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DECLARATION OF COVENANTS AND RESTRICTIONS

Ashbrooke

Carmel, Indiana

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DECLARATION OF COVENANTS AND RESTRICTIONS

ASHBROOKE

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DECLARATION OF COVENANTS AND RESTRICTIONS

ASHBROOKE

This Declaration, made as of _____ day of _____, 1991, by CARWINION ASSOCIATES, L.P., an Indiana limited partnership, ("Declarant"),

W I T N E S S E T H :

WHEREAS, the following facts are true:

A. Declarant is the legal or equitable owner of the real estate located in Hamilton County, Indiana, described in Exhibit A and depicted on Exhibit B, upon which Declarant intends, but is not obligated, to develop a residential subdivision to be known as Ashbrooke.

B. Declarant has or will construct certain improvements and amenities which shall constitute Community Area.

C. Declarant desires to provide for the preservation and enhancement of the property values, amenities and opportunities in Ashbrooke and for the maintenance of the Tract and the improvements thereon, and to this end desire to subject the Tract together with such additions as may hereafter be made thereto (as provided in Paragraph 3) to the covenants, restrictions, easements, charges and liens hereinafter set forth, each of which is for the benefit of the Lots and lands in the Tract and the future owners thereof.

D. Declarant deems it desirable, for the efficient preservation of the values and amenities in Ashbrooke, to create an agency to which may be delegated and assigned the powers of owning, maintaining and administering the Community Area, administering and enforcing the Restrictions, collecting and disbursing the Assessments and charges hereinafter created, and promoting the recreation, health, safety and welfare of the Owners of Lots in Ashbrooke.

E. Declarant has incorporated under the laws of the State of Indiana a not-for-profit corporation known as Ashbrooke Homeowners Association, Inc. for the purpose of exercising such functions.

NOW, THEREFORE, Declarant hereby declares that all of the Lots and lands in the Tract and such additions thereto as may hereafter be made pursuant to Paragraph 3 hereof, as they are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, are subject to the following Restrictions, all of which are declared to be in furtherance of a plan for the improvement and sale of Lots in the Tract, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Tract

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as a whole and of each of Residences, Lots and lands situated therein. The Restrictions shall run with the land and shall be binding upon Declarant, its successors and assigns, and upon the parties having or acquiring any interest in the Tract or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of Declarant and its successors in title to the Tract or any part or parts thereof.

1. Definitions. The following terms, as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

"Architectural Control Assessment" means the Assessment levied by the Corporation pursuant to Paragraph 11(c).

"Architectural Review Board" means that entity established pursuant to Paragraph 12 of this Declaration for the purposes therein stated.

"Articles" means the Articles of Incorporation of the Corporation, as amended from time to time.

"Ashbrooke" means the name by which the Tract shall be commonly known.

"Assessments" means all sums lawfully assessed against the Members of the Corporation or as declared by this Declaration, any Supplemental Declaration, the Articles or the By-Laws.

"Board of Directors" means the governing body of the Corporation.

"By-Laws" means the Code of By-Laws of the Corporation, as amended from time to time.

"Community Area" means (i) the Drainage System, (ii) the Lake Area, (iii) the Entry Ways, (iv) any utility service lines or facilities not maintained by a public utility company or governmental agency that are located on, over or below or through more than one Section, and (v) any areas of land (1) shown on any Plat, (2) described in any recorded instrument prepared by Declarant or its agents, or (3) conveyed to or acquired by the Corporation, together with all improvements thereto, that are intended to be devoted to the use or enjoyment of some, but not necessarily all, of the Owners of Lots.

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"Corporation" means Ashbrooke Homeowners Association, Inc., an Indiana not-for-profit corporation, its successors and assigns.

"Declarant" means Carwinion Associates, L.P., its successors and assigns to its interest in the Tract other than Owners purchasing Lots or Residences by deed from Declarant (unless the conveyance indicated an intent that the grantee assume the rights and obligations of Declarant).

"Development Area" means the land described in Exhibit A.

"Drainage Board" means the Hamilton County, Indiana Drainage Board, its successors or assigns.

"Drainage System" means the open drainage ditches and swales, the subsurface drainage tiles, pipes and structures, the dry and wet retention and/or detention ponds, the Off-Site Drainage Facilities, and the other structures, fixtures, properties, equipment and facilities (excluding the Lakes) located in the Tract and designed for the purpose of controlling, retaining or expediting the drainage of surface and subsurface waters from, over and across the Tract, including but not limited to those shown or referred to on a Plat, all or part of which may be established as legal drains subject to the jurisdiction of the Drainage Board.

"Entry Ways" means the structures constructed as an entrance to Ashbrooke or a part thereof (exclusive of the street pavement, curbs and drainage structures and tiles), the traffic island depicted as Block "A" on the Plat of Section 1 of Ashbrooke and any other traffic islands dividing a roadway providing access to Ashbrooke or a part thereof, and the grassy area surrounding such structures.

"General Plan of Development" means that plan prepared by Declarant and approved, if necessary, by appropriate public agencies that outlines the total scheme of development and general uses of land in the Development Area, as such may be amended from time to time.

"Landscape Easement" means a portion of a Lot denoted on a Plat as an area to be landscaped and maintained by the Corporation.

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"Lake" means any lake, a part of which is located in the Development Area and depicted on Exhibit B and "Lakes" means all of such Lakes. A numerically designated Lake means the Lake so designated by such number on the General Plan of Development.

"Lake Access Easement" means the area designated on a Plat as a means of access to a Lake.

"Lake Area" means that portion of a Lake located within a Section and depicted on the Plat thereof.

"Lake Declaration" means that certain Declaration of Covenants, Restrictions and Maintenance Obligations executed by Declarant and Shady Brook Development Co. relating to maintenance of the Lakes which has been recorded in the Office of the Recorder of Hamilton County, Indiana as Instrument No. 91-11880, as the same may be amended from time to time.

"Lot" means a platted lot as shown on a Plat.

"Lot Development Plan" means (i) a site plan prepared by a licensed engineer or architect, (ii) foundation plan and proposed finished floor elevations, (iii) building plans, including elevation and floor plans, (iv) material plans and specifications, (v) landscaping plan, and (vi) all other data or information that the Architectural Review Board may request with respect to the improvement or alteration of a Lot (including but not limited to the landscaping thereof) or the construction or alteration of a Residence or other structure or improvement thereon.

"Maintenance Costs" means all of the costs necessary to keep the facilities to which the term applies operational and in good condition, including but not limited to the cost of all upkeep, maintenance, repair, replacement of all or any part of any such facility, payment of all insurance with respect thereto, all taxes imposed on the facility and on the underlying land, leasehold, easement or right-of-way, and any other expense related to the continuous maintenance, operation or improvement of the facility.

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"Member" means a Class A or Class B member of the Corporation and "Members" means Class A and Class B members of the Corporation.

"Mortgagee" means the holder of a first mortgage on a Residence.

"Off-site Drainage Facilities" means those portions of the Lakes and the other drainage facilities located on the Shady Brook Land which are more particularly described in the Lake Declaration.

"Owner" means a Person, including Declarant who at the time has or is acquiring any interest in a Lot except a Person who has or is acquiring such an interest merely as security for the performance of an obligation.

"Part of the Development Area" means any part of the Development Area not included in the Tract.

"Person" means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

"Plat" means a final secondary plat of a portion of the Development Area recorded in the Office of the Recorder of Hamilton County, Indiana.

"Reserve for Replacements" means a fund established and maintained by the Corporation to meet the cost of periodic maintenance, repairs, renewal and replacement of the Community Area.

"Residence" means any structure intended exclusively for occupancy by a single family together with all appurtenances thereto, including private garage and outbuildings and recreational facilities usual and incidental to the use of a single family residential lot.

"Restrictions" means the covenants, conditions, easements, charges, liens, restrictions, rules and regulations and all other provisions set forth in this Declaration, all applicable Supplemental Declarations, the Register of Regulations and the Lake Declaration, as the same may from time to time be amended.

