

9

17

MARTHA A. WOMACKS
RECORDER

344820 OCT 12 8

PROPERTY TAXATION
SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER

Declaration of Covenants, Restrictions, and Assessments
of

Robey Glen Subdivision

THIS DECLARATION of Covenants, Restrictions, and Assessments, ("Declaration") is made by ASHLEY, LLC, an Indiana Limited Liability Company, ("Declarant");

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property ("Real Estate") in Marion County, Indiana, as described in Exhibit "A" attached hereto and hereby made a part hereof; and,

WHEREAS, Declarant has now subdivided said Real Estate and designated said subdivision as FINAL PLAT OF ROBEY GLEN SUBDIVISION ("Development"), a parcel consisting of thirty-six (36) residential lots and one (1) Outlot being more particularly described on said plat thereof recorded as Instrument No. 2000-0162688 on or near the same date as this Declaration in the Office of the Recorder of Marion County, Indiana, and hereby made a part hereof; and

WHEREAS, Declarant desires to create an organization to which shall be assigned the responsibility for maintaining and administering any common areas and certain other areas of the Development and of administering and enforcing the covenants and restrictions contained in this Declaration and hereby further establishes a system of assessments to be borne by all Owners to provide for maintenance of Common Property, Common Expenses, and mutual enforcement of this Declaration.

NOW, THEREFORE, Declarant hereby affirms that the Development shall hereafter be acquired, held, transferred, subdivided, sold, hypothecated, leased, improved, used, and occupied subject to this Declaration which purports to protect the value and desirability of the Development, and which shall run with the land and shall be binding on all parties having any right, title or interest in the Development or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I
DEFINITIONS

Following are definitions of some of the terms used in this Declaration:

"Assessment" shall mean that share of the Common Expenses imposed upon each Lot, together with any interest or late charges thereon imposed for delinquency and any costs of collection thereof, including legal fees, as determined and levied pursuant to the provisions herein. This Declaration provides for a Regular Assessment and a Special Assessment, as described herein.

"Association" shall mean *Robey Glen Homeowners Association, Inc.* (or similar name), its successors and assigns, which shall be created as an Indiana not-for-profit corporation and shall operate in accordance with this Declaration. Its membership shall consist of all Owners.

"Builder" shall mean the contractor(s) constructing the first Dwelling Unit on each Lot.

"Committee" shall mean the Development Control Committee.

10/12/00 10:06AM WANDA MARTIN MARION CTY RECORDER JAM 42.00 PAGES: 17

Inst # 2000-0162687

"Common Expenses" shall mean the actual and estimated cost to the Association for maintenance, lighting, management, operation, insurance, repair, taxation, improvement or replacement of any Common Property. Such costs shall include but not be limited to maintenance of any easements within the Development, entry signs, landscaping, storm water retention lakes, and any other costs or expenses incurred by the Association for the benefit of the Common Property. Common Expenses shall not include any construction costs incurred in connection with the initial installation of the streets, utility lines and mains, drainage systems, or other improvements constructed by Declarant or utility companies.

"Common Property" shall mean all real and/or personal property that is in the nature of common or public improvements, whether or not such property is located on or within any Common Area.

"Development Period" shall mean the period of time commencing with Declarant's acquisition of the Real Estate and ending when Declarant has completed the development and sale of, and no longer owns any Lot or any other portion of the Development and any bonds required to be posted by Declarant to the City of Indianapolis for the Development improvements have all expired.

"Dwelling Unit" shall mean a detached single-family residence, including attached garage, situated upon a Lot in the Development.

"Lot" shall mean any residential parcel of real estate as shown on the Plat, except for the "Outlot". No Lot may be subsequently subdivided for development purposes, except for Declarant's adjustment for modifications or infractions that may occur.

"Owner" shall mean a person or legal entity that acquires title or interest in and to a Lot, but shall exclude those persons having such interest merely as security for the performance of an obligation.

"Plat" shall mean the subdivision plat(s) of the Development identified as the Final Plat of Robey Glen Subdivision and recorded in the Office of the Recorder of Marion County, Indiana. The "Outlot" as designated on the Plat shall not be subject to the terms of this Declaration, and the owner of the Outlot shall not be a member of the Association.

ARTICLE II CHARACTER OF THE DEVELOPMENT

Each Lot shall be used exclusively for single-family residential purposes. No permanent structure shall be erected, placed or permitted to remain upon any Lot except a Dwelling Unit. No business buildings may be erected on any Lots thereof. No business may be conducted on any Lots thereof other than those occupations permitted in the Zoning Ordinance of Marion County, Indiana or applicable ordinances affecting the Development. All Lots shall be subject to the easements, restrictions, and limitations of record, and to all governmental zoning authority and regulations affecting the Development, all of which are incorporated herein by reference.

ARTICLE III RESTRICTIONS CONCERNING SIZE, PLACEMENT, AND MAINTENANCE OF DWELLING UNITS AND OTHER STRUCTURES

- A. Type, Size, and Nature of Construction Permitted and Approvals Required: The Committee shall approve all Builder plans including plot plans, elevations, specifications, and exterior colors for paint, brick, shingles, etc. No exterior improvement such as a greenhouse, porch, garage, swimming pool, hot tub, deck, fence, tennis court or similar improvement shall be erected, placed, stored, or altered on any Lot without the prior written approval of the Committee.

Declarant may, at the option of Declarant, impose higher standards of construction to the Development than those required herein throughout the Development Period.

1. **Minimum Areas:** Any Dwelling Unit shall have the following minimum areas, exclusive of open porches, basements, and garages:
 - a. The minimum floor area of a one-story Dwelling Unit shall be 1,000 square feet.
 - b. The minimum floor area of a Dwelling Unit of more than one story shall be 1,300 s.f. with the minimum main (first floor) living area of 660 s.f.

Each Dwelling Unit shall include an attached 2-car (or larger) enclosed garage. The maximum height of any Dwelling Unit shall be 35 feet.

