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DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
CAREY GLEN

THIS DECLARATION, made on the 3<sup>RD</sup> day of SEPTEMBER, 2003, by  
CAREY GLEN, LLC., an Indiana limited liability company ("Declarant"),

WITNESSETH:

WHEREAS, Declarant is the owner of certain property, located in Hamilton County, Indiana, which is more particularly described in Exhibit "A" (hereafter "Property") attached hereto and by this reference, made a part hereof, upon which Declarant intends to develop a residential subdivision.

WHEREAS, Declarant desires to subdivide and develop the Property;

NOW, THEREFORE, the Declarant hereby declares that the Property and all of the Lots (as defined in Article II below) in the Property, 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 of the improvement and sale of the Property and each Lot situated therein, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property as a whole and each of the Lots situated therein. The restrictions shall run with the Property and shall be binding upon the Declarant, its successors and assigns, and upon the parties having or acquiring any interest in the Property or any part or parts thereof subject to these restrictions. The restrictions shall inure to the benefit of the Declarant and its respective successors entitled to the Property or any part or parts thereof.

ARTICLE I

*Name*

The subdivision of the Property created by this Declaration shall be known and designated as Carey Glen (hereafter "Subdivision").

ARTICLE II

*Definitions*

The following terms, when used throughout this Declaration, shall have the following meanings and definitions:

Section 2.1 "Architectural Control Committee" means a committee created by the Board of Directors after the Development Period ends, pursuant to Section 6.2 below.

Section 2.2 "Articles" means the Articles of Incorporation of the Association (as hereinafter defined) 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.

Section 2.3 "Association" means the CAREY GLEN HOMEOWNERS ASSOCIATION, INC., a non-profit corporation, its successors and assigns.

200300095407  
Filed for Record in  
HAMILTON COUNTY, INDIANA  
JENNIFER J HAYDEN  
09-16-2003 At 12:53 pm.  
DEC COV RES 85.00

Section 2.4 "Board of Directors" means the Board of Directors of the Association.

Section 2.5 "Builder" means a person or entity engaged in and responsible for the original construction of a residence on a Lot.

Section 2.6 "Common Area" means: (1) those portions of the 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 (as hereinafter defined), (2) Lake Area, as defined below, and (3) items (if any) deemed Common Area for maintenance purposes only. 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 hereafter defined) as a "Block", "Common Area", "C.A.", or such other areas within the Property that are not otherwise identified on the Plat (as hereafter defined) as a lot or street. The Common Area will be conveyed to the Association upon the sale of the last remaining Lot and the Common Area to be conveyed to the Association is described in the Plat (as hereinafter defined).

Section 2.7 "Common Expenses" shall mean and refer to expenses of administration of the Association, and expenses for the upkeep, maintenance, repair and replacement of all Common Area, and all sums lawfully assessed against the Owners by the Association, and all sums, costs and expenses declared by this Declaration to be Common Expenses.

Section 2.8 "Declarant" means CAREY GLEN, LLC, an Indiana limited liability company, and its successors and assigns.

Section 2.9 "Development Control Committee" means the committee established by the Declarant pursuant to Section 6.2 below.

Section 2.10 "Development Period" means the period of time commencing with Declarant's acquisition of the Property and ending when Declarant has completed the development and sale of, and no longer owns, any Lot or any other portion of the Property. The Development Period shall recommence each time the Declarant acquires any part (or all) of the Property.

Section 2.11 "Director" means any member of the Board of Directors.

Section 2.12 "Dwelling Unit" means any single-family residence situated upon a Lot (as hereafter defined).

Section 2.13 "Lake Area(s)" means any Common Area or dry detention area as depicted on the Plat on which a lake now exists or is later constructed by Declarant and "Lake" means a body of water which now exists or is later constructed by Declarant in a Lake Area.

Section 2.14 "Lot" or "Lots" means, as the context requires, any parcel or parcels of land designated as such upon the Plat (as hereinafter defined) or, after construction, that parcel of land upon which there is constructed one (1) single detached Dwelling Unit. Subject to any necessary approval of the appropriate governmental authority, a "Lot" may contain portions of real estate greater or less than its originally platted dimensions should the Declarant deem it advisable in order to accommodate the construction of a Dwelling Unit.

Section 2.15 "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but otherwise excluding those having such interest merely as security for the performance of an obligation. Unless specifically indicated to the contrary, the term "Owner" shall include the Declarant.

Section 2.16 "Plat" means the subdivision plats of the Property which are recorded with the Recorder of the County in which the Property is located, as the same may be hereafter amended or supplemented pursuant to this Declaration.

### ARTICLE III

#### *Property Rights, Easements and Encroachments*

Section 3.1 Owners' Easements of Enjoyment of Common Area. Every Owner shall have a nonexclusive right and easement of enjoyment, in common with all Owners, in and to any Common Area, which nonexclusive right and easement or enjoyment shall be appurtenant to and shall pass with title to every Lot (in the form of a right to membership in the Association), subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of recreational facilities, if any, situated upon the Common Area owned by the Association;

(b) The right of the Association to suspend the voting rights and right to use of any recreational facilities, if any, by any Owner (i) for any period during which any assessment remains unpaid and (ii) for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) The right of the Association to promulgate reasonable rules and regulations governing the use of the Common Area owned by the Association including, without limitation, parking, swimming, boating, fishing, (including the denial thereof of any such rights) and upon improvements, additions or alterations to the Lots and the Common Area owned by the Association;

(d) The rights of Declarant as provided in this Declaration, as the same may be amended from time to time;

(e) The right of the Association to mortgage any or all of the Common Area owned by the Association, upon the approval of two-thirds (b) of the membership of each class of members of the Association;

(f) The easements reserved elsewhere in this Declaration and the right of the Association to grant further reasonable utility easements across and through the Common Area owned by the Association for the benefit of its members;

(g) The right of the Association to dedicate or transfer all or any part of the Common Area owned by the Association to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members or otherwise allowed pursuant to this Declaration, as amended. No such dedication or transfer, except as allowed pursuant to this Declaration, shall be effective unless there is recorded an instrument agreeing to such dedication or transfer signed by two-thirds (b) of the membership of each class of members of the Association; and

(h) If ingress or egress to any Lot is through the Common Area, any conveyance or encumbrance of such Common Area is subject to such Lot Owner's easement for ingress and egress;

(i) The right of the Declarant to erect any signs (i) advertising the sale of the Property or any Lot and/or (ii) identifying the Subdivision;

(j) All other rights, obligations and duties as set forth in this Declaration, as the same may be from time to time amended or supplemented.

Section 3.2 Delegation of Use. In accordance with the By-Laws and any reasonable and nondiscriminatory rules and regulations promulgated from time to time by the Association, and subject to the rights of others as set forth in this Declaration, any owner may assign his or her right of enjoyment of the Common Area owned by the Association, to family members, guests, tenants or contract purchasers who reside on the Lot.

Section 3.3 Certain Obligations and Access Rights to the Common Area.

(a) Except as otherwise set forth in this Declaration, the Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the management and control, for the exclusive benefit of the Owners as provided herein, of the Common Area owned by the Association and for the maintenance of the same in good, clean, attractive, safe and sanitary condition, order and repair.

(b) The Association shall have and is hereby granted a general right of access and easement to all of the Common Area owned by the Association and across the Lots, at reasonable times and at any time in case of emergency, as reasonably required by its officers, directors, employees and their agents and independent contractors, to the full extent necessary or appropriate to perform its obligations and duties as set forth in this Declaration. The easements and rights specified herein also are reserved for the benefit of Declarant so long as Declarant owns any portion of the Property and for so long as Declarant may be liable under any builder's warranty.

Section 3.4 General Drainage, Utility, Sewer and Other Development Easement. The following rights and easements reserved in this Section 3.4 shall not be exercised with respect to a Lot, after the conveyance of such Lot, in a manner that (i) unreasonably and adversely affects any Dwelling Unit or portion thereof located upon such Lot or the Owner's use or enjoyment thereof, or (ii) unreasonably restricts the rights of ingress and egress to such Lot. The following rights and easements reserved by Declarant in this Section 3.4 shall run with the land, and Declarant's right to further alter or grant easements shall automatically terminate and pass to the Association one (1) year after Declarant shall have conveyed the last Lot within the Property.

(a) Declarant hereby reserves unto itself, and unto any public or private utility, a general easement ("General Drainage, Utility, and Sewer Easement") for drainage, utility and sewer purposes in, on and over all of the Common Area and any Lot, so as to permit Declarant to properly install and allow to be installed and maintained all electrical, telephone, water, gas, and sanitary and storm sewer, to serve any Dwelling Unit constructed on the Property. This General Drainage, Utility, and Sewer Easement shall include all areas of the Property outside any Dwelling Units, with the exception of any areas covered by chimneys, or patios. Improvements or permanent structures installed within the Common Area are subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of the Declarant and any public or private utility to construct, maintain, repair or remove any necessary facilities. By virtue hereof, Declarant reserves the right to install a lake(s), pond(s), and/or dry detention areas on any Common Area. The rights hereunder and easements hereby reserved survive the conveyance, by the Declarant to the Association, of any Common Area. This

easement shall be in addition to any easement defined upon a Plat as a drainage, sewer, utility, cable, landscape, sign, transmission, flowage or similar type easement.

(b) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, an easement ("Lake Easement") and right-of-way in and to any Lake Area (s) or areas now or hereafter shown on the Plat as a "Block", "Common Area", "Dry Detention Area", or "Lake" or any other Common Area within the Property used as a water retention or detention area, or on which a Lake now exists or is later constructed, for the purpose of fulfilling any maintenance obligations set forth in this Declaration and/or establishing and maintaining proper surface water drainage throughout the Property, and an easement of ingress and egress through so much of the remainder of the Property as is reasonably necessary or appropriate, to perform such actions as Declarant or the Association deem necessary or appropriate, for the purpose of establishing and maintaining proper surface water drainage throughout the Property, which such actions shall include the construction, repair and maintenance of retention and detention ponds or lakes in accordance with the requirements of applicable law and of all governmental agencies having jurisdiction (without undertaking any obligation or duty to exceed such requirements).