"Register of Regulations" means the document containing rules, regulations, policies, and procedures adopted by the Board of Directors or the

Architectural Review Board, as the same may from time to time be amended.

"Section" means that portion of the Development Area that is depicted on a Plat.

"Shady Brook Land" means the land described in Exhibit A to the Lake Declaration.

"Sidewalks" means the concrete or other hard-surface walkways installed by Declarant within the Sidewalk Easements established on the Plats, and all replacements thereof.

"Supplemental Declaration" means any Plat or supplementary declaration of covenants, conditions or restrictions that may be recorded and which extends the provisions of this Declaration to a Section and contains such complementary or supplementary provisions for such Section as are required or permitted by this Declaration.

"Tract" means the land described in Exhibit C and such other real estate as may from time to time be annexed thereto under the provisions of Paragraph 3 hereof.

"Zoning Authority" with respect to any action means the Director of the Department of Community Development of the City of Carmel or, where he lacks the capacity to take action, or fails to take such action, the governmental body or bodies, administrative or judicial, in which authority is vested under applicable law to hear appeals from, or review the action, or the failure to act, of the Director.

2. Declaration. Declarant hereby expressly declares that the Tract and any additions thereto pursuant to Paragraph 3 hereof shall be held, transferred, and occupied subject to the Restrictions. The Owner of any Lot subject to these Restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall accept such deed and execute such contract subject to each Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, each Owner acknowledges the rights and powers of Declarant and of the Corporation with respect to these Restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant, the Corporation, and the Owners and subsequent Owners of each of the Lots affected by these

Restrictions to keep, observe, comply with and perform such Restrictions and agreement.

3. Additions to the Tract. Declarant shall have the right to bring within the scheme of this Declaration and add to the Tract real estate that is a Part of the Development Area or that is contiguous to the Development Area. In determining contiguity, public rights of way shall not be considered.

The additions authorized under this Paragraph 3 shall be made by the filing of record of one or more Supplemental Declarations with respect to the additional real estate and by filing with the Corporation any revisions to the General Plan of Development necessary to reflect the scheme of development of the additional real estate. Unless otherwise stated therein, such revisions to the General Plan of Development shall not bind Declarant to make the proposed additions. For purposes of this Paragraph 3, a Plat depicting a portion of the Development Area shall be deemed a Supplemental Declaration.

4. The Lakes. Declarant shall convey title to the Lake Area to the Corporation. The Lakes shall be maintained as provided in the Lake Declaration. The Maintenance Costs of the Lakes allocable to the Corporation under the Lake Declaration shall be assessed as a General Assessment against all Lots subject to assessment. Each Owner of a Lot that abuts a Lake shall be responsible at all times for maintaining so much of the bank of the Lake above the pool level as constitutes a part of, or abuts, his Lot and shall keep that portion of the Lake abutting his Lot free of debris and otherwise in reasonably clean condition. Owners may use the Lakes only to the extent permitted by the Lake Declaration. Each Owner of a Lot abutting a Lake shall indemnify and hold harmless Declarant, the Corporation and each other Owner against all loss or damage incurred as a result of injury to any Person or damage to any property, or as a result of any other cause or thing, arising from or related to use of, or access to, a Lake by any Person who gains access thereto from, over or across such Owner's Lot. Declarant shall have no liability to any Person with respect to a Lake, the use thereof or access thereto, or with respect to any damage to any Lot resulting from a Lake or the proximity of a Lot thereto, including loss or damage from erosion.

5. Drainage System. The Drainage System has or will be constructed for the purpose of controlling drainage within and adjacent to the Development Area and maintaining the water level in the Lakes. Declarant shall maintain the Drainage System (exclusive of such portion thereof as is subject to the Lake Declaration, including but not limited to the Off-site Drainage Facilities) in good condition satisfactory for the purpose for which it was constructed until the earlier of December 31, 1994, or the date the Drainage System is accepted as a legal drain by the Drainage Board. After the earlier of such dates, the Corporation shall maintain the

Drainage System to the extent not maintained by the Drainage Board or the Commercial Association (as defined in the Lake Declaration) and the Maintenance Costs thereof shall be assessed against all Lots subject to assessment serviced by that part of the Drainage System with respect to which Maintenance Costs are incurred. Each Owner shall be individually liable for the cost of maintenance of any drainage system located entirely upon his Lot which is devoted exclusively to drainage of his Lot and is not maintained by the Drainage Board. Each Owner shall also have the maintenance responsibility established in Paragraph 8(1).

6. Maintenance of Entry Ways and Landscape Easements. The Corporation shall maintain the Entry Ways and all improvements and plantings thereon, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. Grass, trees, shrubs and other plantings located on an Entry Way shall be kept neatly cut, cultivated or trimmed as reasonably required to maintain an attractive entrance to Ashbrooke or a part thereof. All entrance signs located on an Entry Way shall be maintained at all times in good and slightly condition appropriate to a first-class residential subdivision. The Corporation shall maintain all plantings within a Landscape Easement installed by Declarant (exclusive of grass) and all replacements thereof, and the Maintenance Costs thereof shall be assessed as a General Assessment against all lots subject to assessment. The Owner of each Lot subject to a Landscape Easement shall cut the grass within such easement as required to maintain the same in good and slightly condition.

7. Maintenance of Sidewalks. To the extent not maintained by public authority, the Corporation shall maintain the Sidewalks and shall replace the same as required to maintain the appearance, utility and safe use thereof. The Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. The Corporation may, but shall not be required, to contract for the removal of snow and ice from the Sidewalks and the cost thereof shall be deemed a Maintenance Cost to be included within the General Assessment which is assessed against all Lots subject to assessment.

8. Construction of Residences.

(a) Land Use. Lots may be used only for residential purposes and only one Residence not to exceed two and one-half stories or 25 feet in height measured from finish grade to the underside of the eave line may be constructed thereon. No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of Residences in Ashbrooke than the number of original Lots depicted on the Plats. Notwithstanding any provision in the applicable zoning ordinance to the contrary, no Lot

may be used for any "Special Use" that is not clearly incidental and necessary to single family dwellings. No home occupation shall be conducted or maintained on any Lot other than one which does not constitute a "special use" and is incidental to a business, profession or occupation of the Owner or occupant of such Lot and which is generally or regularly conducted at another location which is away from such Lot. No signs of any nature, kind or description shall be erected, placed, or permitted to remain on any Lot advertising a permitted home occupation.

(b) Size of Residence. Except as otherwise provided herein, no residence may be constructed on any Lot unless such Residence, exclusive of open porches, attached garages and basements, shall have a ground floor area of 2,000 square feet if a one-story structure, or 1,200 square feet if a higher structure, but in the case of a building higher than one story, there must also be at least 600 square feet in addition to the ground floor area and the total floor area shall not be less than 2,000 square feet.

(c) Temporary Structures. No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a dwelling, temporary or permanent, nor may any structure of a temporary character be used as a dwelling.

(d) Building Location and Finished Floor Elevation. No building may be erected between the building line shown on a Plat and the front Lot line, and no structure or part thereof may be built or erected nearer than ten (10) feet to any side Lot line or nearer than twenty (20) feet to any rear Lot line, provided that the aggregate of side yard shall not be less than twenty-five (25) feet unless otherwise permitted by the Zoning Authority. A minimum finished floor elevation, shown on the development plan for each Section, has been established for each Lot and no finished floor elevation with the exception of flood protected basements shall be constructed lower than said minimum without the written consent of the Architectural Review Board. Demonstration of adequate storm water drainage in conformity with both on-Lot and overall project drainage plans shall be a prime requisite for alternative finished floor elevations. Before construction commences, the finished floor elevation shall be physically checked on the Lot and certified

by a licensed professional engineer or a licensed land surveyor.

(e) Driveways. All driveways shall be paved and maintained dust free.

(f) Yard Lights. If street lights are not installed in Ashbrooke, then each Owner or his builder shall install and maintain a light in operable condition on his Lot at a location, having a height and of a type, style and manufacture approved by the Architectural Review Board prior to the installation thereof. Each such light fixture shall also have a bulb of a maximum wattage approved by Architectural Review Board to insure uniform illumination on each Lot and shall be equipped with a photo electric cell or similar device to insure automatic illumination from dusk to dawn each day.

