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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS**

of

**THE PRESERVE AT SPRING KNOLL**

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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS**

**THIS DECLARATION**, made and entered into this 9<sup>th</sup> day of February, 2001, by **CARTER PROPERTIES, L.L.C.**, ("Developer"),

**WITNESSETH:**

**WHEREAS**, Developer is the fee simple title holders of all the land in Boone County, contained in and fully described on Exhibit "A", attached hereto and made a part hereof (hereinafter the "**REAL ESTATE**").

**WHEREAS**, Developer intends to divide the Real Estate into Two Hundred Fifty-Eight (258) tracts (each such tract hereinafter referred to individually as a "**Lot**" and collectively as "**Lots**"), numbered 97 through 356, inclusive, (excluding Lots #173 and 288) such subdivision known as **The Preserve at Spring Knoll**.

**WHEREAS**, Developer desires to sell and convey Lots subject to the imposition of certain mutual and beneficial easements, restrictions, covenants, conditions and charges designed to assure ingress and egress thereto and to protect the value and desirability thereof.

**NOW, THEREFORE**, Developer hereby declares that each Lot and all Lots shall be held, conveyed, encumbered, leased, rendered, used, occupied and improved subject to the following covenants, conditions and restrictions, which shall run with the Real Estate and be binding on each party having any right, title or interest in any Lot or Lots, and his, her or its heirs, beneficiaries,

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successors, assigns and personal and legal representatives, and which covenants, conditions and restrictions shall inure to the benefit of the Owners and each and every one of the Owner's successors in title to any Lot or Lots into which the Real Estate is subdivided.

## ARTICLE I

### Definitions

**Section 1.01. Declaration:** "Declaration" shall mean this instrument, together with any amendments or changes hereto which are hereafter made and evidenced as herein required.

**Section 1.02. Developer:** "Developer" shall mean Carter Properties, L.L.C., their successors or assigns in the ownership, development and division of the Real Estate, and/or any person, firm, corporation or other legal entity specifically designated as such as set out in Article III of this Declaration.

**Section 1.03. Lot:** "Lot" (also referred to as "Tract"), referred to in the plural thereon as "Lots", shall mean any of the Two Hundred Fifty-Eight (258) tracts, more or less, into which the Real Estate is subdivided, the legal description being attached as Exhibit "A", which tracts are to be numbered in sequence (97 - 356, excluding Lots #173 and 288), as set out in the plat of The Preserve at Spring Knoll, Section I, recorded in the Office of the Recorder of Boone County, Indiana, in Book Number 12, Page 1-8, and any subsequent sections (2 and 3) recorded thereafter, as any tract(s) may be enlarged or diminished by Developer in connection with a reconfiguration

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thereof (in which event each tract shall be defined by the outside boundaries thereof). In no event shall any reconfiguration result in any tract having an area less than the area permitted by applicable zoning laws and in no event shall the Real Estate be divided to permit the construction of more than Two Hundred Fifty-Eight (258) single family residences and related improvements otherwise permitted hereunder, except as otherwise set out in Section 6.13.

**Section 1.04. Owner:** "Owner", referred to in plural as "Owners", shall mean and refer to the record owner, whether one or more persons or entities, their respective heirs, beneficiaries, successors, assigns and personal and legal representatives, of the legal title to any Lot, including contract sellers, but excluding those having such interests merely as security for the performance of an obligation. Developer shall also be considered an Owner for purposes of this Declaration for so long as, and to the extent that, Developer owns a Lot or Lots.

**Section 1.05 Driveway:** "Driveway", referred to in the plural as "Driveways", shall mean that portion of any Lot developed and hard surfaced for the purpose of permitting ingress and egress to and from such Lot from any public road.

**Section 1.06. Lot Development Plans:** "Lot Development Plans" shall mean and consist of the following plans:

(i) a site plan, prepared by a licensed civil engineer or registered surveyor approved by Developer, showing existing improvements on a Lot, any proposed



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alteration of the topography, elevation or natural state of the Lot in connection with the improvement thereof or any construction thereon, and locating thereon all proposed improvements and structures showing finished floor elevations and details relating to drainage; (ii) complete house building and/or accessory structure plans, including structural details, exterior elevations and floor plans; (iii) material plans and specifications; (iv) detailed landscaping plans describing the size and name of all plantings as well as location and size of trees which will be removed as part of the construction process; (v) all other data or information which Developer may reasonably request, including, but not limited to, a fully executed original and two (2) copies of the CHECK LIST OF COMPLIANCE FOR THE PRESERVE AT SPRING KNOLL, as well as all accompanying plans, specifications and data requested therein.

**Section 1.07. Property Owners' Association:** "Property Owners' Association" shall mean the unincorporated association of owners established in accordance with Article IV of this Declaration, or such other legal entity as may be formed as a successor thereto.

**Section 1.08. Subdivision:** "Subdivision" shall mean the Real Estate as divided into Lots, all as evidenced by a plat thereof recorded herewith in the Office of the Recorder of Boone County, Indiana, Book Number 12, Page 1-8, identified as the plat of The Preserve at Spring Knoll, and any additional sections of said subdivision that may hereafter be recorded and subject to these Declarations, along with any amendments thereto.

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**Section 1.09. Maintenance Costs:** "Maintenance Costs" shall mean all of the costs necessary to keep the facility or improvements which the Property Owners' Association has determined is for the common good, operational and in good condition, including but not limited to (i) the costs for all upkeep, maintenance, repair or replacement of all or any part thereof, (ii) payment of all insurance premiums and taxes imposed thereon and on the underlying easement or right-of-way, and any other expense related to the continuous operation thereof and (iii) costs associated with the operation of the Property Owners' Association or incurred in connection with the enforcement of the terms and provisions of this Declaration.

**Section 1.10. Common Areas:** "Common Areas" shall mean those areas designated on the Plat or in another document executed by Developer for the common good or service to one or more Lots in the Subdivision. Common Areas may be designated on the Plat as Blocks or otherwise. Common Areas may include drainage systems and retention ponds. In accordance with commitments made by Developer to the Zionsville Plan Commission and/or Town Council, Developer may convey or transfer portions of Common Areas or Blocks as shown on the Plat to the Zionsville Board of Park and Recreation.

