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DECLARATION OF COVENANTS AND EASEMENTS

This Declaration of Covenants and Easements (the "Declaration"), executed this 8th day of November 2000, by The City of Carmel Redevelopment Commission (the "Declarant"),
WITNESSES:

Recitals

WHEREAS, Declarant owns in fee simple the real property located in Carmel, Indiana that more particularly is described in Exhibit A, attached hereto and incorporated herein by reference, and as may be amended from time to time as provided herein (the "Real Estate");

WHEREAS, the deeds conveying the Real Estate to Declarant were recorded in the Office of the Recorder of Hamilton County, Indiana, ~~XXXXXXXXXXXX~~ as Instruments No. 9809801724, 9809855135 and 990923665

WHEREAS, Declarant is developing the Real Estate as a City Center that will provide a balanced mixture of residential and retail facilities, dining options, a corporate office campus, and other facilities (the "Project");

WHEREAS, each designated parcel of real property within the Real Estate and the Project, as depicted on Exhibit B, attached hereto and incorporated herein by reference, and as may be amended from time to time as provided herein, is a "Parcel";

WHEREAS, except as otherwise provided herein, each Parcel shall remain a single Parcel for purposes of this Declaration, regardless of any subdivision or other segmenting of such Parcel;

WHEREAS, each owner of a Parcel is an "Owner"; provided that, if there are multiple owners of a Parcel, through any subdivision or other segmenting of such Parcel, then such multiple owners, collectively, are an "Owner";

WHEREAS, Parcel 1 depicted and described on Exhibit B-1, attached hereto and incorporated herein by reference, is the "Multi-Family Parcel";

WHEREAS, Parcels 2A and 2B depicted and described on Exhibit B-2, attached hereto and incorporated herein by reference, are collectively the "Office Parcel";

WHEREAS, Parcel 7 depicted and described on Exhibit B-3, attached hereto and incorporated herein by reference, is the "Public Amenities Parcel";

WHEREAS, Parcels 4 and 5 depicted and described on Exhibit B-4, attached hereto and incorporated herein by reference, are collectively the "Retail Parcel";

WHEREAS, Parcel 6 depicted and described on Exhibit B-5, attached hereto and incorporated herein by reference, is the "Single Family Parcel";

WHEREAS, notwithstanding anything to the contrary set forth herein, if (a) the Single Family Parcel is subdivided or otherwise segmented; and (b) a portion of the Single Family Parcel is used for retail or other commercial uses; then: (a) such portion shall: (i) become the "Commercial Parcel"; and (ii) be a Parcel, separate and distinct from the Single Family Parcel; and (b) the owner of the Commercial Parcel shall be an Owner, separate and distinct from the Owner of the Single Family Parcel

20000058577
Filed for Record in
HAMILTON COUNTY, INDIANA
MARY L. CLARK
On 11-22-2000 At 11:53 am.
DEC COV RES 96.00

WHEREAS, notwithstanding anything to the contrary set forth herein, if an owner's association is formed with respect to the Single Family Parcel (excluding the Commercial Parcel), then such owner's association shall be deemed to the Owner of the Single Family Parcel (excluding the Commercial Parcel);

WHEREAS, Declarant, the Owners, and the current and future mortgagees, grantees, successors, and assigns of Declarant and the Owners, collectively, are the "Parties in Interest";

WHEREAS, Declarant may acquire other real property adjacent to or near the Real Estate for development as a part of the Project (the "Adjacent Real Estate"), which real property Declarant may add to, and make a part of, the Project and the Real Estate either as: (a) part of one of the Parcels; or (b) a separate and distinct Parcel; and, thereafter, the Adjacent Real Estate shall be referred to, and constitute a part of, the Real Estate;

WHEREAS, each Parcel upon which a building is built, constructed, or erected is an "Improved Parcel", regardless of whether: (a) such Parcel has been subdivided or otherwise segmented; and (b) any subdivided or otherwise segmented portion of such Parcel is unimproved; and

WHEREAS, Declarant desires in this Declaration to provide for the construction, installation, use, operation, maintenance, repair, and replacement of improvements, sidewalks, walkways, equipment, fixtures, and facilities located within those portions of the Project that are defined or specified for the common benefit of the Owners in this Declaration;

Agreement

NOW, THEREFORE, Declarant: (a) for good and valuable consideration; (b) to facilitate the development of the Project as a City Center that will provide a balanced mixture of residential and retail facilities, dining options, a corporate office campus, a performing arts center, a museum/exhibit hall, and an amphitheater; and (c) upon the terms and conditions set forth in this Declaration: (a) declares, creates, makes, and reserves in this Declaration certain easements and covenants that shall bind, and shall inure to the benefit of, the Parties in Interest; and (b) reserves certain rights in this Declaration; which easements, covenants, and reserved rights are as follows:

- 1. Walkways.** Declarant hereby declares, creates, makes, and reserves the following access easements (the "Walkway Easements"): (a) perpetual and nonexclusive mutual easements appurtenant to the Parcels for the benefit of the Parcels, Declarant, the Owners, and all other Parties in Interest, each of which easements shall be in, on, under, over, above, across, and through the entirety of the Real Estate; and (b) easements in gross in favor of Declarant, each of which easements shall be in, on, under, over, above, across, and through the entirety of the Real Estate. The Walkway Easements, and all rights in and to the Walkway Easements, are declared, created, made, and reserved for the purposes of: (a) allowing pedestrians to walk over and across the common sidewalks and walkways that are located on the Real Estate outside of the public right-of-way (the "Common Walkways"); and (b) installing directional signage with respect to public rights-of-way and improvements located on the Real Estate; and (c) further developing the Project and the Adjacent Real Estate. All of the Walkway Easements shall be subject to: (a) subsequent limitation as provided in Sections 5 and 6; and (b) the covenants in Sections 9 and 10 regarding use and contributions for certain expenses (the "Owner Covenants").
- 2. Utilities.** Declarant hereby declares, creates, makes and reserves the following utility easements (the "Utility Easements"): (a) perpetual and nonexclusive mutual easements appurtenant to the Parcels for the benefit of the Parcels, Declarant, the Owners, and all other Parties in Interest,

each of which easements shall be in, on, under, over, above, across, and through the entirety of the Real Estate; and (b) easements in gross in favor of Declarant, each of which easements shall be in, on, under, over, above, across, and through the entirety of the Real Estate. The Utility Easements, and all rights in and to the Utility Easements, are declared, created, made, and reserved for the purposes of: (a) providing systems for general water delivery service, water delivery service for fire protection, sanitary sewer service, natural gas service, public electrical power service, public telephone service, and other communications services to the Parcels (collectively, the "Utility Systems"); and (b) further developing the Project and the Adjacent Real Estate. The Utility Systems shall include all equipment, fixtures, and facilities used in connection with the Utility Easements, such as mains, pipes, lines, valves, meters, lift stations, and other utility facilities. All of the Utility Easements shall be subject to: (a) subsequent limitation as provided in Sections 5 and 6; and (b) the Owner Covenants.

3. Drainage. Declarant hereby declares, creates, makes and reserves the following surface and storm water drainage easements (the "Drainage Easements"): (a) perpetual and nonexclusive mutual easements appurtenant to the Parcels for the benefit of the Parcels, Declarant, the Owners, and all other Parties in Interest, each of which easements shall be in, on, under, over, above, across, and through the entirety of the Real Estate. The Drainage Easements, and all rights in and to the Drainage Easements, are declared, created, made, and reserved for the purposes of: (a) providing a system of surface and storm water drainage for the entirety of the Project (the "Drainage System"); and (b) further developing the Project and the Adjacent Real Estate. The Drainage System shall include all equipment, fixtures, and facilities used in connection with the Drainage Easements, such as detention ponds, retention areas, ditches, tiles, pipes and lines, pumps, pump stations, sprinklers, wells, and other drainage facilities. As part of the Drainage Easements, the Drainage System shall include, without limitation, the "Project Detention Pond", which is depicted and described on Exhibit C, attached hereto and incorporated herein by reference. All of the Drainage Easements shall be subject to: (a) subsequent limitation as provided in Sections 5 and 6; and (b) the Owner Covenants. Notwithstanding anything to the contrary set forth herein: (a) each Owner shall have the right to discharge from its Parcel surface and storm water into the Drainage System in accordance with a drainage plan for that Parcel approved pursuant to Subsection 10(d)(ii) (the "Approved Drainage Plan"); and (b) the Drainage Easements shall not be limited in any way: (i) to prevent any Owner from discharging from its Parcel surface or storm water into the Drainage System in accordance with an Approved Drainage Plan; or (ii) that otherwise would have an adverse effect on any Owner discharging its surface or storm water into the Drainage System in accordance with an Approved Drainage Plan; without the express written consent of the affected Owner, as evidenced by an instrument executed by the Owner and recorded in the Office of the Recorder of Hamilton County, Indiana.

4. Rights Reserved. In conjunction with the declaration, creation, making, and reservation of the Walkway Easements, the Utility Easements, and the Drainage Easements (collectively, the "Declared Easements"), Declarant reserves the following rights, which rights are subject to the limitations set forth in Section 5:

- (a) Maintenance Rights. From time to time, and at any time, to install, service, maintain, repair, and replace any portion of the Common Walkways, the Utility Systems, or the Drainage System. The rights set forth in this Subsection, collectively, are the "Easement Maintenance Rights";
- (b) Additional Instruments. From time to time, and at any time, to execute and record, without the consent of any Owner or Party in Interest (except as provided in Section 6), additional instruments that Declarant determines to be necessary or appropriate to accomplish the purposes of Sections 1 through 4, which bind the Owners and Parties in Interest, and: (i) limit the area of any Declared Easement to

a defined or specified part of the Real Estate; (ii) define or specify the location of any Declared Easement relocated by Declarant pursuant to Subsection 4(c); or (iii) memorialize the abandonment or relocation of any Declared Easement pursuant to Subsection 4(c); provided that such additional instruments shall not increase the obligations, nor decrease the rights, of any Owner under this Declaration without such Owner's consent.

(c) Relocation. From time to time, and at any time, to abandon or relocate any one or more of the Declared Easements on any part of the Real Estate owned by Declarant, if Declarant determines that the abandonment or relocation is necessary or appropriate for: (i) compliance with any applicable laws, statutes, ordinances, rules, regulations, orders, or standards of any municipality or other political subdivision or governmental body or agency (the "Laws"); (ii) compliance with the requirements of any public utility provider or private utility company that provides storm water drainage service, general water delivery service, water delivery service for fire protection, sanitary sewer service, natural gas service, public electrical power service, public telephone service, and other communications services to the Parcels (the "Utility Provider"); (iii) the abandonment or relocation of another Declared Easement; (iv) the construction, erection, installation, or alteration of a building or other improvement; or (v) the further development of the Project or the Adjacent Real Estate. The rights set forth in this Subsection, collectively, are the "Easement Relocation Rights";

(d) Regulations. From time to time, and at any time, to promulgate commercially reasonable regulations concerning the use by the Owners, the occupants and tenants of buildings in the Project (the "Tenants"), and the visitors, invitees, and licensees of Declarant, the Owners, and the Tenants (the "Visitors") of: (i) the Common Walkways and the Walkway Easements; (ii) the Utility Systems and the Utility Easements; and (iii) the Drainage System and the Drainage Easements;

(e) Dedication. From time to time, and at any time, to assign or dedicate to: (i) any Utility Provider; or (ii) the City of Carmel, Indiana, or any of its commissions, agencies, or boards, or any other political subdivision or governmental body, commission, agency, or board (the "Municipality"); in whole or in part, any Common Walkway, any Utility System, or the Drainage System, together with: (i) the easements declared, created, made, and reserved for the Common Walkway, the Utility System, or the Drainage System assigned or dedicated; and (ii) any rights reserved to Declarant that reasonably are necessary or appropriate to enable the Utility Provider or the Municipality to provide adequate access, utility service, or surface drainage to the Parcels; and

(f) Provider Agreements. From time to time, and at any time, to enter into any agreement with any Utility Provider or Municipality that provides storm water drainage service, general water delivery service, water delivery service for fire protection, or sanitary sewer service, which agreement shall: (i) bind the Owners and the Parties in Interest; and (ii) declare or define the rights and obligations of Declarant, the Owners, the Parties in Interest, and the Utility Provider or the Municipality in connection with: (A) any such services provided by the Utility Provider or the Municipality; and (B) the use and maintenance of the Utility Systems or the Drainage System, as applicable, and the easements declared, created, made, and reserved for the Utility Systems or the Drainage System, as applicable.