(g) Storage Tanks. Any gas or oil storage tanks used in connection with a Lot shall be either buried or located in a Residence such that they are completely concealed from public view and comply with all applicable legal requirements.

(h) Construction and Landscaping. All construction upon, landscaping of and other improvement to a Lot shall be completed strictly in accordance with the Lot Development Plan approved by the Architectural Review Board. All landscaping specified on the landscaping plan approved by the Architectural Review Board shall be installed on the Lot strictly in accordance with such approved plan within thirty (30) days following substantial completion of the Residence unless the Board agrees to a later landscaping completion date. Unless a delay is caused by strikes, war, court injunction or acts of God, the Owner shall complete construction of any Residence, construction of which is commenced upon a Lot, within one (1) year after the date of commencement of the building process. If the Owner fails to complete construction of a Residence within the time period specified herein, Declarant may:

(i) obtain injunctive relief to force the Owner to complete construction of such Residence in accordance with the Lot Development Plan; or

(ii) pursue such other remedies at law or in equity as may be available to Declarant.

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For the purposes of this subparagraph (h), construction of a Residence will be deemed "completed" when the exterior of the Residence (including but not limited to the foundation, walls, roof, windows, entry doors, gutters, downspouts, exterior trim, paved driveway and landscaping) has been completed in conformity with the Lot Development Plan.

(i) Mailboxes. All mailboxes installed upon Lots shall be uniform and shall be of a type, color and manufacture approved by the Architectural Review Board. Such mailboxes shall be installed upon posts approved as to type, size and location by the Architectural Review Board.

(j) Septic Systems. No septic tank, absorption field or any other on-site sewage disposal system (other than a lateral main connected to a sanitary sewerage collection system operated by the Clay Township Regional Waste District or a successor public agency or public utility) shall be installed or maintained on any Lot.

(k) Water Systems. No private or semi-private water supply system may be located upon any Lot which is not in compliance with regulations or procedures adopted or established by the Indiana State Board of Health, or other civil authority having jurisdiction. To the extent that domestic water service is available from a water line located within 200 feet of the lot line maintained by a public or private utility company, each Owner shall connect to such water line to provide water for domestic use on the Lot and shall pay all connection, availability or other charges lawfully established with respect to connections thereto. Notwithstanding the foregoing, an Owner may establish, maintain and use an irrigation water well on his Lot as long as the well does not adversely affect the normal pool level of any Lake.

(l) Drainage. In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of such 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 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 Ashbrooke may be included in a legal drain established by the Drainage Board. In such event, each Lot in Ashbrooke will be subject to assessment by the Drainage Board for the costs of maintenance of the portion of the Drainage System and/or the Lakes 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 affect materially the surface elevation or grade of surrounding Lots. Perimeter foundation drains and sump pump drains shall not be outletted into streets or street rights-of-way. These drains shall be connected whenever feasible into a subsurface drainage tile. 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.

9. Maintenance of Lots.

(a) Vehicle Parking. No camper, motor home, truck, trailer, boat or disabled vehicle may be parked or stored overnight or longer on any Lot in open public view.

(b) Signs. Except for such signs as Declarant or any builder authorized by Declarant to construct a Residence on a Lot may in their absolute discretion display in connection with the development of Ashbrooke and the sale of Lots and Residences therein and such signs as may be located on the Community Area, no sign of any kind shall be displayed to the public view on any Lot except that one sign of not more than four (4) square feet may be displayed at any time for the purpose of advertising the property for sale or for rent, or may be displayed by a builder to advertise the property during construction and sale; provided, however, that the foregoing Restrictions shall not apply to any sign displayed on a Lot improved with a Residence which promotes the candidacy of Persons seeking election to public office if such sign is not displayed for a period in excess of sixty (60) days.

(c) Fencing. No fence, wall, hedge or shrub planting higher than eighteen (18) inches shall be permitted between the front property line and the front building set-back line except where such

planting is located on a Landscape Easement or is part of Residence landscaping and the prime root thereof is within four (4) feet of the Residence. Trees shall not be deemed "shrubs" unless planted in such a manner as to constitute a "hedge". No chain link fence shall be erected upon a Lot if it would be visible from a street. 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 Corporation in such manner as to preserve the uniformity of such fence. In no event may any fence be erected or maintained on any Lot without the prior approval of the Architectural Review Board, which may establish design standards for fences and further restrictions with respect to fencing, including limitations on (or prohibition of) the installation of fences in the rear yard of a Lot and along the bank of any Lake. All fences shall be kept in good repair. No fence, wall, hedge or shrub planting 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 street property lines and a line connecting points 25 feet from the intersection of said street lines, or in the case of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(d) Vegetation. An Owner shall not permit the growth of weeds and volunteer trees and bushes on his Lot, and shall keep his Lot reasonably clear from such unsightly growth at all times. If an Owner fails to comply with this Restriction, the Architectural Review Board shall cause the weeds to be cut and the Lot cleared of such growth at the expense of the Owner thereof and the Architectural Review Board shall have a lien against the cleared Lot for the expense thereof.

(e) Nuisances. 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 neighborhood. Barking dogs shall constitute a nuisance.

(f) Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for trash.

Rubbish, garbage or other waste shall be kept in sanitary containers out of public view. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

(g) Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. The owners of such permitted pets shall confine them to their respective Lots such that they will not be a nuisance. Owners of dogs shall so control or confine them so as to avoid barking which will annoy or disturb adjoining Owners.

(h) Outside Burning. No trash, leaves, or other materials shall be burned upon a Lot if smoke therefrom would blow upon any other Lot and, then, only in acceptable incinerators and in compliance with all applicable legal requirements.

(i) Antennas and Receivers. No satellite receiver or down-link shall be permitted on any Lot. No exterior antenna shall be permitted on any Lot without the prior written consent of the Architectural Review Board. The Architectural Review Board shall not be obligated to give its consent to the installation of any exterior television antenna if television reception is available from underground cable connections serving the Lot or to the installation of any other exterior antenna if all Owners of Lots within 200 feet of the Lot upon which the proposed antenna would be erected do not consent in writing to the installation thereof.

(j) Exterior Lights. No exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Lot.

(k) Electric Bug Killers. Electric bug killers, "zappers" and other similar devices shall not be installed at a location or locations which will result in the operation thereof becoming a nuisance or annoyance to other Owners and shall only be operated when outside activities require the use thereof and not continuously.

10. Ashbrooke Homeowners Association, Inc.

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(a) Membership. Each Owner shall automatically be a Member and shall enjoy the privileges and be bound by the obligations contained in the the Articles and By-Laws. 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 on other Owners, including those provisions with respect to the payment of Assessments.

(b) Powers. The Corporation 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.

(c) Classes of Members. The Corporation shall have two (2) classes of members as follows:

Class A. Every Person who is an Owner shall be a Class A member.

Class B. Declarant shall be a Class B member. No other Person, except a successor to substantially all of the interest of Declarant in the Development Area, shall hold a Class B membership in the Corporation. The Class B membership shall terminate upon the resignation of the Class B member, when all of the Lots in the Development Area (as depicted on the General Plan of Development) have been sold, or on December 31, 2001, whichever first occurs.

(d) Voting and Other Rights of Members. The voting and other rights of Members shall be as specified in the Articles and By-Laws.

(e) Reserve for Replacements. The Board of Directors shall establish and maintain the Reserve for Replacements by the allocation and payment to such reserve fund of an amount determined annually by the Board to be sufficient to meet the cost of periodic maintenance, repairs, renewal and replacement of the Community Area. In determining the amount, the Board shall take into consideration the expected useful life of the Community Area, projected increases in the cost of materials and labor, interest to be earned by such fund and the advice of Declarant or such consultants as the Board may employ. The Reserve for Replacements shall be deposited in a special account with a lending

institution the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America.