2. **Driveways and Off-Street Parking Spaces:** There shall be a minimum of two (2) off-street, off-sidewalk parking spaces in each driveway. All driveways shall be constructed upon initial construction and completed prior to occupancy, weather permitting, with concrete material. A driveway shall not exceed in width, the side boundaries of the garage it serves and must be a minimum width equal to the interior width of the garage door it serves, unless specifically approved by the Committee. No driveway shall extend into the side yard(s). No additional parking shall be permitted on a Lot other than in the existing driveway. All Lots shall be accessed from the interior streets of the Development.
3. **Prohibition of Relocated or Moveable Structures:** No garage, trailer, shack, dog house, outhouse, or unenclosed or unattached structure of any kind may be erected or moved onto any Lot for use as either a temporary or permanent residence or for any other purpose, except as required by Declarant or Builder in connection with the initial construction of the Development or a Dwelling Unit.
4. **Maintenance of Lots:** All Lots shall be maintained in an orderly manner during the period of any construction on the Lots. All parties to this Declaration shall understand that due to the construction nature of the Development throughout the Development Period, a certain level of rubbish and erosion will exist until all Lots have been improved. Declarant shall not be responsible for the removal of debris, construction materials, etc. on any streets or Lots owned by Declarant or Builder(s) due to the construction nature of the Development, except for rubbish deposited or caused by Declarant.
5. **Consistent Building Standards:** Prior to completion of construction, Builders shall install two (2) uniform, photoelectric ("dusk to dawn"), unswitched, security coach lights on each side of the front overhead garage door of each Dwelling Unit. Each Owner shall subsequently maintain their coach lights as to condition and bulb replacement with a 75 or 100-watt clear bulb. Except as otherwise approved by the Declarant in connection with a Builder's model home or sales center or public street lighting, all outside lighting contained in or with respect to the Development shall be of an ornamental nature consistent with the architecture within the Development and shall provide for projection of light so as not to create a glare, distraction or nuisance to any Owner or other property owners in the vicinity of or adjacent to the Development.

Each mailbox in the Development shall be installed in a location approved by Declarant and the U.S. Post Office.

The Committee shall approve the style, size, color, and location of each security light and mailbox prior to installation and during replacements thereof.

Builders shall install and Owners shall replace the roof shingles of each Dwelling Unit with a style approved by the Committee. The color of all roof shingles in the Development shall be "Weathered Gray", or similar, in the opinion of the Committee.

CHICAGO TITLE

6. Fences: All fences shall be approved in writing by the Committee prior to construction, and, except those installed by Declarant, must meet the following standards, unless approved otherwise by the Committee:

- a. The design of the fence shall be shadow box, vinyl-clad chain link, or black wrought-iron style.
- b. If wooden fences are painted or stained, they shall be in a color approved by the Committee. Chain link vinyl color shall be black only.
- c. For corner lots, no fence shall encroach into the side yard as determined by the building setback line. For non-corner lots, no fence shall be installed between the street and the front corner of the Dwelling Unit.
- d. All corner lot fences shall meet the requirements of Article III.B of this Declaration regarding sight distances.
- e. The heights of shadow box or similar privacy or pool fences may not exceed six (6) feet. The heights of any other type of fence may not exceed four (4) feet. Every fence shall be installed in a sturdy, workmanlike manner, and must be maintained in good condition by the Owner. Fence care includes but is not limited to repaint/restrain, rust removal, and repair of structural damage, defects, or deterioration of fencing, posts, and gates.
- f. Any deviation from the above fencing requirements must have written approval of the Committee.

7. Unapproved Structures: The following structures shall not be allowed in the Development.

Outside fuel storage tanks;
Pet kennels, doghouses, or dog runs;
Awnings and patio covers made of metal, fiberglass, canvas or similar type materials;
Above-ground (or mid-grade or similar) swimming pools;
Solar heat panels;
Outbuildings, including storage sheds, detached garages, mini-barns, tool sheds or any temporary or permanent building other than the Dwelling Unit.

8. Satellite Dishes and Antennas: Outdoor satellite dishes shall be permitted in the Development, provided, however, that (in the Committee's opinion) the (i) diameter of the satellite dish shall be no more than eighteen inches (18"), (ii) only one (1) satellite dish shall be permitted on each Lot, and (iii) the Committee shall have first determined that the satellite dish is appropriately placed and properly screened in order to preserve property values and maintain a harmonious and compatible relationship throughout the Development.

The maximum height of exposed antennas shall not exceed five (5) feet above the respective roof peak. As with any exterior improvement, the location of satellite dishes and antennas must also be approved by the Committee prior to installation.

9. Water Supply and Sewage Systems: No private or semi-private water supply or sewage disposal system may be located upon any Lot. No septic tank, absorption field or similar method of sewage disposal shall be located or constructed on any Lot.

B. Sight Distance at Intersections: No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and nine (9) feet above the street shall be placed or permitted on any corner lot within the triangular area formed by the street property lines and a line connecting them at 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 sight line 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 the sight lines. (Per Chapter 4, Section 4.02, Subsection 7 of the Subdivision Control Ordinance 58-AO-13, as amended.)

- C. **Building Setback Lines:** Front, side and rear building setback lines are established as shown on the Plat. Between said lines and the right-of-way lines of the streets and the side and rear lot lines, no structures may be erected or maintained. The setback lines may vary in depth in excess of the minimum as designated on the Plat. The minimum front yard set back shall be as designated on the Plat. The minimum rear yard setback shall be twenty (20) feet. The minimum side yard setback shall be six and one-half (6.5) feet with an aggregate of thirteen (13) feet for both sides.
- D. **Damaged Structures:** No Dwelling Unit which has been partially or totally destroyed by fire or other catastrophic event shall be allowed to remain in such state without commencement of reconstruction within sixty (60) days from the date of such occurrence.
- E. **Maintenance of Lots and Improvements:** Except to the extent such maintenance shall be the responsibility of the Association under any of the provisions of this Declaration, it shall be the duty of the Owner of each Lot to keep the grass on their Lot properly cut and keep the Lot reasonably free of weeds, trash or construction debris and otherwise neat and attractive in appearance, in the opinion of the Committee, including without limitation, the proper maintenance of the exterior of any structures on such Lot. These requirements shall not apply to Lots owned by the Declarant during the Development Period or during the initial construction period of a Dwelling Unit.