5. **Rights Limited.** Notwithstanding anything to the contrary set forth herein:

(a) Detention Pond. Declarant shall not: (a) abandon or relocate the Project Detention Pond; or (b) limit the Drainage Easements in any way: (i) to prevent any Owner from discharging its surface or storm water into the Drainage System in accordance with an Approved Drainage Plan; or (b) that otherwise would have an adverse effect on any Owner discharging its surface or storm water into the Drainage System in accordance with an Approved Drainage Plan; without the express written consent of the affected Owner, as evidenced by an instrument executed by the Owner and recorded in the Office of the Recorder of Hamilton County, Indiana;

(b) Easement Limitations. Subject to the terms and conditions set forth in Section 6, and upon approval of the Construction Plans (as defined in Section 11) for a building, permanent parking area, or permanent sidewalk or walkway, the area of all Walkway Easements, Utility Easements, and Drainage Easements shall be deemed to be limited to that part of the Real Estate that is not under, over, or above a building or the foundation of a building, or over or above a permanent parking area; provided that the area of any Utility Easement or Drainage Easement may include that portion of the Real Estate that is under a permanent parking area, permanent driveway, or permanent sidewalk or walkway; provided that the use of such portion as a Utility Easement or Drainage Easement does not materially impair the use of the permanent parking area, permanent driveway, or permanent sidewalk or walkway.

(c) Material Interference. Declarant shall not exercise any rights reserved to Declarant in Section 4 in a manner that materially interferes with the lawful and intended use of any Parcel; provided that in no event shall an abandonment or relocation of any one or more of the Declared Easements be deemed to be a material interference if: (i) Declarant complies with the terms and conditions of Subsections 4(c), 4(f) and 5(a), if applicable; and (ii) such abandonment or relocation is necessary or appropriate for compliance with: (a) any Law; or (b) the requirements of any Utility Provider, and

(d) Damage. The Declarant and/or any permitted party exercising the rights reserved to Declarant in Section 4 that damages any parking area, sidewalk, walkway, lighting, landscaped area, building or other surface improvements (collectively, the "Surface Improvements") when exercising such rights shall restore the damaged Surface Improvement to a condition substantially the same as the condition that existed before such damage occurred.

6. **Nature and Assignment.**

(a) Defined Easements. Notwithstanding anything to the contrary set forth herein, any Declared Easement may be limited to a defined or specified part of the Real Estate (the "Defined Easements") by an additional instrument (the "Easement Instruments") executed by Declarant pursuant to its reserved rights in Section 4(b); provided that, if the Declared Easement to be limited is located on a Parcel that is not owned by Declarant, then the Easement Instrument limiting that Declared Easement must be executed by the Owner of the Parcel on which the Declared Easement is located. Except as expressly provided in this Subsection, no pictorial representation, legal description, other description, construction, installation, or use shall be deemed to limit, define, or specify any Declared Easement.

(b) Permanent Easements. Except as provided in this Section, all Declared Easements (subject to the limitation thereof by Declared Easements becoming Defined Easements) shall be perpetual and permanent. Each appurtenant Declared Easement, and the benefits thereof, shall: (i) run with the land benefitted by the appurtenant Declared Easement; and (ii) inure to the benefit of Declarant and the Owners of the benefitted Parcels, and to all other Parties in Interest as to such Parcels. Each Declared Easement in gross, and the benefits thereof, shall inure to the benefit of Declarant. Each appurtenant Declared Easement and Declared Easement in gross, and the burdens thereof, shall: (i) run with and bind the land burdened by such appurtenant Declared Easement or burdened by the Declared Easement in gross; and (ii) bind the Owners of the burdened Parcels and all other Parties in Interest as to such Parcels.

(c) Instruments of Conveyance. Each instrument that conveys, grants, transfers, creates, assigns, or mortgages any interest in a Parcel that is benefitted by a Declared Easement or that is burdened by a Declared Easement (the "Instrument of Conveyance") shall be deemed: (i) (unless the Instrument of Conveyance expressly states otherwise) to assign, as an appurtenance to the interest in the Parcel, the right to the nonexclusive use and benefit of the Declared Easement that benefits the Parcel (regardless of whether the Instrument of Conveyance expressly assigns that right); and (ii) to impose, as a limitation or restriction upon the interest, the burden of the Declared Easement that burdens the Parcel (regardless of whether the Instrument of Conveyance expressly imposes such limitation or restriction). In no event shall any party except Declarant be deemed to be the holder or beneficiary of any Declared Easement in gross, or any right or interest therein.

(d) Conveyance by Declarant. On the date that Declarant conveys all of its ownership interest in all of the Parcels (including, without limitation, any additional Parcels added to the Real Estate pursuant to Section 12 that it owns at that time, all of the Declared Easements that are not Defined Easements, the benefits and burdens thereof, and the interests and rights of all parties therein, shall terminate and have no further force and effect, unless the development of the Project is not yet complete, in which case such Declared Easements shall terminate when the development of the Project is completed. Completion of the development for purposes of this Section shall be deemed to have occurred upon the expiration of the Development Period (as defined in Section 7).

7. Project Development. The period of developing the Project (the "Development Period") shall be deemed to be complete when Declarant executes and records an instrument in the Office of the Recorder of Hamilton County, Indiana, stating that the Development Period is completed (the "Completion Statement") or when all of the following conditions occur: (a) the construction, erection, and installation of all buildings and Surface Improvements in and on the Project are completed; (b) all Parcels are engaged fully in their permanent uses; (c) the construction and installation of the Common Walkways are completed; and (d) the construction and installation of the Utility Systems and the Drainage System are completed, each building in or on the Project is adequately served by the Utility Systems, and all Parcels are served adequately by the Drainage System. Declarant shall record a Completion Statement in the Office of the Recorder of Hamilton County, Indiana, without the consent of any Owner or Party in Interest, and the Completion Statement shall be binding on all Owners and Parties in Interest.

8. Non-Dedication. This Declaration shall not be deemed to: (a) dedicate for public purposes any Declared Easement; (b) dedicate or assign to a Utility Provider or Municipality any Declared

Easement or the interest and rights of Declarant or the Owners in and to any Declared Easements (including, without limitation, the rights reserved to Declarant in Section 4); or (c) otherwise subject any Declared Easement to the control of any Utility Provider or Municipality. Declarant intends that all appurtenant Declared Easements shall be for the private use and enjoyment of Declarant and the Parties in Interest and shall remain the property of Declarant and the Parties in Interest; provided that this Section shall not be deemed to restrict in any way the rights reserved to Declarant in Section 4. If Declarant dedicates or assigns any Declared Easement to any Utility Provider or Municipality (or consents to such dedication or assignment as provided in Subsection 4(e)), then, to the extent that the Utility Provider or the Municipality commits to maintain and repair, or to bear the expense of maintaining and repairing, any Declared Easement and the equipment, fixtures, and facilities used in conjunction therewith, the Owner Covenants shall not obligate Declarant or the Owners to maintain and repair, or bear the expense of maintaining or repairing, any such dedicated Declared Easement or the equipment, fixtures, and facilities used in conjunction therewith.

9. Use of Parcels.

(a) General Maintenance. Each Owner shall: (i) maintain its Parcel, and the Surface Improvements, and all other improvements on its Parcel, at all times in a good, safe, sanitary, clean, and sightly condition; (ii) store refuse, rubbish, debris, trash, and all other waste in a sanitary manner covered and screened from public view, and provide each building on its Parcel with waste collection and removal service at least twice each week; (iii) accept and make deliveries and drop-offs (and load and unload goods, merchandise, materials, and equipment) only: (A) during normal business hours for the business being conducted on that Owner's Parcel (unless Declarant first approves additional hours in writing); and (B) from the rear of the building on that Owner's Parcel (unless Declarant first approves a different location in writing); (iv) comply with all Laws (including, without limitation, zoning ordinances and use restrictions), and with any and all commercially reasonable rules that Declarant may promulgate from time to time during the Development Period (the "Rules"); and (v) comply with the screening, signage, and landscaping standards set forth on Exhibit D, attached hereto and incorporated herein by reference.

(b) Prohibitions. No Owner shall: (i) create, cause, or permit any nuisance to exist on its Parcel; (ii) cause or permit any unsightly condition, noxious or objectionable dust, gases, odors, or noises to exist on, or to emanate from, its Parcel; (iii) cause or permit any temporary structure (including, without limitation, sheds, shacks, and tents) to be built, constructed, erected, or installed on its Parcel (unless Declarant first approves the temporary structure in writing); (iv) cause or permit the storage of any inventory items, business furniture, fixtures or equipment, or any other material, item or object of any nature outside of a building (unless Declarant first approves the storage in writing); (v) cause or permit the storage, use, treatment, processing, handling, production, generation, disposal, release, or transportation of any explosive, combustible, radioactive, hazardous, or toxic material, substance, or waste (the "Hazardous Substances") in, on or from its Parcel, except for the lawful and commercially reasonable storage, use, handling, or transportation of those types and amounts of Hazardous Substances as may be necessary for typical operations of the nature permitted on its Parcel; provided: (A) that no Owner shall stockpile Hazardous Substances or otherwise store more Hazardous Substances on its Parcel than may be necessary to conduct with reasonable dispatch the operations permitted on its Parcel; (B) all storage, usage, and transportation of Hazardous Substances shall be conducted in compliance with the Laws and Rules; and (C) each Owner shall take all necessary and appropriate safety precautions in connection with such storage, usage, and transportation; (vi)

use (or cause or permit the use of) its Parcel for a purpose that materially interferes with the lawful and intended use of another Parcel; or (vii) attempt to dedicate any Declared Easement in favor of a Utility Provider or Municipality or limit a Declared Easement to be a Defined Easement (unless Declarant first approves the dedication or limitation in writing, which approval shall not be withheld or delayed unreasonably). Notwithstanding anything to the contrary set forth herein, neither: (i) the activities related to the construction, erection, and installation of buildings or Surface Improvements on any Parcel or any portion of the Adjacent Real Estate; nor (ii) the consequences of such construction activities; shall be deemed to be a violation of any of the terms or conditions of this Section (unless the activities materially and unreasonably interfere with the lawful and intended use of another Parcel).

10.

Maintenance and Contribution.