(f) Limitations on Action by the Corporation. Unless the Class B Member and at least two-thirds of the Mortgagees (based on one vote for each first mortgage owned) or two-thirds (2/3) of the Class A members (other than Declarant) have given their prior written approval, the Corporation, the Board of Directors and the Owners may not: (i) except as authorized by Paragraph 13(a), by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Community Area (but the granting of easements for public utilities or other public purposes consistent with the intended use of the Community Area shall not be deemed a transfer for the purposes of this clause); (ii) fail to maintain fire and extended coverage on insurable Community Area on a current replacement cost basis in an amount at least one hundred percent (100%) of the insurable value (based on current replacement cost); (iii) use hazard insurance proceeds for losses to any Community Area for other than the repair, replacement or reconstruction of the Community Area; (iv) change the method of determining the obligations, assessments, dues or other charges that may be levied against the Owner of a Residence; (v) by act or omission change, waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Residences, or the maintenance and up-keep of the Community Area; or (vi) fail to maintain the Reserve for Replacements in the amount required by this Declaration.

(g) Mergers. Upon a merger or consolidation of another corporation with the Corporation, its properties, rights and obligations may, as provided in its articles of incorporation, by operation of law be transferred to another surviving or consolidated corporation or, alternatively, the properties, rights and obligations of another corporation may by operation of law be added to the properties, rights and obligations of the Corporation as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established by this Declaration within the Tract together with the covenants and restrictions

30established upon any other properties as one scheme. No other merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Tract except as hereinafter provided.

(h) Termination of Class B Membership. Wherever in this Declaration the consent, approval or vote of the Class B member is required, such requirement shall cease at such time as the Class B membership terminates, but no such termination shall affect the rights and powers of Declarant set forth in Paragraphs 14(b), 14(f), 15 or 20(b).

11. Assessments.

(a) Creation of the Lien and Personal Obligation of Assessments. Declarant hereby covenants, and each Owner of any Lot by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Corporation the following: (1) General Assessments, (2) Architectural Control Assessments and (3) Special Assessments, such Assessments to be established and collected as hereinafter provided.

All Assessments, together with interest thereon and costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which each Assessment is made until paid in full. Each Assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due.

(b) General Assessment.

(i) Purpose of Assessment. The General Assessment levied by the Corporation shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners of Lots and for the improvement, maintenance and operation of the Community Area.

(ii) Basis for Assessment.

(1) Lots Generally. Each Lot owned by a Person other than Declarant shall be assessed at a

uniform rate without regard to whether a Residence has been constructed upon the Lot.

(2) Lots Owned by Declarant. No Lot owned by Declarant shall be assessed by the Corporation except such Lots as have been improved by the construction thereon of Residences which shall be subject to assessment as provided in Clause (1) above.

(3) Change in Basis. The basis for assessment may be changed with the assent of the Class B member and of (i) two-thirds (2/3) of the Class A members (excluding Declarant) or two-thirds (2/3) of the Mortgagees (based on one vote for each first mortgage owned) who are voting in person or by proxy at a meeting of such members duly called for this purpose.

(iii) Method of Assessment. By a vote of a majority of the Directors, the Board of Directors shall, on the basis specified in subparagraph (ii), fix the General Assessment for each assessment year of the Corporation at an amount sufficient to meet the obligations imposed by this Declaration and the Lake Declaration upon the Corporation. The Board of Directors shall establish the date(s) the General Assessment shall become due, and the manner in which it shall be paid.

(iv) Allocation of Assessment. The cost of maintaining, operating, restoring or replacing the Community Area has been allocated in this Declaration among Owners of Lots on the basis of the location of the lands and improvements constituting the Community Area and the intended use thereof. In determining the General Assessment, costs and expenses which in accordance with the provisions of this Declaration are to be borne by all Owners

shall first be allocated to all Owners. Costs and expenses which in accordance with the provisions of this Declaration are to be borne by the Owners of certain Lots shall then be allocated to the Owners of such Lots. The provisions of subparagraph (ii) 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.

(c) Architectural Control Assessment. If any Owner fails to comply with the requirements of the first two sentences of Paragraph 8(h) and/or the provisions of Paragraph 12(c) of this Declaration, then the Corporation may levy against the Lot owned by such Owner an Assessment in an amount determined by the Board of Directors which does not exceed the greater of (i) One Hundred Dollars (\$100.00) for each day that such failure continues after written notice thereof is given by Declarant or the Corporation to such Owner or (ii) Five Thousand Dollars (\$5,000.00). Such Assessment shall constitute a lien upon the Lot of such Owner and may be enforced in the manner provided in subparagraph (f) below. The levy of an Architectural Control Assessment shall be in addition to, and not in lieu of, any other remedies available to Declarant, the Architectural Review Board or the Corporation, at law or in equity in the case of the failure of an Owner to comply with the provisions of this Declaration.

(d) Special Assessment. The Corporation may levy in any fiscal year a Special Assessment applicable to that year and not more than the next four (4) succeeding fiscal years for the purpose of defraying, in whole or in part, the cost of any construction, repair, or replacement of a capital improvement upon the Community Area or the Off-site Drainage Facilities, including fixtures and personal property relating thereto, provided that any such Assessment shall have the assent of the Class B member and of a majority of the votes of the Class A members whose Lots are subject to assessment with respect to the capital improvement who are voting in person or by proxy at a meeting of such members duly called for this purpose.

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(e) Date of Commencement of Assessments. The General Assessment shall commence with respect to assessable Lots within a Section on the day the first Lot in the Section is conveyed to an Owner who is not Declarant. The initial Assessment on any assessable Lot shall be adjusted according to the days remaining in the month in which the Lot became subject to assessment.

(f) Effect of Nonpayment of Assessments; Remedies of the Corporation. Any Assessment not paid within thirty (30) days after the due date may upon resolution of the Board of Directors bear interest from the due date at a percentage rate no greater than the current statutory maximum annual interest rate, to be set by the Board of Directors for each assessment year. The Corporation shall be entitled to institute in any court of competent jurisdiction any lawful action to collect the delinquent Assessment plus any expenses or costs, including attorneys' fees, incurred by the Corporation in collecting such Assessment. If the Corporation has provided for collection of any Assessment in installments, upon default in the payment of any one or more installments, the Corporation may accelerate payment and declare the entire balance of said Assessment due and payable in full. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Community Area or abandonment of his Lot.

(g) Subordination of the Lien to Mortgages. 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. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall, however, extinguish the lien of such Assessments as to payments which became due more than six (6) months prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

(h) Certificates. The Corporation shall, upon demand by an Owner, at any time, furnish a certificate in writing signed by an officer of the

Corporation that the Assessments on a Lot have been paid or that certain Assessments remain unpaid, as the case may be.

(i) Annual Budget. By a majority vote of the Directors, the Board of Directors shall adopt an annual budget for the subsequent fiscal year, which shall provide for allocation of expenses in such a manner that the obligations imposed by the Declaration, all Supplemental Declarations and the Lake Declaration will be met.

12. Architectural Control.

(a) The Architectural Review Board. An Architectural Review Board consisting of three (3) or more Persons as provided in the By-Laws shall be appointed by the Class B member. At such time as there is no Class B member, the Architectural Review Board shall be appointed by the Board of Directors.

(b) Purpose. The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the Tract and of improvements thereon in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.

(c) Conditions. Except as otherwise expressly provided in this Declaration, no 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 the Declarant to an Owner shall be made or done without the prior approval by the Architectural Review Board of a Lot Development Plan therefor. Prior to the commencement by any Owner other than Declarant of (i) construction, erection or alteration of any Residence, building, fence, wall, swimming pool, tennis court, patio, or other structure on a Lot or (ii) any plantings on a Lot, a Lot Development Plan with respect thereto shall be submitted to the Architectural Review Board, and no building, fence, wall, Residence or other structure shall be commenced, erected, maintained, improved, altered, made or done, or any plantings made, by any Person other than Declarant without the prior written approval of the Architectural Review Board of a Lot Development Plan

relating to such construction, erection, alteration or plantings. Such approval shall be in addition to, and not in lieu of, all approvals, consents, permits and/or variances required by law from governmental authorities having jurisdiction over Ashbrooke, and no Owner shall undertake any construction activity within Ashbrooke unless all legal requirements have been satisfied. Each Owner shall complete all improvements to a Lot strictly in accordance with the Lot Development Plan approved by the Architectural Review Board. As used in this subparagraph (c), "plantings" does not include flowers, bushes, shrubs or other plants having a height of less than eighteen (18) inches.

