the Subdivision so as to block or otherwise obstruct vehicular traffic on any Streets within the Subdivision at any time, and no such construction vehicles, equipment, trailers, trucks and/or cars shall be allowed to be parked on any Street within the Subdivision at any time other than during the Permitted Construction Hours.
- (k) No building materials, construction trailers and/or other construction equipment shall be allowed to be staged or stored outside on any Lot for more than thirty (30) consecutive days without the prior written approval of the Declarant or the Association, as the case may be. If any such building materials, construction trailers and/or other construction equipment is staged or stored outside on any Lot for more than thirty (30) consecutive days without the prior written approval of the Declarant or the Association, the Declarant or the Association, as the case may be, shall have the right and authority to remove such materials, construction trailers and/or other construction equipment from the Lot and have same stored off-site, all at the Owner's sole cost and expense, and the Declarant or the Association, as the case may be, shall not be liable for the secure storage of same nor for any damage or loss arising from the removal of same from the Lot;
- (l) Upon commencement of construction, repair or remodel of a Residence or other improvement on any Lot and thereafter at all times while any construction activity is on-going (even after a Certificate of Occupancy has been issued by the City) on any Lot, the Owner shall be responsible for ensuring that: (i) any construction debris, waste and trash is contained entirely on the Lot, does not encroach onto any other Lots, Common Areas or into the Streets within the Subdivision and is hauled away and disposed of off-site on a regular basis, in accordance with this Declaration and all Laws (as hereinafter defined); (ii) any dirt, soil erosion, dust, surface water flow and/or drainage does not encroach onto any other Lots, Common Areas or into the Streets within the Subdivision and all necessary and appropriate steps are taken to prevent same from occurring; and (iii) in the event that any construction debris, waste, trash dirt, soil erosion, dust, surface water flow and/or drainage does encroach onto any other Lots, Common Areas or into the Streets within the Subdivision, the Owner shall take all necessary and appropriate steps, or cause same to be taken, to clean up and/or contain such construction debris, waste, trash dirt, soil erosion, dust, surface water flow and/or drainage within Twenty-Four (24) hours from the date that the Owner is notified by the Declarant or the Association (either verbally or in writing) of any violation of this subsection;
- (m) The Declarant or the Association, as the case may be, may from time to time adopt other rules and regulations regarding construction activities on Lots within the Subdivision in addition to the provisions contained herein, and any and all construction activities within the Subdivision

shall be subject to such additional rules and regulations, regardless of whether such rules and regulations were adopted after the commencement of construction, repair or remodel of any Residence or other improvement on any Lot;

- (n) Prior to commencement of construction, repair or remodel of a Residence or other improvement on any Lot and thereafter when any rule or regulation regarding construction activities is adopted by the Declarant or the Association, the Owner shall: (i) deliver to the Builder, general contractor or contractor primarily responsible for the construction, repair or remodel of the Residence a copy of this Declaration and any and all rules and regulations regarding construction activities that have been adopted by the Declarant or the Association; (ii) have such Builder, general contractor or contractor sign the copy of the rules and regulations indicating his acknowledgement of and agreement to adhere to all such rules and regulations; and (iii) deliver such signed copy of the rules and regulations to the Declarant or the Association, as the case may be, within thirty (30) days from the date that such copy is first provided by the Declarant or the Association to the Owner.
- (o) The Declarant (prior to the Control Transfer Date) or the Association (after the Control Transfer Date) reserves the right to restrict or prohibit any Builder, general contractor or contractor from constructing, repairing or remodeling within the Subdivision if such Builder, general contractor or contractor: (i) has previously constructed, repaired or remodeled a Residence or other improvement within the Subdivision and did not adhere to the Declaration and/or aforementioned rules and regulations, or (ii) refuses to sign a copy of the rules and regulations indicating his acknowledgement of and agreement to adhere to all such rules and regulations;
- (p) Subject to the right of the Declarant or the Association to amend the same from time to time, the Declarant or the Association, as the case may be, shall have the right and authority, in addition to all other rights and remedies available at law and in equity, to impose a fine in the amount of Two Hundred Fifty Dollars (\$250.00) on the Owner for each violation of any provision contained in this Declaration and any additional rules and regulations adopted by the Declarant or the Association regarding construction activities by any agent, Builder, general contractor, contractor and/or independent contractor engaged by the Owner to construct, repair or remodel a Residence or other improvement on its Lot; and
- (q) Notwithstanding anything to the contrary contained herein and notwithstanding any ARC approval, each Residence and any other improvements to any Lot (whether temporary or permanent in nature) shall comply with all Laws regarding the construction and on-going maintenance and operation of such Residence.

7.30 No Lot or Lots shall be used by an Owner for any purpose other than as a single-family residence, except that a home occupation, which satisfies the following definition as well as all requirements of the City's Zoning Ordinance, may be permitted for any use conducted entirely within the Residence and participated in solely by a member of the immediate family residing in said Residence, which use is clearly incidental and secondary to the use of the Residence for dwelling

purposes and does not change the character thereof and in connection with which there is: a) no sign or display that will indicate from the exterior that the Residence is being utilized in whole or in part for any purpose other than that of a dwelling; b) no commodity sold upon the premises; c) no person is employed other than a member of the immediate family residing in the Residence; and d) no manufacture or assembly operations are conducted; provided, however, that in no event shall the following or similar activities be conducted or considered to be a permitted Home Occupation: child day care, barber shop, styling salon, animal hospital, or any form of animal care or treatment such as dog trimming, or any other similar activities. The foregoing notwithstanding, the Declarant (and Builders which have obtained the prior written approval of the Declarant) shall be permitted to operate sales trailers, model homes, and sales offices.

7.31 The following shall apply to open ditches and swales:

- (a) Drainage swales (ditches) along dedicated roadways and within the right-of-way, or on dedicated Drainage, Utility and Sewer Easements, General Easements or other easements as provided herein, are not to be altered, dug out, filled in, tiled, or otherwise changed, without the written permission of the appropriate jurisdictional agency and the Declarant. Owners must maintain these swales as grassways or other non-eroding surfaces in accordance with all Laws. Any damage to swales or drainage structures must be repaired or replaced by the Owner; and
- (b) Any Owner or Builder altering, changing, or damaging these drainage swales or ditches will be held responsible for such action and will be given ten (10) days notice, by registered mail, to repair and/or replace said damage, after which time, if no action is taken, the appropriate jurisdictional agency, Declarant or the Association will cause said repairs and/or replacement to be accomplished and the invoice for such repairs will be sent to the responsible Owners for immediate payment. If immediate payment is not received by the Association, the Association shall have all the rights and remedies to collect any outstanding amounts as outlined hereafter in this Declaration.