## **ARTICLE II**

### **Character of Lots**

**Section 2.01. In General:** Every Lot or group of Lots referred to in

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these covenants shall be used exclusively for single family residential purposes.

**Section 2.02. Improvement and Development of Lots:** No Lot shall be further divided to create any additional tract upon which a single family residence and improvements otherwise permitted hereunder may be constructed, nor shall any improvements be made thereto or construction commence, proceed or continue thereon, except in strict accordance with the terms and provisions of this Declaration. Not more than one (1) single family dwelling house, together with attached garage and such related accessory structures and recreational facilities as may be permitted by this Declaration shall be constructed, altered, placed or permitted to remain on any Lot referred to by the covenants. In the event of multiple Lot ownership, no single family dwelling house shall be constructed on or across a portion of more than one (1) Lot without the express written consent of the Developer herein.

**Section 2.03. Occupancy or Residential Use of Partially Completed Dwelling House Prohibited:** No dwelling house constructed on a Lot shall be occupied or used for residential purposes for human habitation until it has been substantially completed. The determination of whether a dwelling house has been "substantially completed" shall be made by Developer and the Zionsville Building Inspector, and such decision shall be binding on all parties affected thereby.

**ARTICLE III**

**Developer**

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**Section 3.01. Developer:** The powers and authorities contained in this Article shall be vested in Developer and the covenants, conditions and restrictions in Article V of this Declaration shall be administered and enforced by Developer, or their designated successors and/or assigns. Developer's administration and enforcement of such covenants, conditions and restrictions shall include, but not be limited to, approval of Lot Development Plans prior to the improvement of any Lot. Neither the exercise of such administration and enforcement duties by Developer, nor the approval of any Lot Development Plans by Developer, shall relieve any Owner of any duty and obligation imposed by this Declaration or compliance with the covenants, conditions or restrictions as the same are recorded in the Office of the Boone County Recorder. In the event that a written approval is not received from Developer within thirty (30) days from the date submittals are made, the failure to issue such written approval shall mean the disapproval thereof. In the event of a disapproval, Developer shall give a short statement of the reason or reasons for such disapproval within ten (10) days following receipt of a written request to do so. The Developer shall not unreasonably withhold approval and shall act in a manner which is neither arbitrary or capricious. However, Developer reserves the right to unilaterally deny approval of Lot Development Plans if the single family dwelling is inconsistent as to design, color, building materials, size or costs with adjacent lots.

**Section 3.02. Powers of Developer:** No Lot shall be developed and no

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single family dwelling house, accessory building, driveway or other structure or improvement of any type, kind or character shall be constructed, placed, altered or permitted to remain on any Lot in the Subdivision without the prior written approval of Developer. Any required approval shall be requested by an Owner by written application to Developer. Such written application shall be made in the manner and form prescribed from time to time by Developer, and shall be accompanied by three (3) complete sets of Lot Development Plans as defined in Section 1.07 of these covenants, and such other information as may be reasonably required by Developer. The authority given to Developer hereby is for the purpose of determining whether the proposed improvement and development of a Lot is consistent with the terms and provisions of this Declaration, is consistent with and meets Developer's overall plans for improvement and development of the Real Estate and is compatible and consistent with the development of other Lots. In furtherance of the foregoing purposes, Developer is hereby given discretion as to matters related to location, building orientation, layout, design, architecture, color schemes and appearance in approving Lot Development Plans. Any house building or other accessory structure plans included as a part of any application to Developer for required approvals shall set forth the color and composition of all exterior materials proposed to be used and any site plan submitted shall describe and detail all proposed landscaping and include any other material or information which Developer may reasonably require. All plans and drawings representing a part

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of the Lot Development Plans and any other plans reasonably required to be submitted to Developer shall be drawn to a scale of 1" = 10', or to such other scale as Developer may require. All plans submitted shall be prepared by a registered land surveyor and an engineer or architect unless Developer specifically permits otherwise.

**Section 3.03. Liability of Developer:** Neither Developer, nor his agents, successors or assigns, shall be responsible in any way for any defects or insufficiencies in any plans, specifications or other materials submitted for review, whether or not approved by Developer, nor for any defects in any work done in accordance therewith. Developer shall not be liable to any person, firm, corporation or other legal entity aggrieved by Developers' exercise of (or failure to exercise) any of his powers as specified in Section 3.02 hereof, and shall have no liability whatsoever which is claimed or alleged to result, in whole or in part, upon refusal by Developer to approve Lot Development Plans submitted to Developer.

**Section 3.04. Inspection:** Developer, the Property Owners' Association or their assigns shall have the right to go upon any Lot, without being a trespasser, to inspect any work being performed thereon, in order to assure compliance with this Declaration and conformity with Lot Development Plans and with any other plans or submittals made to him and upon which any approvals required by this Declaration are based.

**Section 3.05. Assignment of Duties:** All of the duties, responsibilities

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and rights held by Developer under this Declaration shall be exercised and administered by Developer in good faith until such time, if any, as they may be assigned by Developer to another of one or more Owners referenced by these covenants or any other legal entity formed as a successor thereto. Any such assignment shall be at the option and sole discretion of Developer and may be made at any time or stage of development. Any assignment by Developer shall be by written instrument duly executed and recorded in the Boone County Recorder's Office. Following any such assignment and recordation, the duties, responsibilities and rights of Developer under this Declaration shall immediately vest in and be performed by the assignee or successor.