(d) Procedures. In the event the Architectural Review Board fails to approve, modify or disapprove in writing a Lot Development Plan within thirty (30) days after notice of such plan has been duly filed with the Architectural Review Board in accordance with procedures established by Declarant or, if Declarant is no longer a Class B member, the Board of Directors, approval will be deemed denied. A decision of the Architectural Review Board (including a denial resulting from the failure of such Board to act on the plan within the specified period) may be appealed to the Board of Directors which may reverse or modify such decision (including approve a Lot Development Plan deemed denied by the failure of the Architectural Review Board to act on such plan within the specified period) by a two-thirds (2/3) vote of the Directors then serving.

(e) Guidelines and Standards. The Architectural Review Board shall have the power to establish and modify from time to time such written architectural and landscaping design guidelines and standards as it may deem appropriate to achieve the purpose set forth in subparagraph (b) to the extent that such design guidelines and standards are not in conflict with the specific provisions of this Declaration. Any such guideline or standard may be appealed to the Board of Directors which may terminate or modify such guideline or standard by a two-thirds (2/3) vote of the Directors then serving.

(f) Application of Guidelines and Standards. The Architectural Review Board shall apply the guidelines and standards established pursuant to subparagraph (e) in a fair, uniform and reasonable manner consistent with the discretion inherent in

the design review process. In disapproving any Lot Development Plan, the Architectural Review Board shall furnish the applicant with specific reasons for such disapproval and may suggest modifications in such plan which would render the plan acceptable to the Board if resubmitted.

(g) Design Consultants. The Architectural Review Board may utilize the services of architectural, engineering and other Persons possessing design expertise and experience in evaluating Lot 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 may, from time to time, represent Persons filing Lot Development Plans with the Architectural Review Board.

(h) Existing Violations of Declaration. The Architectural Review Board shall not be required to consider any Lot Development Plan submitted by an Owner who is, at the time of submission of such Lot Development Plan, in violation of the requirements of the first two sentences of Paragraph 8(h) and/or the provisions of subparagraph (c) of this Paragraph 12, unless such Owner submits to the Architectural Review Board with such Lot Development Plan an irrevocable agreement and undertaking (with such surety as the Board may reasonably require) to remove from the Owner's Lot any improvements or landscaping constructed and/or installed prior to the submission of a Lot Development Plan (or constructed and/or installed in violation of a previously approved Lot Development Plan) to the extent any such previously constructed and/or installed improvement or landscaping is not subsequently approved by the Architectural Review Board. The Architectural Review Board shall have the power to recommend to the Board of Directors that the Corporation assess an Architectural Control Assessment against any Owner who fails to comply with the requirements of Paragraphs 8 or 12. Under no circumstances shall any action or inaction of the Architectural Review Board be deemed to be unreasonable, arbitrary or capricious if, at the time of such decision, the Person having submitted a Lot Development Plan for approval by the Architectural Review Board has violated Paragraphs 8 or 12 of the Declaration and such violation remains uncured.

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(i) Exercise of Discretion. Declarant intends that the members of the Architectural Review Board exercise discretion in the performance of their duties consistent with the provisions of subparagraph (f), and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members. In any judicial proceeding challenging a determination by the Architectural Review Board and in any action initiated to enforce this Declaration in which an abuse of discretion by the Architectural Review Board is raised as a defense, abuse of discretion may be established only if a reasonable Person, weighing the evidence and drawing all inferences in favor of the Board, could only conclude that such determination constituted an abuse of discretion.

13. Community Area.

(a) Ownership. The Community Area shall remain private, and neither Declarant's execution or recording of an instrument portraying the Community Area, nor the doing of any other act by Declarant is, or is intended to be, or shall be construed as, a dedication to the public of such Community Area. Declarant or the Corporation may, however, dedicate or transfer all or any part of the Community Area to any public agency, authority or utility for use as roads, utilities, parks or other public purposes.

(b) Density of Use. Declarant expressly disclaims any warranties or representations regarding the density of use of the Community Area or any facilities located thereon.

(c) Obligations of the Corporation. The Corporation, subject to the rights of Declarant and the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Community Area and all improvements thereon (including furnishings and equipment related thereto), and shall keep the Community Area in good, clean, attractive and sanitary condition, order and repair.

(d) Easements of Enjoyment. No Person shall have any right or easement of enjoyment in or to the Community Area except to the extent granted by, and subject to the terms and provisions of, this Declaration, the Lake Declaration or any Supplemental Declaration executed by Declarant.

Such rights and easements as are thus granted shall be appurtenant to and shall pass with the title to every Lot for whose benefit they are granted.

(e) Extent of Easements. The easements of enjoyment created hereby shall be subject to the following:

(i) the right of the Corporation to establish reasonable rules for the use of the Community Area and to charge reasonable admission and other fees for the use of any recreational facilities located in or constituting a part of the Community Area except that no fee shall be charged to those specifically authorized to use such facilities by this Declaration or any Supplemental Declaration unless the Corporation is specifically authorized to do so by this Declaration or a Supplemental Declaration;

(ii) the right of the Corporation to suspend the right of an Owner and all Persons whose right to use the Community Area derives from such Owner's ownership of a Lot to use such portions of the Community Area for any period during which any Assessment against his Lot remains unpaid for more than thirty (30) days after notice;

(iii) the right of the Corporation to suspend the right of an Owner or any Person claiming through the Owner to use the Community Area for a period not to exceed sixty (60) days for any other infraction of this Declaration, any Supplemental Declaration or the Register of Regulations;

(iv) the right of the Corporation to mortgage any or all of the Community Area and the facilities constructed thereon for the purposes of improvements to, or repair of, the Community Area or facilities constructed thereon, pursuant to approval of the Class B member and two-thirds (2/3) of the votes of the Class A members (excluding Declarant) or two-thirds (2/3) of the Mortgagees (based on one vote for each first mortgage owned), voting in

person or by proxy at a regular meeting of the Corporation or a meeting duly called for this purpose;

(v) the right of the Corporation to dedicate or transfer all or any part of the Community Area to any public agency, authority or utility, but no such dedication or transfer shall be effective unless an instrument signed by the Class B member and the appropriate officers of the Corporation acting pursuant to authority granted by two-thirds (2/3) of the votes of the Class A members (excluding Declarant) or two-thirds (2/3) of the Mortgagees (based on one vote for each first mortgage owned), agreeing to such dedication or transfer, has been recorded; and

(vi) the right of Declarant in any Supplemental Declaration or Plat to restrict the use of Community Area located in a Section to (a) Owners of Residences located in such Section or (b) to other Owners of less than all of the Lots in the Tract.

(f) Additional Rights of Use. The members of the family and the guests of every Person who has a right of enjoyment to the Community Area and facilities may use the Community Area and facilities subject to such general regulations consistent with the provisions of this Declaration, the Lake Declaration and all Supplemental Declarations as may be established from time to time by the Corporation and included within the Register of Regulations.

(g) Damage or Destruction by Owner. In the event the Community Area is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents, or member of his family, such Owner authorizes the Corporation to repair said damaged area; the Corporation shall repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Corporation in the discretion of the Corporation. An amount equal to the costs incurred to effect such repairs shall be assessed against such Owner as a Special Assessment

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and shall constitute a lien upon the Lot of said Owner.

(h) Conveyance of Title. Declarant may retain the legal title to the Community Area or any portion thereof until such time as it has completed improvements thereon, but notwithstanding any provision herein, the Declarant hereby covenants that it shall convey to the Corporation each phase of the Community Area to which it has retained title, free and clear of all liens and financial encumbrances, not later than two (2) years from the date each such phase of the Community Area is subjected to this Declaration. Owners shall have all the rights and obligations imposed by this Declaration with respect to such Community Area prior to conveyance, except that the Corporation shall not be liable for payment of taxes and insurance for such Community Area (other than taxes on the Lakes) until title is conveyed.