7.32 Except as otherwise provided, no individual using a Pond, if any, has the right to cross another Lot or trespass upon shoreline not within a Common Area owned by the Association, subject to the rights of the Declarant, the Association, their employees, heirs, successors and assigns as set forth in the Declaration. No one shall do or permit any action or activity which could result in pollution of any Pond, diversion of water, elevation of any Pond level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality, drainage or proper Pond management except as provided in the Declaration. A Pond may not be used for swimming, ice skating, boating, or for any other purpose, except for drainage of the Property, unless expressly and specifically approved by the Board of Directors in writing and allowed by law. Ponds and Pond Areas may or may not exist on the Property, and the reference throughout this Declaration to Ponds and Pond Areas is made in order to address Ponds and Pond Areas, if any, which now exist or are later constructed upon the Property. The installation on the Property of any Pond or Pond Area shall be within the sole discretion of the Declarant, and under no circumstances shall the Declarant be required or obligated to install any Pond or Pond Area. Only the

Declarant and the Association shall have the right to store items or develop recreational facilities upon any Common Area owned by the Association adjacent to a Pond.

- 7.33 No clotheslines may be erected on any Lot.
- 7.34 All plumbing vent stacks shall be located on the rear of the Residences.
- 7.35 The roofing materials on all Residences within the Subdivision shall be of a color, quality, style and composition acceptable to the ARC, in its sole discretion.
- 7.36 All metal and PVC roof or range vents shall be painted to blend with the Residence's roof color.
- 7.37 No solar panels shall be permitted on any Residence.
- 7.38 If storm doors are installed, they must be painted to match the exterior color of the Residence. No unfinished aluminum doors or windows shall be permitted.
- 7.39 Decorative street signs that do not conform to applicable City standards may be installed by Declarant in the Declarant's sole and absolute discretion. Such decorative street signs shall be maintained by the Association, and shall be repaired or replaced by the Association if damaged in accordance with applicable rules and regulations of the controlling municipality. The Association assumes all liability in the installation, maintenance and repair of the decorative street signs.
- 7.40 No Residence constructed on any Lot shall be occupied or used for permanent residential purposes or human habitation until a certificate of occupancy (or its equivalent) has been issued by the City.
- 7.41 Each Owner shall cut all grass and trim and otherwise insure, replace and maintain all other landscaping located in the Street right(s)-of-way and the Landscape Easement(s) on, abutting or nearest its Lot and shall insure, replace and maintain all Sidewalks in the Sidewalk Easements on its Lot. Each Owner shall insure, maintain and immediately replace any landscaping, including without limitation any Street trees, located within any Street right(s)-of-way and Landscape Easement on, abutting or nearest its Lot as required by this Declaration, the Plat, or any other document controlling maintenance of Lots.
- 7.42 All Lots shall have irrigation systems serving the entire Lot. The front yard, side yards and that portion of the back yard of the Lot a distance of ten (10) feet from the Residence building line shall be sodded immediately following final grading of the Lot, and the balance of the Lot shall be hydroseeded. For Lots on which Residences are Substantially Completed on or after November 15th and before April 15th, all landscaping, hydroseeding, sodding and irrigation installation shall be completed on or before the following June 30th. For all other Lots, all landscaping, irrigation installation, hydroseeding and sodding shall be completed within sixty (60) days after Substantial Completion of the Residence.

- 7.43 Declarant shall maintain all Streets and curbs in good condition satisfactory for the purpose for which they were constructed until their dedication has been accepted by the City.
- 7.44 All street lights and decorative street signs located within the right-of-way of any Street and/or any Signage Easement shall be maintained by the Association.

ARTICLE VIII

ARCHITECTURAL REVIEW COMMITTEE

Section 8.

- 8.1 The ARC shall have the authority to regulate the external design, appearance, use, location and maintenance of the Subdivision and the Property in order to preserve and enhance values and maintain a harmonious relationship among the Lots and Residences within the Subdivision. Each purchaser and Owner of a Lot within the Subdivision shall take title subject to the aforementioned authority of the ARC and the standards and procedures contained herein. Approvals, determination, permissions, or consents required herein shall be deemed given only if they are given in writing and signed, with respect to the Declarant or the Association, by an officer thereof, and with respect to the ARC, by one (1) member thereof.
- 8.2 The ARC shall consist of three (3) or more Persons appointed by the Board as provided by the By-Laws and herein. Prior to the Control Transfer Date, Declarant shall have the right to appoint and remove, with or without cause, all Persons from the ARC. Persons serving on the ARC shall not be required to be Owners in order to serve on the ARC unless otherwise specified in the By-Laws.
- 8.3 Declarant intends that the ARC exercise discretion in the performance of its duties consistent with the provisions hereof, and every Owner by the purchase of a Lot and every Mortgagee by the acceptance of a mortgage or deed of trust for a Lot shall be conclusively presumed to have consented to the exercise of discretion by the ARC. In any judicial proceeding challenging a determination by the ARC and in any action initiated to enforce this Declaration in which an abuse of discretion by the ARC is raised as defense, abuse of discretion may be established only if a reasonable person, weighing the evidence and drawing all inferences in favor of the ARC, could only conclude that such determination constituted an abuse of discretion.
- 8.4 The ARC shall have the right to inspect work being performed on any Lot without the Owner's permission to assure compliance with the restrictions and applicable regulations in this Declaration.
- 8.5 Neither the ARC nor the Declarant or Association, or any agent thereof, respectively, shall be liable in any way for any costs, fees, damages, delays, or any charges or liability whatsoever relating to the approval or disapproval of any Development Plan or plans submitted to it, nor shall the ARC, Association or Declarant, or any agent thereof, respectively, be responsible in any way for any defects in any plans, specifications or other materials submitted to it, or for any

defects in any work done according thereto. Further, the ARC, Association, Declarant and/or any agent thereof, respectively, make no representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, the compliance of proposed plans with laws and zoning ordinances, or the materials to be used. All parties should seek professional construction and engineering advice and inspections on each Lot prior to proposing construction.

- 8.6 None of the following shall be installed or constructed by any Owner or Builder, but specifically excluding the Declarant (prior to the Control Transfer Date) and the Association (after the Control Transfer Date), without prior written approval thereof by the ARC: (i) any and all landscaping, fences, structures, lighting, walking trails, sidewalks, or other improvements located in any Common Area, Landscape Easement, Drainage, Utility and Sewer Easements, General Easements or any other easements provided pursuant to this Declaration; (ii) any entrance monument or signage identifying the Development or any section thereof; and/or (iii) street signage.
- 8.7 Whenever two (2) or more contiguous Lots shall be owned by the same Owner, and such Owner shall desire to use two (2) or more of said Lots as a site for a single Residence, such Owner must apply in writing to the ARC for permission to so use such Lots. If permission for such a use is granted, the Lots constituting the site for a single Residence shall be treated as a single Lot for the purpose of applying this Declaration to said Lots, so long as the Lots remain improved with one (1) single Residence; provided, however, that the Owner agrees to and shall pay all Common Assessments for each originally platted Lot and shall agree to the placement of any lien by the Association on both Lots.
- 8.8 No construction, repair or remodel of any Residence, building structure, fence, deck, kennel, swimming pool, hot tub, tennis or basketball court or the like, or improvement of any type or kind (including any significant landscaping, as determined by the ARC), nor the alteration of any exterior color or building material of same, shall be permitted without the prior approval of the ARC. Such approval shall be obtained only after the Owner of the Lot requesting authorization from the ARC has made written application to the ARC at least thirty (30) days prior to the commencement of the proposed construction. Such written application shall be in the manner and form as prescribed from time to time by the ARC and shall be accompanied by two (2) complete sets of the Development Plan for the proposed Residence and/or improvement. The ARC shall have a period of thirty (30) days from the date of receipt of a complete application and Development Plan in which to approve, disapprove or approve with conditions the Owner's application and Development Plan. If the ARC approves the Owner's application and Development Plan, the Owner shall be permitted to commence construction of the proposed improvement, and the ARC's approval shall remain valid and effective for a period of one (1) year from the date such written approval is issued. If the ARC disapproves the Owner's application and Development Plan, the ARC shall provide its reasons for doing so in writing to the Owner. If, however, approval has not been received by applicant in writing within thirty (30) days from the date of receipt of the complete application and Development Plan, then said application shall be deemed DENIED. The Owner may thereafter resubmit a revised application and