**ARTICLE IV**

**Association of Property Owners and Assessments**

**Section 4.01. Association of Property Owners: In**

order to provide for the continuing maintenance and administration of the Subdivision, there is hereby established an unincorporated association of Owners of Lots in The Preserve at Spring Knoll ("Property Owners' Associations"). The Property Owners' Association shall be comprised of and limited in members to the Owners from time to time of the several Lots within the Subdivision. Membership in the Property Owners' Association shall commence immediately upon becoming an Owner and continue for so long as ownership of a Lot or Lots continues. At such time as an Owner conveys title and ceases to be an Owner, membership in the Association shall terminate. A

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new Owner of a Lot shall automatically become a member. The Developer shall act as the Property Owners Association until the organization of the resident Owners of Lots as the Property Owners Association. Until such time that administration of the Property Owners Association is turned over to the resident Owners of Lots, the Developer shall establish the amount of general assessments, the dates that such general assessments are due and the manner in which the same shall be paid; however, the amount of general assessments collected by the Developer acting as the Property Owners Association shall not exceed the amount of three hundred dollars (\$300) per year. The provisions of this declaration for uniform assessment shall not be deemed to require that all assessments against vacant Lots or Lots improved with residences be equal, and Developer may determine that the liability for assessments shall begin upon completion of a residence upon a Lot. Although an Owner need not participate in the administration of the Subdivision, all Owners and the ownership of any Lot or Lots shall be subject to any and all rules and regulations duly established by the Property Owners' Association (as well as being subject to the rights of Developer and the terms and provisions of this Declaration) and shall be liable for the payment of all assessments levied by the Property Owners' Association. The Property Owners' Association may assign or otherwise transfer its rights, responsibilities and duties under this Declaration to any legal entity which may be formed as a successor thereof. Any such assignment or transfer shall be in writing and shall be effective when written evidence thereof is duly recorded



with reference to this Declaration in the office of the Recorder of Boone  
County, Indiana.

**Section 4.02. Rights and Duties of the Property**

**Owners' Association:** The Property Owners' Association shall be responsible  
for the following:

- (a) The landscaping, maintenance and upkeep of the fencing installed by the  
Developer within the areas shown on the plat and contained within the  
drainage and utility easements ("D" and "U") as well as all other  
common areas shown on the plat. The Property Owners' Association  
shall also be responsible for maintenance and upkeep of the signage for  
The Preserve at Spring Knoll located within the drainage and utility  
easement at the entrances of the Subdivision. The Property Owners'  
Association shall also be responsible for maintenance and upkeep of the  
retention lakes shown as "Common Area" or Blocks on the plat. The  
Property Owners' Association, to the extent the same has not been  
transferred by Developer to the Zionsville Park and Recreation Board,  
shall be responsible for maintenance and upkeep of the limited access  
nature park, shown as "Block B".
- (b) Procuring of utilities used in connection with the Lots, single family  
residences and common areas to the extent the same are not provided  
and billed directly to owners of Lots by utility companies. Further, it  
shall be the responsibility of the Property Owners' Association, if they

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- choose to exercise that responsibility, to provide for common snow removal throughout the Subdivision and bill the members accordingly.
- (c) Payment of insurance (if any may be required under other sections to this declaration).
  - (d) Determination of general and special assessments levied against the Owners. The Association shall have the ability to waive any general and special assessments levied against the Developer, Member and/or their assigns.
  - (e) Promulgation and enforcement of the rules and regulations in this Declaration or as otherwise duly promulgated by the Owners.
  - (f) Arrange for the common pick up and removal of garbage and waste so as to assure that one waste hauler will be utilized to serve the Subdivision.
  - (g) Exercise of the powers vested in the Property Owners' Association by this Declaration or by Articles of Incorporation and Bylaws of any successor corporation thereto.

**Section 4.03. Meetings of the Property Owners' Association and**

**Voting Rights:** Business of the Property Owners' Association shall be conducted at meetings of this Association. Meetings of the Association may be called by the then current Chairman or Secretary/Treasurer of the Property Owners' Association or upon request of the Owner(s) of at least ten (10) Lots. Written notice of any meeting of the Lot Owners shall be personally delivered or mailed by first class United States mail by the Secretary-Treasurer to all

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Owners at least twenty (20) days prior to any proposed meeting. The Corporation shall have the following classes of membership with the following voting rights:

- (a) Class A. Class A members shall be all Owners of Lots in the Subdivision. Each Class A member shall be entitled to one (1) vote for each Lot of which such member is the Owner with respect to each matter submitted to a vote of members upon which the Class A members are entitled to vote. When more than one (1) Person constitutes the Owner of a particular Lot, all such Persons shall be members of the Association, but all of such Persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.
- (b) Class B. Class B members shall be Developer and all successors and assigns of Developer designated by Developer as Class B members in a written notice mailed or delivered to the resident agent of the Association. Each Class B member shall be entitled to five (5) votes for each Lot of which it is the Owner on all matters requiring a vote of the members of the Association. The Class B membership shall cease and terminate on the date upon which the written resignation of the Class B members as

such is delivered to the Association or successor thereto or the date Developer no longer owns any Lots in the Subdivision, whichever occurs first. After the above, Class B memberships shall be converted to Class A memberships, and each former Class B member shall be entitled to one (1) Class A membership for each Lot owned in the Subdivision.

**Section 4.04. Assessments:** The Property Owners' Association shall have the power to levy uniform, general and special assessments against each Owner and each Lot, without regard to the size thereof relative to any other Lot in the Subdivision.

**Section 4.05. Creation of a Lien and Personal Obligation of Assessments:** Developer hereby covenants and each Owner of each Lot by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Property Owners' Association general and special assessments, such assessments to be established and collected as provided in this Article. Until paid in full, an assessment not paid when due, together with interest thereon (at a percentage rate per annum equal to the then current Indiana statutory maximum annual interest rate) and costs of collection (including reasonable attorneys' fees and court costs) shall be a continuing lien upon the Lot against which such assessment is made. Each assessment, together with interest and costs of collection as aforesaid, shall also become and remain, until paid in full, the personal obligation of the one or more

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persons or entities in ownership of the Lot at the time when the assessment first became due and payable. If any Owner fails, refuses or neglects to make payment of an assessment when due, the lien for such assessment on such Owner's Lot may, at any time following notice thereof by first class United States mail of the amount thereof to an owner and the expiration of ten (10) days from the date such notice is sent, be foreclosed by the Property Owners' Association in the same manner in which a Mechanic's Lien is foreclosed from time to time under Indiana law, or in any other manner otherwise from time to time permissible or provided by law. The Property Owners Association may, at its option, bring a suit against the Owner (and if more than one, either jointly or severally) to recover a money judgment for any unpaid assessment without foreclosing the lien for such assessment or waiving the lien securing the same. In any action to recover an assessment, whether by foreclosure or otherwise, the Property Owners' Association shall be entitled to recover interest as aforesaid and the costs and expenses of such action, including, but not limited to, reasonable attorneys' fees and court costs.