(a) Common Walkways. Each Owner shall: (i) provide its Improved Parcel with paved parking areas and vehicle loading facilities that serve Tenants of, and Visitors to, the buildings on its Improved Parcel; (ii) maintain and repair: (A) the parking areas, sidewalks, walkways, and loading facilities on its Improved Parcel so that they are safe for use by, and are adequate to serve, all Tenants of, and Visitors to, buildings on that Owner's Improved Parcel; and (B) the portions of the Common Walkways that are located on its Parcel so that such portions are in a good, safe, sound, sanitary, clean, and slightly condition; (iii) replace, in whole or in part: (A) the parking areas, sidewalks, walkways, and loading facilities on its Improved Parcel; and (B) the portions of the Common Walkways, if any, that are located on its Parcel; in each case when replacement is necessary to satisfy the obligations of the Owner under this Declaration; and (iv) procure and maintain policies of public liability insurance, in customary amounts, that insure the Owner and Declarant against liability for property damage, personal injury, and loss of life occurring on, or in connection with, the use of the portion of the Common Walkways, if any, that are located on its Parcel

(b) Utility Systems. Each Owner shall: (i) maintain and repair the components of the Utility Systems that are located on its Parcel, so that such components are in: (A) good and safe condition; and (B) sound working order; and (ii) replace, in whole or in part, such components of the Utility Systems when replacement is necessary to satisfy the obligations of the Owner under this Declaration. If components of the Utility Systems that are located on a Parcel serve another Parcel, then, the Owner of the Parcel served by such components (the "Utility Utilizing Owner") shall pay to the Owner of the Parcel on which such components are located (the "Utility Maintaining Owner") a share of the expenses incurred by the Utility Maintaining Owner in connection with maintaining, repairing, and replacing such components (the "Utility Component Expenses"), which share shall be based on the proportion of: (i) the acreage of the Utility Utilizing Owner's Parcel served by such components; to (ii) the aggregate acreage of all Parcels served by such components. Notwithstanding anything to the contrary set forth in this Subsection, to the extent that any Utility Provider or Municipality maintains and repairs the Utility Systems or bears the expense of maintaining and repairing the Utility Systems, no term or condition of this Declaration shall obligate the Owners to maintain and repair the Utility Systems or to bear the expense of maintaining or repairing the Utility Systems.

(c) Utility Meters. Each Owner shall obtain all necessary approvals and permits, and pay any and all charges and fees, for the connection of that Owner's Parcel, and

the buildings on such Parcel, to utility services and/or the Utility Systems; and (iii) pay all charges and fees for usage or consumption of any utility services on or from that Owner's Parcel and the buildings on such Parcel.

(d) Drainage Systems.

(i) Declarant shall maintain and repair all portions of the Drainage System that are not located entirely on, and serving exclusively, one Parcel, including, without limitation, that Declarant shall maintain the Project Detention Pond (the "Common Portions of the Drainage System"). Declarant shall replace, in whole or in part, the Common Portions of the Drainage System when Declarant determines that replacement is necessary or appropriate to satisfy the obligation of Declarant to maintain and repair the Common Portions of the Drainage System under this Declaration. Each Owner that owns a Parcel that is served by components of the Common Portions of the Drainage System shall pay to Declarant a share of the expenses incurred by Declarant in connection with operating, maintaining, repairing, replacing, and landscaping such components (the "Common Drainage System Expenses"), which share shall be based on the proportion of: (A) the acreage of the Owner's Parcel served by such components; to (B) the aggregate acreage of all Parcels served by such components. The Common Drainage System Expenses shall include any and all amounts incurred by Declarant to: (A) maintain the landscaping of the areas immediately surrounding the Project Detention Pond and the other Common Portions of the Drainage System (and re-landscape such areas, as necessary); and (B) pay for the use, maintenance, repair, and replacement of off-site drainage ponds, equipment, fixtures, and facilities that provide or facilitate surface or storm water drainage from the Project.

(ii) Each Owner shall: (A) provide its Parcel with surface and storm water drainage that adequately channels, directs, or drains the surface and storm water in, on, or from the Parcel in accordance with a drainage plan approved by Declarant and the Municipality; and (B) maintain and repair the portions of the Drainage System that are located entirely on and exclusively serving the Owner's Parcel. Neither the Declarant nor any Owner shall change the surface grade of its Parcel in any way: (i) to prevent any Owner from discharging its surface or storm water into the Drainage System in accordance with an Approved Drainage Plan; or (b) that otherwise would have an adverse effect on any Owner discharging its surface or storm water into the Drainage System in accordance with an Approved Drainage Plan.

(e) Non-Compliance. If an Owner fails to comply with any Owner Covenant, then Declarant shall notify the Owner of such failure to comply, and, if the Owner does not comply within a reasonable time, then Declarant may: (i) enter in or upon any portion of the Owner's Parcel, or the Surface Improvements located on the Parcel, and cure the non-compliance; (ii) enjoin the non-compliance through an action at law or in equity; or (iii) institute an action at law or in equity for specific performance of the Owner Covenant. Any Owner that fails to comply with any

Owner Covenant shall: (i) promptly reimburse Declarant for all expenses that Declarant incurs in connection with curing the non-compliance; and (ii) be liable to Declarant for all costs that Declarant incurs in connection with enjoining such non-compliance (including, without limitation, attorneys' fees and legal costs).

(f) Contribution Payments. All amounts payable by an Owner (the "Contributing Owner") to Declarant or to another Owner (the "Maintaining Owner") pursuant to this Section (the "Contribution Payments") shall be deemed to be delinquent if the full amount thereof is not paid within 30 days after receipt by the Contributing Owner of an invoice for the amount payable. All delinquent Contribution Payments: (i) shall bear interest at 4% above the rate of interest that is designated by The Wall Street Journal as the prevailing prime rate (as revised or modified from time to time during the period when a Contribution Payment is delinquent); and (ii) together with the interest thereon, shall be a lien against the Contributing Owner's Parcel (the "Non-Payment Lien"); provided that the Non-Payment Lien shall be subordinate to any prior mortgage of record that is held by a mortgagee that is not an affiliate of the Contributing Owner. Notwithstanding anything to the contrary set forth herein: (i) this Declaration shall not impose any obligation or liability on any mortgagee until the mortgagee obtains fee simple ownership of a Parcel; and (ii) a mortgagee shall be liable for, and obligated to pay, only the Contribution Payments that are allocable to a Parcel after the date on which: (A) the mortgagee obtains fee simple ownership of that Parcel; or (B) the mortgagee assumes possession of that Parcel; whichever first occurs.

(g) Collection. Declarant or a Maintaining Owner may: (i) collect any delinquent Contribution Payment owed to it, and the accrued interest thereon, by any action at law or in equity; and (ii) foreclose the Non-Payment Lien. Any Contributing Owner that fails to pay a Contribution Payment before the payment becomes delinquent shall be liable to Declarant or the Maintaining Owner, as the case may be, for all costs that Declarant or the Maintaining Owner incurs in connection with: (i) collecting the Contribution Payment owed to it, and the accrued interest thereon; and (ii) foreclosing the Non-Payment Lien (including, without limitation, attorneys' fees and legal costs). Until the date on which the Contributing Owner pays to Declarant or the Maintaining Owner, as the case may be, the delinquent Contribution Payment, Declarant or the Maintaining Owner, as the case may be, in addition to its other remedies, may withhold from, or deny to, the Contributing Owner and all Tenants of, and Visitors to, the Contributing Owner's Parcel, use of: (i) in the case of Declarant, the Drainage System; and (ii) in the case of the Maintaining Owner, the components of the Common Walkways and/or the Utility Systems that are located on the Maintaining Owner's Parcel. Upon the request of an Contributing Owner or the mortgagee of a Parcel, Declarant or a Maintaining Owner, as the case may be, shall furnish the Owner or the mortgagee with information regarding any delinquent Contribution Payment, the accrued interest thereon, and any Non-Payment Lien on the Parcel.

11. Architectural Compatibility. No Owner shall build, construct, erect, or install a building, structure, sign, other Surface Improvement, or any other improvement (collectively, the "Improvements") on its Parcel, or alter any of the existing improvements on its Parcel (including, without limitation, reducing the number of parking spaces on the Parcel), until all of the following conditions are satisfied:

(a) Construction Plans. The Owner submits to a committee (the "Architectural Review Committee") consisting of: (i) three qualified representatives designated by

Declarant (the "Declarant Representatives"); and (ii) one qualified representative designated by each of the Owners of the Multi-Family Parcel, the Office Parcel, the Public Amenities Parcel, and the Retail Parcel; all plans, designs, and specifications for the proposed improvement or the proposed alteration of an existing improvement (including, without limitation, a site plan of the proposed improvement or the proposed alteration of an existing improvement) (the "Construction Plans");

(b) Construction Materials. The Owner submits to the Architectural Review Committee samples of any construction and finishing materials that Declarant may request (the "Construction Materials");

(c) Compliance. The Architectural Review Committee determines that the Improvements (as shown in the Construction Plans) appear to comply with, and will not cause a violation of: (i) the Laws; (ii) any and all reasonable rules, regulations, and directions that Declarant may promulgate from time to time concerning construction, erection, installation, and alteration of improvements; (iii) the screening, signage, and landscaping standards set forth on Exhibit D; and (iv) any development guidelines that may be adopted by the Architectural Review Committee, including, without limitation, that such Improvements will be constructed in the Georgian Colonial architectural style.

(d) Compatibility. The Architectural Review Committee determines that the Improvements and the Construction Materials are of a quality and nature that are compatible with the plans for the Project and any existing improvements in and on the Project and the Adjacent Real Estate; and

(e) Approval. The Architectural Review Committee approves the Construction Plans in writing; provided that the Architectural Review Committee may not approve the Construction Plans if the Construction Plans deviate from the standards set forth in Subsections 11(c)(iii) or 11(c)(iv) without the approval of at least two of the Declarant Representatives.

Determinations by the Architectural Review Committee pursuant to this Section shall be made reasonably, and approvals of the Architectural Review Committee required by this Section shall not be withheld or delayed unreasonably. Notwithstanding anything to the contrary set forth herein, any Construction Plans approved by Declarant prior to the date hereof shall be deemed to be approved by the Architectural Review Committee.

12. Addition of Adjacent Real Estate. Declarant hereby reserves the right, from time to time and at any time during the Development Period, to add and incorporate any portion of the Adjacent Real Estate into the Project, either as: (a) part of one of the Parcels; or (b) a separate and distinct Parcel (the "Additional Real Estate"). As of the date on which Declarant adds and incorporates the Additional Real Estate into the Project by amendment of this Declaration: (a) the Additional Real Estate shall be deemed to be included within the Real Estate and the Project; (b) all references in this Declaration to the "Real Estate" or to the "Project" shall be deemed to include the Additional Real Estate; (c) all references in this Declaration to "Parcels" shall be deemed to include all parcels of land within the Additional Real Estate; (d) all references in this Declaration to "Owners" shall be deemed to include all owners of a Parcel within the Additional Real Estate; (e) all references in this Declaration to "Parties in Interest" shall be deemed to include all Owners of Parcels in the Additional Real Estate, and all current and future mortgagees, grantees, assigns, and successors of the Owners of Parcels in the Additional Real Estate; and (f) all easements created by this Declaration shall bind, benefit, burden, and run with the Additional Real Estate, as provided in Section 6.

13. Amendments. Declarant hereby reserves the right, from time to time and at any time during the Development Period, to modify, supplement, or amend this Declaration, without the consent of any Owner or Party in Interest; provided that: (a) Declarant records the modification in the Office of the Recorder of Hamilton County, Indiana; and (b) the modification is for any one or more of the following purposes: (i) to extend the terms and conditions of this Declaration to bind and benefit the Annexed Real Estate and the Owners of Parcels within the Annexed Real Estate; (ii) to clarify one or more terms or conditions of this Declaration, without materially changing the substance hereof, (iii) to clarify, further define, or limit any easement, or otherwise to exercise any rights reserved in Section 4; or (iv) to change the substance of one or more terms or conditions of this Declaration; provided that such change shall not materially increase the obligations, nor materially decrease the rights, of any Owner under this Declaration without such Owner's consent, unless such change is necessary to comply with the Laws. Upon request from time to time, each Owner shall execute and deliver any further instruments or documents: (a) supplementing or confirming amendments to this Declaration; or (b) that reasonably may be required by any financial institution as mortgagee of (or as a condition precedent to making any mortgage loan secured by) any Parcel or Parcels, provided that such instruments or documents do not increase the obligations, nor decrease the rights, of any Owner under this Declaration without such Owner's consent. After the Development Period, this Declaration may be modified, supplemented, or amended only by a written instrument that is: (a) executed by Owners that, in the aggregate, own 66% or more of the acreage within the Real Estate; and (b) recorded in the Office of the Recorder of Hamilton County, Indiana; provided that such modifications, supplements, and amendments do not materially increase the obligations, nor materially decrease the rights, of any Owner under this Declaration without such Owner's consent.