Development Plan to the ARC, and the same time periods and procedures for review and approval of the resubmitted application and plan shall apply. The ARC may also approve an application and Development Plan with certain imposed conditions, and the Owner shall be permitted to commence construction of the proposed improvement as long as the Owner agrees in writing, prior to commencing such construction, to honor and comply with the conditions imposed by the ARC. Any application and/or Development Plan submitted to the ARC for any improvement other than the initial construction of a Residence on a Lot shall be accompanied by payment of an administrative fee in the amount of Two Hundred Fifty Dollars (\$250.00) (in the form of cash, a cashier's check, money order or credit card payment) to defray the costs of reviewing the application and/or Development Plan and administering the approval process. No application and/or Development Plan submitted without the accompanying full payment of the aforementioned administrative fee shall be considered by the ARC for approval or reviewed in any manner until such time as full payment is received. The Declarant and/or the Association reserves the right to change the administrative fee at any time and from time to time as it deems necessary, in its sole discretion. Notwithstanding anything to the contrary in the foregoing, upon receipt of any written application which is in form and content acceptable to the ARC in the ARC's sole and absolute discretion, the ARC may pre-approve a Builder's plans and specifications for the original construction of a Residence and, in the event of such pre-approval, the Builder shall then be authorized to construct the pre-approved Residence on different Lots without further approvals from the ARC.

- 8.9 The ARC may refuse to grant approval with or without cause. Common grounds for denial include, but are not limited to, a lack or absence of the following: (a) the plans and specifications, drawings or other material submitted must be adequate and complete, show the proposed improvement and must not be in violation of the Plat, the Commitments or Declaration; and (b) the design or color scheme of a proposed improvement must be in harmony with the general surroundings of the Lot or with adjacent buildings or structures.
- 8.10 The ARC may allow reasonable variances or adjustments to this Declaration where literal application would result in unnecessary hardship, but any such variance or adjustment shall be granted in conformity with the general intent and purposes of this Declaration, and no variance or adjustment shall be granted which is materially detrimental or injurious to other Lots in the Development, and any such variance or adjustment granted shall not be considered as setting a precedent or creating an expectation that the ARC might rule similarly in the future on other variance requests. Except as otherwise expressly provided in this Declaration, no construction, improvements, alterations, repairs, change of colors, excavations, changes in grade, planting or other work that in any way alters any Lot or the exterior of the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by Declarant to another Owner shall be made or done without the prior approval by the ARC of a Development Plan therefor.
- 8.11 A decision of the ARC (including a denial resulting from the failure of the ARC to act on a Development Plan within the specified period) may be appealed to the Board of Directors, which may reverse or modify such decision (including

approve a Development Plan deemed denied by the failure of the ARC to act on such plan within the specified period) by a two-thirds (2/3) vote of the Board of Directors then serving.

- 8.12 If an Owner or Builder has encroached on an adjacent Owner's Lot, a portion of the Property or in a Common Area, the encroaching Owner or Builder will immediately, at his or her own expense, move any fence or other improvement(s) so as to eliminate the encroachment.
- 8.13 Each purchaser of a Lot in the Subdivision shall take title subject to the aforementioned authority of the ARC and the following architectural standards and procedures:
- (a) All Residences must have basements or crawl spaces and attached garages with a minimum size sufficient to allow for the indoor storage of at least two (2) automobiles.
 - (b) The maximum height of any Residence shall be thirty-five (35) feet at its highest point.
 - (c) No Residence may be constructed on a Lot any nearer to the front Lot line, or nearer to the side Lot lines or rear Lot line than the minimum building setbacks provided herein.
 - (d) The minimum building setbacks for each Lot shall be as follows: (i) twenty-five (25) feet from the Street right-of-way for the front yard; (ii) ten (10) feet for the rear yard; and (iii) seven and one-half (7.5) feet for the side yards (unless the Lot is located on a corner of a section within the Subdivision, in which event the minimum building setback for a side yard shall be twenty (20) feet).
 - (e) Notwithstanding the foregoing, the minimum width of any Lot within the Subdivision shall be at least ninety (90) feet at the building line.
 - (f) No Residence shall be built on any Lot with a Finished Living Area of less than: (i) Two Thousand Four Hundred (2,400) square feet for a single-story building; or (ii) Three Thousand (3,000) square feet for a two-story building.
 - (g) The minimum roof pitch for any Residence, regardless of whether it is a single-story or two-story building, shall be at a ratio of 5/12 on all Lots. All Residences shall have a minimum of three (3) ridgelines unless otherwise permitted by the City.
 - (h) No Residence shall be permitted to have any aluminum or vinyl siding anywhere on its exterior (except for architectural trim and around windows and doors); "Hardiplank" and cedar siding building materials will be the only siding materials permitted on the exterior elevations of the Residence. No Residence shall be permitted to have any cinder block, "CBS" or concrete block to be exposed or visible on any exterior elevation of the Residence, including without limitation on any walk-out

basement. "Hardiplank", cedar siding, brick, stucco and stone shall be the only permitted exterior building materials for any Residence, and all exterior building materials proposed for the construction of any Residence shall be subject to the prior written approval of the ARC.

- (i) Each Residence must be constructed of eighty percent (80%) masonry on the first floor, front, sides and rear, exclusive of windows, doors and garage doors. The basement floor of the rear elevations of Residences with walk-out basements shall constitute the first floor of the rear elevation. Permitted masonry materials shall be brick, limestone, natural stone, cultured stone, EIFS and/or stucco.