If the Owner of any Lot fails to properly maintain its Lot in a manner reasonably satisfactory to the Association, the Association shall have the right (but not the obligation), through its agents, employees and contractors, to enter upon said Lot and clean, repair, maintain or restore the Lot and the exterior of the improvements erected thereon. The cost of any such work shall be and shall constitute a special assessment against such Lot and the owner thereof, whether or not a Builder, and may be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general. Neither the Association nor any of its agents, employees or contractors shall be liable to the offending Owner for any damage which may result from any maintenance work performed hereunder.

The Owner shall, at a minimum,:

- 1) establish the original lawn and mow the grass with reasonable frequency to prevent its growth from exceeding four (4) inches in height;
- 2) keep Lot free of debris, equipment, stored building materials, or rubbish including any outside storage of trash containers, etc.;
- 3) prevent the existence of any other conditions which may detract from or diminish the aesthetic appearance of the Development in the opinion of the Committee;
- 4) remove dead, unsafe, or unsightly trees or other plants; and,
- 5) maintain the exterior of all improvements in good repair to avoid any unsightly appearance, in the opinion of the Committee.

- F. **Requirement to Mow Grass in Public Right-of-Way:** All Owners shall be required to mow and maintain the grass in public rights-of-way of their Lot, if any.

ARTICLE IV EASEMENTS

- A. **General Easements.** The strips of ground shown on the Plat that are marked "D. & U.E." (Drainage and Utility Easement) are reserved for the use of Declarant throughout the Development Period, and for the use of public utility companies, including cable television companies and municipal agencies for the purpose of installing and maintaining swales, ducts, poles, lines, wires, sewers, drains and appurtenances thereto.

The areas of ground shown on the Plat marked "Utility Easements, Drainage Easements and Sanitary Sewer Easements", either separately or in combination are hereby created and reserved for the use of all public utility companies (not including transportation companies), governmental agencies and the Association for access to and the installation, maintenance, repair or removal of poles, mains, sewers, ducts, swales, drains, lines, wires, cables, etc. and equipment, facilities, or appurtenances thereto for the furnishing of utility services. Said easements shall be perpetual from the date the Plat is recorded.

CHICAGO TITLE

- B. **Drainage Easements.** Drainage Easements are hereby created and reserved for (i) the use of Declarant during the Development Period for access to and the construction, maintenance, operation, repair and control of any retention and detention ponds and improvements comprising and/or related to the storm water drainage system, either by surface drainage or appropriate underground installations, for the Development and adjoining property and (ii) the use of the Association and the Department of Capital Asset Management of the City of Indianapolis (DCAM) (or its governmental successors or assigns exercising similar powers) for access to and the maintenance, repair and replacement of such drainage system. The Owner of any Lot subject to a Drainage Easement, including any builder, shall be required to keep the portion of said Drainage Easement on his/her Lot free from obstructions so that storm water drainage will be unimpeded and will not be changed or altered without a permit from DCAM and prior written approval of the Declarant.
- C. **Sanitary Sewer Easements.** The Sanitary Sewer Easements are hereby created and reserved for the use of DCAM (or its governmental successors or assigns exercising similar powers) and, during the Development Period, for the use of Declarant for access to and the installation, repair, removal, replacement or maintenance of the underground sanitary sewer system.
- D. **Landscape Easements.** Landscape Easements are hereby created and reserved: (i) for the use of the Declarant during the Development Period for access to and the installation, maintenance and replacement of foliage, landscaping, screening materials, entrance walls, lighting, irrigation and other improvements and (ii) for the use of the Association for access to and the installation, maintenance and replacement of foliage, landscaping, screening materials, entrance walls, lighting, irrigation and other improvements. Except as installed by Declarant or installed and maintained by the Association or with the written consent of the Committee, no structures or improvements, including, without limitation, piers, decks, walkways, patios or fences shall be erected or maintained upon said Landscape Easements. Several Lots are improved with a retention pond at the rear of these Lots. The Owners of these Lots shall allow adjacent Owners, the Association, or their contractors or representatives access across their Lots (within the designated easements) so that each Owner can maintain the rear of his/her respective Lot, which has been separated by the pond.
- E. **Access to Easements.** The delineation of the Utility, Drainage and Sanitary Sewer Easement areas on the Plat shall not be deemed a limitation on the rights of any entity for whose use any such easement is created and reserved to go on any portion of any Lot subject to such easement temporarily to the extent reasonably necessary for the exercise of the rights granted to it by this Declaration. No permanent structures may be erected in these easements except for temporary structures, fences, driveways and walkways and subject to the rights of the applicable easement(s).

ARTICLE V
MISCELLANEOUS PROVISIONS AND PROHIBITIONS

- A. **Nuisances:** No noxious, unlawful, or offensive activities may be conducted on any Lot, nor shall anything be done on any Lot which shall be or shall become an unreasonable annoyance or nuisance to Owners of other Lots, in the opinion of the Committee.
- B. **Signs:** No signs or advertisements shall be placed on any Lot in the Development without the prior written approval of the Committee, except for the sale of a Lot or Dwelling Unit (limited to one sign per Lot not to exceed six (6) square feet); however, Declarant and designated Builders may use signs for advertising during the initial sale of Lots and the initial construction of Dwelling Units in the Development.
- C. **Animals:** No animals, livestock, or poultry of any kind shall be kept on any Lot, except that dogs or cats may be kept, provided that they: 1) are not kept, bred, or maintained for any commercial purpose; 2) do not become a nuisance to other Owners, in the opinion of the Committee, such as excessive barking, safety, or number or type of pets, and; 3) they be properly vaccinated and leashed upon leaving Owner's property, and their waste be immediately disposed of by the Owner.