14. Easements.

(a) Plat Easements. In addition to such easements as are created elsewhere in this Declaration and as may be created by Declarant pursuant to written instruments recorded in the office of the Recorder of Hamilton County, Indiana, Lots are subject to drainage easements, regulated drain easements, utility easements, entry way easements, landscape easements, lake access easements, non-access easements and sidewalk easements, either separately or in any combination thereof, as shown on the Plats, which are reserved for the use of Owners, public utility companies and governmental agencies as follows:

(i) Drainage Easements (DE) are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of the Tract and adjoining ground and/or public drainage systems. Under no circumstance shall any such easement be blocked in any manner by the construction or reconstruction of any improvement, nor shall any grading restrict, in any manner, the waterflow over, through or under such easement. Drainage Easements are subject to construction or reconstruction to any extent necessary to obtain adequate

drainage within the Development Area at any time by any governmental authority having jurisdiction over drainage, by Declarant, and by the Corporation, but neither Declarant nor the Corporation shall have any duty to undertake any such construction or reconstruction. Drainage Easements are for the mutual use and benefit of the owners of the lots and land intended to be served thereby.

(ii) Regulated Drain Easements (RD) are Drainage Easements created for the use and benefit of the Drainage Board as legal drains established in the manner prescribed by law.

(iii) Sewer Easements (SE) are created for the use of the local governmental agency having jurisdiction over any storm and sanitary waste disposal system which may be designed to serve the Tract for the purpose of installation and maintenance of sewers that are a part of said system.

(iv) Utility Easements (UE) are created for the use of Declarant, the Corporation and all public utility companies, not including transportation companies, for the installation and maintenance of mains, ducts, poles, lines and wires, as well as for all uses specified in the case of sewer easements.

(v) Entry Way Easements (EWE) are created for the use by Declarant, the Architectural Review Board and the Corporation for the installation, operation and maintenance of the Entry Ways.

(vi) Landscape Easements (LE) are created for the use by Declarant, the Architectural Review Board and the Corporation for the planting and maintenance of trees, shrubs and other plantings.

(vii) Lake Access Easements (LAE) are created for the use of Declarant, the Corporation, the Drainage Board and the City of Carmel for the purpose of gaining

access to the Lakes, the Drainage Facilities and the Off-site Drainage Facilities in the course of maintenance, repair or replacement of any thereof.

(viii) Non-Access Easements (NAE) are created to preclude vehicular access from certain Lots to abutting rights-of-way across the land subject to such easements.

(ix) Sidewalk Easements (SWE) are created for the use and benefit of the general public for the installation, maintenance and replacement of sidewalks and the use thereof for pedestrian traffic.

All easements mentioned herein include the right of reasonable ingress and egress for the exercise of other rights reserved. No structure, including fences, shall be built on any drainage, sewer or utility easement if such structure would interfere with the utilization of such easement for the purpose intended or violate any applicable legal requirement or the terms and conditions of any easement specifically granted to any Person who is not an Owner by an instrument recorded in the Office of the Recorder of Hamilton County, but a paved driveway necessary to provide access to a Lot from a public street and a sidewalk installed by or at the direction of Declarant (and replacements thereof) shall not be deemed a "structure" for the purpose of this Restriction.

(b) General Easement. There is hereby created a blanket easement over, across, through and under the Tract for ingress, egress, installation, replacement, repair and maintenance of underground utility and service lines and systems, including but not limited to water, sewers, gas, telephones, electricity, television, cable or communication lines and systems. By virtue of this easement it shall be expressly permissible for Declarant or the providing utility or service company to install and maintain facilities and equipment on the Tract and to excavate for such purposes if Declarant or such company restores the disturbed area as nearly as is practicable to the condition in which it was found. No sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or relocated in a Section except as proposed and approved by Declarant prior

to the conveyance of the first Lot in a Section to an Owner or by the Architectural Review Board thereafter. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Corporation shall have the right to grant such easement on the Tract without conflicting with the terms hereof. This blanket easement shall in no way affect any other recorded easements on the Tract, shall be limited to improvements as originally constructed, and shall not cover any portion of a Lot upon which a Residence has been constructed.

(c) Public Health and Safety Easements. An easement is hereby created for the benefit of, and granted to, all police, fire protection, ambulance, delivery vehicles, and all similar Persons to enter upon the Community Area in the performance of their duties.

(d) Drainage Board Easement. In addition to the Regulated Drain Easements established on the Plats, an easement is hereby created for the benefit of, and granted to, the Drainage Board to enter the Tract and all Lots therein to the extent necessary to exercise its rights with respect to any legal drain constituting a part of the Drainage System.

(e) Crossing Underground Easements. Easements utilized for underground service may be crossed by driveways, walkways and Lake Access Easements provided prior arrangements are made with the utility company furnishing service. Such easements as are actually utilized for underground service shall be kept clear of all other improvements, including buildings, patios, or other pavings, other than crossings, driveways, walkways or Lake Access Easements, and neither Declarant nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, agents, employees, or servants to shrubbery, trees, flowers or other improvements of the Owner located on the land covered by said easements.

(f) Declarant's Easement to Correct Drainage. For a period of ten (10) years from the date of conveyance of the first Lot in a Section, Declarant reserves a blanket easement and right on, over and under the ground within that Section to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and

appearance. Such right expressly includes 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 shall restore the affected property to its original condition as nearly as practicable. Declarant shall give reasonable notice of its intention to take such action to all affected Owners, unless in the opinion of Declarant an emergency exists which precludes such notice.

(g) Water Retention. The Owner of each Lot, by acceptance of a deed thereto, consents to the temporary storage (detention) of storm water within the Drainage Easements (DE) and Regulated Drain Easements (RD) located on such Owner's Lot.

15. Declarant's Use During Construction. Notwithstanding any provisions to the contrary contained herein or in any other instrument or agreement, Declarant or its sales agents or contractors may maintain during the period of construction and sale of Lots and Residences in the Tract or the Development Area, upon such portion thereof as is owned or leased by Declarant, such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of Lots and Residences, including, but without limiting the generality thereof, a business office, storage area, construction yards, signs, model Residences and sales offices.

16. Enforcement. The Corporation, any Owner or Declarant shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration and of any Supplemental Declarations, but neither Declarant nor the Corporation shall be liable for damage of any kind to any Person for failure either to abide by, enforce or carry out any of the Restrictions. No delay or failure by any Person to enforce any of the Restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that Person of the right to do so thereafter, or an estoppel of that Person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the Restrictions. In any action by Declarant, the Corporation or an Owner to enforce this Declaration, such Person shall be entitled to recover all costs of enforcement, including attorneys' fees, if it substantially prevails in such action.

17. Limitations on Rights of the Corporation. As long as there is a Class B member, the Corporation may not use its resources nor take a public position in opposition to the General Plan of Development or to changes thereto proposed by Declarant.

Nothing in this paragraph shall be construed to limit the rights of the Members acting as individuals or in affiliation with other Members or groups as long as they do not employ the resources of the Corporation or identify themselves as acting in the name, or on the behalf, of the Corporation.

18. Approvals by Declarant. As long as there is a Class B member, the following actions shall require the prior approval of Declarant: the addition of real estate to the Tract; dedication or transfer of the Community Area; mergers and consolidations of Sections within the Tract or of the Tract with other real estate; mortgaging of the Community Area; amendment of this Declaration and any Supplemental Declaration; and changes in the basis for assessment, the maximum General Assessment or the amount, use and time of payment of the initial Assessment for the Community Center.

19. Mortgages.

(a) Notice to Corporation. Any Owner who places a first mortgage lien upon his Residence or the 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 Mortgagee pursuant to the terms of the Declaration any Supplemental Declaration, the Articles or the By-Laws (the "Organizational Documents") shall be deemed effectively given if mailed to such 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, either by the Owner or 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.