8.14 No approval by the ARC of any application, Development Plan, other plans or variance or adjustment request shall be deemed or construed to be a representation or warranty on the part of the ARC, the Declarant or the Association that such application, Development Plan, other plans or variance or adjustment is in compliance with all local, state and federal codes, laws, ordinances, statutes, rules and regulations or is free from defect in design, method of construction, engineering, etc. Neither the ARC, the Declaration, the Association, nor any agent thereof, respectively, shall be liable in any way for any costs, fees, damages, delays or any charges or liability whatsoever relating to the review, approval or disapproval (or failure to do grant any of the same) of any application, Development Plan, other plans or any other request submitted to it. Each Owner has the responsibility and obligation to ascertain whether the proposed Residence or improvement is in compliance with all applicable local, state or federal codes, ordinances, statutes, laws, rules and regulations ("Laws") and free from defect, and prior to making any application or submitting any Development Plan to the ARC, the Owner shall have obtained all necessary variances, waivers and/or other approvals from any local, state or federal governmental authority, including without limitation the City or the Commission, for the construction of any proposed Residence or improvement which is not in compliance with all Laws. Subsequent to the ARC's approval of the Development Plan, the Owner shall obtain all necessary permits and/or other approvals, including without limitation a building permit from the City, from any local, state or federal governmental authority to allow for the commencement and completion of the proposed Residence or other improvement in accordance with the approved Development Plan, all Laws. In submitting an application or request to the ARC, the Owner hereby warrants and represents that it has or will have obtained all of the aforementioned necessary approvals and permits and has satisfied itself that the proposed Residence or improvement is free from defect and is merely seeking approval of the proposed Residence or improvement as being in compliance with the Declaration and harmonious with the Subdivision and architectural style of other Residences within the Subdivision. If any change is made to the Development Plan subsequent to the ARC's approval thereof, the Owner shall be required to submit a revised Development Plan showing such change and obtain the ARC's approval of such revised Development Plan prior to commencing any construction, and the revised Development Plan shall be subject to the review process and all other provisions of this Section 8.

8.15 The ARC may utilize the services of architects, engineers and other Persons possessing design expertise and experience in evaluating Development Plans. No

presumption of any conflict of interest or impropriety shall be drawn or assumed by virtue of the fact that any of such consultants are affiliated with Declarant or may, from time to time, represent Persons filing Development Plans with the ARC.

- 8.16 The ARC shall not be required to consider any Development Plan submitted by an Owner who is, at the time of submission of such Development Plan, in violation of any provision of this Declaration, unless such Owner submits to the ARC with such Development Plan an irrevocable agreement and undertaking (with such surety as the ARC may reasonably require) to cure such violation, including without limitation removing from the Owner's Lot any improvements, landscaping or exterior lighting constructed and/or installed prior to the submission of a Development Plan (or constructed and/or installed in violation of a previously approved Development Plan) to the extent any such previously constructed and/or installed improvement, landscaping or exterior lighting is not subsequently approved by the ARC.
- 8.17 The ARC shall have the power to recommend to the Board of Directors that the Declarant or the Association assess a Violation Assessment against any Owner who fails to comply with the requirements of this Article 8. Under no circumstances shall any action or inaction of the ARC be deemed to be unreasonable, arbitrary or capricious if, at the time of such decision, the Person having submitted a Development Plan for approval by the ARC has violated any provision of the Declaration and such violation remains uncured.
- 8.18 No reference herein to any accessory building, pool, hot tub, fence or other structure or improvement shall be construed as a representation by the Declarant or the Association that same will be permitted as a matter of right or that an Owner is entitled to approval of same.

ARTICLE IX

ASSESSMENTS

CHICAGO TITLE

Section 9.

- 9.1 Each Owner of any Lot, except the Declarant, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association as follows: (a) Common Assessments; (b) Special Assessments; and (c) Violation Assessments.
- 9.2 By a majority vote of the Board, the Board shall adopt an annual budget for the subsequent fiscal year, which shall provide for the allocation of expenses in such a manner that the obligations imposed by the Declaration can be met.
- 9.3 By a majority vote of the Board, the Board during any calendar year shall be entitled to increase the Common Assessments for that year if it should determine that the estimated or current Assessment is insufficient for that year, provided that the Board shall give at least thirty (30) days' advance written notice to the

Owners. The Board shall establish the dates upon which the Common Assessments shall become due and the manner in which it shall be paid.

- 9.4 In addition to any other Assessments, by a majority vote of the Board, the Board may levy in any year a "Special Assessment" for the purpose of enforcing the Declaration, for legal expenses, for collection expenses, to defray the cost of undertaking the action that is the responsibility of an Owner but which action has not been taken, for the cost of any capital improvement which the Association is required to maintain, for operating deficits, or such similar purpose; provided, however, that any such Assessment shall have the assent of the majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.
- 9.5 In addition to all other Assessments authorized herein, by a majority vote of the Board, the Board may levy a "Violation Assessment" for any violation of this Declaration or for damage to any portion of the Common Area by an Owner and/or the Owner's occupants, guests, invitees, agents and/or contractors (including without limitation the Owner's builder, general contractor and subcontractors) which damages the Owner has not undertaken to repair or replace in accordance with the provisions of this Declaration.
- 9.6 Each Lot owned by a Person other than the Declarant shall be assessed at a uniform rate without regard to whether a Residence has been constructed upon the Lot. The provisions of subsection for uniform assessment shall not be deemed to require that all Assessments against vacant Lots or Lots improved with comparable types of Residences be equal, but only that each Lot be assessed uniformly with respect to comparable Lots subject to assessment for similar costs and expenses.
- 9.7 Declarant shall not pay the Common Assessment or any Special Assessment so long as any Residence constructed upon a Lot by Declarant has not been conveyed to an Owner intending to occupy the Residence.
- 9.8 All Assessments, together with interest thereon, attorneys fees, and other costs of collection permitted by this Declaration to be collected, shall be a charge on the land and shall be a continuing lien upon the Lot against which each Assessment is levied until paid in full. Each Assessment, together with interest thereon and costs of collection thereof, including reasonable attorneys fees, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due. No sale or transfer of a Lot shall relieve such Lot from liability for any Assessments or liens due and owing to the Association.
- 9.9 No Owner, by waiver of the use or enjoyment of the Common Areas, or by abandonment of the Residence belonging to such Owner, may exempt itself from paying any Assessment or other expense provided for in this Declaration. In addition to any other rights of the Board as provided herein, any failure of any Owner to timely pay any Assessment shall entitle the Board, by a majority vote of the Board, to take any or all of the following actions:
- (a) impose a monthly late charge of up to twenty-five percent (25%) of the amount of the Assessment;