- D. **Vehicle Parking:** All passenger vehicles shall be parked in garages or in driveways and shall not be parked upon grassy or landscaped areas. All other vehicle types (unless otherwise provided herein) including, but not limited to motor homes, mobile homes, inoperative or disabled vehicles, trailers, boats, watercraft, snowmobiles, campers, commercial trucks (over ¾ ton load capacity), or recreational vehicles shall not be parked or stored upon a Lot unless within a closed garage. Only guest passenger vehicles may be parked on the street for a period not exceeding forty-eight (48) hours; however, this does not include vehicles parked on the streets on a frequent (in excess of 48 hours per month) basis. No vehicles shall be placed on blocks or jacks for purposes of repair, except for repairs made in closed garages.
- E. **Ditches and Swales:** Owners shall keep unobstructed and in good repair, all open storm water drainage ditches and swales located on their respective Lots. Owners shall comply at all times with the provisions of the Development Grading Plan as approved by the Indianapolis Dept of Capital Asset Management ("DCAM") for this Plat. No filling, regrading, piping, rerouting or other alteration of any open ditch or swale may be made without the written consent of the Committee, and subject to the approval of the appropriate governmental entity. Any field tile or underground drain encountered during construction of any improvements within the Development shall be perpetuated. All Owners, their successors and assigns, shall comply with the Indiana Drainage Code including amendments thereto. Any damage or change from Declarant's original grade(s) caused by Owners, Builders or their contractors shall be restored immediately to proper grades at Owner's expense.
- F. **Lakes:** There shall be no swimming, skating, boating or other recreational use in or on any pond, creek, ditch or stream in the Development. The Association may promulgate rules and regulations with respect to the permitted uses, if any, of any bodies of water in the Development.
- G. **Trash Removal:** Trash and refuse disposal shall be the responsibility of each Owner. Dumpsters or other forms of general or common trash accumulation shall not be permitted in the Development except to facilitate development and Dwelling Unit construction. No Lot shall be used as a dumping ground for trash. Garbage and other waste shall be kept in sanitary containers. All equipment for storage or disposal of such materials shall be kept clean and shall not be stored on any Lot in open public view. No garbage or other waste shall be allowed to accumulate on any Lot. No homeowner or occupant of a Lot shall burn or bury any garbage or refuse.
- H. **Sump Pumps:** No sump pump may be discharged into any street or open swale after a Dwelling Unit is completed. Only storm sewers shall be used for such discharge. Sump pumps shall be installed underground with plastic pipe or tile connected to said storm sewers.

ARTICLE VI

BUILDING ON SEVERAL CONTIGUOUS LOTS HAVING ONE OWNER

Whenever two or more contiguous Lots in the Development are owned by the same Owner, and said Owner proposes to use two or more of said Lots as a site for one (1) Dwelling Unit, said Owner shall apply in writing to the Committee and the required governmental authority for permission to use said Lots for this purpose. If the Committee and said governmental authority grant such permission, the Lots constituting the site for said Dwelling Unit shall be treated as a single Lot for the purpose of applying these restrictions so long as the Lots remain improved with one (1) Dwelling Unit, with the exception that, as it relates to any Assessments, each Lot will be assessed separately.

ARTICLE VII **REMEDIES**

- A. **Available Remedies:** In the event of a violation, or threatened violation, of any of the provisions of this Declaration, Declarant, Owners, and all other parties claiming under them ("Interested Parties"), individually or through the Association, shall have the right to enforce the Declaration contained herein, and may pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damages, and including the right to recovery of damages for such violation, injunctive relief against any such violation or threatened violation, or to secure removal by due process of any structure not in compliance with this Declaration, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof.

- B. **Government Enforcement:** The Metropolitan Development Commission, its successors and assigns, shall have no right, power or authority to enforce any covenants, restrictions or other limitations contained herein other than those covenants, commitments, restrictions or limitations that expressly run in favor of the Commission; provided, however that nothing herein shall be construed to prevent the Metropolitan Development Commission from enforcing any provisions of the Subdivision Control Ordinance, 58-AO-13, as amended, or any conditions attached to approval of the Plat by the Plat Committee. (Per Metropolitan Development Commission Resolution No 83-12-58, 1983.)
- C. **Delay or Failure to Enforce:** No delay or failure on the part of any aggrieved party, including without limitation the Association and the Declarant, to invoke any available remedy with respect to any violation or threatened violation of any covenants, conditions, or restrictions enumerated in this Declaration or in the Plat of any part of the Real Estate shall constitute a waiver by that party of, or an estoppel of that party to assert any right available to it upon the occurrence, recurrence or continuance of such violation.

ARTICLE VIII
EFFECT OF BECOMING AN OWNER

Any Owner, by the acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner, shall accept said deed or execute said contract subject to this Declaration and the Plat. By acceptance of said deed or the execution of said contract, the Owner acknowledges the rights and powers of interested parties with respect to the Declaration, and also, for themselves, their heirs, personal representatives, successors and assigns. Said Owner shall covenant and agree with and consent to Declarant and to the Owners and subsequent Owners of each of the Lots to keep, observe, comply with and perform said agreements.

ARTICLE IX
ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

- A. **Membership:** Each Owner shall automatically become a member ("Member") of the Association and shall remain a Member so long as the Owner owns a Lot. Membership shall be appurtenant to and may not be separated from the ownership of any Lot.
- B. **Classes of Membership:** The Association shall have two (2) classes of voting Members:
1. **Class A:** Class A Members shall be all Owners with the exception of the Declarant and 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; however, the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot.
 2. **Class B:** The Class B Member shall be the Declarant, who shall be entitled to three (3) votes for each Lot owned, including Lots owned in subsequent phases of the Development, if any. Unless Declarant chooses to convert its class earlier, the Class B membership shall be converted to Class A membership upon the occurrence of either of the following events, whichever occurs earlier:
 - (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
 - (b) on December 31, 2010.

If Declarant's Class B membership converts to Class A according to 2(a) above, and Declarant then chooses to annex additional real estate located near the Development to be subject to the provisions of this Declaration, then Declarant's membership in the expanded subdivision may convert back to Class B Membership based on the total votes of all Lots in the expanded subdivision (Declarant's Lots equal three (3) votes per Lot). The conversion shall occur only upon Declarant's execution and recordation of a supplemental declaration in the Office of the Recorder of Marion County, Indiana.