14. Severability. The invalidity or unenforceability of any term or condition of this Declaration shall not affect the validity and enforceability of any other term or condition of this Declaration. The terms and conditions of this Declaration shall be governed by, and construed in accordance with, the laws of the State of Indiana. All references in this Declaration to "Owners" shall be deemed to be references to Declarant, unless and until Declarant conveys all of its ownership interest in and to all of the Parcels, and except when a reference to "Owners" expressly excludes Declarant.

15. Multi-Family Parcel Easements. Notwithstanding anything to the contrary set forth herein, the Multi-Family Parcel shall be subject only to Declared Easements for utilities and to no other Declared Easements. The Declared Easements for utilities hereby are limited by Declarant solely to, and are deemed to be Defined Easements with respect to the Multi-Family Parcel solely as to, the areas depicted and/or described on Exhibit E, attached hereto and incorporated herein by reference. In addition to the Defined Easements, the Declarant also declares, creates, makes and reserves the following access easement: an easement in gross in favor of Declarant, which easement shall be in, on, over, above and across that portion of the Multi-Family Parcel depicted and described as the "Ingress-Egress Easement" on Exhibit E, attached hereto and incorporated herein by reference (the "Access Easement"). Use of the Access Easement by the Declarant shall be for the sole purpose of accessing, maintaining and preserving that portion of the Real Estate depicted as "Wetlands Parcel #2 on Exhibit B-1. Declarant's use of the Access Easement shall not in any material way interfere, disrupt, disturb or otherwise affect the use of the Multi-Family Parcel by the Owner thereof, its officers, directors, members, partners, employees, agents, tenants, sub-tenants, licensees or invitees. In the event that Declarant, its officers, employees, agents, licensees or contractors disturb, damage or otherwise change the condition of that portion of the Real Estate subject to the Access Easement or to any Surface Improvements located thereon, Declarant promptly shall restore the property and/or the Surface Improvements to the condition existing prior to entry on and damage to the property. The Construction Plans for construction of Improvements on the Multi-Family Parcel that are attached to, and/or referenced in, the Project Agreement by and between Declarant and the Owner of the Multi-Family Parcel, dated November 2, 1999, as amended to date, have been approved by Declarant and are not subject to review and approval by the Architectural Review Committee pursuant to Section 11.

16. **Remaining Parcels.** Notwithstanding anything to the contrary set forth herein, the Declared Easements with respect to the Office Parcel, the Public Amenities Parcel, the Retail Parcel, the Single Family Parcel, and, if applicable, the Commercial Parcel shall be limited to the areas depicted and/or described on exhibits that will be attached to, and incorporated by reference in, this Declaration as amendments pursuant to Sections 4 and 13.

IN WITNESS WHEREOF, Declarant has executed this Declaration of Covenants and Easements as of the date first written above, for filing of record in the Office of the Recorder of Hamilton, County, Indiana.

THE CITY OF CARMEL
REDEVELOPMENT COMMISSION

By: [Signature]
Printed: Richard A. Roesch
Title: President

ACKNOWLEDGMENT

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for the State of Indiana, personally appeared Richard A. Roesch, the President of The City of Carmel Redevelopment Commission, who, having first been duly sworn, acknowledged the execution of the foregoing Declaration of Covenants and Easements for and on behalf of such entity.

Witness my hand and Notarial Seal this 8th day of November, 2000.

By: [Signature]
Notary Public

Printed Name: Phyllis G. Mottissey



My commission expires: 7/25/2007
I am a resident of Hamilton County, Indiana.

This instrument was prepared by Jennifer R. Shoup, Attorney-At-Law, Wallack Somers & Haas, One Indiana Square, Suite 1500, Indianapolis, Indiana, 46204.

INDEX TO EXHIBITS

Exhibit A	Real Estate
Exhibit B	Designated Parcels
Exhibit B-1	Multi-Family Parcel
Exhibit B-2	Office Parcel
Exhibit B-3	Public Amenities Parcel
Exhibit B-4	Retail Parcel
Exhibit B-5	Single Family Parcel
Exhibit C	Project Detention Pond
Exhibit D	Screening, signage, and landscaping standards
Exhibit E	Limitation of Declared Easements on Multi-Family Parcel

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Exhibit A - Real Estate Plan

11 October 2000

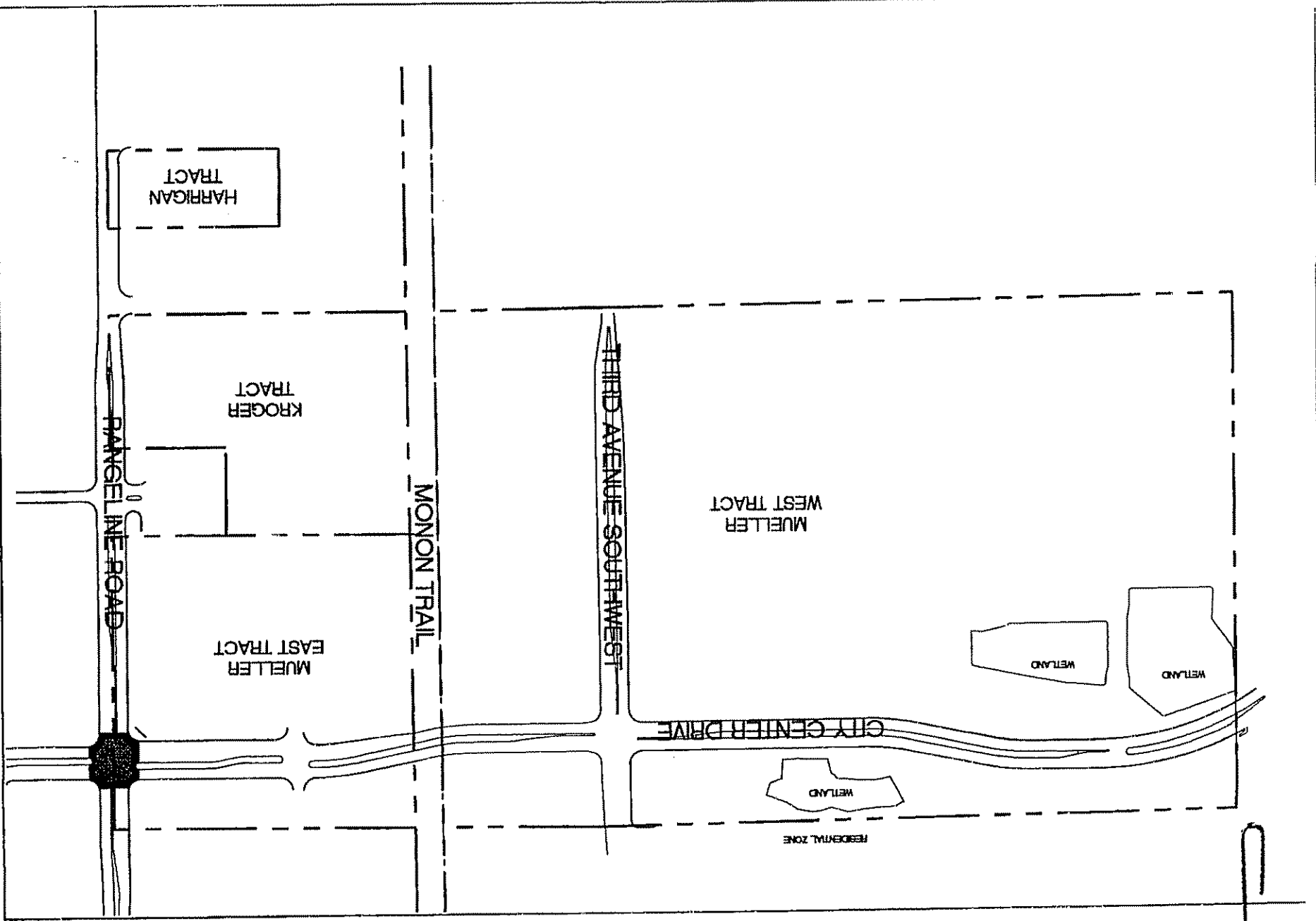


Exhibit A - Mueller Tract

11 October 2000



EAST TRACT (Mueller Property East of the Right-of-Way of the Former Monon Railway)
A part of the Northeast Quarter of Section 36, Township 18 North, Range 3 East, Hamilton County, Indiana, described as follows: BEGINNING at the brass plug found at the northeast corner of said quarter section, said corner being North 00 degrees 13 minutes 54 seconds West 2,648.02 feet, measured along the east line of said quarter section, from the brass plug found at the southeast corner of said quarter section; thence South 00 degrees 13 minutes 54 seconds East 628.97 feet along the east line of said quarter section to the northeast corner of that land described in the deed to Huffer as recorded in Instrument No. 9709731574, in the Office of the Recorder of Hamilton County, thence South 89 degrees 12 minutes 13 seconds West 700.45 feet along the north line of said Huffer land and the north line of that land described in the deed to City of Carmel Redevelopment Commission as recorded in Instrument No. 9809801724, in said Recorder's office, to the northwest corner of said Redevelopment Commission land and the east line of the right-of-way of the former Monon Railway, thence North 00 degrees 51 minutes 54 seconds West 628.94 feet along said east line to the north line of said quarter section; thence North 89 degrees 12 minutes 13 seconds East 707.40 feet along said north line to the point of beginning and containing 10.164 acres, more or less.

WEST TRACT (Mueller Property West of the Right-of-Way of the Former Monon Railway)
A part of the Northeast Quarter of Section 36, Township 18 North, Range 3 East, Hamilton County, Indiana, said corner being North 00 degrees 13 minutes 54 seconds West 2,648.02 feet, measured along the east line of said quarter section, from the brass plug found at the southeast corner of said quarter section; thence South 89 degrees 12 minutes 13 seconds West 773.40 feet along the north line of said quarter section to the west line of the right-of-way of the former Monon Railway and the POINT OF BEGINNING of this description; thence South 00 degrees 51 minutes 54 seconds East 1,187.94 feet along said west line to the south line of the land described in the Affidavit subscribed and sworn to by Helen Moffitt Mueller as recorded in Miscellaneous Record 48, pages 462 and 463, in the Office of the Recorder of Hamilton County, thence South 89 degrees 12 minutes 13 seconds West 1,865.64 feet along said south line to the southwest corner of said Mueller land and the west line of said quarter section; thence North 00 degrees 11 minutes 57 seconds West 1,188.01 feet along said west line to the northwest corner of said quarter section; thence North 89 degrees 12 minutes 13 seconds East 1,851.83 feet along the north line of said quarter section to the POINT OF BEGINNING and containing 50.690 acres, more or less.

Legal Description:

Part of the North Half of the Northeast Quarter of Section 36, Township 18 North, Range 3 East in Hamilton County, Indiana, described as follows: Beginning at a point on the east line of the Northeast Quarter of Section 36, Township 18 North, Range 3 East 804.23 feet South 00 degrees 00 minutes 00 seconds (assumed bearing) from the Northeast corner of said Northeast Quarter, thence South 00 degrees 00 minutes 00 seconds on said east line 383.77 feet; thence South 89 degrees 27 minutes 30 seconds West parallel with the north line of said Northeast Quarter 694.27 feet to the easterly right of way line of the Monon Railroad; thence North 00 degrees 38 minutes 00 seconds West on said right of way line 559.00 feet to a point 628.97 feet South of said North line; thence North 89 degrees 27 minutes 30 seconds East parallel with said North line 461.33 feet to a point 239.12 feet South 89 degrees 27 minutes 30 seconds West of said East line; thence South 00 degrees 00 minutes 00 seconds East parallel with the east line of said Northeast Quarter 173.00 feet; thence North 90 degrees 00 minutes 00 seconds East 239.11 feet to the place of beginning, containing 7.993 acres, more or less.