(c) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the right and an undefined sign and facilities easement ("Sign and Facilities Easement") to install, erect, construct and maintain an entryway sign or signs, directional signs, advertising signs advertising the Property or the Lots therein, lighting, walkways, pathways, fences, walls and any other landscaping, architectural and recreational features or facilities considered necessary, appropriate, useful or convenient, anywhere upon the Property (except upon any Lot after the first conveyance thereof). Any such signs shall comply with any applicable zoning requirements and all such facilities shall be maintained by the Association as a part of its Common Area maintenance obligations.

(d) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the full right, title and authority to:

(i) Relocate, alter or otherwise change the location of any Drainage, Flowage, Utility, Sewer and Lake, Sign and Facilities Easement, or any facility at any time located therein or thereon;

(ii) Grant such further easements, licenses and rights-of-way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress and egress, utility and similar purposes on or within any portion of the Property, for the benefit of the Property or any portion thereof; and,

(iii) Describe more specifically or to change the description of any Drainage, Flowage, Utility, Sewer, Lake, Sign and Facilities Easement or any other easement, license or right-of-way now or hereafter existing on the Property, by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Recorder the County in which the Property is located.

(e) The title of the Association (as to the Common Area owned by the Association during the Development Period, if any), and of any Owner of any Lot shall be subject to the rights and easements reserved herein.

Section 3.5 Easement for Emergency Purposes. An easement is hereby dedicated and granted for use in the case of an emergency by emergency vehicles such as fire trucks, police cars and ambulances and emergency personnel, public and private, over and upon the Common Area.

Section 3.6 Fee Title to Lot. The fee title to any Lot described as bounded by any street, lane, walkway, park, pond, lake, or any other common property which has not been dedicated or accepted by the public and the fee title to any Lot shown on any Plat as abutting upon any such common property shall not extend upon such common property and the fee title to such common property is reserved to the grantor to be conveyed to the Association for the common enjoyment of all residents of the Subdivision.

Section 3.7 Designated Drainage, Utilities, and Sewer Easements. There are strips of ground designated on the Plat as drainage easements, utility easements, sewer easements, sanitary sewer easements and storm sewer easements, or any combination thereof (hereafter collectively "DU&E Easements"), which are hereby reserved to the appropriate governmental entities, public utilities and private utilities for the installation and maintenance of swales, ditches, pipes, drains, sanitary sewers, manholes, and detention and retention areas or other drainage facilities. Purchasers of Lots in this subdivision shall take title subject to such easements hereby created and subject at all times to the rights of proper authorities to service and maintain such drainage facilities and easements, and no permanent structure of any kind and no part thereof except fences which do not retard or impede the flow of drainage water and which are approved pursuant to Section 6.2 below, shall be built, erected or maintained on said drainage easements except by Declarant and its assigns. It shall be the responsibility of the Association and the Owners of the areas enclosed within such easements to maintain such areas in such conditions that the flow of storm drainage waters on, across and from said areas shall not be impeded, diverted or accelerated. Such use 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, upstream or downstream, 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 obtain access to such areas to perform maintenance and to perform such maintenance as may be necessary to protect that easement and servitude rights. It shall be the responsibility of the Association 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 for the applicable Plat by the appropriate governmental agency or department and the requirements of all drainage permits for such Plat issued by those agencies. Failure to so comply shall operate as a waiver and release of the Declarant, the developer, or their engineers and agents from all liability as to damage caused by storm waters or storm drainage.

Further, there are easements and servitudes upon the land within the Plat in favor of surface water runoff along natural valleys and drainage channels running to Owners of other land contained within the Plat, upstream and downstream. It shall be the responsibility of the Association and the Owners of these natural valleys and channels to use their land and maintain said natural valleys and channels in such manner and condition that the flow of storm drainage waters on, across, from and to such areas shall not be impeded, diverted or accelerated.

Section 3.8 Designated Easements for Landscaping, Mounding, Screening and Signage. Within any strips of ground shown or designated on a Plat as a landscape easement, landscape maintenance easement, landscape maintenance access easement, or by any similar language indicating a landscaping purpose, Declarant hereby reserves unto itself during the Development Period and thereafter unto the Association, the exclusive and sole right to (i) erect signs which advertise the Property or availability of Lots, and/or identify the Subdivision and (ii) install landscaping, mounding, walls, and screening. Notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, signs, fences or other improvements shall be erected or maintained in the area of such easements, except by the Declarant during the Development Period and thereafter by the Association. Furthermore, notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences, structures, signs, or other improvements shall be erected within the area of any such

easements located adjacent to any perimeter roadway, public highway or right-of-way along the perimeter or boundary of the Property, except by the Declarant.

Section 3.9 Street Dedication. All streets now or hereafter located upon the Property are hereby dedicated to the public.

Section 3.10 Easement Work. Notwithstanding any architectural approval under Section 6.2 below, during the course of any maintenance, service, repair or work upon any easement, the Declarant, the Association, any private utility, any public utility, and/or any governmental entity shall have the right and the authority, without any obligation or liability whatsoever planted, to any owner, to remove, damage, or destroy any fence or other structure or landscaping built, erected, maintained or planted in any easement described in Section 3.7 and Section 3.8 above.

Section 3.11 No Access. There may be strips of ground designated on the Plat as "no access strips", "no access", "no access easement", "no access esmt", or by other similar language. Vehicular ingress, egress, and traveling and/or the construction of improvements for such ingress, egress and/or traveling, is prohibited on, over, or across any such strips or areas.

Section 3.12 Reservation of Right to Grant Easement. The Declarant hereby reserves the right, in its discretion, to (i) grant easements upon, under, over and across the Property for the benefit of land which is adjacent to the Property and/or (ii) to obtain, for the benefit of the Property, easements upon, under, over and across the real estate which is adjacent to the Property.

#### ARTICLE IV

##### ***Association Membership, Voting Rights, Board of Directors and Professional Management***

Section 4.1 Membership. Initially, the person(s) who serve as incorporator(s) of the Association shall be the member(s) (the "Initial Member(s)"). The Initial Member(s) shall remain member(s) of the Association until the Association Articles of Incorporation are accepted by the Indiana Secretary of State, at which time the Initial Member(s) shall cease to be member(s) unless they also qualify as Class A or Class B members. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Apart from the Initial Member(s), a membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot.

Section 4.2 Classes of Membership and Voting Rights. The Association shall have the following classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant. 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. 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 vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant. The Declarant shall be entitled to six (6) votes for each Lot owned. For purposes of this calculation, it shall be assumed that Declarant owns all Lots, which number shall be reduced as Lots are conveyed by the Declarant to an Owner. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (i) December 31, 2023; or
- (ii) When the total number of votes outstanding in the Class A membership is equal to the total number of votes outstanding in the Class B membership; or,
- (iii) The date on which the Class B Member agrees in writing to the cessation and conversion of the Class B membership.

The foregoing notwithstanding, Declarant and/or the Development Control Committee shall retain all architectural review and approval until the end of the Development Period, as is set forth in Section 6.2 below.

Section 4.3 Board of Directors. The Board of Directors of the Association shall be appointed and/or elected as prescribed by the Association's Articles and By-Laws. The Board of Directors shall manage the affairs of the Association. Directors need not be members of the Association.

Section 4.4 Professional Management. The Association may, in its sole and subjective discretion, engage or employ a professional manager or management company, possessing experience in the management of homeowners associations, to assist the Board of Directors in the management and administration of the Association. No contract or agreement for professional management of the Association, nor any other contract between Declarant and the Association, shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause and without payment of any termination fee upon written notice of ninety (90) days or less.

Section 4.5 Fulfillment of Commitments. Notwithstanding the cessation of the Class B membership and the turnover of the Association, and notwithstanding the conveyance of any Common Area by the Declarant to the Association, the Declarant reserves the right to enter upon any Lots and/or Common Areas for the purpose of complying with any written or unwritten commitments extended to any municipality or zoning jurisdiction in connection with any zoning approvals, plat approvals, variance approvals, special use or exception approvals, and/or any other approvals granted by such municipality or zoning jurisdiction.

## ARTICLE V

### *Covenant for Maintenance Assessments*

Section 5.1 Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot now or hereafter owned by it within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (a) Regular Yearly Assessments (for maintenance, repairs and ordinary operating expenses, including Common Expenses);
- (b) Special Assessments for capital improvements and operating deficits and for special maintenance or repairs as provided in this Declaration; and
- (c) One Time Assessment for purposes specified below.

Such assessments shall be established, shall commence upon such dates and shall be collected as hereinafter provided. All such assessments, together with prejudgment interest at eight percent (8%) per



annum, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them.

Section 5.2 Purpose of Regular Yearly Assessments. The Regular Yearly Assessments levied by the Association shall be used exclusively, in the reasonable discretion of the Board of Directors of the Association, for the promotion of the recreation, health, safety and welfare of the residents in the Property, for the improvement, maintenance and repair of the Common Area, for the performance of the obligations and duties of the Association and for other purposes only as specifically provided herein. As and if necessary, a portion of the Regular Yearly Assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the Common Area, and other capital improvements which the Association is required to maintain.

Section 5.3 Maximum Regular Yearly Assessments.

(a) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Regular Yearly Assessment on any Lot shall be three hundred fifty dollars (\$350.00) per Lot per year.

(b) From and after January 1 of such year, the maximum Regular Yearly Assessment may be increased each calendar year not more than twenty-five percent (25%) above the maximum Regular Yearly Assessment for the previous year, without a vote of the membership. In addition, upon the employment and engagement by the Association of a professional manager or management company to assist the Board of Directors in the management and administration of the Association, there shall immediately and automatically, without notice or vote of membership, be added to the regular annual assessment the cost of such professional management.

(c) From and after January 1 of such year, the maximum Regular Yearly Assessment may be increased each calendar year by more than twenty-five percent (25%) above the maximum Regular Yearly Assessment for the previous year, by a vote of two-thirds (b) of the votes entitled to be cast by members who cast votes in person or by proxy at a meeting duly called for this purpose.

(d) The Board of Directors from time to time may fix the Regular Yearly Assessment, without any vote of the membership, at any amount not in excess of the maximum.

Section 5.4 Special Assessments for Capital Improvements and Operating Deficits. In addition to the Regular Yearly Assessments authorized above, the Association may levy a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain, or to recover any operating deficits which the Association may from time to time incur, provided that any such assessment shall have the approval of two-thirds (b) of the votes entitled to be cast by those members who cast votes in person or by proxy at a meeting duly called for this purpose.