C. Board of Directors: The Members shall elect a Board of Directors of the Association ("Board") as prescribed by the Association's Articles of Incorporation and By-Laws. The Board shall manage the affairs of the Association. No director or officer of the Association shall receive compensation for his or her services as such director or officer, except to the extent expressly authorized by a majority vote of the Owners present at a duly constituted meeting of the Association members.

D. Responsibilities of the Association: The responsibilities of the Association shall include, but shall not be limited to:

1. Maintenance of any Common Areas, Landscape Easements, or Common Property including any and all improvements thereon as the Association deems necessary or appropriate.
2. Installation and replacement of any and all improvements, Common Property, street lights, entry signs, private street signs, lawn, flowers, landscaping in and upon any Common Areas, Landscape Easements, or as the Association deems necessary or appropriate.
3. Maintenance of retention ponds and streams so as not to create stagnant or polluted waters affecting the health and welfare of the Development.
4. Procuring and maintaining for the benefit of the Association, its officers and Board of Directors, and Owners, proper liability and property insurance coverage as the Board shall deem appropriate. Each Owner shall be solely responsible for liability and loss of or damage to his personal and real property located on Owner's Lot, however caused.
5. Assessment and collection thereof from all Members.
6. Payment of all Common Expenses.
7. Performing or contracting for Association management, snow removal, lawn care, maintenance, trash removal or other services as the Association shall deem necessary or advisable.
8. Enforcing the rules and regulations of the Association, the requirements of this Declaration, and any applicable zoning commitments or other recorded covenants, in each case, as the Association shall deem necessary or advisable, including the granting of any approvals whenever and to the extent called for by the Declaration for the common benefit of all such Owners. The Association shall also have the right, but not the obligation, to act on behalf of any Owner or Owners seeking enforcement of the Declaration.
9. The Board shall cause proper books and records of the levy and collection of each Regular and Special Assessment to be kept and maintained, including a roster setting forth the identification of each Lot, which books and records shall be kept by the Association and shall be available for the inspection of each Owner at a reasonable time.
10. Upon request, the Association shall promptly furnish to any Owner, prospective purchaser, title insurance company, or Mortgagee, a certificate in writing signed by an authorized representative of the Association, setting forth the extent to which Assessments have been levied and paid with respect to any Lot in which the requesting party has a legitimate interest. As to any person or party relying thereon, such certificate shall be conclusive evidence of payment of any Assessment therein stated.

CHICAGO TITLE

- E. **Powers of the Association.** The Association may adopt, amend or rescind reasonable rules and regulations (not inconsistent with the provisions of this Declaration) governing the use and enjoyment of any Common Areas, Landscape Easements, or Common Property and the management and administration of the Association, in each case, as the Association deems necessary or advisable. The rules and regulations promulgated by the Association may provide for reasonable interest and late charges on past due installments of any Regular or Special Assessments or other charges or fines. The Association shall furnish or make copies available of its rules and regulations to Owners prior to the time when the rules and regulations become effective.
- F. **Non-Liability of Directors and Officers.** The directors and officers of the Association shall not be liable to the Owners or any other persons for any error or mistake of judgment in carrying out their duties and responsibilities as directors or officers of the Association, except for their own individual willful misconduct or gross negligence. The directors and officers of the Association shall have no personal liability with respect to any contract made by them on behalf of the Association except in their capacity as Owners. Neither the Association nor its officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color of authority of the Declaration or for any failure to take any action called for by the Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct.

ARTICLE X
ASSESSMENTS

- A. **Purpose of Assessments:** Each Owner 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 for his/her obligation for (i) regular assessments for Common Expenses ("Regular Assessments") and (ii) special assessments for capital improvements and operating deficits and for special maintenance and repairs ("Special Assessments").

The general purpose of Regular and Special Assessments is to provide funds for Common Expenses for the benefit of Owners and for such other purposes as are reasonably necessary or specifically provided herein. A portion of the Regular Assessment may be set aside or otherwise allocated in a reserve fund for repair and replacement of any capital improvements that the Association shall determine as necessary. The Regular and Special Assessments levied by the Association shall be uniform for all Lots.

- B. **Liability for Assessments:** All Regular Assessments and Special Assessments, together with interest, costs of collection and legal fees, shall be a continuing lien upon the Lot against which such assessment is made prior to all other liens except only (i) tax liens on any Lot in favor of any unit of government or special taxing district and (ii) the lien of any first mortgage of record. Each such assessment, together with interest, costs of collection and legal fees, shall also be the personal obligation of the Owner of the Lot at the time such assessment became due and payable. No sale or transfer of a Lot shall relieve such Lot from liability for any Assessments, nor shall any sale or transfer relieve any Owner of the personal liability hereby imposed. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. The personal obligation for delinquent assessments (as distinguished from the lien upon the Lot) shall not pass to such Owner's successors in title unless expressly assumed by them. The Board shall cause written notice of all Assessments levied by the Association upon the Lots to be delivered to the Owners or their designated representatives not less than fourteen (14) calendar days prior to the due date of such Assessment.
- C. **Basis of Regular Assessments:** The Board shall have the right, power and authority, without any vote of the Members, to fix from time to time the Regular Assessment against each Dwelling Unit provided that the new Regular Assessment does not increase more than 5% from the prior year's Regular Assessment. Assessment increases in excess of 5% from the prior year, or any Special Assessment shall be established by the presentation of a budget and the majority approval thereof by the Members at a duly constituted meeting of the Members as determined by the Board.

In order to determine the amount of the Regular Assessment per Lot, the Board shall establish an annual budget for each fiscal year, setting forth all anticipated Common Expenses for the coming fiscal year, together with a reasonable allowance for reserves for future repair and replacement of the Common Property or unexpected expenses. A copy of the approved budget shall be delivered within a reasonable time to any Owner requesting it.