**Section 4.06. Purpose of Assessment:** General or special assessments levied by the Property Owners' Association shall be used exclusively to exercise those powers and advance those purposes for which the Property Owners' Association has been formed by this Declaration.

**Section 4.07. Basis for Assessment:** Except as provided in Section 4.09 hereof, general or special assessments levied by the Property Owners'

Association shall be assessed uniformly against each Lot (and the Owner(s) thereof), regardless of whether any such Lot is improved or unimproved and without regard to the type of improvements constructed on any Lot, or the extent of use of the facilities and improvements for which any assessment, general or specified, is made.

**Section 4.08. Annual Meeting, Adoption of Budget and**

**General Assessment:** Between May 1<sup>st</sup> and July 10<sup>th</sup> of each year, the Association shall hold an annual meeting with notice to all Owners in the manner required by 4.03 of this Declaration. At the annual meeting, the Owners shall elect a Chairman and a Secretary-Treasurer to coordinate and handle the day to day affairs of the Property Owners' Association and shall adopt a proposed annual budget. The budget, adopted by the Property Owners' Association, shall provide for allocation of anticipated expenses in such a manner that the obligations imposed by this Declaration will be met and shall further outline all anticipated expenses and obligations for the period covered thereby. Following approval of the budget, the Chairman and Secretary-Treasurer shall fix a uniform general assessment against each Lot (and the Owner(s) thereof) in an amount necessary to defray the expenses and obligations budgeted, together with an amount, if any, approved by the Owners to permit establishment of and/or contribution into a reserve account in order to defray anticipated future capital expenditures. Notice of the uniform general assessment shall be sent by the Secretary-Treasurer to each Lot Owner as soon

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as practicable following the annual meeting. Unless otherwise determined by majority vote of the Owners, the general assessment established shall be paid in full to the Secretary/Treasurer of the Property Owners' Association in one (1) installment on or before August 31<sup>st</sup> next succeeding. Upon receipt of payment, the Secretary-Treasurer shall deposit the amount involved in an account opened and maintained in the name of the Property Owners' Association at a state or national bank having its principal banking offices in either Lebanon, Zionsville or Indianapolis, Indiana. Withdrawals from such account shall be made only upon the approval of both the Chairman and Secretary-Treasurer signing jointly and only for a purpose or purposes set forth in this Declaration.

**Section 4.09. Special Assessments:** In addition to the general assessment, the Property Owners' Association may levy in any calendar year one (1) or more uniform special assessments against each Lot (and the owners(s) thereof) for the purpose of defraying, in whole or in part, any unanticipated expenses or obligations or the costs of any major reconstructions, repair, replacement or maintenance required, **PROVIDED THAT** the levy of any such special assessment must be approved by the owner(s) of at least two-thirds (2/3's) of the Lots who are voting in person or by written proxy at a special meeting of Owners duly called for such purpose, subject to written notice delivered in person or sent by first class United States mail at least fifteen (15) days in advance to each Owner of the time, place and purpose of such meeting. Following approval of the levy of any such special assessment, the vote of the

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owner(s) of at least a majority of the Lots shall establish the date or dates any such special assessment shall become due, and the manner in which it shall be paid to the Secretary-Treasurer for deposit in the Property Owners' Association account established and maintained in accordance with Section 4.08 hereof, for use consistent with the purpose or purposes for which such special assessment was levied.

**Section 4.10. Subordination of the Lien to Mortgages:** The lien of the assessments provided for herein against a Lot shall be subordinate to the lien of a recorded bona fide first mortgage covering such Lot and subordinate to any tax or special assessment lien of such Lot in favor of any governmental taxing or assessing authority. The sale or transfer of a Lot shall not affect the assessment lien. The sale or transfer of a Lot pursuant to bona fide mortgage foreclosure proceedings or any other bona fide proceeding in lieu thereof shall, however, extinguish the lien of such assessment as to any payment which became due prior to such sale or transfer. No such sale or transfer shall release a Lot from liability for any assessments thereafter becoming due or from the lien thereof.

**Section 4.11. Duties of Chairman and Secretary-Treasurer of the Property Owners' Association:** The Chairman and Secretary-Treasurer of the Property Owners' Association, or their designee, shall have the duties set forth in this Declaration, shall attend to and handle the day to day affairs of the Property Owners' Association and shall attend to handle such other duties delegated to them by the Owners. All acts taken and things done shall be



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measured by a standard of reasonableness and neither the Chairman nor the Secretary-Treasurer shall have any liability to an Owner, Owners or the Property Owners' Association unless acting in bad faith in a manner inconsistent with the terms and provisions of this Declaration. Notwithstanding the foregoing, in no event (except in the case of a bona fide emergency involving a total expenditure not exceeding One Thousand Dollars (\$1,000) or such other amount from time to time established by the Owners), shall either the Chairman or Secretary-Treasurer have any right, privilege or authority to contract for, solicit, hire or otherwise obtain services or materials which are not included within and covered by the budget then applicable or which are otherwise funded by a special assessment levied in accordance with Section 4.09 hereof.

**Section 4.12. Receipt For Payment:** The Property Owners' Association shall, within twenty (20) days after demand made at any time, furnish a receipt in writing signed by the Secretary-Treasurer of the Property Owners' Association, specifying that the assessment respecting a Lot has been paid or that certain assessments remain unpaid, as the case may be. Such receipts shall be conclusive evidence of payment of any assessment therein stated to have been paid.