- (b) accelerate the entire balance of the unpaid Assessments for the remainder of the fiscal year and declare the same immediately due and payable;
 - (c) suspend the Owner's right to use the Common Areas;
 - (d) suspend the Owner's right to vote;
 - (e) foreclose upon the Owner's Residence for the amount of the lien for such unpaid Assessment; and/or
 - (f) take any other action, seek enforcement of any other right and/or pursue any other remedy provided at law or in equity.
- 9.10 Each Owner shall be personally liable for the payment of all Assessments, and where the Owner constitutes more than one Person, the liability of such Persons shall be joint and several.
- 9.11 The Association shall, upon reasonable request by an Owner, furnish a letter in writing signed by an officer of the Association, indicating the accounting status of Assessments on a Lot and showing the balance due, if any, to the Association. In connection with providing such letter, the Association may adopt an administrative fee to be charged to the Owner to defray the cost of processing such request and issuing such letter.
- 9.12 On the earlier of (i) the date a Lot is conveyed (either by deed or by installment sale, conditional sale or land-contract sale) by Declarant to a Builder or an Owner (other than the holder of a first mortgage on such Lot in a conveyance which constitutes a deed in lieu of foreclosure), (ii) the date a Residence constructed on the Lot has been certified for occupancy by the City or (iii) the date a Residence on the Lot is first occupied by an Owner upon completion of construction thereof, there shall be due and payable to the Association by the Owner of such Lot the sum of Four Hundred Fifty Dollars (\$450.00) as a contribution to its working capital and start-up fund, which payment shall be non-refundable and shall not be considered as an advance payment of any Assessment or other charge owed the Association with respect to such Lot. Such working capital and start-up fund shall be held and used by the Association for payment of, or reimbursement to Declarant for advances made to pay, expenses of the Association for its early period of operation of the Subdivision, to enable the Association to have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary by the Board.
- 9.13 Upon conveyance of a Lot to Builder but prior to the date of closing of the sale of a Lot from a Builder to an Owner, the estimated Common Assessment for each Lot shall be Fifty-Five Dollars (\$55.00) per month per Lot. The estimated Common Assessment for a Lot, commencing upon the date of closing of the sale of a Lot to from a Builder to an Owner other than the Builder shall be Ninety-Five Dollars (\$95.00) per month per Lot. These are estimates of the initial Common Assessments and are subject to change without further notice by a majority vote of the Board.

- 9.14 The lien of the Assessments provided for herein against a Lot shall be subordinate to the lien of any recorded first mortgage covering such Lot and to any valid tax or special assessment lien on such Lot in favor of any governmental taxing or assessing authority. Sale or transfer of any Lot shall not affect the Assessment lien, and no sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

ARTICLE X

GENERAL PROVISIONS

Section 10.

- 10.1 Each Owner of a Lot subject to this Declaration, by acceptance of a deed conveying title thereto, or by virtue of the execution of a contract for the purchase thereof, shall accept such deed and execute such contract subject to each and every covenant, condition, easement and restriction contained in this Declaration. By acceptance of such deed or execution of such contract, each Owner acknowledges the rights and powers of the Declarant, the ARC and the Association contained in this Declaration, and also, for themselves, their heirs, personal representatives, successors and assigns, such Owner covenants and agrees and consents to and with the Declarant, the ARC and the Association to keep observe, comply with and perform such covenants, conditions, easements and restrictions contained in this Declaration.
- 10.2 The Declarant, the Association and/or any Owner (subject to the provisions of Article 11 above) shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, restrictions, easements, liens, Assessments and charges now or hereafter imposed by the Declaration or other Association documents unless such right is specifically limited. Failure by the Declarant and/or the Association or any Owner to enforce any right, provision, covenant or conditions which may be granted by this Declaration shall not constitute a waiver of the right of the Declarant and/or Association or any Owner to enforce such right, provision, covenant or condition in the future. All rights, remedies and privileges granted to the Declarant and/or the Association or any Owner by this Declaration shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies nor shall it preclude the party exercising same from exercising such privileges as may be granted to it by this Declaration or at law or in equity. Notwithstanding the foregoing, nothing contained in this Declaration shall be construed in any manner to limit any activity of the Declarant in the construction, development and marketing of the Property.
- 10.3 Any Mortgagee shall notify the Secretary of the Board of Directors of such mortgage and provide the name and address of the Mortgagee. A record of such Mortgagee's name and address shall be maintained by the Secretary and any notice required to be given to the Eligible Mortgagee pursuant to the terms of the Declaration, the Articles or the By-Laws (the "Organizational Documents") shall be deemed effectively given if mailed to such Eligible Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary

by the Mortgagee, no notice to any Mortgagee as may be otherwise required by the Organizational Documents shall be required and no Mortgagee shall be entitled to vote by virtue of the Organizational Documents or a proxy granted to such Mortgagee in connection with the mortgage.

- 10.4 The Association shall promptly provide to any Eligible Mortgagee notice of any of the following:
- (a) Any delinquency in the payment of any Assessment owed by the Owner of any Residence on which said Eligible Mortgagee holds a mortgage or any default by an Owner under the Organizational Documents, if said delinquency or default continues for more than one hundred eighty (180) days; or
 - (b) Any proposed action that requires the consent of a specified percentage of Eligible Mortgagees, as provided herein.
- 10.5 The covenants, easements and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of the Declarant or any Owner subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of twenty (20) years from the date this Declaration is recorded. Upon the expiration of such initial twenty-year period, this Declaration shall automatically be extended for successive periods of ten (10) years each upon expiration of the previous ten-year period; provided, however, that there shall be no renewal or extension of this Declaration if, during the last year of the initial twenty-year period or during the last year of any subsequent ten-year period, three-fourths (3/4) of the votes cast at a duly held meeting of the Owners of the Association vote in favor of terminating this Declaration at the end of its then current term. In order for such vote to be deemed valid: (a) all Owners of the Association shall have been given written notice of such meeting at least thirty (30) days in advance, (b) the vote shall have been administered in accordance with this Declaration and the By-Laws; (c) the Board shall prepare and execute a certificate documenting the vote by three-fourths (3/4) of the Owners to terminate the Declaration and obtain the signatures of all Eligible Mortgagees having an interest in any Lot on the certificate; and (d) such certificate shall be recorded in the Office of the Recorder of Hamilton County, Indiana.
- 10.6 The Association may be dissolved with the assent given in writing and signed by at least two-thirds (2/3) of the Owners, and the assets, both personal and real, shall be disposed of in accordance with state and federal laws applicable to a nonprofit corporation.
- 10.7 Any and all rights and obligations of the Declarant set forth herein may be transferred, in whole or in part, to other persons or entities, provided that such transfer shall not reduce an obligation or enlarge a right beyond that contained in this Declaration. Any such transfer shall not be effective unless a written instrument signed by the Declarant is recorded with the Office of the Recorder of Hamilton County, Indiana.