D. Basis of Special Assessments: In addition to Regular Assessments, the Board may make Special Assessments against each Lot, for the purpose of defraying, in whole or in part, the cost of constructing, reconstructing, repairing or replacing any capital improvement which the Association is required to maintain or the cost of special maintenance and repairs or to recover any deficits (whether from operations or any other loss) which the Association may from time to time incur. Any Special Assessment shall require the approval of a majority of a quorum of Members present, in person or by proxy, at a duly constituted meeting of the Members called and held for such purpose.

Upon the approval of the Board and at Declarant's option, the Association may borrow up to \$2,500 from Declarant for unplanned deficits during the Development Period, with or without interest. Any such loan shall be immediately repaid to Declarant upon the Association's ability to repay such amount. If necessary, the Board may impose a Special Assessment upon the approval of a majority of a quorum of Members present in person or by proxy, and such Special Assessment shall be due and payable on the date(s) determined by the Board.

E. Fiscal Year: The fiscal year of the Association shall initially be the calendar year and may be changed from time to time by action of the Board. The Regular Assessment on each Lot may commence at any time following the month in which Declarant first conveys any Lot to an Owner.

F. Declarant's Assessments. The Declarant shall not be assessed any portion of any Regular or Special Assessment during the Development Period.

G. Date of Commencement of Regular or Special Assessments. The Regular Assessment or any Special Assessment shall commence upon the first day of the first month following the recording of this Declaration. In the case of the conveyance by Declarant of a Lot to any Builder, such commencement of Assessment shall occur on the first day of the next calendar month following the conveyance of each Lot to such Builder.

H. Association Remedies for Non-Payment of Assessments:

1. Lien for Non-Payment of Assessment: If any Assessment is not paid on the date when due, then such Assessment shall be deemed delinquent and shall immediately become a lien upon the Lot.

2. Initiation of Action by Association for Non-Payment of Assessment. If any Assessment upon any Lot is not paid within thirty (30) days after the due date, such Assessment may be increased by a late fee and interest charge imposed as determined by the Board. The Association may bring an action against the delinquent Owner in any court having jurisdiction to enforce payment of the same and/or to foreclose the lien against Owner's Lot, and there shall be added to the amount of such Assessment all costs of such action, including the Association's legal fees, and, in the event a judgment is obtained, such judgment shall include such late fee, costs, and legal fees.

3. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage, regardless of the recording date of said mortgage. Provided, however, 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 any assessments or pro-rated assessment becoming due prior to the date of such sale or transfer. If and to the extent this paragraph is inconsistent with any other paragraph in the Declaration, then this paragraph shall prevail. ®

I. Quorum and Notice Required For Association Meeting. Written notice of any Association meeting called for the purpose of annual meetings, approving Regular or Special Assessments, amending this Declaration, election of the Board, or transacting other business for the benefit of the Association shall be sent to all Owners not less than twenty (20) calendar days in advance of the anticipated meeting. For meetings called for such purposes, the presence of Owners or of proxies entitled to cast one-tenth of the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called without notice, other than announcement at the meeting, until such later time or date that a quorum shall be present in person or by proxy.

ARTICLE XI
DEVELOPMENT CONTROL COMMITTEE

- A. **Creation.** Upon Declarant's recording of this Declaration, there shall be created and established a Development Control Committee ("Committee") to perform the functions provided for herein. During the Development Period, the Committee shall consist of the Declarant or Members appointed, from time to time, by Declarant, which Members shall be subject to removal by Declarant at any time with or without cause. After the Development Period, the Committee shall be a standing committee of the Association, consisting of at least three (3) Owners appointed, from time to time, by the Board. The Committee shall consist of Owners who may or may not be members of the Board. The Board may at any time after the Development Period remove any member of the Committee upon a majority vote of the members of the Board.
- B. **Purposes and Powers of Committee.** The Committee shall review and approve the design, appearance and location of all Dwelling Units, structures, modifications to a Dwelling Unit, or any other improvements placed or modified by any person on any Lot and the modification or removal of any landscaping on any Lot, in such a manner as to preserve the value and desirability of the Development, maintain the harmonious relationship between Dwelling Units and the natural vegetation and topography of the Development, and comply with the terms of this Declaration.
1. **In General.** No Dwelling Unit, building, structure, antenna, satellite dish, walkway, fence, deck, pool, tennis court, basketball goal, sports court, wall, patio or other exterior improvement of any type or kind shall be erected, constructed, placed or modified on any Lot without the prior written approval of the Committee. Such approval shall be obtained only after the Owner requesting authorization from the Committee has made written application to the Committee. Such written application shall be in the manner and form prescribed from time to time by the Committee and, in the case of construction or placement of any improvement, shall be accompanied by two (2) complete sets of plans and specifications for the proposed improvement. Such plans shall include plot plans showing the location of all improvements existing upon the Lot and the location of the proposed improvement, properly and clearly designated. Such plans and specifications shall set forth the color and composition of all proposed exterior materials and landscaping, together with any other material or information regarding the proposed improvement or which the Committee may reasonably require. Unless otherwise permitted by the Committee, a registered land surveyor, qualified engineer, or architect shall prepare plot plans.
 2. **Power of Disapproval.** The Committee may refuse to approve any application (a "Requested Change") made to it when:
 - a. The plans, specifications, drawings or other materials submitted are inadequate or incomplete, or show the Requested Change to be in violation of any of the terms of this Declaration applicable to any part of the Development;
 - b. The design or color scheme of a Requested Change is not in harmony with the general surroundings of the Lot or with adjacent Dwelling Units or related improvements; or
 - c. The Requested Change, in the opinion of the Committee, would not preserve or enhance the value, safety, or desirability of the Development, or would otherwise be contrary to the interests, welfare or rights of the Declarant or any other Owner.
 3. **Rules and Regulations.** The Committee, from time to time, may promulgate, amend or modify additional rules and regulations or building policies or procedures, as it may deem necessary or desirable to guide Owners as to the requirements of the Committee for the submission and approval of Requested Changes.
- C. **Committee Response.** If the Committee does not approve a Requested Change within thirty (30) calendar days after all required information on the Requested Change shall have been submitted to it, then such Requested Change shall be deemed denied.