#### **ARTICLE V**

##### **Lot Development**

**Section 5.01. Lot Development:** Prior to the development, improvement or alteration of, or the construction on or addition to, a Lot or

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Lots, the Owner(s) thereof shall first obtain written approval from Developer of the Lot Development Plans as required by Article III of this Declaration. Any improvement, development or alteration of a Lot or Lots, and any construction thereon or addition thereto, shall strictly comply with this Article V. In the event of a conflict between a set of duly approved Lot Development Plans and the terms and provisions of this Article V, the terms and provisions of Article V shall control.

**Section 5.02. Type, Size and Nature of Construction**

**Permitted:** No structure or building shall be erected, planned or constructed in the areas designated "Common Area" or "Blocks". No single family dwelling house, garage, driveway, accessory building, fence, swimming pool, tennis court or other recreational facility permitted by this Declaration shall be erected, placed or altered on any Lot without the prior written approval of Developer or Property Owners' Association, respectfully, as required by this Declaration. Such approval shall be obtained prior to the commencement of construction and shall be subject to the following minimum standards:

- (a) No structure or building shall be erected, altered, placed or permitted to remain on any Lot other than one single family dwelling not exceeding two and one-half (2 1/2) stories in height, one private attached garage for a minimum of two (2) vehicles, maximum of three, and such other accessory buildings or structures related to swimming pools, tennis courts and other

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recreational facilities, including conservatories which are usual and incidental to the use of the Lot for single family residential purposes.

- (b) The minimum finished first floor area of a dwelling house constructed on a Lot, exclusive of open or screened porches, attached garages and basements or below grade levels, shall be Eleven Hundred Fifty (1,150) square feet for a two story dwelling and Two Thousand (2,000) square feet for a one story dwelling. Each two story dwelling shall have a minimum of Eight Hundred (800) square feet on the second story.
- (c) No single family dwelling house, garage or structure of any kind shall be moved onto any Lot and all materials incorporated into the construction thereof shall be new, except that used brick or interior design features utilizing other than new materials, may be approved by Developer. No house shall be constructed unless one-half (1/2) of the gross exterior is bricked, unless by written consent of Developer. No structure shall be placed or constructed on any Lot at any time for use as either a temporary or permanent residence or for any other purpose, except as reasonably required in connection with the construction of a single family dwelling on a Lot.
- (d) No accessory buildings shall be constructed on any Lot.

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Provided that an accessory pool house may be allowed with written permission of developer so long as the structure is made out of the same materials, or combination thereof, out of which the single family dwelling house on the same Lot is constructed.

- (e) The concrete or block foundation of any single family dwelling house or accessory structure constructed on a Lot shall be covered on the exterior with wood, brick or stone veneer so that no portion of the exterior thereof is left exposed above ground.
- (f) Each attached garage shall be designed as a part of the single family dwelling house to which it is attached. Further, garage doors shall remain closed except when entering, exiting or otherwise having the need to access the garage. The garage door opening shall be designed and constructed in such a manner to minimize, to the extent possible, any direct viewing from the dedicated public streets.
- (g) The roof of each single family dwelling house constructed on a Lot (excluding that portion of the roof covering the attached garage or open or enclosed porch) shall have a pitch of between 8-12 to 12-12 or greater unless otherwise approved by Developer as a part of Developer's approval of Lot Development Plans.
- (h) No house or attached garage shall contain aluminum or vinyl siding. Further, no plywood or other sheets of wood with

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dimensions of four (4) foot by eight (8) foot may be used for exterior siding.

- (i) No open loop geothermal heat pumps shall be allowed.

**Section 5.03. Tree Preservation:** Existing mature trees (having a trunk in excess of six (6) inches in diameter measured at a point three (3) feet from undisturbed ground) shall be preserved to the extent the removal thereof is not mandatory in connection with the construction of an approved single family dwelling house or accessory building unless the removal thereof is otherwise specifically approved by Developer or any such tree is dead or decayed and dangerous.

**Section 5.04. Completion of Construction:** All construction upon a Lot shall be completed in strict accordance with the Lot Development Plans approved by Developer. The exterior of any dwelling house built upon a Lot or combination of Lots shall be completed within eighteen (18) months after the date of commencement of the foundation and the site graded and any areas to be covered with grass shall be seeded or sodded. Each Lot shall be kept and maintained in a sightly and orderly manner during the period of construction. All builders will be required to utilize and pay for a thirty (30) cubic yard trash receptacle for each home during period of construction in order to properly dispose of debris. Every builder or owner shall be required to furnish a Port-o-Let for their workers during construction. However, multiple builders or owners may combine to provide Port-O-Lets to their workers provided there are

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at least two (2) Port-O-Lets for a combined number of twenty (20) workers.

During construction, owner is responsible for any damage to curbs previously installed in the Subdivision by Developer. In the event of damage to a curb by Owner, or Owners' builders, which requires said curb to be repaired or replaced, then, and in that event, the Developer shall cause said curb to be replaced and the costs of repair shall be paid by the Owner causing said damage.

The Developer and Property Owners' Association may utilize any and all assessment and collection remedies available under Article IV.

**Section 5.05. Storage Tanks:** No storage tanks, of any nature, for any use, shall be allowed on or be buried on any Lot.

**Section 5.06. Mailboxes:** All mailboxes installed throughout the Subdivision will be uniform and will be constructed and installed by the Owner in a material and design suitable to Developer at his sole discretion. Mailboxes shall be maintained by Owner and in good working order at all times.

**Section 5.07. Driveways:** No Lot shall be permitted to contain more than one driveway and each Lot shall be allowed only one cut onto a public road adjoining the property. A driveway constructed on any Lot to and from the Public Road shall be constructed and maintained so as to provide the sole means of ingress and egress to such Lots for vehicular traffic. Circular drives which provide more than one cut onto a public road may be allowed upon approval of the Developer.

The driveway on each Lot shall be cut and stone or gravel placed thereon

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prior to development or improvement of the Lot to the extent necessary to avoid the transmittal of mud from construction traffic to the Public Roads. Upon substantial completion of construction, each driveway shall be constructed of either hard mixed aggregate, concrete, asphalt, brick or other material acceptable to Developer.