Exhibit A - Kroger Tract

11 October 2000



EXHIBIT A - LEGAL DESCRIPTION

PART OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 18 NORTH, RANGE 3 EAST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE EAST LINE THEREOF DISTANT SOUTH THEREIN 1488 FEET FROM THE NORTHEAST CORNER THEREOF, THENCE SOUTH IN AND ALONG SAID EAST LINE 100 FEET, THENCE WEST 385.08 FEET, MORE OR LESS, TO A POINT IN THE CENTER LINE OF A CERTAIN POWER LINE EASEMENT GRANTED TO INDIANA RAILROAD, DATED AUGUST 2, 1939, RECORDED IN DEED RECORD 127, PAGE 11 IN THE OFFICE OF THE RECORDER OF HAMILTON COUNTY, INDIANA LAST ASSIGNED OF RECORD TO PUBLIC SERVICE COMPANY OF INDIANA, INC., BY ASSIGNMENT RECORDED IN DEED RECORD 130, PAGE 200 IN SAID RECORDER'S OFFICE, THENCE NORTH ALONG SAID CENTER LINE AS IT PRESENTLY EXISTS, 100 FEET, THENCE EAST 384.31 FEET, MORE OR LESS, TO THE PLACE OF BEGINNING.

EXCEPT THE WEST 10 FEET OF THE EAST 45 FEET OF THE ABOVE DESCRIBED REAL ESTATE.

AND

Part of the Northeast Quarter of Section 36, Township 18 North, Range 3 East in Hamilton County, Indiana, more particularly described as follows: Commencing at the Northeast corner of the Northeast Quarter of Section 36, Township 18 North, Range 3 East; thence South 00 degrees 00 minutes 00 seconds (assumed bearing) on and along the East line of said Northeast Quarter 1188.00 feet; thence South 89 degrees 27 minutes 30 seconds West 372.16 feet to the true place of beginning of this tract, said point being on the centerline of the old abandoned traction line right-of-way; thence continuing South 89 degrees 27 minutes 30 seconds West 308.11 feet to the Easterly right-of-way line of the Monon Railroad; thence South 00 degrees 38 minutes 00 seconds East on and along said right-of-way line 641.00 feet; thence South 89 degrees 42 minutes 30 seconds East 300.21 feet to the centerline of the aforesaid traction line right-of-way; thence North 00 degrees 04 minutes 15 seconds East on and along said centerline 645.40 feet to the place of beginning, containing 4.49 acres, more or less.

Exhibit A - Harrigan Tract

11 October 2000



CSO Architects
Engineers/Interiors



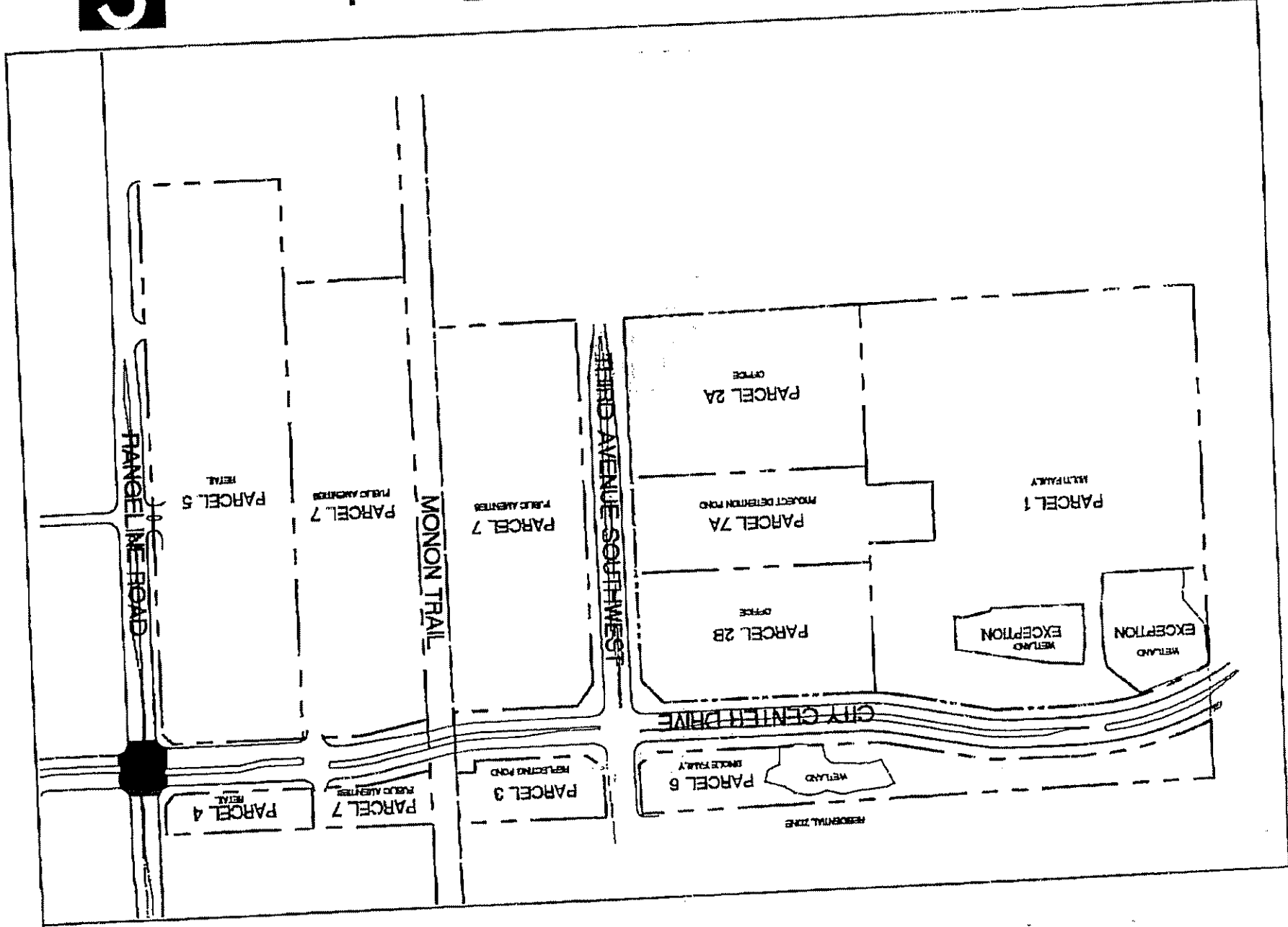
SSO Architects
Engineering

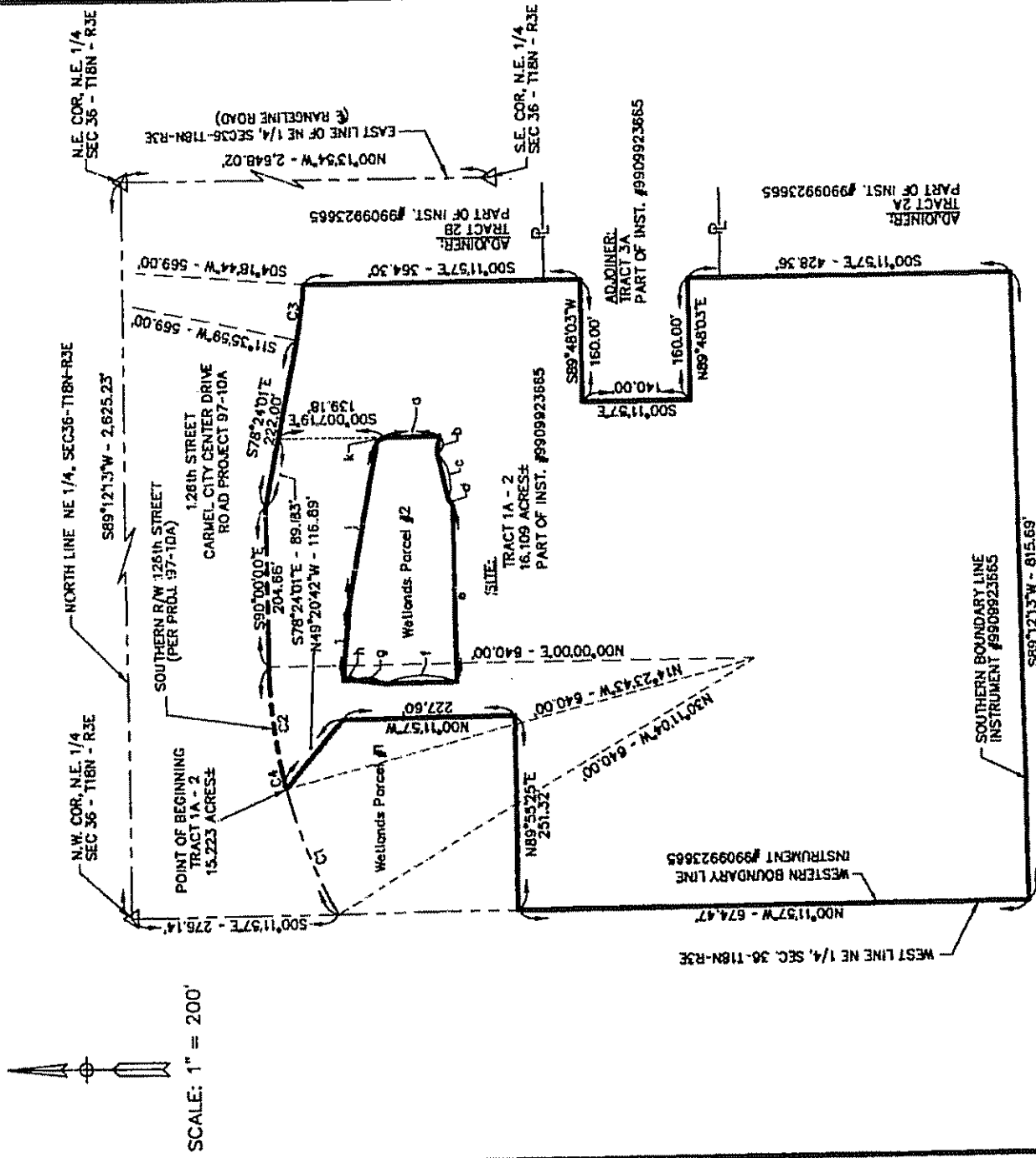
Exhibit B - Designated Parcels

11 October 2000



North





C1 CURVE DATA	C2 CURVE DATA	C3 CURVE DATA	C4 CURVE DATA
Δ = 15°47'21"	Δ = 14°23'44"	Δ = 07°17'15"	Δ = 30°11'04"
R = 640.00'	R = 640.00'	R = 569.00'	R = 640.00'
T = 88.75'	T = 80.83'	T = 36.24'	T = 172.60'
L = 176.37'	L = 160.80'	L = 72.57'	L = 337.17'
C = 175.81'	C = 160.38'	C = 72.32'	C = 333.28'

WETLANDS PARCEL #2 COURSES

- o = S00°07'19"E - 72.97'
- b = N82°23'18"W - 22.36'
- c = S77°22'28"W - 61.28'
- d = S54°11'05"W - 9.89'
- e = S89°48'03"W - 226.94'
- f = N00°12'20"W - 93.58'
- g = N07°37'10"E - 40.46'
- h = N00°11'57"W - 14.97'
- i = S84°06'49"E - 102.13'
- j = S79°03'11"E - 208.27'
- k = S33°26'12"E - 10.36'

TRACT 1A - 2

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 Consultants
 Engineers
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4165 MILLERSVILLE ROAD
 INDIANAPOLIS, IN 46205-2998
 (317) 547-5580 FAX: (317) 543-0270