- 10.8 Until the Control Transfer Date, the Declarant reserves the exclusive right, at any time, in its sole discretion and without notice, to make any modifications or amendments to this Declaration deemed necessary or desirable by the Declarant. After the Control Transfer Date, modifications and amendments to this Declaration may be made from time to time upon the affirmative vote of two-thirds (2/3) of all Owners at any meeting called for that purpose; provided, however, that the full text of any proposed amendment shall be included in the notice of such meeting and the voting requirements specified for such action.
- 10.9 The Declarant, as the most interested party in maintaining the high quality of development of the Subdivision for which these covenants are sought to be enforced, hereby expressly reserves unto itself the right to waive or alter from time to time such of the covenant and restrictions contained herein as it may deem best, as to any one or more of the Lots, which waiver or alteration shall be evidenced by the mutual written consent of the Declarant and then-Owner of the Lot as to which some or all of said restrictions are to be waived or altered, such written consent to be duly recorded in the Office of the Recorder of Hamilton County, Indiana.
- 10.10 The Declarant shall have no duties, obligations or liabilities hereunder as to any other matters of any description except such as are expressly assumed by Declarant, and no undertaking, duty of, or warranty by, Declarant shall be implied by or inferred from any term or provision of this Declaration. The Owner of each Lot shall indemnify, defend and hold Declarant harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which may arise out of or are connected with, or are claimed to arise out of or be connected with, any work done by such Owner, its contractor and their respective employees, agents, or subcontractors which is not in compliance with this Declaration, the Plat, the Development Plan, all rules, regulations, laws, ordinances and codes, including without limitation any erosion control plan adopted and/or implemented in connection with the Subdivision.
- 10.11 Invalidation of any one of the provision of this Declaration by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect. Titles of paragraphs are for convenience only and are not intended to limit or expand the covenants, rights or obligations expressed therein. In the case of any conflict between the Articles of Incorporation and this Declaration, this Declaration shall control; in the case of any conflict between this Declaration and the By-Laws, this Declaration shall control.
- 10.12 Until the Control Transfer Date, the Declarant shall have the right to enter into professional management contracts on behalf of the Association for the management of the Property for terms not to exceed one (1) year; provided, however, that such contracts contain a provision that the Association, after the Control Transfer Date, shall have the right to terminate such contracts, with or without cause, upon thirty (30) days' written notice to the other party and without payment of a termination fee.

ARTICLE XI

REMEDIES

Section 11.

- 11.1 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 covenants, conditions, and restrictions in this Declaration shall be held to be a waiver by that party or an estoppel of that party of any right available to such party upon the occurrence, reoccurrence or continuation of such violation or violations of this Declaration.
- 11.2 Subject to the provisions contained in Section 11.3 below, the Association or any party to whose benefit this Declaration inures, including the Declarant and/or any Owner, may proceed at law or in equity to prevent the occurrence or continuation of any violation of this Declaration, or to compel compliance with this Declaration, and shall be entitled to recover costs of collection and reasonable attorney's fees; however, neither the Declarant, 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 terms, conditions, or restrictions contained in this Declaration.
- 11.3 Any dispute by and between any Owner (including a Builder) and the Declarant and/or the Association arising from the Declarant's and/or the Association's: (a) enforcement, administration, waiver of any provision under this Declaration and/or the Organizational Documents; (b) performance of all obligations under this Declaration and the Organizational Documents and/or operation, maintenance, repair and/or replacement of the Common Area and the Subdivision generally; (c) exercise, granting, assignment and/or transfer (or failure to do same) of any right or privilege under this Declaration or the Organizational Documents; and/or (d) any act or omission in connection with development, operation and/or maintenance of the Subdivision, shall be settled by arbitration in accordance with the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association.

ARTICLE XII

EFFECT ON BECOMING AN OWNER

Section 12.

- 12.1 The Owner(s) of any Lot subject to this Declaration, by acceptance of a deed conveying title thereto, or by virtue of the execution of a contract for the purchase thereof, whether from Declarant, a Builder, or a subsequent Owner of such Lot, shall accept such deed and execute such contract subject to each and every covenant, condition, and restrictions contained in this Declaration. By acceptance of such deed or execution of such contract each Owner acknowledges the rights and powers of the Declarant, Committee, and Association contained in this Declaration, and also, for themselves, their heirs, personal representatives, successors and assigns, such Owner(s) covenant and agree and consent to and with the Declarant, Committee and the Association and to and with the other Owners and subsequent Owners of each of the Lots affected by this Declaration to keep, observe, comply with and perform such covenants, conditions, and restrictions contained in this Declaration.

ARTICLE XIII

TITLES

Section 13.

- 13.1 The titles preceding the various Sections and paragraphs of this Declaration are for convenience of reference only and none of them shall be used as an aid to the construction of any provisions of this Declaration. 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.

ARTICLE XIV

DECLARANT'S RIGHTS

Section 14.

- 14.1 Any and all of the rights and obligations of the Declarant set forth in this Declaration may be transferred, in whole or in part, to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration. No such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded with the Recorder of Hamilton County, Indiana.
- 14.2 Nothing in this Declaration shall be construed in a manner that limits or restricts the Declarant and/or any Builders in their development of the Property and construction of residences thereon. Therefore, notwithstanding anything herein to the contrary, the Declarant and/or any Builders authorized by Declarant may maintain and carry upon portion of the Common Area, and other portions of the Property and Lots owned by the Declarant, such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Residences including, but not limited to, business offices, signs, model units, sales offices, and sales trailers.

IN TESTIMONY WHEREOF, witness the signature of the Declarant of this Declaration as of the date first written above.

DECLARANT:

Abney Glen, LLC
an Indiana limited liability company

By: _____

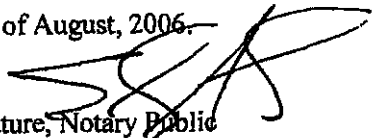
Printed: PAUL STEPPMAN

Title: SOLE MEMBER

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public within and for the State of Indiana, duly commissioned and qualified, personally appeared Paul Shoopman, the President of the Sole Member of the Owner, and who, having been duly sworn, stated that the representations therein contained are true.

WITNESS my hand and Notary Seal this 24th day of August, 2006.



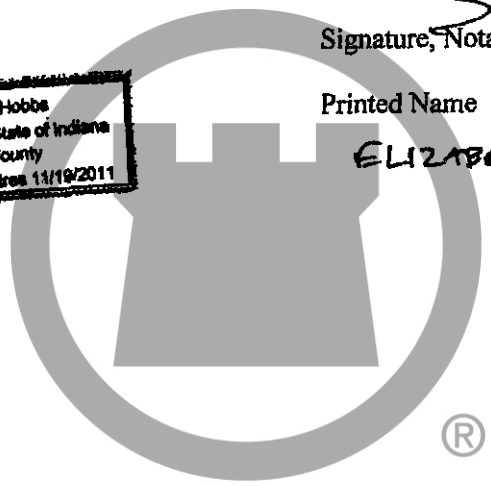
County of Residence:

Signature, Notary Public

My Commission Expires
Elizabeth A. Hobbs
Notary Seal, State of Indiana
Hamilton County
My Commission Expires 11/19/2011

Printed Name

ELIZABETH A. HOBBS



CHICAGO TITLE

EXHIBIT A
LEGAL DESCRIPTION OF
THE PROPERTY



CHICAGO TITLE

CASE NO. 050303535

EXHIBIT A - LEGAL DESCRIPTION

The Northeast Quarter of the Southeast Quarter of Section 31, Township 18 North, Range 3 East in Clay Township, Hamilton County, Indiana, containing 40 acres, more or less.