Under no conditions shall driveways be constructed over curb inlets of the storm sewer system within the right-of-way of the public road. No asphalt or concrete driveway shall be placed behind a curb containing these inlet grates.

**Section 5.08. Fences, Walls, Hedges or Shrub Plantings:** No fence, wall, hedge or other screening shall be erected, placed, altered or permitted to remain on any Lot other than as approved (as to location, type, materials, design and height) by Developer under Article III of this Declaration. In no such situation shall these structures or plantings be placed within platted drainage, utility and landscape easements or within the right-of-way of a public street.

**Section 5.09. Sewage Disposal Systems:**

- a) **Installation:** Private sewage disposal systems (septic systems) are prohibited on all Lots in the Subdivision as this development will be served by the Town of Zionsville Municipal Sanitary Sewage Treatment System.

**Section 5.10. Ditches and Swales:** The Owner of any Lot on which any part of a drainage tile, open storm drainage ditch or swale is situated shall keep such portion thereof as may be situated upon his Lot or Lots continuously

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unobstructed and in good repair, and shall provide for the installation of such culverts upon said Lots as may be reasonably necessary to accomplish the purposes of this subsection, all at each such Owner's own cost and expense.

**Section 5.11. Ponding and Runoff:** No owner shall cause or permit any pond to be created on any Lot, including without implied limitation, from any swale, ditch, stream or creek located on the Real Estate. Further, each owner shall prevent water run-off and the depositing of soil and mud from the Lot onto the street through the use of silt fences installed during the home building process. To the extent that an Owner permits, causes or allows mud to enter onto the streets or private roadways in the Subdivision, during construction or otherwise, the Developer reserves the right to clean the streets and bill or assess the Owner for said costs. The Owner shall pay or reimburse to Developer the reasonable charge for street cleaning and maintenance within thirty (30) days after being billed or assessed thereto. The Developer and Property Owners' Association may utilize any and all assessments and collection remedies available under Article IV. Owner shall comply with all soil erosion plans and conditions as set out in 327 I.A.C. 15 and shall indemnify and hold the Developer harmless from any and all violations by owner or owners, designated employees, representatives, contractors or sub-contractors.

**Section 5.12. Antenna Discs or Other Similar Structures:** Satellite dishes may be erected and placed within the single family residence constructed on the Lot provided that said antenna disc, tower or structure is concealed from



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external view and placed within the structure itself.

**Section 5.13. Subsurface Drains:** Each Lot in the Subdivision has been provided with a four (4) inch tile drainage outlet for the purpose of accepting the flow from sump pumps and downspout drains. These tiles flow into six (6) inch diameter interceptor drains located under the street curb and eventually they outlet into the storm sewer manholes. In no situation shall sump pump or downspout drains be outletted directly to the surface of the street.

Gravity drainage from downspouts may be drained into ravines at the rear of Lots only in situations where the downspout is located below the elevation of the street drain. All floor drains shall drain into the sewage disposal system of the home. In no situation shall sump pumps be outletted into the sanitary sewer system of the home or in a ravine behind the home.

**Section 5.14. Pond Fountains:** The retention ponds shown as "Common Area" or "Blocks" on the plat shall contain pump fountains which shall be paid for and maintained by the Property Owners' Association. There shall be a minimum of one (1) fountain per pond.

**Section 5.15. Compacted Fill Material On Lots:** Lots may contain compacted fill material. This soil, although it has been properly compacted, may not contain similar engineering properties of undisturbed soil for the purpose of foundation construction. Owners shall be solely responsible for soil compaction, or lack thereof, and each Owner shall hereby relieve the Developer of any and all responsibility or liability for disturbed or undisturbed soil as it

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relates to the Owner's construction process, or any other. Developer makes no promises, representations or warranties, either express or implied, as to the nature, quality or compaction of the soil on any individual Lot as each owner is responsible for testing and determining the quality and characteristics of soil on their respective Lot.

**Section 5.16. Treehouses and Playground Equipment.** No treehouses will be allowed on any Lot in the Subdivision. Further, any and all playground equipment shall be made of wood as its primary building material. In no event shall any playground equipment be allowed that uses metal or plastic as its primary building material. The location and installation of any playground equipment shall be done only with the express written approval of Developer.

## **ARTICLE VI**

### **Use and Maintenance of Lots**

**Section 6.01. Vehicle Parking:** No camper, motor home, truck, trailer or boat may be parked or stored overnight or longer on any Lot in open public view. Further, no vehicles as set out above, including automobiles, light trucks or pickups, shall be parked or stored on the private roadways or common areas throughout the Subdivision.

**Section 6.02. Home Occupations:** No home occupation shall be conducted or maintained on any Lot other than one which is incidental to a business, profession or occupation of the Owner or occupant of such Lot and which is generally or regularly conducted at another location which is away

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from such Lot. No signs of any nature, kind or description shall be erected, placed or permitted to remain on any Lot advertising a permitted home occupation.

**Section 6.03. Signs:** No sign of any kind shall be displayed to public view on any Lot except that one two-sided sign (not exceeding six (6) square feet per side) may be displayed at any time for the purpose of advertising the property for sale, or may be displayed by a builder to advertise during construction, provided that, said sign is submitted and approved in writing by Developer.

**Section 6.04. Maintenance of Tracts and Improvements:** The Owner of any Lot shall at all times maintain the Lot and any improvements situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly and, specifically, each such Owner shall:

- (i) Mow such portion of the Lot or Lots upon which grass has been planted at such times as may be reasonably required;
- (ii) Remove all debris or rubbish;
- (iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance;
- (iv) Keep the exterior of all improvements in such a state of repair and maintenance as to avoid their becoming unsightly.

**Section 6.05. Animals:** Only dogs, cats and similar animals generally and customarily recognized as household pets, not exceeding in the aggregate two (2) in number, may be kept or maintained on any Lot as household pets. In

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the event that two (2) pets are maintained, nor more than one (1) per species shall be allowed. All animals kept or maintained on any Lot in this Subdivision shall be kept reasonably confined by means of leash, invisible fencing, or other product similar thereto, so as not to become an annoyance or nuisance. No animal shall be kept or maintained on a Lot for commercial purposes or primarily for breeding purposes.