DATE: 12/08/99	SHEET NO.
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JOB NO. 99-527	

DWG FILE: \\506\4\99\527\895276.E08A
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 PLOT ORIGIN: 0.00,0.00

SPELLCHK: 04/26/00 10:59:37
 EDIT DATE: JAB - 5135
 EDITED BY:

DESC. FILE: 99527D13A.dwg

EXHIBIT B-1 MULTI-FAMILY PARCEL

Tract 1A-2 Land Description
Part of Instrument Number 9909923665
Owned by City of Carmel Redevelopment Commission

Part of the Northeast Quarter of Section 36, Township 18 North, Range 3 East, Clay Township, Carmel, Indiana being more particularly described as follows:

Commencing at the brass plug found at the Northeast Corner of said quarter section, said corner being North 00 degrees 13 minutes 54 seconds West (an assumed bearing) 2,648.02 feet, measured along the east line of said quarter section, from the brass plug found at the southeast corner of said quarter section; thence South 89 degrees 12 minutes 13 seconds West 2,625.23 feet along the North Line of said quarter section to the iron pin with Woolpert cap set at the northwest corner of said quarter section; thence South 00 degrees 11 minutes 57 seconds East 276.14 feet along the West Line of said quarter section, said line also being the western boundary line of a tract of land as recorded in Instrument Number 9909923665 in the Office of the Recorder of Hamilton County, Indiana, to the southern right-of-way line of 126th Street as shown on the Carmel City Center Drive Road Plans Project No. 97-10A, said point being located on a non tangent curve concave to the southeast and being North 30 degrees 11 minutes 04 seconds West 640.00 feet from the radius point of said curve, the following five (5) courses are along the southern right-of-way line of 126th Street; 1) thence Northeasterly 176.37 feet along said curve to a point being North 14 degrees 23 minutes 43 seconds West 640.00 feet from the radius point of said curve and the POINT OF BEGINNING of this description; 2) thence Easterly 160.80 feet along said curve to a point being North 00 degrees 00 minutes 00 seconds East 640.00 feet from the radius point of said curve; 3) thence South 90 degrees 00 minutes 00 seconds East 204.66 feet; 4) thence South 78 degrees 24 minutes 01 seconds East 222.00 feet to a point of curvature to the left, said point being South 11 degrees 35 minutes 59 seconds West 569.00 feet from the radius point of said curve; 5) thence Southeasterly 72.37 feet along said curve to a point being South 04 degrees 18 minutes 44 seconds West 569.00 feet from the radius point of said curve; thence South 00 degrees 11 minutes 57 seconds East 364.30 feet parallel with said West Line; thence South 00 degrees 11 minutes 57 seconds East 140.00 feet parallel with said West Line; thence North 89 degrees 48 minutes 03 seconds East 428.36 feet parallel with said West Line; thence South 00 degrees 11 minutes 57 seconds East 428.36 feet parallel with said West Line to the southern boundary line of said Instrument Number 9909923665; thence South 89 degrees 12 minutes 13 seconds West 815.69 feet along the southern boundary line of said Instrument Number 9909923665 to said West Line of said quarter section, said line also being the western boundary line of said Instrument Number 9909923665; thence North 00 degrees 11 minutes 57 seconds West 674.47 feet along said West Line; thence North 89 degrees 55 minutes 25 seconds East 251.32 feet; thence North 00 degrees 11 minutes 57 seconds West 227.60 feet parallel with said West Line; thence North 49 degrees 20 minutes 42 seconds West 116.89 feet to the point of beginning, containing 16.109 acres more or less.

Excepting the following Wetlands Parcel #2:

Commencing at the brass plug found at the northeast corner of said quarter section, said corner being North 00 degrees 13 minutes 54 seconds West (an assumed bearing) 2,648.02 feet, measured along the east line of said quarter section, from the brass plug found at the southeast corner of said quarter section; thence South 89 degrees 12 minutes 13 seconds West 2,625.23 feet along the north line of said quarter section to the iron pin with Woolpert cap set at the northwest corner of said quarter section; thence South 00 degrees 11 minutes 57 seconds East 276.14 feet along the west line of said quarter section to a point in a non-tangent curve concave to the southeast, said point being North 30 degrees 11 minutes 04 seconds West 640.00 feet from the radius point of said curve, the next three(3) courses are along the proposed southern right-of-way of 126th Street; 1) thence Northeasterly and Easterly 337.17 feet along said curve to a point being North 00 degrees 00 minutes 00 seconds West 640.00 feet from the radius point of said curve; 2) thence South 90 degrees 00 minutes 00 seconds East 204.66 feet; 3) thence South 78 degrees 24 minutes 01 second East 89.83 feet; thence South 00 degrees 07 minutes 19 seconds East 139.18 feet to the POINT OF BEGINNING of this description; thence continuing South 00 degrees 07 minutes 19 seconds East 72.97 feet; thence North 82 degrees 23 minutes 18 seconds West 22.36 feet; thence South 77 degrees 22 minutes 28 seconds West 61.28 feet; thence South 54 degrees 11 minutes 05 seconds West 9.89 feet; thence South 89 degrees 48 minutes 03 seconds West 226.94 feet; thence North 00 degrees 12 minutes 20 seconds West 93.58 feet; thence North 07 degrees 37 minutes 10 seconds East 40.46 feet; thence North 00 degrees 11 minutes 57 seconds West 14.97 feet; thence South 84 degrees 06 minutes 49 seconds East 102.13 feet; thence South 79 degrees 03 minutes 11 seconds East 208.27 feet; thence South 33 degrees 26 minutes 12 seconds East 10.36 feet to the POINT OF BEGINNING and containing 0.886 acres, more or less.

TRACT 1A - 2**AMERICAN CONSULTING, INC.**

Architects
Consultants
Engineers

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(317) 547-5580 FAX: (317) 543-0270

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DATE: 12/08/99

SHEET NO.

DRAWN BY: cer

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JOB NO. 99-527

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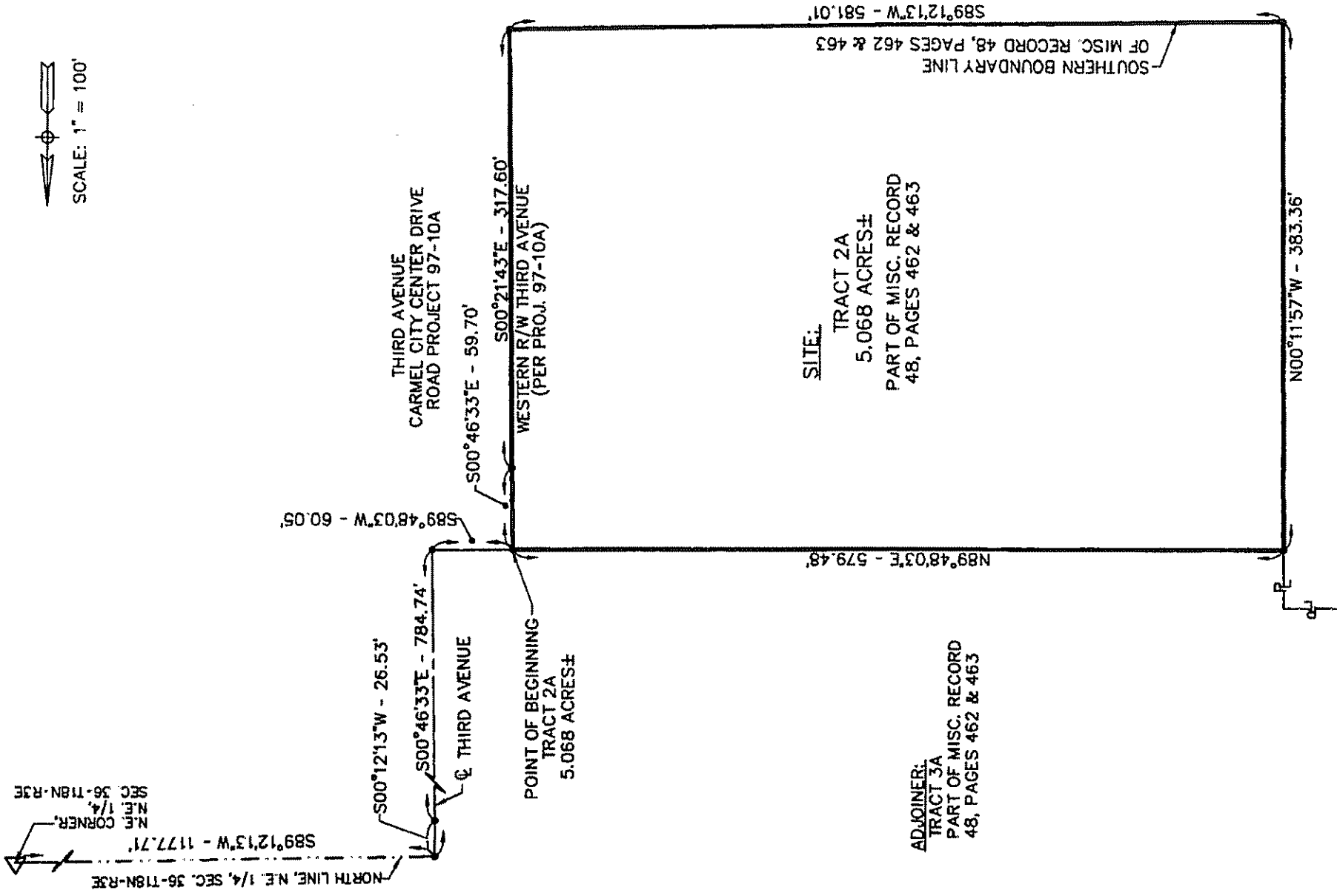
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EDIT DATE:

DESC. FILE: 99527D13A.doc

EXHIBIT B-2 OFFICE MANUEL



SCALE: 1" = 100'



SITE:
 TRACT 2A
 5.068 ACRES±
 PART OF MISC. RECORD
 48, PAGES 462 & 463

ADJOINER:
 TRACT 3A
 PART OF MISC. RECORD
 48, PAGES 462 & 463

ADJOINER:
 TRACT 1A
 PART OF MISC. RECORD 48, PAGES 462 & 463

TRACT 2A

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 INDIANAPOLIS, IN 46205-2998
 (317) 547-5580 FAX: (317) 543-0270

DATE: 12/07/99	SHEET NO.
DRAWN BY: CMM	1 of 2
JOB NO. 99 - 527	

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SPELOR: 12/07/99
 EDIT DATE: 12/09/99 10:41:19
 EDITED BY: CER - 582

DESC. FILE: 98527007.DOC

EXHIBIT B-2 OFFICE PARCEL

Tract 2A Land Description
Part of Deed Record 48, Page 462
Owned by Helen Moffitt Mueller
December 08, 1999

Part of the Northeast Quarter of Section 36, Township 18 North, Range 3 East, Clay Township, Carmel, Indiana being more particularly described as follows:

Commencing at the Northeast Corner of the Northeast Quarter of said Section 36; thence South 89 degrees 12 minutes 13 seconds West (an assumed bearing) 1177.71 feet along the North Line of said quarter to the centerline of 3rd Avenue as shown on the Carmel City Center Drive Road Plans Project No. 97-10A, the following two (2) courses are along the centerline of 3rd Avenue: 1) thence South 00 degrees 12 minutes 13 seconds West 26.53 feet; 2) thence South 00 degrees 46 minutes 33 seconds East 784.74 feet; thence South 89 degrees 48 minutes 03 seconds West 60.05 feet to the western right of way line of Third Avenue and POINT OF BEGINNING of this description, the following two (2) courses are along the western right-of-way line of Third Avenue; 1) thence South 00 degrees 46 minutes 33 seconds East 59.70 feet; 2) thence South 00 degrees 21 minutes 43 seconds East 317.60 feet to the southern boundary line of the tract of land described in the Affidavit subscribed and sworn to by Helen Moffitt Mueller as recorded in Miscellaneous Record 48, pages 462 and 463 in the Office of the Recorder of Hamilton County; thence South 89 degrees 12 minutes 13 seconds West 581.01 feet along the southern boundary line of Mueller Tract; thence North 00 degrees 11 minutes 57 seconds West 383.36 feet; thence North 89 degrees 48 minutes 03 seconds East 579.48 feet to the point of beginning, containing 5.068 acres more or less.