Section 5.5 One-time Assessment. Upon the closing of the initial conveyance of each Lot by Declarant, the purchaser of such Lot shall pay to the Association, in addition to any other amounts then owed or due to the Association, as a contribution to its working capital and start-up fund, an amount of One Hundred Dollars (\$100.00), 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 Association and the Property, to enable the Association to have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary by the Board of Directors.

Section 5.6 Quorum. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of the total number of votes entitled to be cast (Class A and Class B votes combined) shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 5.7 Uniform Rate of Assessment. Regular Yearly Assessments and Special Assessments for capital improvements and to recover operating deficits must be fixed at a uniform rate for all Lots; provided, however, that the foregoing notwithstanding, (i) with respect to any vacant or unimproved Lots, no assessments shall be due, and (ii) with respect to any Lots held by any individual or entity purchasing a Lot or Lots solely for the purpose of construction of a for-sale Dwelling Unit thereon (a "Builder"), or by the Declarant, only twenty-five percent (25%) of the Regular Yearly Assessments and Special Assessments shall be due, but not until such time as a Dwelling Unit is fully constructed and ready for sale upon such Lot by Declarant or Builder.

Section 5.8 Date of Commencement of Yearly Assessments; Due Dates. The Regular Yearly Assessment provided for herein shall commence as to each Lot within a recorded Plat on the first day of the first month following the recording of such Plat. The Board of Directors shall fix any increase in the amount of the yearly assessments at least thirty (30) days in advance of the effective date of such increase. Written notice of any increase in the Regular Yearly Assessment, and written notice of any Special Assessment and such other assessment notices as the Board of Directors shall deem appropriate, shall be sent to every Owner subject thereto. The due dates for all assessments, and the assessment and collection period (i.e., annual, monthly, lump-sum or otherwise) for any Special Assessments, shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an Officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any Lot shall be binding upon the Association as of the date of its issuance.

Section 5.9 Effect of Nonpayment of Assessments; Remedies of the Association. If any assessment (or periodic installment of such assessment, if applicable) is not paid on the due date established therefor pursuant to this Declaration, then the entire unpaid assessment (together with interest thereon, costs and attorneys' fees as provided in this Declaration) shall become delinquent and shall constitute a continuing lien on the Lot to which such assessment relates, binding upon the then Owner, his heirs, devisees, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall not pass to such Owner's successors in title unless expressly assumed by them. If any assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eight percent (8%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, or both. In such event, there shall be added to the amount of such assessment the

costs and attorney's fees of preparing and filing the complaint in such action; and in the event a judgment is obtained such judgment shall include interest on the assessment as above provided, costs of the action and reasonable attorneys' fees to be fixed by the court. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area owned by the Association or abandonment of his Lot.

Section 5.10 Subordination of the Lien to Mortgages: Sale or Transfer. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer. No sale or transfer of any Lot (whether voluntary or pursuant to foreclosure or otherwise) shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof; and, except as hereinabove provided, the sale or transfer of any Lot shall not affect the lien of assessments becoming due prior to the date of such sale or transfer except to the extent that a purchaser may be protected against the lien for prior assessments by a binding certificate from the Association, issued pursuant to this Declaration, as to whether or not such assessments have been paid.

## ARTICLE VI

### *Use, Restrictions, and Architectural Control*

Section 6.1 Lot Use and Conveyance. All Lots shall be used exclusively for single family residential purposes, except that Declarant, during the Development Period, reserves (a) the rights provided in this Declaration respecting the Property generally, and (b) the right to subdivide, dedicate or otherwise convey or designate all or any portion of any one or more Lots which it may own from time to time for recreational or other common uses and benefit of all Owners and other members of the Association. Any Lot or portion thereof so designated for common use shall become part of the Common Area owned by the Association, and reasonable rules and regulations shall be promulgated and enforced with respect thereto so that the use and enjoyment of adjacent Lots by the Owners thereof shall not be unreasonably disturbed. Except as provided in the Declaration, no Lot shall be subdivided to form units of less area. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the covenants, conditions and restrictions contained herein.

Section 6.2 Development and Architectural Control. No building, outbuilding, mailbox, fence, satellite dish, wall or other structure, except original construction of Dwelling Units by or on behalf of the Declarant, shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein, other than by the Declarant, be made until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant and/or the Development Control Committee, until the end of the Development Period, and thereafter by the Board of Directors of the Association. The Development Control Committee shall consist of one (1) to three (3) representatives to be appointed by the Declarant and shall serve until the end of the Development Period, when the Development Control Committee shall cease to exist. The rights, duties and obligations of the Development Control Committee are set forth in Exhibit "B" which is attached hereto and incorporated herein by reference. After the Development Period ends, the Board of Directors, in their sole discretion, may then appoint three (3) or more representatives to an Architectural Control Committee. The Board of Directors shall fill any vacancies in the Architectural Control Committee, and the Board of Directors may, in their sole discretion, remove and/or replace any members of the Architectural Control Committee. Any change in

the appearance or the color of any part of the exterior of a residence shall be deemed a change thereto and shall require the approval therefor as above provided. In the event that written approval is not received as required hereunder within thirty (30) days after complete plans and specifications have been submitted, then the request for approval shall be deemed denied.

Every Owner, by the purchase of a Lot, shall be conclusively presumed to have consented to the exercise of discretion by the Declarant, the Development Control Committee, the Board of Directors, and/or the Architectural Control Committee. In any judicial proceeding challenging a determination by the Declarant, the Development Control Committee, Board of Directors, and/or Architectural Control Committee and in any action initiated to enforce this Declaration in which an abuse of discretion by the Declarant, the Development Control Committee, Board of Directors, and/or Architectural Control Committee 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 Declarant, the Development Control Committee, Board of Directors, and/or Architectural Control Committee, could only conclude that such determination constituted an abuse of discretion.

The Declarant and/or the Development Control Committee, during the Development Period, and thereafter the Board of Directors and/or the Architectural Control Committee, may in its discretion inspect work being performed without the Owner's permission to assure compliance with these restrictions and applicable regulations. All improvements must be constructed as approved and, therefore, must be constructed per the approved plans and in the approved location. If construction of an improvement is not completed within thirty (30) days after approval, then the Declarant and/or the Development Control Committee, during the Development Period, and thereafter the Board of Directors or the Architectural Control Committee may, in its discretion, withdraw and revoke the approval.

Under no circumstances shall the Declarant and/or the Development Control Committee, the Board of Directors, and/or the Architectural Control Committee be liable in any way for costs, fees, damages, delays, or any charges or liability whatsoever relating to the approval or disapproval of any plans submitted to it. Under no circumstances shall the Declarant and/or the Development Control Committee, the Board of Directors, and/or the Architectural Control Committee 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 Declarant and/or the Development Control Committee, the Board of Directors, and/or the Architectural Control Committee make no comment, representation or warranty as (i) to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used and/or (ii) the compliance of any intended improvements with applicable laws, statutes, zoning ordinances, and/or municipal regulations. All parties should seek professional advice, engineering, and inspections on each lot prior to proposing construction.

Section 6.3 Leasing. Any Lot may be leased by its Owner.

Section 6.4 Animals. No animals shall be kept or maintained on any lot except domestic, household pets traditionally kept in individual residences throughout the state of Indiana. All such pets shall be kept reasonably confined so as not to become a nuisance. Excessive barking of dogs or vicious animals shall constitute a nuisance and may be ordered by the Association to be removed from the property.

Section 6.5 Outside Storage. All clotheslines, equipment, garbage cans, service yards, woodpiles or storage piles shall be kept from view of neighboring homes and streets. All rubbish, trash or garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon. Trash must be stored in enclosed containers.

Section 6.6 Setback Lines. Front Building lines are hereby established as shown on the Plat. Between such Front Building lines and the right-of-way lines there shall be erected, placed or altered no structure or part thereof, except fences in keeping with architectural style as specifically approved by the Declarant and/or the Development Control Committee until the end of the Development Period, and thereafter by the Board of Directors and/or Architectural Control Committee; provided, however, except that in no case will such fences be permitted on the public right-of-way. The building lines which are from public right-of-way lines are parallel to and measured perpendicularly from these public right-of-way lines.

Section 6.7 Side Setbacks. The minimum side yard and minimum rear yard requirements shall be those established by the applicable zoning and subdivision control ordinances.

Section 6.8 Temporary Structures and Outbuildings. No structure of a temporary character, tent, shack, basement, garage, barn or other out-building shall be erected, placed, or altered upon any Lot for use as a residence either temporarily or permanently, or at any time be used for such purpose.

Section 6.9 Motor Vehicle Repair. The repair of inoperative motor vehicles or material alteration of motor vehicles shall not be permitted on any Lot unless entirely within a garage permitted to be constructed per the terms of the Declaration.

Section 6.10 Nuisances. No noxious or offensive activities shall be carried on or be permitted to exist on any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance. Any structure or building permitted to be constructed on any Lot by this Declaration, which may be all or in part destroyed by fire, wind, storm or any other reason, shall be rebuilt and restored to its previous condition within a reasonable length of time, and all debris accumulated in connection therewith shall be removed within a reasonable time after any such occurrence.

Section 6.11 Permitted Uses. No use shall be made of any Lot except as permitted by the applicable zoning and subdivision control ordinances under which this Property is developed.

Section 6.12 Drains. No house footing drain or roof water drain shall be discharged into the sanitary sewers.

Section 6.13 Residential Use. Lots may be used only for residential purposes and only for one single-family dwelling, a private garage, and other such outbuildings as are usual and incidental to the use of a residential lot. All lots in this subdivision shall be designated as residential Lots.

Section 6.14 Size. Subject to any further restrictions imposed by any recorded commitment, every single-family dwelling erected, placed, altered or maintained on any Lot within shall have a minimum living area, exclusive of open porches, unfinished basements and attached garages, of not less than what is required by the applicable zoning and subdivision control ordinances.

Section 6.15 Unsightly Growth. In order to maintain the standards of the Property, no weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Property, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. Failure to comply shall warrant the Declarant or the Association to cut weeds or clear the refuse from the Property at the expense of the Owner, and there shall be a lien against said Property for the expense thereof, which lien shall be due and payable immediately. If such lien is not promptly paid, the

Association or the Declarant may file suit and recover such amount together with reasonable attorneys fees and costs of collection.

Section 6.16 Site Visibility. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) feet and nine (9) 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 twenty-five (25) feet from the intersection of said street lines, or in the case of a rounded property corner from the intersection of the street lines extended. The same sightline limitations shall apply to any Lot within ten (10) feet from the intersection 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. No fences shall be permitted to be constructed between the front set back line and the street curb.