**Section 6.06. Garbage, Trash and Other Refuse:** The outside burning of garbage or other refuse shall not be permitted on any Lot, nor shall any outside accumulation of refuse or trash be permitted on any Lot. Each single family dwelling house built shall be equipped with a garbage disposal unit of a type, kind and capacity approved by Developer, and once installed, each such unit shall be kept and maintained in good working order so as to be and remain environmentally acceptable. Trash receptacles will be supplied by the Property Owners' Association under a contract with a waste removal company and be paid for by each individual Owner so to have common trash receptacles and collection throughout the neighborhood. In no event shall any owner allow a trash receptacle to remain outside for longer than a twenty-four (24) hour period of time.

**Section 6.07. Nuisances:** No noxious or offensive activity shall be conducted upon any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood or another Owner.

**Section 6.08. Maintenance of Undeveloped and Unoccupied**

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**Lots:** Owners of undeveloped or unoccupied Lots shall at all times keep and maintain such Lots in an orderly manner, causing weeds and other growths to be reasonably cut and shall prevent the accumulation of rubbish and debris thereon.

**Section 6.09. Property Owners' Association's Right To Perform**

**Certain Maintenance:** In the event that the Owner of any Lot in this Subdivision fails to reasonably maintain such Owner's Lot and any improvements situated thereon in accordance with the provisions of this Article VI, or as otherwise required by this Declaration, the Property Owners' Association, by and through its agents, employees or contractors, shall have the right, but not the obligation, following notice in writing to such Owner of an intention to do so unless reasonable maintenance as detailed in such notice is performed and the expiration of twenty (20) days thereafter without such maintenance being done, to enter upon such Lot without being a trespasser to repair, mow, clean, or perform such other acts as may be reasonably necessary to make such Lot and the improvements situated thereon, conform to the requirements of this Article VI, or as otherwise set forth in this Declaration. The out-of-pocket costs incurred by the Property Owners' Association in connection therewith shall be collectible from the Owner(s) of any such Lot and shall represent a lien against any such Lot until paid in full together with interest thereon, cost of collection and attorneys fees, all without relief from valuation and appraisal laws, as if constituting an unpaid general assessment levied under Article IV of this Declaration. Neither the Developer or Property

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Owners' Association nor any of its agents, employees or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

**Section 6.10. Retention Ponds, Common Areas:** Certain Common Areas of the platted Subdivision consist of retention ponds that provide for the accumulation of water throughout the Subdivision. These retention ponds will be maintained by the Property Owners' Association with the association to have specific easement rights to access the retention ponds for maintenance purposes. Ice fishing, ice-skating or other water activities shall be specifically prohibited on any of the retention ponds. Further, swimming, boating and canoeing are similarly prohibited on the retention ponds.

**Section 6.11. Replat of Lots in Section 5:** The Owners of Lots in the Subdivision are put on notice that Developer may replat and/or amend Section 5 in the event the Developer deems it necessary or desirable to provide for further development in the area. Specifically, Lots 260 - 266, inclusive, may be re-platted to provide for a through street from the Subdivision to County Road 975E. The Owners of Lots in the Subdivision hereby waive any and all remonstrance, objection and notice of such a replat and amendment and specifically give their express and implied consent and permission to such a replat by the Town of Zionsville administrative and legislative bodies. The replatting or amending of platted Lots, if any, will be subject to the conditions and restrictions contained in this Declaration, and any amendments thereto.

Further, the Owners of Lots in the Subdivision hereby waive any notice and remonstrance to application for annexation, primary or secondary plat approval to the real estate described in Exhibit "A".

## ARTICLE VII

### Easements

**Section 7.01. Easements:** The strips of ground shown on the survey of Lots attached hereto and designated Drainage and Utility Easements ("DE", "UE" or "D" & "UE") either separately or together, are hereby created for the use (including required ingress and egress necessary as a part thereof) of public utility companies, the Town of Zionsville, The Preserve at Spring Knoll Property Owners' Association, and the owners of Lots herein as follows:

"Drainage Easements" (D.E.) are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of this and adjoining ground and/or the public drainage system. No structures, including fences, shall be built on a Drainage Easement which obstruct flow from the area being served, nor shall any changes be made in the finished grade elevations of any Lot, whether in connection with the construction of improvements thereon or otherwise, so as to modify, alter or change the location or depth of any drainage swales, ditches or creeks located within any such Drainage Easement without the approval of all Federal, State, County or Municipal authorities from whom approvals are required by law, or which would in any way prohibit, impede, restrict or alter the natural flow of surface water drainage.

"Utility Easements" (U.E.) are created for the use of public utility companies, not including transportation companies, for the installation, operation and maintenance of sanitary sewers and water mains, ducts, poles, lines and wires necessary to provide utility service to a Lot or Lots, subject to the condition that following any installation or maintenance, the affected area within such Utility Easement shall be returned to the condition existing prior thereto at the cost and expense of

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the party responsible for having such work performed.

The Owners shall take title to the Lots subject to the foregoing easements rights in, along and through the strips of ground properly designated as hereinabove set forth on the recorded survey of the Lots for the purposes herein stated.

### ARTICLE VIII

#### General

**Section 8.01. Waiver of Damages:** Neither the Developer, their nominees, representatives or designees, shall be liable for any claim for damages whatsoever arising out of or by reason of any acts taken (or not taken) or things done or performed (or not done or performed) pursuant to any authorities reserved, granted or delegated pursuant to this Declaration.

**Section 8.02. Enforcement:** The right to enforce the restrictions contained in this Declaration and all covenants and restrictions contained herein including, but not limited to, the right of injunctive relief, or the right to seek the removal by due process of law of structures erected or maintained in violation of this Declaration, is hereby given and reserved to Developer, Property Owners' Association and the Owners from time to time of Lots and all parties claiming under them, the Zionsville Plan Commission, Town of Zionsville, all of whom shall have the right, individually, jointly or severally, to pursue any and all remedies, in law and equity available under applicable Indiana law, without being required to show actual damage of any kind



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whatsoever, and shall be entitled to recover, in addition to appropriate monetary damages, if any, reasonable attorneys' fees and other legal costs and expenses incurred as a result thereof.