TRACT 2A

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Engineers*

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INDIANAPOLIS, IN 46205-2998
(317) 547-5580 FAX: (317) 543-0270

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JOB NO. 99 - 527

SHEET NO.

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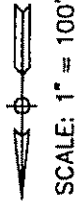
of

2

DESC. FILE: 99527D07.DOC

EXHIBIT B-2 OFFICE PARCEL

NORTH LINE, N.E. 1/4, SEC. 36-T18N-R3E
 S89°12'13"W - 1177.71'
 N.E. CORNER,
 N.E. 1/4,
 SEC. 36-T18N-R3E



THIRD AVENUE
 CARMEL CITY CENTER DRIVE
 ROAD PROJECT 97-10A

S00°12'13"W - 26.53'

S00°46'33"E - 236.76'

Q. THIRD AVENUE

S89°45'36"W - 111.60'

POINT OF BEGINNING
 TRACT 2B
 4.166 ACRES±

S43°47'16"E - 75.56'

S00°46'33"E - 263.17'

WESTERN R/W THIRD AVENUE
 (PER PROJ. 97-10A)

126th STREET
 CARMEL CITY CENTER DRIVE
 ROAD PROJECT 97-10A

N89°45'36"E - 477.25'
 SOUTHERN R/W 126th STREET
 (PER PROJ. 97-10A)

SITE:
 TRACT 2B
 4.166 ACRES±
 PART OF MISC. RECORD
 48, PAGES 462 & 463

S89°48'03"W - 577.16'
 ADJOINER:
 TRACT 3A
 PART OF MISC. RECORD
 48, PAGES 462 & 463

S00°14'24"E - 569.00'

S04°18'44"W - 569.00'

CURVE DATA

Δ = 04°33'06"
 R = 569.00'
 T = 22.61'
 L = 45.21'
 C = 45.19'

N00°11'57"W - 319.30'

ADJOINER:
 TRACT 1A
 PART OF MISC. RECORD
 48, PAGES 462 & 463

TRACT 2B

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Architects
 Consultants
 Engineers

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DATE: 12/07/99	SHEET NO.
DRAWN BY: CMM	1 of 2
JOB NO. 89 - 527	

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 PLOT SCALE: 1:100,000
 PLOT ORIGIN: 0.00,0.00

SPELLCHK: 12/07/99
 EDIT DATE: 12/09/99 11:43:10
 EDITED BY: CER - 582

DESC. FILE: 99527D08.DOC

EXHIBIT B-2 OFFICE PARCEL

Tract 2B Land Description
Part of Deed Record 48, Page 462
Owned by Helen Moffitt Mueller
December 08, 1999

Part of the Northeast Quarter of Section 36, Township 18 North, Range 3 East, Clay Township, Carmel, Indiana being more particularly described as follows:

Commencing at the Northeast Corner of the Northeast Quarter of said Section 36; thence South 89 degrees 12 minutes 13 seconds West (an assumed bearing) 1177.71 feet along the North Line of said quarter to the centerline of 3rd Avenue as shown on the Carmel City Center Drive Road Plans Project No. 97-10A, the following two (2) courses are along the centerline of 3rd Avenue; 1) thence South 00 degrees 12 minutes 13 seconds West 26.53 feet; 2) thence South 00 degrees 46 minutes 33 seconds East 236.76 feet; thence South 89 degrees 45 minutes 36 seconds West 111.60 feet to the western right-of-way line of 3rd Avenue and the POINT OF BEGINNING of this description, the following two courses are along the western right-of-way line of 3rd Avenue; 1) thence South 43 degrees 47 minutes 16 seconds East 75.56 feet; thence South 00 degrees 46 minutes 33 seconds East 263.17 feet; thence South 89 degrees 48 minutes 03 seconds West 577.16 feet; thence North 00 degrees 11 minutes 57 seconds West 319.30 feet to a point located on a non-tangent curve concave to the south and also located on the southern right-of-way line of 126th Street as shown said Carmel City Center Plans, said point being South 04 degrees 18 minutes 44 seconds West 569.00 from the radius point of the survey, the following two (2) courses are along the southern right-of-way line of 126th Street as shown on the Carmel City Center Road Plans Project No. 97-10A; thence Easterly 45.21 feet along said curve to a point of tangency, said point being South 00 degrees 14 minutes 22 seconds East 569.00 feet from the radius point of said curve; 2) thence North 89 degrees 45 minutes 36 seconds East 477.25 feet to the point of beginning, containing 4.166 acres more or less.

TRACT 2B

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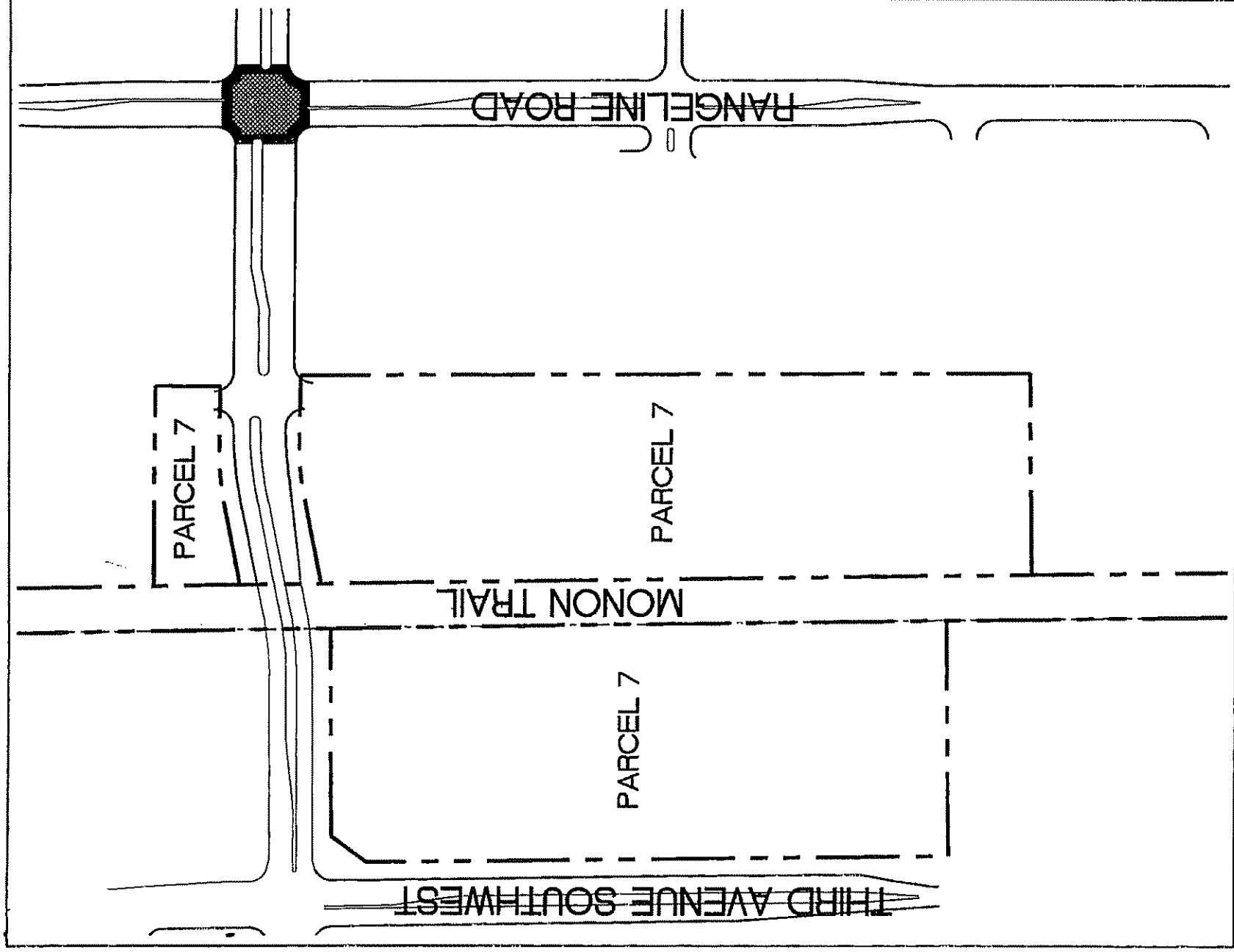
2

of

JOB NO. 99 - 527

2

DESC. FILE: 99527D08.DOC



North

Exhibit B-3 - Public Amenities



11 October 2000

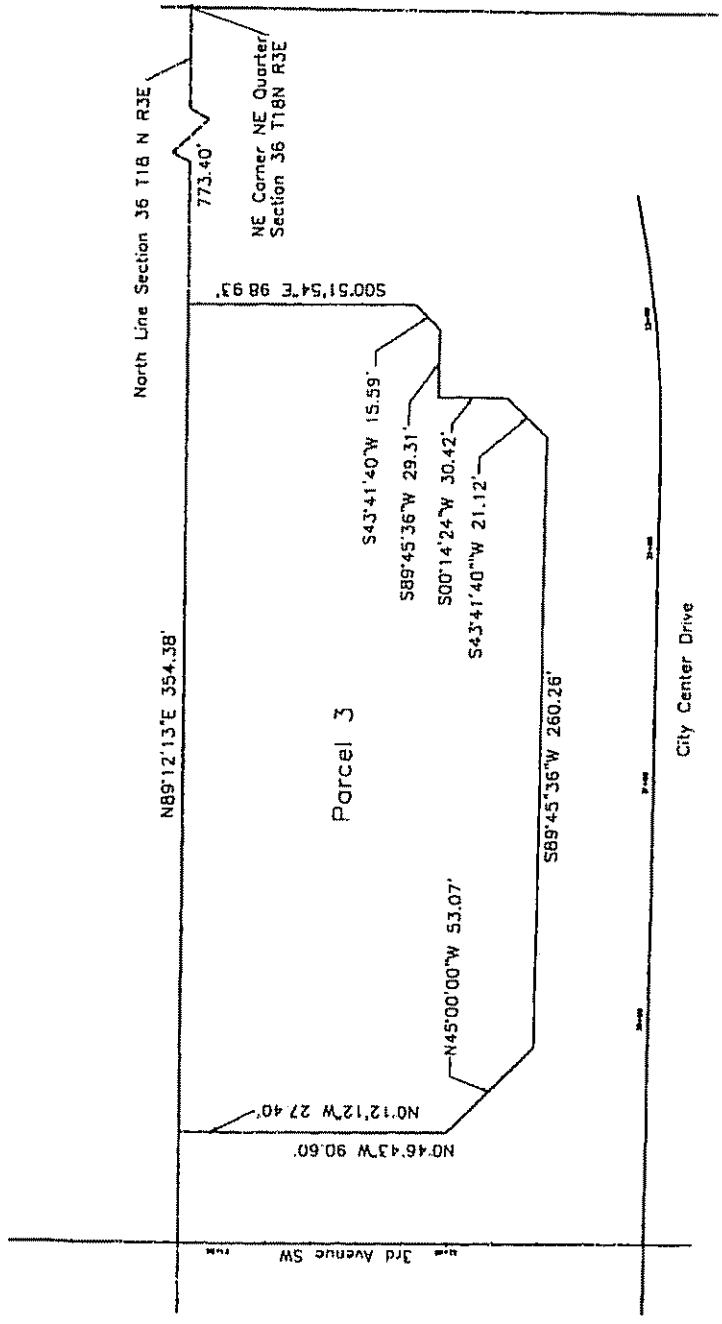
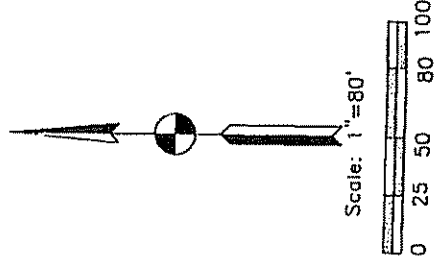