Section 6.17 Semi-tractor trucks, trailers, etc. No semi-tractor trucks, semi-trucks, semi-tractor trailers, boats, campers, mobile homes, disabled vehicles, and/or trailers shall be permitted to park on the Property or a Lot unless fully enclosed in a garage, or unless the same is necessary and incident to the Declarant's, builder's or Association's business on the Property.

Section 6.18 Sign Limitations. No sign of any kind, other than those installed by Declarant, the Association, or a Builder, may be displayed to public view on any Lot, except that one sign with an area of not more than six (6) square feet may be displayed with the purpose of advertising the Lot for sale.

Section 6.19 Lakes, Lake Area(s). Except as otherwise provided, no individual using a Lake, 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 Lake, diversion of water, elevation of any Lake level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality, drainage or proper Lake management except as provided in the Declaration. A Lake 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. Lakes and Lake Areas may or may not exist on the Property, and the reference throughout this Declaration to Lakes and Lake Areas is made in order to address Lakes and Lake Areas, if any, which now exist or are later constructed upon the Property. The installation on the Property of any Lake or Lake Area shall be within the sole discretion of the Declarant, and under no circumstances shall the Declarant be required or obligated to install any Lake or Lake 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 Lake.

Section 6.20 Rules and Regulations. The Board of Directors from time to time may promulgate further rules and regulations concerning the use of Lots and the Common Area owned by the Association. A majority of those Owners voting at a meeting called for the purpose may rescind or modify any rule or regulation adopted by the Board of Directors. Copies of all rules and regulations shall be furnished by the Board to all Owners, at the Owner's last known address, prior to the time when the same shall become effective. The Association shall have current copies of the Declaration, Articles and By-Laws, and other rules concerning the Property as well as its own books, records and financial statements available for inspection by Dwelling Unit Owners or by holders, insurers and guarantors of first mortgages, that are secured by Dwelling Units in the Property. These documents shall be available during normal business hours or under other reasonable circumstances.

Section 6.21 Development and Sale Period. Nothing contained in this Article 6 shall be construed or interpreted to restrict the activities of Declarant or a Builder in connection with the development of the Property and sale of Lots. During the Development Period, Declarant or a Builder shall be entitled to engage in such activities and to construct, install, erect and maintain such facilities, upon any portion of the Property at any time owned or leased by Declarant or a Builder, as in the sole opinion of Declarant or a Builder may be reasonably required, or convenient or incidental to, the development of the Property and sale of the lots; such facilities may include, without limitation, storage areas, signs, parking areas, model residences, construction offices, sales offices and business offices.

Section 6.22 Outside Use of Lots. Except in an individual patio area appurtenant to a Dwelling Unit, no planting or gardening shall be done, and no fences, hedges, walls or other improvements shall be erected or maintained upon the Property except such as installed in accordance with the initial construction of the buildings located thereon or as approved by the Declarant and/or the Development Control Committee, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Control Committee.

Section 6.23 Mailboxes. All mailboxes installed upon Lots shall be uniform and shall be of a type, color and manufacture approved by the Declarant and/or the Development Control Committee during the Development Period and, thereafter, by the Board of Directors and/or the Architectural Control Committee.

Section 6.24 Notice of Zoning Commitments. Notice is hereby given that certain written commitments were made in connection with the zoning of all or part of the Property, and said commitments were recorded with the Hamilton County, Indiana, Recorder on April 17, 2003, as Instrument Number 200300036800 and are attached hereto as Exhibit "C".

Section 6.25 Home Occupations. No Lot or Dwelling Unit located thereon shall be used for any purpose other than as a single family residence, except a home occupation which is both permitted under the applicable zoning ordinance and which also complies with the following guidelines:

- (a) Any home occupation must be conducted entirely within the residence and conducted solely by a member of the immediate family residing in said Dwelling Unit;
- (b) Any home occupation must be clearly incidental and secondary to the use of the Dwelling Unit for residential purposes;
- (c) There can be no sign or display that will indicate from the exterior of the Dwelling Unit that the Dwelling Unit is being used, in whole or in part, for any purpose other than that of a residential dwelling;
- (d) No commodity can be sold from the Lot or Dwelling Unit located thereon.
- (e) No person can be employed other than a member of the immediate family residing in the Dwelling Unit;
- (f) No manufacturer or assembly operations can be conducted; and
- (g) Customers cannot enter upon the Lot or Dwelling Unit for the purpose of conducting business.

In no event shall the following activities be conducted: child care, barber shop, styling salon, animal hospital, kennel, any form of animal care or treatment such as dog trimming, or any similar activities.

Section 6.26 Fences. No fencing, landscape screening, or walls may be constructed or installed until after architectural approval is obtained from the Declarant and/or the Development Control Committee, during the Development Period, and thereafter the Board of Directors and/or the Architectural Control Committee. It is the goal to keep all fencing or screening harmonious with the architectural character of the community. No fence or screen will be approved which obstructs necessary sight lines for vehicular traffic. Undue obstruction of views from adjoining properties and amenity areas will be taken into consideration when reviewing fences for approval. No front yard fencing is permitted, except on a Lot on which there is maintained a sales office or model home by Declarant or Builder. If approved by the Declarant and/or the Development Control Committee, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Control Committee, fences may be privately installed but must be constructed to professional levels of quality, design, material, composition, and color as determined by the Declarant and/or the Development Control Committee, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Control Committee. Non-professionally installed fences may be inspected by the Declarant and/or the Development Control Committee, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Control Committee after completion in order to ensure that the fence is of a professional quality, and final approval of such fence shall be deemed withheld until completion of this final review. All fences shall be kept in good repair by the Owner. In general, fences shall be located on the property line, one foot within the property line, or three feet within the property line; provided, however, that no fence shall be located any closer to the front of a residence than six (6) feet behind the line of the face of the residence nearest the front line, not counting patios, terraces, entryways, or steps.

No fence shall be constructed until its materials, design, and location are first approved by the Declarant and/or the Development Control Committee, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Control Committee. Walls above grade must be constructed of natural stone, masonry, wood or shadow box fencing. All approvals of landscape screening materials, design, and location shall be on an individual basis.

The exact location, material, color and height of the fence and rendering or photograph thereof shall be submitted to the Declarant and/or the Development Control Committee, during the Development Period, and thereafter to the Board of Directors and/or the Architectural Control Committee for written approval at least thirty (30) days prior to proposed construction. If however, approval has not been received by applicant in writing within thirty (30) days after submitted, then said request shall be considered DENIED.

Section 6.27 Animal Kennels. Animal kennels or quarters which are not connected to a Dwelling Unit are prohibited. Animal quarters or kennels which are to be connected to the Dwelling Unit cannot be constructed until after they are approved by the Declarant and/or the Development Control Committee, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Control Committee.

Section 6.28 Playground/Recreational Equipment. No playground or recreational equipment shall be placed or constructed upon a Lot until after it is approved by the Declarant and/or the Development Control Committee, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Control Committee. All such playground or recreational equipment shall be constructed of wood and not metal.



Section 6.29 Additional Covenants. The following additional covenants and restrictions shall apply to the use and enjoyment of any Lot and shall not be subject to any amendment by the Declarant, Development Control Committee, Board of Directors, Architectural Control Committee and/or any Members:

- (a) Above ground pools shall be prohibited;
- (b) Solar heating panels shall be prohibited;
- (c) No fences shall be constructed in areas designated for retention or detention, nor shall fences be constructed in any floodways. No fences shall be constructed in front of the building line of any lot. In general, all fencing must be brick, ornamental iron, or aluminum, treated wood or vinyl coated chain link (dark green or black in color) and must not be higher than six (6) feet from ground level;
- (d) Slab foundation construction will be prohibited, except for garages, patios, and porches;
- (e) Detached outbuildings used for storage, such as mini-barns, shall be prohibited; provided, however, that the Declarant and/or Development Control Committee, during the Development Period, and thereafter by the Board of Directors and/or Architectural Control Committee may approve a gazebo or a pool house, so long as the gazebo or pool house is architecturally consistent with and constructed of the same materials as the principal residence;
- (f) All garage doors must have automatic garage door openers;
- (g) All new plant materials shall conform to the current issue of the American Standard for Nursery Stocks published by the American Association of Nurserymen. Each Lot will have a minimum planting requirement as follows:
  - 1. Street Trees. Each individual Lot Owner shall install a quantity of two (2) Deciduous shade trees which shall be 2-1/2" caliper at breast height. The location, species and quantity shall be as depicted on the development landscape plan which is approved by the Declarant and/or Development Control Committee. Each individual Lot Owner shall replace any such street trees on their lot as necessary.
  - 2. Front and Side Yard Trees. For each individual Lot, the required plant materials to be installed by each individual Lot Owner shall be as follows:
    - a. 1 Flowering tree - 1-1/2" caliper at breast height
    - b. 1 Conifer tree - 8' - 10' height
    - c. 8 Shrubs - 3' - 4' height
    - d. 12 Shrubs - 18" - 24" height
  - 3. Lawns. All yards are to be sodded or hydro-seeded as the minimum requirement. All established lawns shall be required to be fertilized and weeded as necessary to insure a quality lawn appearance at all times.

## ARTICLE VII

### *Maintenance, Repairs and Replacements*

Section 7.1 By Owners. Except as specifically provided in this Declaration or in any Supplementary Declaration, each Owner shall furnish and be responsible for the maintenance of all portions of his Lot. Except as may be specified in any Supplementary Declaration, all fixtures and equipment installed within or as part of the Dwelling Unit, commencing at the points where the utility lines, pipes, wires, conduits or systems enter the Lot upon which said Dwelling Unit is located, shall be maintained and kept in repair by the Owner thereof. Each Owner shall promptly perform all maintenance and repair of his Lot and Dwelling Unit which, if neglected, might adversely affect any other Lot or Dwelling Unit or any part of the Common Area owned by the Association. Such maintenance and repairs include, but are not limited to, all exterior surface, siding, roof, gutters, internal water lines, plumbing, electric lines gas lines, appliances, and all other fixtures, equipment and accessories belonging to the Owner and a part of or appurtenant to his Dwelling Unit or Lot.

Section 7.2 Common Properties and Lawns by the Association.