**Section 8.03. Severability:** The provisions of this Declaration shall be severable and no provision shall be affected by the invalidity of any other provision to the extent that such invalidity does not also render such other provision invalid. In the event of the invalidity of any provision, this Declaration shall be interpreted and enforced as if all invalid provisions were not contained herein.

**Section 8.04. Non-Liability of Developer:** Developer shall not have any liability to an Owner or to any person or entity with respect to drainage on, over, under or through a Lot. Upon the improvement and development of a Lot, the proper handling of storm and surface water drainage shall be the responsibility of the Owner of such Lot, and each Owner by the acceptance of a deed to a Lot, shall be deemed to and does thereby release and forever discharge Developer from, and shall indemnify and hold harmless Developer against, any and all liability arising out of or in connection with the handling, discharge, transmission, accumulation or control of storm or surface water drainage to, from, over, under or through the Lot described in such deed.

**Section 8.05. Public Liability and Property Damage**

**Insurance:** Each Owner shall obtain and pay for such public liability and property damage insurance as may be desired to provide protection against loss,

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cost and expense by reason of injury to or the death of persons or damage to or the destruction of property occurring on or about each such Owner's Lot.

**Section 8.06. Binding Effect:** This Declaration, and the covenants, conditions and restrictions herein contained shall be binding upon Developer, each Owner and any person, firm, corporation or other legal entity now or hereafter claiming an interest in any Lot and their or its respective successors or assigns.

**Section 8.07. Duration:** This Declaration and the restrictions imposed hereby shall run with the Real Estate and shall be binding on all Owners and all persons claiming under them for an initial period of twenty-five (25) years from the date of recordation, and shall automatically extend for successive periods of ten (10) years each, unless prior to the expiration of the initial period of any ten (10) year period they are amended or changed.

**Section 8.08. Amendments to Declaration:** Notwithstanding the above, Developer hereby reserves the right unilaterally to amend and revise the standards, covenants and restrictions contained in this Declaration prior to December 31, 2003. Such amendments shall be in writing, executed by Developer, and recorded with the Recorder of Boone County. No such amendment, however, shall restrict or diminish the rights or increase or expand the obligations of Owners with respect to Lots conveyed to such Owners prior to the amendment or adversely affect the rights and interest of Mortgagees holding first mortgages on residences at the time of such amendment. Developer shall

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not have the right at any time to grant or establish any easement through, across or over any Lot which Developer has previously conveyed without the consent of the Owner of such Lot. This Declaration may be amended or changed at any time with approval in writing by a vote of at least Sixty Percent (60%) of all members entitled to vote as set out in Section 4.03. The amendments shall not become binding and effective until the date of recordation in the Office of the Recorder of Boone County, Indiana.

IN WITNESS WHEREOF, the undersigned have caused this Declaration of Covenants, Conditions and Restrictions to be executed on the day and in the year first above written

CARTER PROPERTIES, L.L.C.

By Robert P. Carter  
ROBERT P. CARTER,  
Manager and Member



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A part of the West Half of Section 27 and a part of the East Half of 28, all in Township 18 North, Range 2 East, in Eagle Township, Boone County, Indiana, described as follows:

BEGINNING at an iron pin marking the Northwest corner of said Section 27; thence North 89 degrees 19 minutes 30 seconds East (bearing system same as bearing system of SMITH MEADOWS Sec. I & II recorded in P.B. 9, p. 51 and P.B. 10, p. 31 in the Office of the Recorder of Boone County, Indiana), along the North line of the Northwest Quarter of said Section 27, 1900.30 feet to a PK Nail; thence South 00 degrees 18 minutes 50 seconds West 1321.57 feet to a 5/8" rebar with red cap; thence North 89 degrees 24 minutes 22 seconds East, along the South line of the Northeast Quarter of the Northwest Quarter of said Section 27, 790.00 feet to a 5/8" rebar with red cap at the Northeast corner of the Southeast Quarter of the Northwest Quarter of said Section 27; thence South 00 degrees 27 minutes 51 seconds West, along the East line of the West Half of said Section 27, 1438.97 feet to a 5/8" rebar with a red cap; thence North 69 degrees 13 minutes 31 seconds West 2777.61 feet; thence South 33 degrees 08 minutes 33 seconds West 157.19 feet; thence Northwesterly 7.16 feet to the West line of said Section 27, along an arc to the left and having a radius of 11,544.19 feet and subtended by a long chord having a bearing of North 56 degrees 52 minutes 32 seconds West and a length of 7.16 feet; thence South 00 degrees 32 minutes 32 seconds West along said West line, 101.01 feet to a 5/8" rebar with red cap on the centerline of the abandoned C. C. C. and St. Louis Railroad being North 00 degrees 32 minutes 32 seconds East 3302.40 feet from an iron pin marking the Southwest corner of said Section 27, said centerline being on a nontangent curve concave to the Southwest, the radius point of which lies South 33 degrees 22 minutes 41 seconds West 11,459.19 feet from said rebar; thence Northwesterly along said centerline and curve 1333.25 feet to the point of tangency of said curve (chord brg. - North 59 degrees 57 minutes 18 seconds West, chord - 1332.50 feet); thence North 63 degrees 17 minutes 17 seconds West, along said centerline, 22.18 feet to a 5/8" rebar with red cap; thence North 00 degrees 37 minutes 04 seconds East 676.13 feet to an iron pipe; thence South 89 degrees 55 minutes 27 seconds West 166.99 feet to a PK Nail on the West line of the Northeast Quarter of the Northeast Quarter of said Section 28; thence North 00 degrees 37 minutes 04 seconds East 617.61 feet to an iron pin marking the Northwest corner of the Northeast Quarter of the Northeast Quarter of said Section 28; thence North 89 degrees 52 minutes 44 seconds East 1344.99 feet to the POINT OF BEGINNING and containing 160.650 acres, more or less.

Exhibit "A"