(b) Notices to Mortgagees. The Corporation shall promptly provide to any Mortgagee of whom the Corporation has been provided notice under subparagraph (a) above notice of any of the following:

- (i) Any condemnation or casualty loss that affects a material portion of the Community Area;
- (ii) Any delinquency in the payment of any Assessment owed by the

Owner of any Residence on which said Mortgagee holds a mortgage or any default by an Owner under the Organizational Documents, if said delinquency or default continues for more than sixty (60) days;

- (iii) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Corporation;
- (iv) Any proposed action that requires the consent of a specified percentage of Mortgagees; and,
- (v) Any proposed amendment of the Organizational Documents effecting a change in (A) the interests in the Community Area appertaining to any Residence or the liability for Maintenance Costs appertaining thereto, (B) the vote appertaining to a Residence or (C) the purposes for which any Residence or the Community Area are restricted.

(c) Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Residence, furnish to such mortgagee or purchaser a statement setting forth the amount of the unpaid Assessments against the Residence and the Owners, and any Mortgagee or grantee of the Residence shall not be liable for, nor shall the Residence conveyed be subject to a lien for, any unpaid Assessments in excess of the amount set forth in such statement.

(d) Financial Statements. Upon the request of any Mortgagee, the Corporation shall provide to said Mortgagee the most recent financial statement prepared on behalf of the Corporation.

(e) Payments by Mortgagees. Any Mortgagee may (i) pay taxes or other charges that are in default and that may or have become a lien upon the Community Area or any part thereof and (ii) pay

overdue premiums on hazard insurance policies or secure new hazard insurance coverage for the Community Area in case of a lapse of a policy. A Mortgagee making such payments shall be entitled to immediate reimbursement from the Corporation.

20. Amendments.

(a) Generally. This Declaration may be amended at any time by an instrument signed by (i) the appropriate officers of the Corporation acting pursuant to the authority granted by not less than two-thirds (2/3) of the votes of the Class A members cast at a meeting duly called for the purpose of amending this Declaration and, to the extent required by Paragraph 18, (ii) Declarant.

(b) By Declarant. Declarant hereby reserves the right unilaterally to amend and revise the standards, covenants and restrictions contained in this Declaration during the period prior to December 31, 2001. Such amendments shall be in writing, executed by Declarant, and recorded with the Recorder of Hamilton County, Indiana. No such amendment, however, shall restrict or diminish in any material respect the rights or increase or expand in any material respect the obligations of Owners with respect to Lots conveyed to such Owners prior to the amendment or adversely affect the rights and interests of Mortgagees holding first mortgages on Residences at the time of such amendment. Declarant shall give notice in writing to such Owners and Mortgagees of any amendments. Except to the extent authorized in Paragraph 14(b), Declarant shall not have the right at any time by amendment of this Declaration to grant or establish any easement through, across or over any Lot which Declarant has previously conveyed without the consent of the Owner of such Lot.

(c) Effective Date. Any amendment shall become effective upon its recordation in the Office of the Recorder of Hamilton County, Indiana.

21. Interpretation. The underlined titles preceding the various paragraphs and subparagraphs of this Declaration are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of this Declaration. Whenever and wherever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine shall be taken to mean or apply to the feminine or to the neuter.

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22. Duration. The foregoing covenants and restrictions are for the mutual benefit and protection of the present and future Owners, the Corporation, and Declarant, and shall run with the land and shall be binding on all parties and all Persons claiming under them until January 1, 2020, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part by vote of those Persons who are then the Owners of a majority of the Lots in the Tract.

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

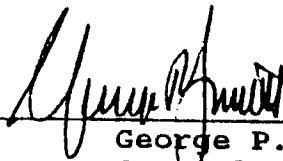
24. Non-Liability of Declarant. Declarant shall not have any liability to an Owner or to any other Person with respect to drainage on, over or under a Lot. Such drainage shall be the responsibility of the Owner of the Lot upon which a Residence is constructed and of the builder of such Residence and an Owner, by an acceptance of a deed to a Lot, shall be deemed to agree to indemnify and hold Declarant free and harmless from and against any and all liability arising from, related to, or in connection with drainage on, over and under the Lot described in such deed. Declarant shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Declarant, and no duty of, or warranty by, Declarant shall be implied by or inferred from any term or provision of this Declaration.

25. Annexation. Each Owner, by the acceptance of a deed to a Lot in Ashbrooke, shall be deemed to have waived such Owner's right to remonstrate against annexation of all or any portion of the Tract by the City of Carmel.

IN TESTIMONY WHEREOF, Declarant has executed this Declaration as of the date set forth above.

CARWINION ASSOCIATES, L.P.

By



George P. Sweet
General Manager

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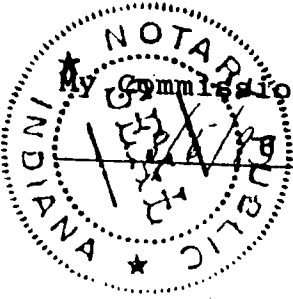
STATE OF INDIANA)
COUNTY OF MARION) SS:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared George P. Sweet, the General Manager of Carwinion Associates, L.P., an Indiana limited partnership, who acknowledged the execution of the above and foregoing Declaration of Covenants and Restrictions for and on behalf of said partnership pursuant to authority granted by its Limited Partnership Agreement.

WITNESS my hand and Notarial Seal this 17th day of Sept., 1991.

Glenda S. Garrison
Notary Public Residing in
Hamilton County

GLENDAS GARRISON
(printed signature)



This instrument prepared by Tom Charles Huston, Attorney at Law, 1313 Merchants Bank Bldg., 11 S. Meridian Street, Indianapolis, Indiana 46204.