(a) The Association, as part of its duties, and as part of the Common Expenses, shall provide for:

(i) Maintenance of the Common Area. Maintenance of the Common Area shall include, but shall not be limited to, fertilizing, treating any Lakes, mowing and replanting when necessary of the grass and trees and maintenance of any other improvement within the Common Area;

(ii) Maintenance of any entry signs, permanent subdivision identification sign, landscaping, mounding, fences, trails, pedestrian paths, multi-purpose fields, swimming pools, wading pools, bath houses, playground equipment, and/or any other improvements installed by the Declarant in any Common Area, or any Landscape Easement, Landscape Maintenance Easement, Landscape Maintenance Access Easement or similar easement;

(iii) The maintenance of any street lights which are installed by Declarant and which are not located upon any Lot; and,

(iv) The maintenance of any brick surface installed by Declarant on any internal street or entryway.

The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the Common Area owned by the Association (or any items deemed Common Area for purposes of maintenance only) as it deems necessary.

(b) Notwithstanding any obligation or duty of the Association to repair or maintain any of the Common Area owned by the Association (or any items deemed Common Area for purposes of maintenance only), if, due to the willful, intentional or negligent acts or omissions of an Owner or a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Area owned by the Association (or any items deemed as such for purposes of maintenance only), or if maintenance, repairs or replacements shall be required thereby which would otherwise be at the Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association, unless such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Association, the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's Lot is subject.

(c) The authorized representatives of the Association, the Board of Directors and the managing agent for the Association (if any) are hereby granted an easement for access upon and to any Lot as may be required in connection with maintenance only, repairs or replacements of or to the Common Area owned by the Association or any items deemed as Common Area for purposes of maintenance only, including, but not limited to, access to any easements reserved by any Plat of any portion of the Property for such purposes.

## ARTICLE VIII

### *Insurance*

Section 8.1 Liability Insurance. The Association shall purchase a master comprehensive general liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive general liability insurance policy shall cover the Association, its Board of Directors, any committee or organization of the Association or Board of Directors, all persons acting or who may come to act as agents, or employees of any of the foregoing with respect to the Association. It shall also cover all Common Area owned by the Associations, public ways and any other areas under the Association's control or supervision. The premiums for all such liability policies shall be a Common Expense.

Section 8.2 Fidelity Bonds. The Association shall have blanket fidelity bonds for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The Association bonds shall name the Association as the obligee and the premium shall be paid as a Common Expense by the Association. Any management agent that handles funds for the Association shall be covered by its own fidelity bond, which must provide the same coverage required of the Association. The Association shall be named as an additional obligee in the management agent's bond. The fidelity bond shall cover the maximum funds that will be in the custody of the Association or its management agent at any time while the bond is in force. In addition, the fidelity bond coverage must at least equal one (1) years' assessments on all Dwelling Units in the Property, plus the Association's reserve funds. If available, the fidelity bonds must include a provision that calls for ten (10) days' written notice to the Association or insurance trustee before the bond can be canceled or substantially modified for any reason.

Section 8.3 Miscellaneous Insurance Provisions. The Association shall obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of the Association, its Board of Directors and any managing agent acting on behalf of the Association. The premiums for all such insurance coverage shall be a Common Expense.

Section 8.4 Casualty and Restoration. Damage to or destruction of any Common Area actually owned by the Association due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose. Except as provided in any Supplementary Declaration, the same obligation shall apply to an Owner, and not the Association, for damage or destruction to the Owner's Dwelling Unit. For purposes of this Section, repair, reconstruction and restoration shall mean construction or rebuilding of the damaged property to as near as possible the same condition as it existed immediately prior to the damage or destruction, with the same or a similar type of architecture.

Section 8.5 Insufficiency of Insurance Proceeds. If the insurance proceeds received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area actually owned by the Association or any improvements damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by the Association which shall then have the right to levy a Special Assessment against all Lots for such deficiency.

Section 8.6 Surplus of Insurance Proceeds. In the event that there is any surplus of insurance proceeds after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Association as a reserve or may be used in the maintenance and operation of the Property. The action of the Board of Directors in proceeding to repair or reconstruct damage shall not constitute a waiver of any rights against any Owner for committing willful or malicious damage.

## ARTICLE IX

### *Mortgages*

Section 9.1 Mortgagee Rights. In addition to any other rights provided elsewhere in this Declaration to mortgagees, any lender or lenders holding a first mortgage or first mortgages upon any Lot or Lots, jointly or singly, may pay any real estate taxes or other taxes or charges which are in default and which may or have become a charge or lien against any Common Area owned by the Association or any other property owned by the Association; and may pay any overdue premiums on any hazard, casualty, liability or other insurance policies or secure new insurance coverage on the lapse of any policies for any such property owned by the Association or covering any property for which the Association has an obligation to maintain insurance coverage. Any such lender or lenders making payments in accordance with this Section shall be entitled to immediate reimbursement therefor from the Association along with any costs incurred, including reasonable attorneys' fees.

Section 9.2 Notice to Mortgagees. The Association, upon request, shall provide to any lender holding a first mortgage upon any Lot, a written certificate or notice specifying unpaid assessments and other defaults of the Owner of such Lot, if any, in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation of the Association, its By-Laws or any other applicable documents, which default has not been cured within sixty (60) days. A reasonable charge maybe made by the Association for the issuance of any such certificate or notice, and any such certificate properly executed by an officer of the Association shall be binding upon the Association, as provided in this Declaration.

Section 9.3 Condemnation and Insurance Awards. No provisions of this Declaration, or any amendment thereto, shall give an Owner, or any other party, priority over any rights of the first mortgagee of a Lot pursuant to its mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Area property.

Section 9.4 Right of First Refusal. The Association DOES NOT have the "right of first refusal" to purchase any Dwelling Unit. Any right of "right of first refusal" subsequently granted to the Association through amendment of the Declaration, Association Articles, Association By-Laws or any other document governing the development and administration of the Properties must receive the prior written approval of the Federal Housing Administration or Secretary of the Department of Housing and Urban Development. Any "right of first refusal" subsequently added in the Declaration, Association

Articles, Association By-Laws or any other document governing the development and administration of the Property must not impair the rights of a first mortgagee to:

- (a) Foreclose or take title to a Dwelling Unit, and the Lot upon which the Dwelling Unit is situated, pursuant to the remedies in the mortgage;
- (b) Accept a deed or assignment in lieu of foreclosure in the event of default by a mortgagor; or
- (c) Sell or lease a unit acquired by the mortgagee.

*Section 9.5 Unpaid Dues or Charges.* Any first mortgagee who obtains title to a Dwelling Unit, and the Lot upon which the Dwelling Unit is situated, pursuant to the remedies in the mortgage or through foreclosure, will not be liable for the Dwelling Unit's unpaid dues or charges accrued before the acquisition of the title to the Dwelling Unit by the mortgagee.

## ARTICLE X

### *General Provisions*

*Section 10.1 Right of Enforcement.* In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Declarant, the Association or any Owner and all parties claiming under them shall have the right to enforce the covenants, conditions and restrictions contained herein, and pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof.

*Section 10.2 Severability and Waiver.* Invalidation of any one of the covenants, restrictions or provisions contained in this Declaration by judgment or court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect. 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 as 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.

*Section 10.3 Assignment.* Declarant may at any time assign some or all of its rights and obligations under this Declaration. Such assignment shall be effective after it is executed and recorded by Declarant with the Recorder of the County in which the Property is located. After such assignment is recorded with the Recorder of the County in which the Property is located, Declarant shall have no further obligations or liabilities under the Declaration with respect to the rights or obligations assigned.

*Section 10.4 Amendment.* This Declaration and the covenants, conditions and restrictions set forth in this Declaration, as from time to time amended in the manner hereafter set forth, shall run with the land and shall be binding upon the persons owning any portion of the Property and all parties closing under them. This Declaration may be amended or modified at any time by an instrument recorded in the Office of the Recorder of the County in which the Property is located, approved and signed by at least seventy-five percent (75%) of the then Owners. Provided, however, that none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. Except as prohibited in the paragraph immediately below, the Declarant reserves the right and

power to amend this Declaration without the approval of the Owners: (i) to correct or clarify the legal description of the Property or the Real Estate; (ii) to correct clerical or typographical errors; (iii) to make nominal changes in the Declaration; (iv) to the extent necessary to conform to any requirements imposed or requested by any governmental agency, public authority or financial institution (including the U.S. Department of Housing and Urban Development, the U.S. Veterans Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or similar agency); or (v) to the extent necessary to enable the Declarant to meet any other reasonable need or requirement, including those associated with the completion of the development of the Property and to facilitate the making or marketing of first mortgages upon any lots. Notwithstanding anything herein to the contrary, the Declarant may unilaterally record any Supplementary Declaration. Any amendment must be recorded.

Notwithstanding the above, the restrictions contained in Section 6.29 above may under no circumstances be amended.

Section 10.5 Condemnation, Destruction or Liquidation. The Association shall be designated to represent the Owners in any proceedings, negotiations, settlements or agreements for the handling of any losses or proceeds from condemnation, destruction or liquidation of all or a part of the Common Area owned by the Association, or from the termination of the development. Each Dwelling Unit Owner, by his acceptance of a deed, appoints the Association as his attorney-in-fact for this purpose. Proceeds from the settlement will be payable to the Association for the benefit of the Dwelling Unit Owners and their mortgage holders. Any distribution of funds in connection with the termination of this development shall be made on a reasonable and an equitable basis.

**IN WITNESS WHEREOF, CAREY GLEN, LLC, an Indiana limited liability company, has caused this Declaration to be executed as of the date first written above.**

**CAREY GLEN, LLC,  
an Indiana limited liability company**

**By: SCM DEVELOPMENT, INC.,  
an Indiana corporation,  
Managing Member**

By:   
Michael J. Klein, Managing Member

STATE OF INDIANA            )  
  ) SS:  
COUNTY OF MARION        )

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Michael J. Klein, a Managing Member of Carey Glen, LLC, an Indiana limited liability company, and having been duly sworn, acknowledged execution of this Declaration of Covenants, Conditions and Restrictions of Carey Glen.

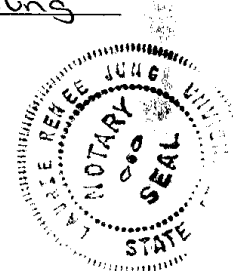
Witness my hand and Notarial Seal this 3<sup>rd</sup> day of September, 2003.