- D. Liability of the Committee. Neither the Committee, the Association, the Declarant nor any agent or member of any of the foregoing, shall be responsible in any way for any defects in any plans, specifications, or other materials submitted to it, nor for any defects in any work done, or nonconformance with any applicable building codes in connection with a Requested Change or for any decision made by it unless made in bad faith or by willful misconduct.
- E. Inspection. The Committee or its designee may, but shall not be required to, inspect work being performed to assure compliance with this Declaration and the materials submitted to it pursuant to this Article and may require any work not consistent with an approved Requested Change, or not approved, to be stopped and removed immediately at the offending Owner's expense.

ARTICLE XII
AMENDMENTS TO DECLARATION

- A. By the Association. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:
1. Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting of the members of the Association at which the proposed amendment is to be considered.
 2. Resolution. A resolution to adopt a proposed amendment may be proposed by either the Board of Directors or Owners representing at least a majority of votes of all Owners.
 3. Meeting. The resolution concerning a proposed amendment must be adopted by the vote required by the following subparagraph below at a meeting of the Members of the Association duly called and held in accordance with the provisions of the Association's By-Laws.
4. Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than ninety percent (90%) in the aggregate of all votes entitled to be cast by all Owners if the proposed amendment is considered and voted upon on or before December 31, 2020, and not less than seventy-five percent (75%) of such votes if the proposed amendment is considered and voted on after December 31, 2020. In any case, however, any such amendment shall require the prior written approval of Declarant during the Development Period. In the event any Dwelling Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner provided that the Mortgagee has given prior written notice of its mortgage interest to the Board of Directors. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional property, dedication or mortgaging of any Common Area, and amendment of this Declaration.
5. Mortgagees' Vote on Special Amendments. No amendment to this Declaration shall be adopted which changes any provision of this Declaration which would be deemed to be of a material nature by the Federal National Mortgage Association under Section 601.02 of Part V, Chapter 4, of the Fannie Mae Selling Guide, or any similar provision of any subsequent guidelines published in lieu of or in substitution for the Selling Guide, or which would be deemed to require the first mortgagee's consent under the Freddie Mac Sellers' and Servicers' Guide, Vol. 1, Section 2103(d), without the written approval of at least sixty-seven percent (67%) of the Mortgagees who have given prior notice of their mortgage interest to the Board of Directors of the Association.

CHICAGO TITLE

Any Mortgagee which has been duly notified of the nature of any proposed amendment shall be deemed to have approved the same if the Mortgagee or a representative thereof fails to appear at the meeting in which such amendment is to be considered (if proper notice of such meeting was timely given to such Mortgagee) or if the Mortgagee does not send its written objection to the proposed amendment prior to such meeting. In the event that a proposed amendment is deemed by the Board of Directors to be one which is not of a material nature, the Board of Directors shall notify all Mortgagees whose interests have been made known to the Board of Directors of the nature of such proposed amendment, and such amendment shall be conclusively deemed not material if no Mortgagee so notified objects to such proposed amendment within thirty (30) days after the date such notices are mailed and if such notice advises the Mortgagee of the time limitation contained in this sentence.

- B. By the Declarant. Declarant hereby reserves the right throughout the Development Period to make any technical amendments, in the opinion of Declarant, to this Declaration without the approval of any other person or entity, for any purpose reasonably deemed necessary or appropriate by the Declarant, including without limitation: to bring Declarant or this Declaration into compliance with the requirement of any statute, ordinance, regulation or order of any public agency having jurisdiction thereof; to conform with zoning covenants and conditions; to comply with the requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Veterans Administration or any other governmental agency or to induce any of such agencies to make, purchase, sell, insure or guarantee first mortgages; or to clarify or correct clerical or typographical errors in this Declaration or any amendment or supplement hereto; provided, however, that in no event shall Declarant be entitled to make any amendment which has a material adverse effect on the rights of any Mortgagee, or which substantially impairs, in the opinion of Declarant, the rights granted by this Declaration to any Owner or substantially increases, in the opinion of Declarant, the obligations imposed by this Declaration on any Owner.
- C. Adverse Effect. No amendment to this Declaration that adversely affects the rights of a public utility shall be effective with respect to such public utility without its written consent thereto. No amendment, which is contrary to a zoning commitment, shall be effective without the written approval of the affected adjacent homeowners or their associations as designated by the Department of Metropolitan Development.
- D. Recording. Each amendment to this Declaration shall be executed by Declarant, if during the Development Period, and by the President or Vice President and Secretary of the Association, if after the Development Period. All amendments shall be recorded in the Office of the Recorder of Marion County, Indiana, and no amendment shall become effective until so recorded.

ARTICLE XIII
DECLARANT'S RIGHTS

- A. Access Rights. Declarant hereby creates and reserves an access license over and across all of the Development for the use of Declarant and its representatives, agents, designees, contractors and affiliates during the Development Period. Notwithstanding the foregoing, the area of the access license shall be limited to that part of the Development that is not in, on, under, over, across or through a Dwelling Unit or the foundation of a Dwelling Unit properly located on any Lot. The parties for whose benefit this access license is herein created and reserved shall exercise such access rights only to the extent reasonably necessary and appropriate and such parties shall, to the extent reasonably practicable, repair any damage or destruction caused by reason of such parties' exercise of this access license.
- B. Signs. Declarant and its designees shall have the right to use signs of any size during the Development Period and shall not be subject to the Declaration with respect to signs during the Development Period. The Declarant and its designees shall also have the right to construct or change any Dwelling Unit, building, improvement or landscaping on the Development without obtaining the approval of the Committee at any time during the Development Period.

CHICAGO TITLE

- C. Sales Offices and Models. Notwithstanding anything to the contrary contained in this Declaration or a Plat of any part of the Development now or hereafter recorded in the office of the Recorder of Marion County, Indiana, Declarant, any entity related to Declarant and any other person or entity with the prior written consent of Declarant, during the Development Period, shall be entitled to construct, install, erect and maintain such facilities upon any portion of the Development owned by Declarant, the Association or such person or entity as, in the sole opinion of Declarant, may be reasonably required or convenient or incidental to the development of the Development or the sale of Lots and the construction or sale of Dwelling Units thereon. Such facilities may include, without limitation, storage areas or tanks, parking areas, signs, awnings, model residences, construction offices, sales offices, or trailers.