Except the following described real estate conveyed to the City of Carmel, Indiana by Warranty Deed dated August 30, 2005 and recorded September 13, 2005, as Instrument Number 200500060161 in the Office of the Recorder of Hamilton County, Indiana, to-wit:

A part of the land described in the deed recorded in Deed Record 331, Page 330 in the Office of the Recorder of Hamilton County, Indiana and being a part of the Northeast Quarter of the Southeast Quarter of Section 31, Township 18 North, Range 3 East in Hamilton County, Indiana, more particularly described as follows:

Beginning at the Southeast corner of said Quarter-Quarter Section; thence South 89 degrees 41 minutes 24 seconds West along the South line of said Quarter-Quarter Section 45.00 feet; thence North 00 degrees 00 minutes 17 seconds East parallel with the East line of said Quarter-Quarter Section 366.37 feet; thence South 89 degrees 59 minutes 42 seconds East 45.00 feet to the East line of said Quarter-Quarter Section; thence South 00 degrees 00 minutes 17 seconds West along said East line 366.12 feet to the point of beginning, containing 0.378 acres, more or less.

EXHIBIT B
THE COMMITMENTS



CHICAGO TITLE

COMMITMENTS CONCERNING THE USE AND DEVELOPMENT OF REAL ESTATE

Indiana Land Development Corporation ("ILD"), the contract purchaser of the real estate located in Hamilton County, Indiana, and described in what is attached hereto and incorporated herein by referenced as Exhibit "A" (the "Real Estate"), makes the following Commitments (the "Commitments") applicable to the Real Estate.

Section 1. Exhibits. Attached hereto and incorporated herein by reference as Exhibit "A" is the legal description of the real estate (the "Real Estate") and attached hereto and incorporated herein by reference as Exhibit "B" are the tree preservation plan and a colored rendering of the tree preservation plan (collectively, the "Tree Preservation Plan").

Section 2. Definitions. Different words and terms are defined throughout these Commitments and, further, the following definitions shall apply throughout these Commitments:

1. ARB: The Architectural Review Board established by the Developer in the Declaration of Covenants.
2. Commission: The Plan Commission of the City of Carmel, Indiana.
3. Declaration of Covenants. A Declaration of Covenants, Conditions and Restrictions for the Real Estate which shall be prepared by the Developer and recorded in the office of the Recorder of Hamilton County, Indiana, and which may, from time to time, be amended.
4. Department. The Department of Community Services of the City of Carmel, Indiana.
5. Developer. Indiana Land Development Corporation, its successors and assigns.
6. Historical Architectural Style. Historical Architectural Styles are established by and shall mean and refer to such homes as (i) colonial homes, (ii) cape cod homes, (iii) craftsman homes, (iv) traditional farmhouse homes, (v) french country homes, or (vi) homes with various exterior architectural elements, taken from the foregoing, to create more recent versions of the foregoing.

The Department shall have the authority to determine whether a specific house plan qualifies as a Historical Architectural Style entitled to the modification, in the manner specified in these guidelines, of the standards set forth in these guidelines. The Department shall have the authority to approve a house plan as a Historical Architectural

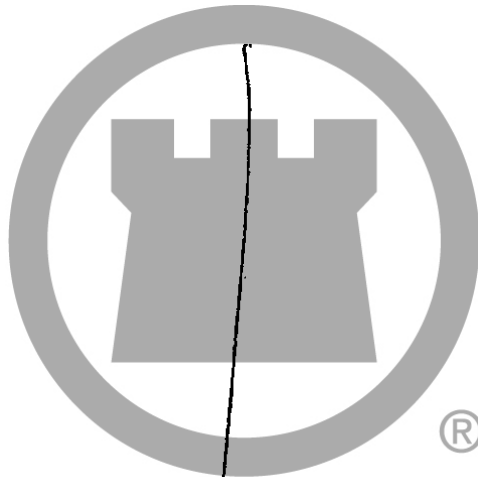
Style. The denial by the Department of a house plan as a Historical Architectural Style may be appealed by the Developer to the Commission.

7. Homeowners Association. A nonprofit corporation established for the promotion of the health, safety and welfare of the residents of the Real Estate once developed, and to manage, maintain, and repair the common areas within the Real Estate and any improvements located thereon.
8. Masonry. (i) Brick, limestone, natural stone, cultured stone, or other similar building material or a combination of the same, bonded together with mortar to form a wall, buttress or similar mass and (ii) EIFS and stucco.
9. Permitted Exterior Building Materials. Masonry, wood, concrete fiber board (Hardi-Plank or similar materials) or resin based products (fypon).
10. Plat. The subdivision plat or plats for the Real Estate recorded with the Hamilton County Recorder.
11. Ridgeline. The intersection of two horizontal roof planes, or the angle formed by them, which form the peak of a pitched area.

Section 3. Architectural Commitments. The following commitments are applicable to the Real Estate:

1. Masonry Requirements:
 - A. All homes shall have Masonry on 80% of the first floor, front, sides and rear, exclusive of windows, doors, and garage doors. The basement floor of the rear elevations of homes with walk out basements shall constitute the first floor of the real elevation.
 - B. The Masonry requirements may be modified by the Developer's Architectural Review Board (the "ARB") for up to 10 of the residences with a Historical Architectural Style.
2. Minimum Square Footage:
 - A. One-story homes shall have minimum finished living area of 2,400 square feet, including finished basements but excluding garages, porches, and any unfinished area.

- B. Two-story homes shall have a minimum living area of 3,000 square feet, including finished basements, but excluding garages, basements, porches, and any unfinished area.



CHICAGO TITLE

3. Permitted Exterior Building Materials:
 - A. Permitted Exterior Building Materials shall be used in all exterior areas other than windows, doors, garage doors, and roofs. Vinyl siding and aluminum siding are prohibited as exterior building materials.

4. Declaration of Covenants and Homeowners Association: In connection with the development of the Real Estate, a Declaration of Covenants shall be recorded, and a Homeowners Association shall be established.

5. Roof Pitch: The roof pitch on the main roofline shall be a minimum of 5:12 (5 vertical to 12 horizontal), from front to back. Ancillary roofs such as porches, bays or walkways may be less than the minimum requirement.

6. Roof Ridgeline:
 - A. A one-story home shall have a minimum of three (3) ridgelines; provided, however, that when fewer is consistent with a Historical Architectural Style, a minimum of two (2) ridgelines shall be permitted.

 - B. A two-story home shall have a minimum of three (3) ridgelines; provided, however, that when fewer is consistent with a Historical Architectural Style, a minimum of two (2) ridgelines shall be permitted.

 - C. Ridgelines shall only be considered if they are horizontal ridges which form the peak of a pitched area. Covered and enclosed porches shall count as a ridgeline.

7. Corner Breaks:
 - A. Each home shall have a minimum of three (3) corner breaks on the front and rear elevations. The exterior corners of a covered porch, the outermost corners of the home, and a projection with a height of no less than six feet (6') shall count toward this requirement.