My Commission Expires: 5-1-09

Laurie Renee Jung  
Notary Public

Residing in Hamilton County

Laurie Renee Jung  
Printed Name



Prepared By:  
**James E. Shinaver**  
NELSON & FRANKENBERGER  
3021 East 98th Street, Suite 220  
Indianapolis, Indiana 46280  
(317) 844-0106

**EXHIBIT "A"**

**PERIMETER DESCRIPTION FOR CAREY GLEN**

A part of the Northwest Quarter of Section 8, Township 18 North, Range 4 East, Hamilton County, Indiana, being more particularly described as follows:

Commencing at the southwest corner of the Northwest Quarter of Section 8, Township 18 North, Range 4 East, Hamilton County, Indiana; thence North 00 degrees 02 minutes 55 seconds West (assumed bearing) on the west line of said Northwest Quarter 478.65 feet to the southwest corner of the real estate described in Instrument No. 97-20864 in the Office of the Recorder of Hamilton County, Indiana; thence continuing North 00 degrees 02 minutes 55 seconds West on said west line 1031.02 feet to the Point of Beginning of the herein described real estate; thence continuing North 00 degrees 02 minutes 55 seconds West on said west line 589.27 feet to the southwest corner of the real estate described in Deed Book 267, Page 46; thence South 89 degrees 28 minutes 00 seconds East parallel with the north line of said Northwest Quarter and on the south line of said real estate 1329.78 feet to a point on the east line of the West Half of said Northwest Quarter; thence South 00 degrees 00 minutes 39 seconds West on said east line 589.45 feet to a point which bears South 89 degrees 27 minutes 31 seconds East from said Point of Beginning; thence North 89 degrees 27 minutes 31 seconds West 1329.18 feet to the Point of Beginning, containing 17.99 acres, more or less.

The above described real estate is subject to and/or together with the following:

Right-of-Way of Carey Road.

Water Line Easement along the south side of the above described real estate (recording information unknown).

Subject to all other easements, restrictions, and rights-of-way of record.



**EXHIBIT B**

**DEVELOPMENT CONTROL COMMITTEE  
GUIDELINES FOR ARCHITECTURAL APPROVAL  
FOR CAREY GLEN**

**INTRODUCTION**

Pursuant to the Declaration of Covenants, Conditions, and Restrictions for Carey Glen as amended and supplemented (herein referred to as the "Declaration"), The Carey Glen Developmental Control Committee (herein referred to as the "DCC") is charged with the responsibility of preserving and enhancing the values of all Lots subject to the Declaration, of maintaining a harmonious relationship among structures and the natural vegetation and topography of said Lots, and of providing for the proper functioning of the storm drainage system for the said Lots and Property. For these purposes, the DCC has the right to promulgate and enforce rules, regulations and guidelines to regulate the exterior design, appearance, use, location and maintenance of lands, and improvements thereon, subject to the Declaration. In order to satisfy this responsibility, the DCC has the right to take the following actions:

- a) Approve or disapprove plans and specifications for all proposed construction on all Lots and Property subject to the Declaration, and
- b) Approve or disapprove plans and specifications for all improvements on all Lots and Property subject to the Declaration.

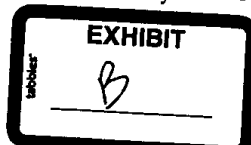
The following guidelines for all construction on and improvement of all Lots and Property subject to the Declaration are hereby adopted by the DCC for guidance to Lot Owners in preparing and submitting plans and specifications to the DCC for its consideration. These guidelines may be changed, modified and amended by the DCC at any time, in accordance with the procedure therefore set forth in the Declaration. Further, where the Zoning Commitments, which are attached hereto as Exhibit "C" refers to the Architectural Control Committee and/or Committee, during the Development Period, the DCC shall have the same rights and powers as the Architectural Control Committee and/or Committee.

**NOTE: NO NEW CONSTRUCTION OR IMPROVEMENT TO ANY LOT MAY BE INITIATED WITHOUT PRIOR WRITTEN APPROVAL FROM THE DCC.**

While the DCC shall have up to thirty (30) days for approval or rejection of submitted plans, every effort will be made to complete the review process in a shorter period when necessary to accommodate the needs of Lot Owners.

**I. CONSTRUCTION APPROVAL**

In order to create and maintain a high quality residential development on the Property, certain criteria for all construction has been established by the DCC.



## 1. General Requirements For Construction

While detailed construction requirements may vary by specific areas or sections of the Property, the general requirements are set forth below.

- a) Square Footage. The square footage for all Dwelling Units shall be governed by the Zoning Commitments which are attached hereto as Exhibit "C".
- b) Tree Preservation. No trees greater than 4 ½" in caliper shall be removed unless the same are (i) within the building site pad, (ii) within 15' of the perimeter of the building structure or appurtenance thereto, (iii) between the front of the house and the interior roadway of the Subdivision, and/or (iv) required to be removed in order to comply with safety requirements or the requirements of any governmental agency. At the time of construction of any home on a wooded lot, protective barriers will be installed at a location 15' to 20' from the perimeter of the proposed home to protect existing trees and vegetation from construction damage. In the event any Builder or Lot Owner violates the tree preservation requirements set forth herein, such Builder or Lot Owner shall be required to reestablish trees on the Lot consistent with the trees lost. For example, if a 6" tree is removed, the Builder or Lot Owner shall reestablish such tree by installing three 2" trees or two 3" trees in replacement thereof. Any such replacement tree shall not include the following species: Ash, Female Ginko, Cottonwood, Silver Maple or Box Elder.
- c) Construction Trash. All Builders will be required to utilize a thirty (30) cubic yard trash receptacle for each Dwelling Unit during periods of construction in order to properly dispose of debris.
- d) Temporary and Permanent Driveway. Each Builder is required to install and maintain a temporary stone drive on each Lot. Such temporary drive shall consist of #2 and/or #53 stone and shall provide for construction access to the building area from commencement of house construction until completion of a permanent drive. The permanent driveway on each Lot shall be governed by the Zoning Commitments which are attached hereto as Exhibit "C".
- e) Colors and Materials of Homes. Materials used on the exterior of Dwelling Units and improvements are subject to the approval of the DCC, and all exterior colors are, generally, to be subdued, earthen tones or white and compatible with other structures in or planned for the immediate area. The Architectural Standards and building materials for all Dwelling Units shall be governed by the Zoning Commitments which are attached hereto as Exhibit "C".
- f) Erosion Control and Tree Protection Measures. During periods of construction of a home or improvements on a Lot, the Builder shall provide adequate physical barriers such as temporary orange construction fencing in order to protect trees from damage by construction equipment and related activities. In addition, Builders shall be required to exercise appropriate erosion and sediment control measures, such as silt fencing, straw bales, temporary seeding, etc., at each building lot at commencement of site work through establishment of vegetation, in order to prevent silt

transportation to the main drainage ways. No disturbance of, or excavation within the ravines or other areas identified as Preservation Areas shall be permitted.

- g) Utilities. All utilities shall be installed underground unless otherwise required by the utility provider.
- h) Garages. Garage construction and type shall be governed by the Zoning Commitments which are attached hereto as Exhibit "C".
- i) Street Trees. Street Tree planting shall be governed by the Zoning Commitments which are attached hereto as Exhibit "C".

## **2. Plans And Specifications**

In order to properly review proposed construction, the DCC has established the following drawings as a minimum for submittal to the DCC. Submittal for approval shall include all items below. Clarification drawing and details may be requested by the DCC prior to approval if adequate details are not included in the plans.

- a) Plot Plan. Include location of the proposed structure, street trees, driveways, walks, terraces, decks, pools, fences, air conditioning units, etc., and shall include information on setbacks and easements.
- b) Grading & Utility Plan. Include all existing and proposed contours, finished floor elevations, proposed and existing utilities.
- c) Tree Protection & Erosion Control Plan. Include tree clearing limits, erosion control and tree preservation measures to be taken during construction.
- d) Floor Plans & Elevations. Include floor plans for all levels, front, side and rear elevations.
- e) Exterior Details & Specifications. Include exterior details, building colors, finishes and materials.

All site related plans shall be drawn at scale of not less than 1"=20'. All architectural related plans are to be drawn at a scale of not less than 1/4"=1'. All plans shall be fully dimensional and presented in duplicate (two sets) on a 24"x36" sheet size format.

## **II. METHOD OF APPROVAL**

The Owner of any Lot seeking construction approval shall submit a "New Construction Plan Submittal Form", the form of which shall be provided by the DCC.

The DCC shall review plans within thirty (30) days of submittal. A "Checklist of Compliance," the form of which shall be provided by the DCC, shall be returned to the DCC, with one (1) set of plans stamped "Approved" and dated by the DCC. The DCC shall retain one (1) set of plans with the Checklist for its files. If the DCC disapproves the plans, written notice of such shall be

given to the Lot Owner and shall specify the reason or reasons for such disapproval. Construction may not start until all plans received "Approval" from the DCC.

### **III. RESUBMITTAL**

If the submittal is incomplete, or the DCC has disapproved any of the submitted plans it is the responsibility of the Owner to see that corrections or modifications are made in compliance with the DCC comments. One set of corrected plans shall then be resubmitted with changes "noted". The DCC will make every effort to review and approve the plans as quickly as possible.

### **IV. ARCHITECTURAL GUIDELINES**

The DCC has established the following guidelines for specific types of construction and improvements on all Lots and Property subject to the Declaration. Any addition, exterior alteration or change to an existing Dwelling Unit and/or building and/or structure shall be compatible with the design character or the original Dwelling Unit and/or building and/or structure. Any new detached structure (if permitted), shall be compatible with the existing structure.

#### **1. Fences, Walls and Screening**

Fencing, walls and screening will be designed and installed to be as harmonious as possible with the architectural character of the Subdivision and shall be subject to the terms and conditions of the Declaration and Zoning Commitments. No fence or screen will be approved if its installation will obstruct necessary site lines for vehicular traffic. Undue obstruction of view or other amenities from adjoining properties will be taken into consideration by the DCC when reviewing for approval. Fences in general shall not be located any closer to the front of the home than the rear foundation line of the structure. Dog run fencing will be allowed only if an electronic "invisible fence" is used. The DCC discourages fencing of the entire back yard due to the effect that this may have on the feeling of spaciousness desired by other Lot Owners. The DCC shall have the right to require additional landscaping on the exterior side of all solid fencing on a Lot. Fences may be privately installed, but must be constructed to professional levels of quality.