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EXHIBIT A

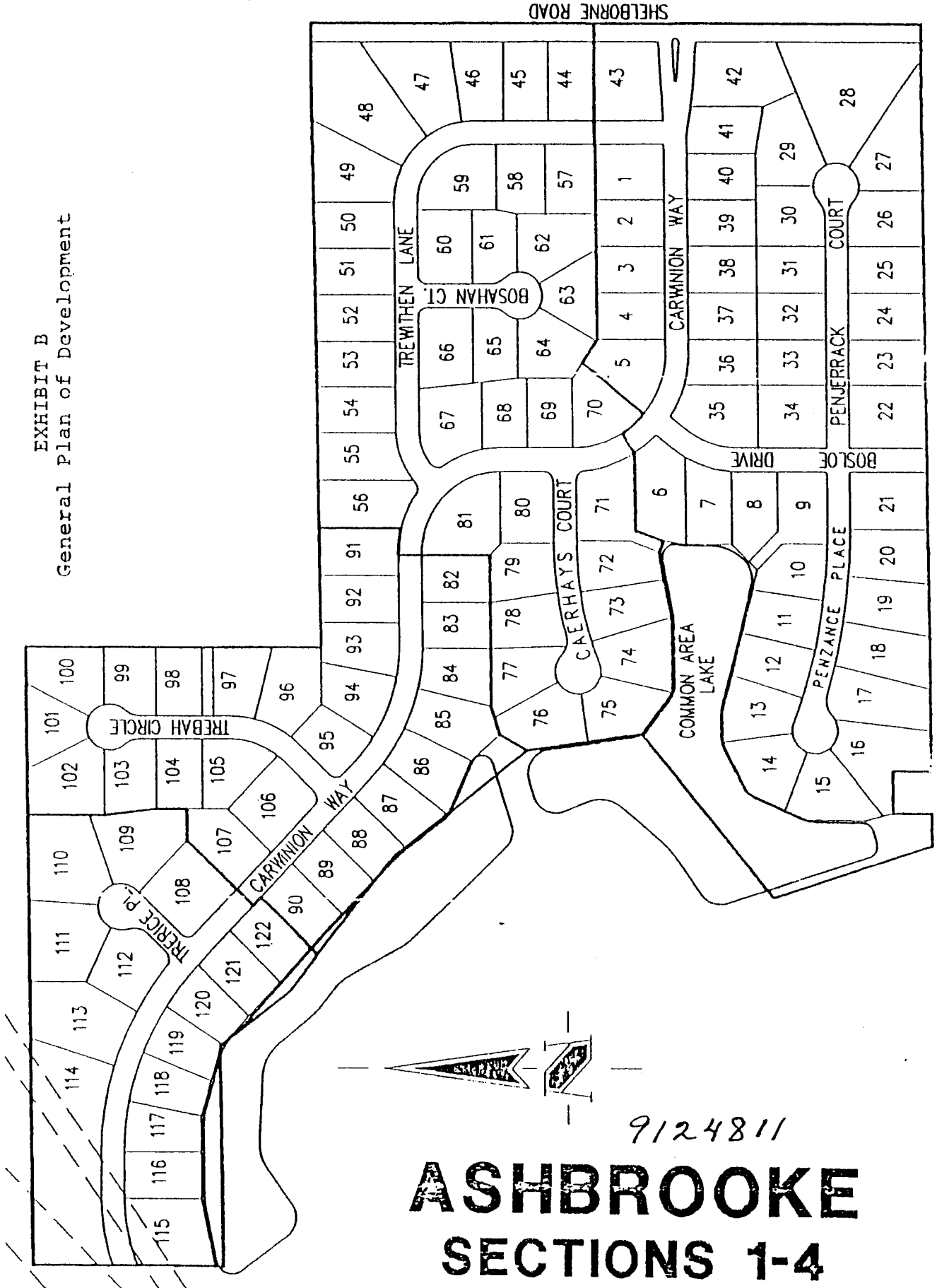
Development Area

Part of the Northeast Quarter of Section 7, Township 17 North, Range 3 East in Hamilton County, Indiana, described as follows:

Beginning at the southeast corner of said northeast quarter section; thence on an assumed bearing of North 00 degrees 05 minutes 53 seconds West along the east line of said northeast quarter section a distance of 1335.90 feet to the northeast corner of the southeast quarter of said northeast quarter section; thence South 89 degrees 29 minutes 56 seconds West along the north line of said quarter-quarter section a distance of 1334.11 feet to the northwest corner of said quarter-quarter section; thence North 00 degrees 03 minutes 30 seconds East along the east line of the west half of said northeast quarter section a distance of 648.27 feet to a point distant 689.60 feet south of the northeast corner of the west half of said northeast quarter section; thence South 89 degrees 34 minutes 56 seconds West parallel with the north line of said northeast quarter section a distance of 1332.32 feet to the west line of said northeast quarter section; thence south 00 degrees 12 minutes 52 seconds West along said west line a distance of 414.98 feet; thence North 89 degrees 33 minutes 38 seconds East a distance of 478.19 feet; thence South 37 degrees 01 minutes 26 seconds East a distance of 193.33 feet; thence South 50 degrees 54 minutes 58 seconds East a distance of 369.72 feet; thence South 37 degrees 31 minutes 26 seconds East a distance of 370.00 feet; thence South 08 degrees 01 minutes 26 seconds East a distance of 255.00 feet; thence South 50 degrees 43 minutes 34 seconds West a distance of 452.09 feet; thence South 18 degrees 01 minutes 26 seconds East a distance of 367.92 feet to the south line of said northeast quarter section; thence North 89 degrees 24 minutes 58 seconds East along said south line a distance of 325.44 feet to a point distant 100.00 feet west of the southeast corner of the west half of said northeast quarter, said point being the southwest corner of the 0.161 acre tract of land described in a deed to the Clay Township Regional Waste District (Instrument No. 90-7920; Office of the Hamilton County Recorder); thence North 00 degrees 05 minutes 53 seconds West parallel with the east line of said northeast quarter and along the west line of said 0.161 acre tract a distance of 70.00 feet; thence North 89 degrees 24 minutes 58 seconds East parallel with the south line of said northeast quarter and along the north line of said 0.161 acre tract of land a distance of 100.00 feet to the northeast corner of said 0.161 acre tract; thence South 00 degrees 05 minutes 53 seconds East parallel with the east line of the aforesaid northeast quarter and along the east line of said 0.161 acre tract a distance of 70.00 feet to the southeast corner of the west half of the aforesaid northeast quarter; thence North 89 degrees 24 minutes 58 seconds East along the south line of said northeast quarter section a distance of 1337.78 feet to the Point of Beginning. Containing 69.337 acres, more or less.

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EXHIBIT B
General Plan of Development



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ASHBROOKE
SECTIONS 1-4

EXHIBIT C

Description of the Tract

This Instrument Recorded 9-18 1991
Sharon K. Cherry, Recorder, Hamilton County, Indiana

PART OF THE NORTHEAST QUARTER OF SECTION 7, TOWNSHIP 17 NORTH, RANGE 3 EAST, IN HAMILTON COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 7; THENCE NORTH 00 DEGREES 05 MINUTES 53 SECONDS WEST (ASSUMED BEARING) ALONG THE EAST LINE OF SAID QUARTER SECTION A DISTANCE OF 712.91 FEET; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST A DISTANCE OF 259.70 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST A DISTANCE OF 2.04 FEET; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST A DISTANCE OF 420.00 FEET; THENCE NORTH 57 DEGREES 17 MINUTES 57 SECONDS WEST A DISTANCE OF 59.33 FEET; THENCE SOUTH 40 DEGREES 00 MINUTES 00 SECONDS WEST A DISTANCE OF 175.04 FEET TO A POINT ON A CURVE HAVING A RADIUS OF 205.00 FEET, THE RADIUS POINT OF WHICH BEARS NORTH 40 DEGREES 00 MINUTES 00 SECONDS EAST; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 62.86 FEET TO A POINT WHICH BEARS SOUTH 57 DEGREES 34 MINUTES 04 SECONDS WEST FROM SAID RADIUS POINT; THENCE SOUTH 57 DEGREES 34 MINUTES 04 SECONDS WEST A DISTANCE OF 50.00 FEET; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST A DISTANCE OF 161.81 FEET; THENCE SOUTH 20 DEGREES 00 MINUTES 00 SECONDS WEST A DISTANCE OF 63.46 FEET; THENCE NORTH 70 DEGREES 00 MINUTES 00 SECONDS WEST A DISTANCE OF 25.00 FEET; THENCE SOUTH 79 DEGREES 11 MINUTES 35 SECONDS WEST A DISTANCE OF 140.26 FEET; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST A DISTANCE OF 165.00 FEET; THENCE NORTH 53 DEGREES 43 MINUTES 51 SECONDS WEST A DISTANCE OF 112.15 FEET; THENCE SOUTH 50 DEGREES 43 MINUTES 34 SECONDS WEST A DISTANCE OF 452.09 FEET; THENCE SOUTH 18 DEGREES 01 MINUTES 26 SECONDS EAST A DISTANCE OF 367.92 FEET TO THE SOUTH LINE OF SAID NORTHEAST QUARTER; THENCE NORTH 89 DEGREES 24 MINUTES 58 SECONDS EAST ALONG THE SOUTH LINE OF SAID QUARTER SECTION A DISTANCE OF 69.00 FEET TO A POINT DISTANT 356.44 FEET WEST OF THE SOUTHEAST CORNER OF THE WEST HALF OF SAID NORTHEAST QUARTER SECTION; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST A DISTANCE OF 85.67 FEET; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST A DISTANCE OF 90.00 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST A DISTANCE OF 84.76 FEET TO THE SOUTH LINE OF SAID QUARTER SECTION; THENCE NORTH 89 DEGREES 24 MINUTES 58 SECONDS EAST ALONG SAID SOUTH LINE A DISTANCE OF 266.44 FEET TO THE AFORESAID SOUTHEAST CORNER OF THE WEST HALF OF SAID NORTHEAST QUARTER SECTION; THENCE CONTINUING NORTH 89 DEGREES 24 MINUTES 58 SECONDS EAST ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 7 A DISTANCE OF 1337.78 FEET TO THE POINT OF BEGINNING. CONTAINING 26.542 ACRES, MORE OR LESS.

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