**ARTICLE XIV
MISCELLANEOUS**

- A. Titles. The underlined titles of the various Articles and Sections of this Declaration are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provisions of the Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or the neuter, and vice versa.
- B. Duration. This Declaration shall be effective for an initial term until December 31, 2020 and shall automatically renew for additional terms of ten (10) years each, in perpetuity, unless at the end of any term the Owners of two-thirds (2/3) of the Lots, including any Lots annexed into the Development, vote to terminate this Declaration, in which case this Declaration shall terminate as of the end of the term during which such vote was taken. Notwithstanding the preceding sentence, all easements created or reserved by this Declaration shall be perpetual unless otherwise expressly indicated herein.
- C. Severability. This Declaration shall run with the land and shall be binding on all parties claiming under them. Invalidation or unenforcement of any of the provisions of this Declaration by Judgment, Court Order, or the Board of Directors shall in no way affect any of the other provisions that shall remain in full force and effect.
- D. Dedication of Street Rights-of-Way. All street rights-of-way shown on the Plat and not heretofore dedicated to the public are hereby dedicated to the public.
- E. Applicable Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Indiana.
- F. Annexation. Declarant may from time to time annex additional real estate located near the Development in accordance with the provisions of this Declaration (and from and after such annexation shall be deemed part of the Development for all purposes of this Declaration) by execution and recordation by Declarant in the Office of the Recorder of Marion County, Indiana, of a supplemental declaration, and such action shall require no approvals or other action of the Owners.

IN WITNESS WHEREOF, the undersigned has hereunto caused its name to be subscribed this 10th day of OCTOBER, 2000.

ASHLEY, LLC

BY: _____

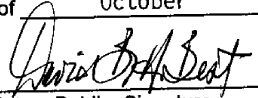
Gregory A. Bruzas
Gregory A. Bruzas, Member

CHICAGO TITLE

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Gregory A. Bruzas, a Member of Ashley, LLC, an Indiana Limited Liability Company, who acknowledged the execution of the foregoing Declaration of Covenants, Restrictions, and Assessments acting for and on behalf of Declarant, and who, having been duly sworn, stated that any representations herein contained are true.

Witness my hand and Notarial Seal this 10th day of October, 2000.



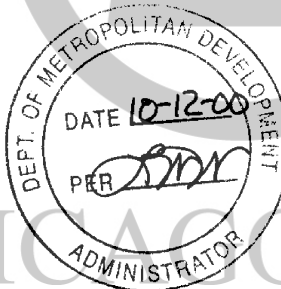
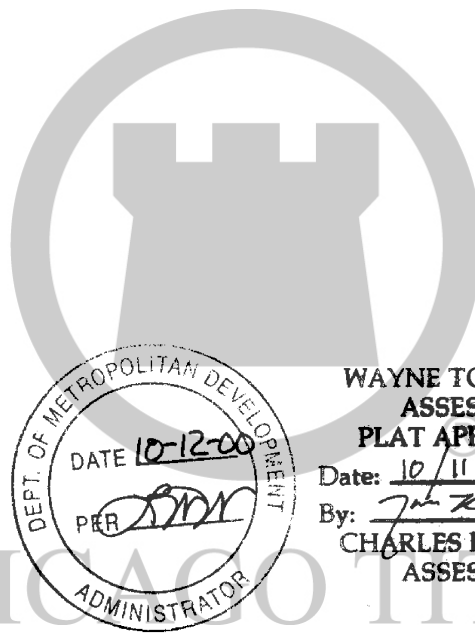
Notary Public -Signature

David B. H. Best
Name Printed



County of Residence: Marion

My Commission Expires: 16 May 2008



WAYNE TOWNSHIP
ASSESSOR
PLAT APPROVED

Date: 10/11/2000
By: John R. M. Ruddy
CHARLES R. SPEARS
ASSESSOR

This instrument prepared by:
William T. Rees, Attorney, P.O. Box 34297, Indianapolis, IN 46234-0297

EXHIBIT "A"

**Robey Glen Subdivision
LAND DESCRIPTION**

A part of the Northwest Quarter of the Northwest Quarter of Section 28, Township 16 North, Range 2 East of the Second Principal Meridian in Wayne Township, Marion County, Indiana, more particularly described as follows:

Commencing at the Northwest corner of said Northwest Quarter Quarter Section; thence South 00 degrees 00 minutes 00 seconds West (assumed bearing) along the west line of said Quarter Quarter Section a distance of 660.00 feet to the POINT OF BEGINNING of the herein described real estate; thence North 89 degrees 56 minutes 40 seconds East parallel with the north line of said Quarter Quarter Section a distance of 1,013.17 feet to a point that is a distance of 323.39 feet west of the east line of said Northwest Quarter Quarter Section; thence South 00 degrees 06 minutes 41 seconds West parallel with and 323.39 feet west of said east line a distance of 429.00 feet; thence South 89 degrees 56 minutes 40 seconds West parallel with the north line of said Northwest Quarter Quarter Section a distance of 862.34 feet to the southeast corner of real estate conveyed to Donald and Rita Kelley by warranty deed recorded as Instrument No. 72-16090 in the Office of the Recorder of Marion County, Indiana; thence North 00 degrees 00 minutes 00 seconds West parallel with the west line of said Northwest Quarter Quarter Section and along the east line of said Kelley real estate a distance of 189.00 feet to the northeast corner thereof; thence South 89 degrees 56 minutes 40 seconds West parallel with the north line of said Northwest Quarter Quarter Section and along the north line of said Kelley real estate a distance of 150.00 feet to the west line of said Northwest Quarter Quarter Section; thence North 00 degrees 00 minutes 00 seconds East along said west line a distance of 240.00 feet to the Point of Beginning, containing 9.323 Acres (406,121 Square Feet), more or less.



CHICAGO TITLE