- a) Height Restrictions. The DCC believes that the environmental integrity of the Subdivision will be materially lessened if the open nature of the Subdivision is affected by the proliferation of fences of excessive height. The DCC therefore, will approve fences up to four (4) feet in height which otherwise meet the fencing standards herein. The DCC will give consideration, however, to a variance in this height limit where clearly unique circumstances exist. By way of example, the use of six (6) foot privacy fences around small patio areas of a backyard of a home will be considered. The specific fence height restrictions are as follows:

- 1) Property fencing and walls above grade shall not exceed four (4) feet in height unless otherwise approved by the DCC.
- 2) The DCC will not approve any proposed fence which exceeds four (4) feet in height unless the adjacent property line of the Lot presents some circumstances clearly unique to that Lot.

- 3) Patio screens/privacy fences shall not exceed six (6) feet in height.
  - 4) Pool fencing; see "Section 4. *Swimming Pools*".
- b) Materials and Finish.
- 1) Wood fencing or screening will be considered subject to the DCC's right to require landscaping on the exterior sides thereof.
  - 2) The DCC will not approve an application for the installation of a chain link or other galvanized metal fencing unless it is vinyl coated or covered with similar coating material and is black or dark green in color.
  - 3) All fencing or screening should preferably have finished material on both sides. If only one side has finished materials, that side must face the public side or adjoining property.
  - 4) Walls above grade should be constructed of natural stone, masonry or attractive timber. Railroad ties shall be prohibited.

**2. Landscape Materials**

All new plant materials shall conform the current issue of the American Standard for Nursery Stocks published by the American Association of Nurserymen. The landscape plan for each Lot must be implemented and completed prior to occupation of the Dwelling Unit. Each Lot shall have a minimum planting requirement as follows:

a) Street Trees

Each individual Lot Owner shall install a quantity of two (2) Deciduous shade trees which shall be 2-1/2" caliper at breast height. The location, species and quantity shall be as depicted on the development landscape plan which is approved by the DCC. Each individual Lot Owner shall replace any such street trees on their Lots as is necessary.

b) Front and Side Yards – For each individual Lot, the required plant materials to be installed by each Individual Lot Owner shall be as follows:

- |                  |                               |
|------------------|-------------------------------|
| 1 Flowering tree | 1 ½" caliper at breast height |
| 1 Conifer tree   | 8'-10' height                 |
| 8 Shrubs         | 3' - 4' height                |
| 12 Shrubs        | 18" - 24" height              |

### **3. Lawns**

All yards are to be sodded or hydroseeded as the minimum requirement. All established lawns will be required to be fertilized and weeded as necessary to insure a quality lawn appearance at all times.

### **4. Swimming Pools**

Swimming pools must have the approval of the DCC before any work is undertaken. No above ground pools shall be allowed. Permanent backyard pools will be approved by the DCC only after careful consideration of the potential effect of such a pool to neighboring properties. An application for the construction of a swimming pool will not be considered unless the application is accompanied by proposed fencing and landscape design. The design of the fence shall conform to requirements set forth herein, as well as requirements of the Declaration, Zoning Commitments and/or any applicable municipal regulations. Use of plantings in the vicinity of the proposed pool will be required to soften the affect of sound and fencing on neighboring properties.

### **5. Sport Courts, Basketball Goals**

Tennis courts, racquetball courts, paddle ball courts, squash courts and other recreational or sporting facilities will be approved by the DCC only after thorough consideration of the potential affect of such a structure or use in neighboring properties.

The DCC will not approve lighted courts or facilities. An application for the construction of any such facility will not be considered unless accompanied by fencing and landscape plans. It is recommended by the DCC that any such fencing be of an open composition in order to blend in with the surrounding properties and soften the affect on adjacent properties.

Backboards of all basketball goals shall be translucent fiberglass with a black pole (or approved equal). The DCC reserves the right to disapprove the location of all basketball goals, and portable basketball goals shall be prohibited from being located or placed in any public right-of-way.

### **6. Play Equipment**

Permanent children's play equipment such as swing and slide, playhouses, etc., shall not require approval by the DCC provided such equipment is a wood material and is not more than six (6) feet in height, maintained by the Lot Owner in good repair, and every reasonable effort has been made to screen or shield from adjacent properties. Equipment higher than six (6) feet shall require approval of the design, location, color, material and use by the DCC.

### **7. Mailboxes**

Each Lot Owner is required to install a uniform mailbox. Uniform mailbox designs/standards for the Subdivision will be approved/provided by the DCC.

### **8. Driveways**

All driveways must be asphalt, concrete or other solid surface such as stamped concrete or exposed aggregate as approved by the DCC. Extensions, widening or re-routing of existing driveways must be approved by the DCC prior to construction. Gravel driveways shall be prohibited.

### **9. Sidewalks**

Each Lot is required to have five (5) foot wide sidewalks installed in accordance with the approved development construction plans. Plans are available from the DCC upon request.

### **10. Antennas**

Unless specifically authorized by the DCC, no television, radio or other antennas may be erected by any lot owner on the exterior portion of any Dwelling Unit, building and/or structure or Lot other than a satellite receiving dish which shall not exceed 18" in diameter.

### **11. Lighting**

Lighting shall be governed by the Zoning Commitments, which are attached hereto as Exhibit "C".

## **V. MISCELLANEOUS**

All construction trades performing work on any structure or other improvements on any Lot in the Subdivision shall be expected to conduct their work in a professional manner and in accordance with all standards published by the recognized trade councils respective of their industries. It is not the responsibility of the DCC to supervise or inspect the quality of construction performed by the construction trades.

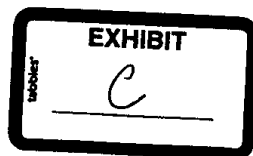
**NOTE: NO NEW CONSTRUCTION OR IMPROVEMENT TO ANY LOT MAY BE INITIATED WITHOUT PRIOR WRITTEN APPROVAL FROM THE DCC.**

200300036800  
Filed for Record in  
HAMILTON COUNTY, INDIANA  
JENNIFER J HAYDEN  
04-17-2003 At 10:53 am.  
MISC 23.00

COMMITMENTS CONCERNING THE  
USE AND DEVELOPMENT OF REAL ESTATE

SCM Development, Inc. (the "Owner") makes the following commitments ("Commitments") to the Plan Commission of the Town of Westfield/Washington Township, Indiana (the "Commission"):

1. Description of Real Estate. The real estate is legally described on Exhibit A (the "Real Estate").
2. Docket Number. The Docket Number, under which the Commission considered the Applicant's request for rezoning, was 0302-REZ-01.
3. Definitions.
  - A. The "Adjacent Lots" shall mean and refer to the residential lots directly adjacent to the Brookside Subdivision which, on the Conceptual Site Plan, are identified as Lots 10, 11, and 12.
  - B. The "Brookside Subdivision" shall mean and refer to the residential subdivision east of the Real Estate commonly known as Brookside;
  - C. The "Builder" shall mean and refer to any person or entity to which builds a residence upon the Real Estate;
  - D. The "Committee" shall mean and refer to the Architectural Review Committee established by the Covenants.
  - E. The "Covenants" shall mean and refer to the Declaration of Covenants, Conditions, and Restrictions which, in connection with the Real Estate, the Owner prepares and causes to be recorded with the Recorder of Hamilton County, Indiana; and
  - F. The "Homeowners Association" shall mean and refer to the Homeowners Association identified in the Covenants and established pursuant to the Indiana Nonprofit Corporations Act.
  - G. The "Town" shall mean and refer to the Town of Westfield, Indiana.





- H. The "Town Council" shall mean and refer to the Town Council of the Town of Westfield, Indiana.
  - I. The "Zoning Ordinance" shall mean and refer to the Westfield/Washington Township Zoning Ordinance.
4. Commitments Regarding Lots, Common Areas, and Streets. Attached hereto as Exhibit "B" is the conceptual site plan (the "Conceptual Site Plan") for the Real Estate. The Conceptual Site Plan is subject to revision and modification; provided, however, that any approved plat of the Real Estate shall comply with the following:
- A. There shall be no more than twenty-five (25) residential lots;
  - B. The Adjacent Lots shall be at least twenty-five thousand (25,000) square feet;
  - C. All lots other than Adjacent Lots shall be at least fifteen thousand (15,000) square feet;
  - D. Common area will not be less than a total of 2.7 acres. Said common area shall be conveyed by the Owner to the Homeowner's Association, and thereafter maintained by the Homeowner's Association. The Common area shall be available to all residents in the subdivision; and
  - E. There shall be two (2) walking paths contained within the common area. Said walking paths shall be open and available to residents of the subdivision.
  - F. All internal streets will be built to the standards of the Town.
5. Commitments Regarding Architectural Standards. The following architectural standards shall be required and applicable to the residences constructed upon the Real Estate:
- A. Except for doors, soffits, windows or other ornamentation, the exterior of all residences shall be brick, stone, wood, EIFS and/or Hardie Plank or the equivalent.
  - B. Aluminum or vinyl siding is prohibited as an exterior material; however, vinyl-clad windows and soffits are permitted.
  - C. The exterior of all chimneys shall be brick, stone, or EIFS.

- D. All residences shall have a minimum roof pitch, on the primary structure, of twelve (12) horizontal to six (6) vertical. Lesser roof pitches on patios may be approved by the Committee.
- E. All garages shall be attached to the residence. There shall be no more than six (6) residences with front-loaded garages the garage doors of which (i) are not at an angle from the primary residence to which they are attached but, instead, (ii) are parallel with the front elevation of the primary residence to which they are attached (hereinafter "Front Load Garages").
- F. No more than six (6) residences shall have a two (2) car garage, and all other residences shall have a three (3) car garage. Residences on the Adjacent Lots shall have three (3) car garages and said garages shall not be Front Load Garages.
- G. Single story residences shall be a minimum of two thousand two hundred (2,200) square feet of finished space, exclusive of garages, porches, patios, and basements.
- H. Subject to subparagraph (I) immediately below, two (2) story residences shall have a minimum of two thousand four hundred (2,400) square feet of finished space, exclusive of garages, porches, patios, and basements. The main floor of all two (2) story homes shall be a minimum of one thousand two hundred (1,200) square feet of finished space, exclusive of garages, porches, patios, and basements.
- I. All residences located on the Adjacent Lots shall be two (2) stories and shall be a minimum of two thousand six hundred (2,600) square feet of finished space, exclusive of garages, porches, patios, and basements. The main floor of such two (2) story residences on Adjacent Lots shall be a minimum of one thousand three hundred (1,300) square feet of finished space, exclusive of garages, porches, patios, and basements.
- J. All driveways will be asphalt, concrete, or other solid surface, such as stamped concrete or exposed aggregate. Gravel driveways shall be prohibited.
- K. Beyond the Town's minimum standard for street lighting, (i) additional neighborhood street lighting will be provided or (ii) residences will have a dusk to dawn pole light in the yard or a dusk to dawn carriage light attached to the residence.