8. Side Elevations: All side elevations for all homes constructed upon the Real Estate shall contain at least two (2) of the following enhancements:
 - A. Finished space bump out
 - B. Bay window
 - C. Decorative trim molding at gutter height
 - D. Decorative shaped window
 - E. Varied building planes
 - F. Accent siding
 - G. Minimum 12" overhangs

- H. Chimney chase
- I. Shutters or window trim on all operating windows
- J. Shadow line roof shingles
- K. First floor brick wrap

9. Chimney Chases: The exterior siding materials on all chimney chases extending above the gutter line shall be the same as one of the exterior siding materials of the subject residence.

10. Miscellaneous

- A. All new home, landscaping and exterior color plans must be approved by the ARB prior to beginning construction.
- B. All driveways shall be concrete unless otherwise approved by the ARB.
- C. Uniform mailboxes, as determined by the ARB, shall be required.
- D. Dusk to dawn yard lights or garage mounted coach lights shall be required in a uniform location, as determined by the ARB.

Section 4. Tree Preservation Commitment. Areas of tree preservation (the "Preservation Areas") are identified on the Tree Preservation Plan:

- 1. Except as noted immediately below, trees shall not be removed from the Preservation Areas:
 - A. The clearing of underbrush and dead trees shall be allowed;
 - B. The removal of a tree for public health, safety, and welfare shall be allowed;
 - C. The removal of structurally unsound trees shall be allowed;
 - D. The removal of trees required by the Hamilton County Surveyor to be removed shall be allowed; and
 - E. The removal of trees necessary to the installation and/or maintenance of drainage infrastructure shall be allowed.
- 2. Except as set forth immediately above in paragraph 1A, B, C and D in this Section 4, each tree within the Preservation Area which is badly damaged or destroyed and which is greater than 2-1/2" in caliper (measured at 6" above the ground) shall be replaced, within

one year, by the person or entity causing such damage or destruction, with trees which are (i) at least 2-1/2" in caliper (measured at 6" above the ground) and (ii) have, in aggregate when added together, a cumulative caliper (measured at 6" above ground) at least equal to the caliper (measured at 6" above the ground) of the damaged or destroyed tree. Any such replacement trees which die within one year of their planting shall promptly be replaced with a substantially similar tree.

Section 5. Height Difference. The cul-de-loop, located south of Long Branch Creek and identified on Exhibit "B", shall be installed so that the height of the asphalt pavement along the southern (east-west) segment of the cul-de-loop is at least 3 feet lower than the top of grade at the foundation of the rear elevation of the residences on Lots 80 and 81 in Block 2 of Long Branch Estates located adjacent to and south of the cul-de-loop.

Section 6. Binding on Successors

These Commitments are binding on the Developer, each other person acquiring an interest in the Real Estate, unless modified or terminated by the Commission. These Commitments may be modified or terminated only by a decision of the Commission after a public hearing wherein notice as provided by the rules of the Plan Commission has been made. The provisions of this Section 4 notwithstanding, these Commitments shall terminate as to any part or parts of the Real Estate hereafter reclassified (rezoned) on the City of Carmel's Official Zone Map.

Section 7. Effective Date

The Commitments contained herein shall be effective upon the occurrence of all of the following events:

1. The granting of the primary plat approval and subdivision waivers (collectively the "Approvals") requested by ILD; and
2. The commencement of the development of the Real Estate in accordance with the Approvals.

Section 8. Recording

The undersigned hereby authorizes the Secretary of the Commission to record these Commitments in the Office of the Recorder of Hamilton County, Indiana.

EXHIBIT "A"

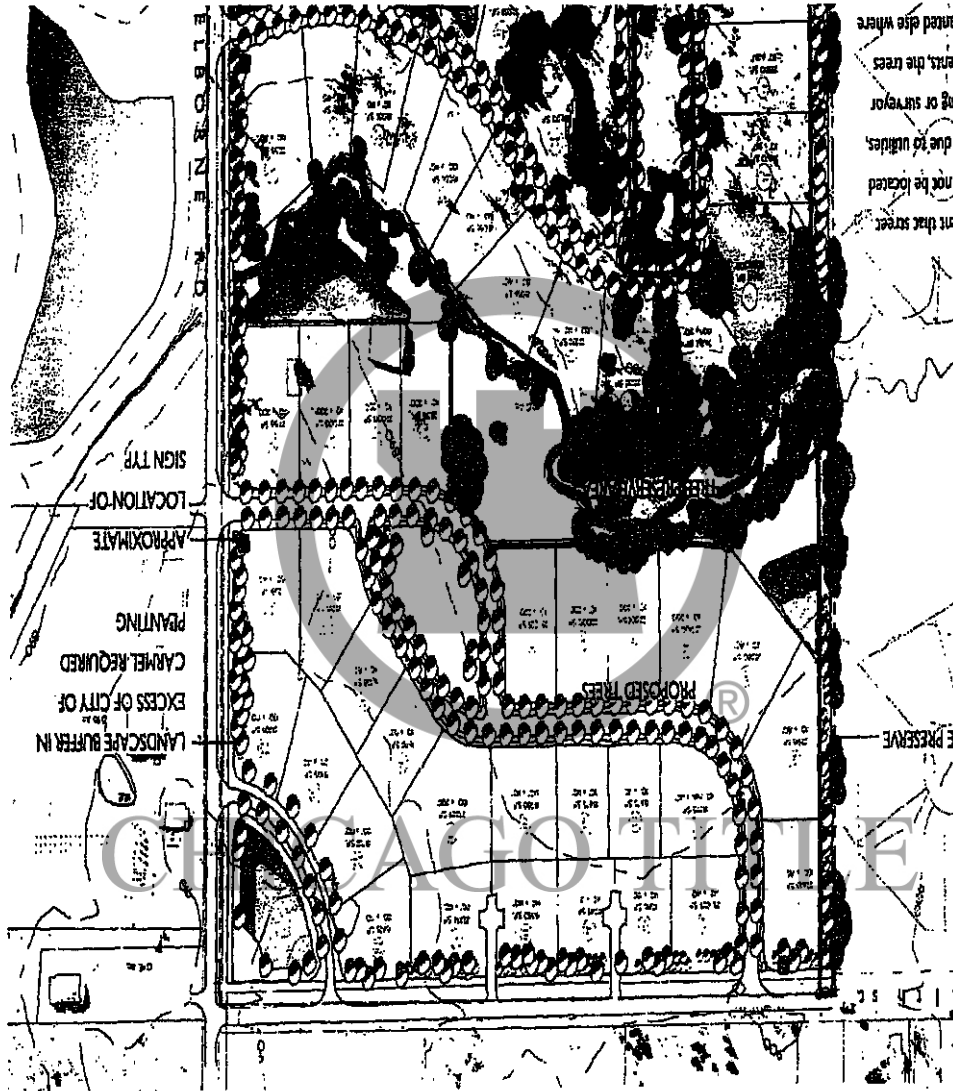
Legal Description

The Northeast Quarter of the Southeast Quarter of Section 31, Township 18 North, Range 3 East in Clay Township, Hamilton County, Indiana, containing 38.86 acres, more or less.



CHICAGO TITLE

BEST POSSIBLE IMAGE



not be located
due to utilities,
ing or surveyor
ents, the trees
need also where