6. Commitments Regarding Landscape Standards. The Real Estate shall be developed in accordance with the requirements of the landscape provisions of the Zoning Ordinance. Such requirements shall include a twenty (20) foot buffer yard perimeter along the northern boundary of the Real Estate, and a forty (40) foot buffer yard along the southern boundary of the Real Estate, as depicted on the Conceptual Site Plan.
7. Commitments Regarding Annexation. The Owner shall proceed with the current application for annexation and include in the recorded covenants of the subdivision an "annexation non-remonstrance clause".
8. Commitments Regarding the Declaration of Covenants, Conditions and Restrictions. The Covenants shall include the following provisions or, in the Owners sole discretion, more restrictive provisions, which cannot be changed by amendment:
  - A. Above ground pools shall be prohibited.
  - B. Solar heating panels shall be prohibited.
  - C. No fences shall be constructed in areas designated for retention or detention, nor shall fences be constructed in any floodways. No fences shall be constructed in front of the building line of any lot. In general, all fencing must be brick, ornamental iron, or aluminum, treated wood or vinyl coated chain link (dark green or black in color) and must not be higher than six (6) feet from ground level.
  - D. Slab foundation construction will be prohibited, except for garages, patios, and porches.
  - E. Detached outbuildings used for storage, such as mini-barns, shall be prohibited; provided, however, that the Committee may approve a gazebo or a pool house, so long as the gazebo or pool house is architecturally consistent with and constructed of the same materials as the principal residence.
  - F. All garage doors must have automatic garage door openers.
  - G. The architectural review guidelines established by the Committee shall require that all new plant materials shall conform to the current issue of the American Standard for Nursery Stocks published by the American Association of Nurserymen. Each lot will have a minimum planting requirement as follows:

1. Street Trees. Each individual lot owner shall install a quantity of two (2) Deciduous shade trees which shall be 2-1/2" caliper at breast height. The location, species and quantity shall be as depicted on the development landscape plan which is approved by the Committee. Each individual lot owner shall replace any such street trees on their lot as necessary.
2. Front and Side Yard Trees. For each individual lot, the required plant materials to be installed by each individual lot owner shall be as follows:
  - a. 1 Flowering tree - 1-1/2" caliper at breast height
  - b. 1 Conifer tree - 8' - 10' height
  - c. 8 Shrubs - 3' - 4' height
  - d. 12 Shrubs - 18" - 24" height
3. Lawns. All yards are to be sodded or hydro-seeded as the minimum requirement. All established lawns shall be required to be fertilized and weeded as necessary to insure a quality lawn appearance at all times.
9. Binding on Successors and Assigns. After the Effective Date (defined below), these Commitments are binding upon Owner, each subsequent owner of the Real Estate, each other person acquiring an interest in the Real Estate, and each Builder, unless modified or terminated by the Commission. These commitments may be modified or terminated only by a decision recommendation of the Commission made at a public hearing after notice as provided by the Rules of the Commission followed by a decision by Town Council.
10. Effective Date. The commitments contained herein shall be of no force and effect until the approval of the rezoning requested under the Docket Number.
11. Recording. The undersigned shall record these Commitments in the Office of the Recorder of Hamilton County, Indiana, upon the occurrence of all events specified in paragraph 10 above.
12. Enforcement. These Commitments may be enforced by the Town and any owner of part or all of the Real Estate.

EXECUTED this 14<sup>TH</sup> day of April, 2003.

SCM DEVELOPMENT, INC.

By: [Signature]  
Michael Klein, Vice President

STATE OF INDIANA     )  
                                  ) SS:  
COUNTY OF HAMILTON )

BEFORE ME, a Notary Public in and for said County and State, personally appeared Michael Klein, the Vice President of SCM Development, Inc., who acknowledged the execution of the foregoing Commitments.

WITNESS my hand and Notarial Seal this 14<sup>TH</sup> day of APRIL, 2003.

My Commission Expires:

5-11-2008

Residing in MARION County

[Signature]  
Notary Public - Signature

JANET L. WILKE  
Printed Name



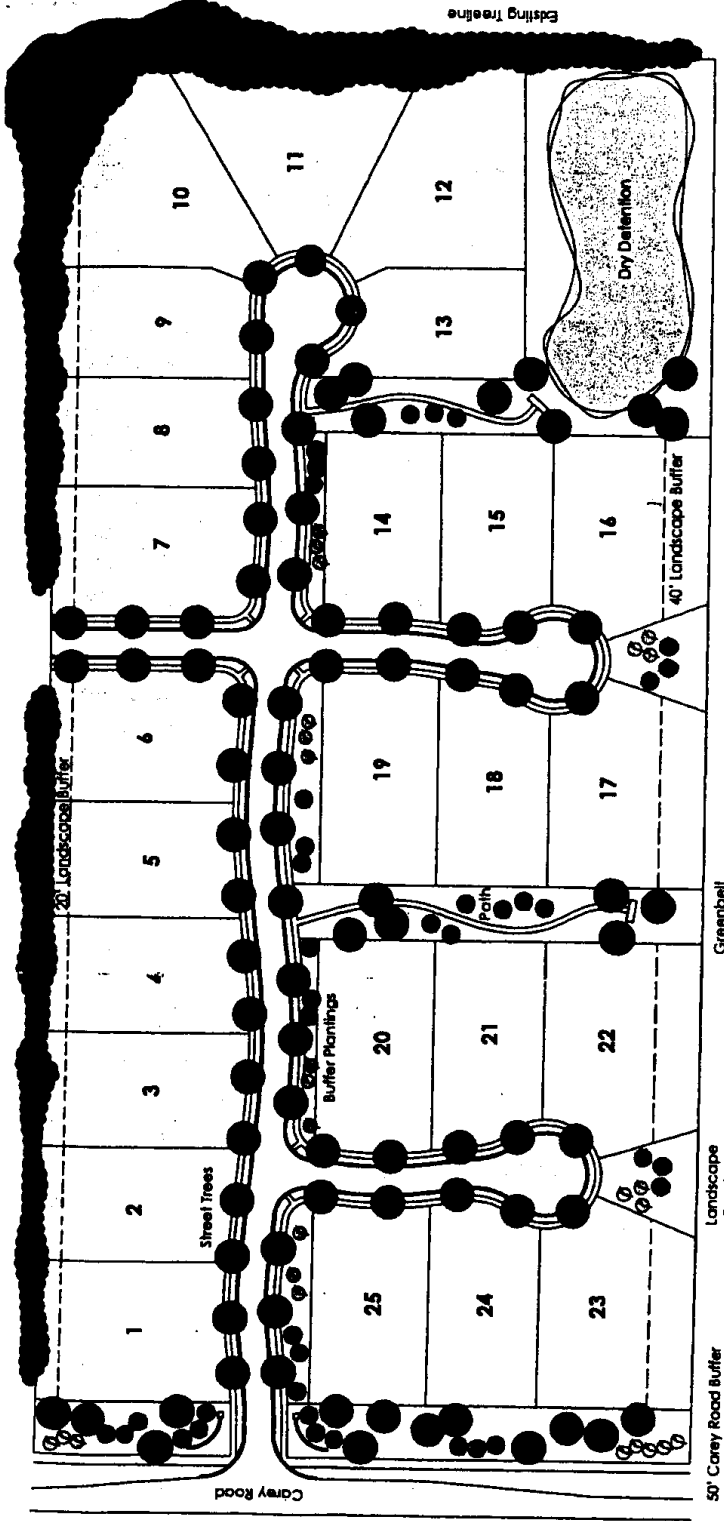
Prepared By: Charles D. Frankenberger, Nelson & Frankenberger, 3021 East 98<sup>th</sup> Street, Suite 220, Indianapolis, Indiana 46204.

**EXHIBIT "A"**

**PERIMETER DESCRIPTION FOR CAREY GLEN**

A part of the Northwest Quarter of Section 8, Township 18 North, Range 4 East, Hamilton County, Indiana, being more particularly described as follows:

Commencing at the southwest corner of the Northwest Quarter of Section 8, Township 18 North, Range 4 East, Hamilton County, Indiana; thence North 00 degrees 02 minutes 55 seconds West (assumed bearing) on the west line of said Northwest Quarter 478.65 feet to the southwest corner of the real estate described in Instrument No. 97-20864 in the Office of the Recorder of Hamilton County, Indiana; thence continuing North 00 degrees 02 minutes 55 seconds West on said west line 1031.02 feet to the Point of Beginning of the herein described real estate; thence continuing North 00 degrees 02 minutes 55 seconds West on said west line 589.27 feet to the southwest corner of the real estate described in Deed Book 267, Page 46; thence South 89 degrees 28 minutes 00 seconds East parallel with the north line of said Northwest Quarter and on the south line of said real estate 1329.78 feet to a point on the east line of the West Half of said Northwest Quarter; thence South 00 degrees 00 minutes 39 seconds West on said east line 589.45 feet to a point which bears South 89 degrees 27 minutes 31 seconds East from said Point of Beginning; thence North 89 degrees 27 minutes 31 seconds West 1329.18 feet to the Point of Beginning, containing 17.99 acres, more or less.



**Site Data**

Total Area: 18+/- Acres  
 Total Units: 25  
 Density: 1.39 Units/Acre  
 Lot Size: 15,000 sf - 29,000 sf  
 Open Space: 2.7 Acres (15%)

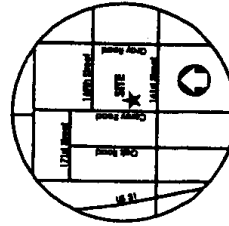
EXHIBIT "B"



CAREY GLEN

A RESIDENTIAL ENCLAVE IN WESTFIELD

Conceptual Site Plan



Site Vicinity Map