EXHIBIT B-4
RETAIL PARCEL


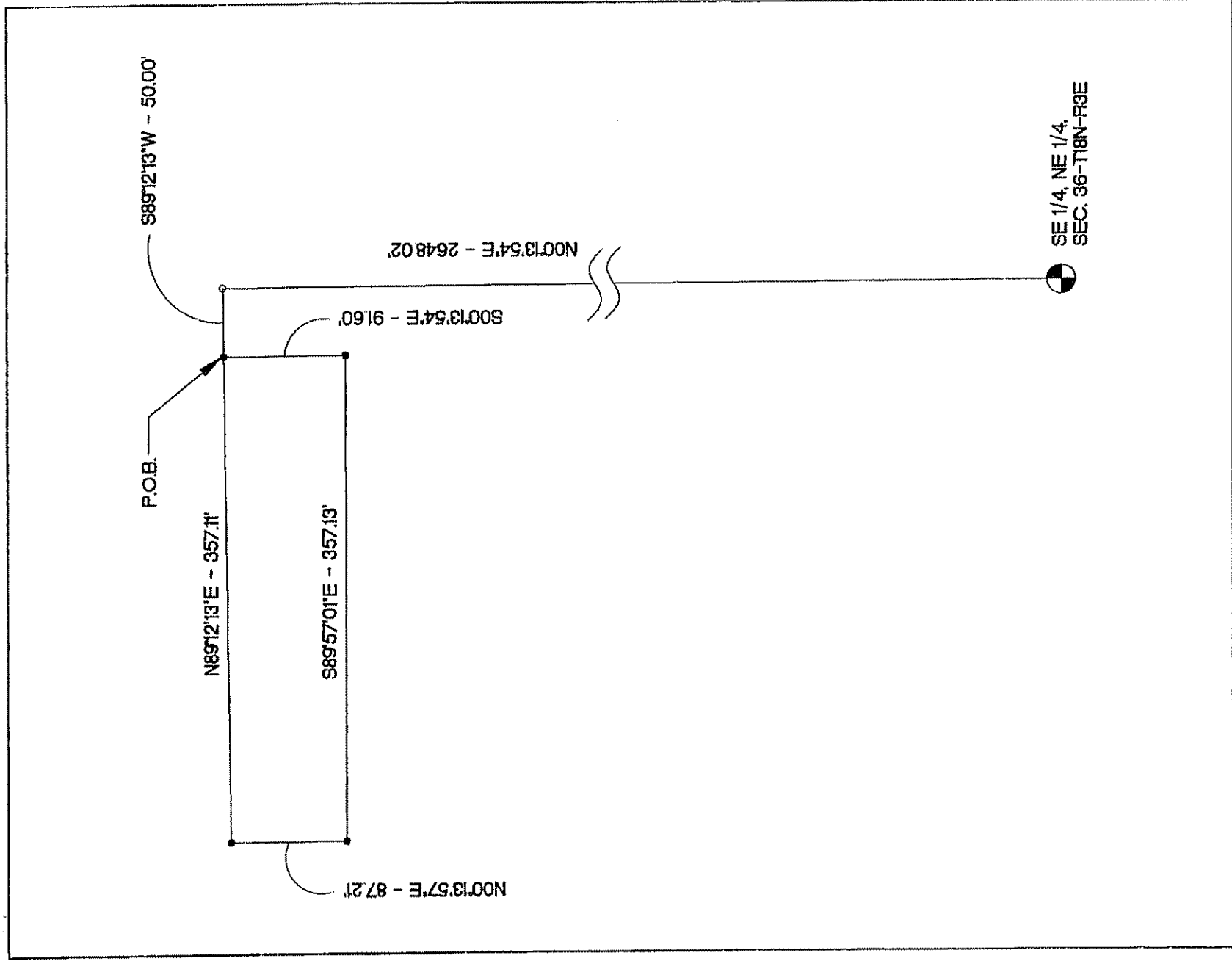
 <p>CSO Architects Engineers & Interiors</p> <p>6100 Madison Crossing Suite 200 Indianapolis, Indiana 46240 317.546.7500 FAX 317.574.0937 Copyright 1998</p>		Date	10/10/00	Drawn By	MLC	Checked By	JMB	Sheet No.	1
		Scale	Graphic	<p><small>This drawing is the property of CSO Architects Engineers & Interiors. It is to be used only for the project and location specified. It is not to be reproduced, copied, or used for any other purpose without the written consent of CSO Architects Engineers & Interiors.</small></p>		Project No.	20498-par3	Sheet	1 of 1

Exhibit B-4
Retail Parcel
Parcel 3 Land Description

A part of the Northeast Quarter of Section 36, Township 18 North, Range 3 East, Hamilton County, Indiana and more particularly described as follows:

Commencing at the brass plug marking the Northeast corner of the Northeast Quarter of Section 36, Township 18 North, Range 3 East; thence South 89 degrees 12 minutes 13 seconds East 773.40 feet along the North line of said quarter section to the West line of the right-of-way of the former Monon Railway and the **Point of Beginning**; thence South 00 degrees 51 minutes 54 seconds East 98.93 feet along said right-of-way; thence South 43 degrees 41 minutes 40 seconds West 15.59 feet; thence South 89 degrees 45 minutes 36 seconds West 29.31 feet; thence South 00 degrees 14 minutes 24 seconds West 30.42 feet; thence South 43 degrees 41 minutes 40 seconds West 21.12 feet to the proposed right-of-way of City Center Drive; thence South 89 degrees 45 minutes West 260.26 feet along said proposed right-of-way; thence North 45 degrees 00 minutes 00 seconds West 53.07 feet along said proposed right-of-way to the proposed right-of-way of Third Avenue Southwest; thence North 00 degrees 45 minutes 43 seconds West 90.60 feet along said proposed right-of-way to the North line of said Quarter section; thence North 89 degrees 12 minutes 13 seconds East 354.38 feet to the Point of Beginning and containing 1.210 acres more or less.



North

Exhibit B-4 - Retail Parcel 4

11 October 2000

Scale: 1"=100'

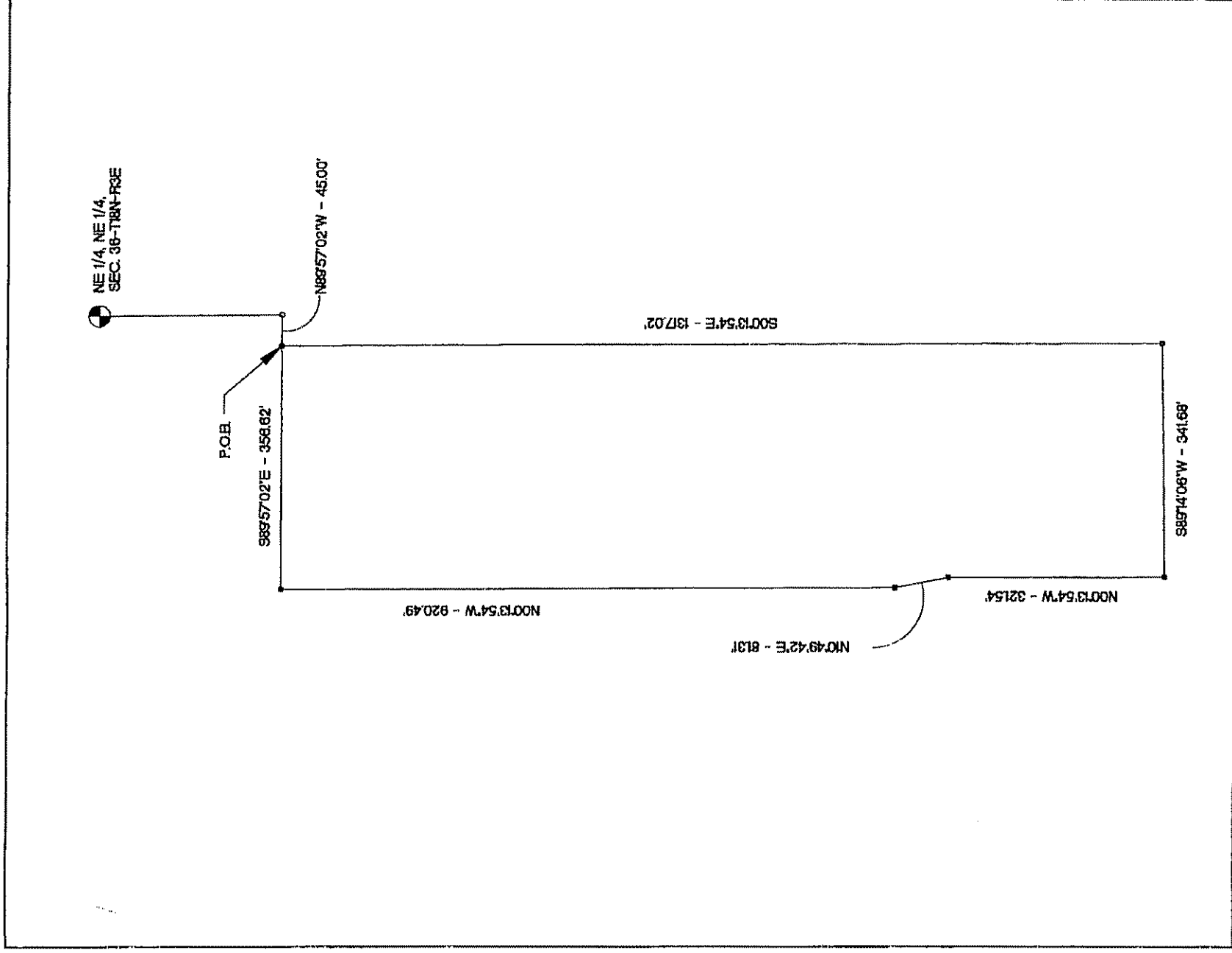


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EXHIBIT B-4 RETAIL PARCEL 4

PARCEL 4 LEGAL DESCRIPTION

A part of the Northeast Quarter of Section 36, Township 18 North, Range 3 East, Hamilton County, Indiana, described as follows: COMMENCING at the brass plug found at the northeast corner of said quarter section, said corner being North 00 degrees 13 minutes 54 seconds West 2,648.02 feet, measured along the east line of said quarter section, from the brass plug found at the southeast corner of said quarter section; thence South 89 degrees 12 minutes 13 seconds West 50.00 feet to the West right-of-way line of Range Line Road and the POINT OF BEGINNING; thence South 00 degrees 13 minutes 54 seconds East 91.60 feet along the west line of said right-of-way to the North right-of-way line of City Center Drive; thence South 89 degrees 57 minutes 01 seconds West 357.13 feet along the North line of said right-of-way; thence North 00 degrees 13 minutes 57 seconds West 87.21 feet to the north line of said quarter section; thence North 89 degrees 12 minutes 13 seconds East 357.11 feet along said north line to the point of beginning and containing 0.733 acres, more or less.



North

Exhibit B-4 - Retail Parcel 5

Scale: 1"=200'

11 October 2000



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EXHIBIT B-4 RETAIL PARCEL 5*Parcel - S*

LAND DESCRIPTION
Proposed Parking Lot
For the Carmel Center
10.679 Acres

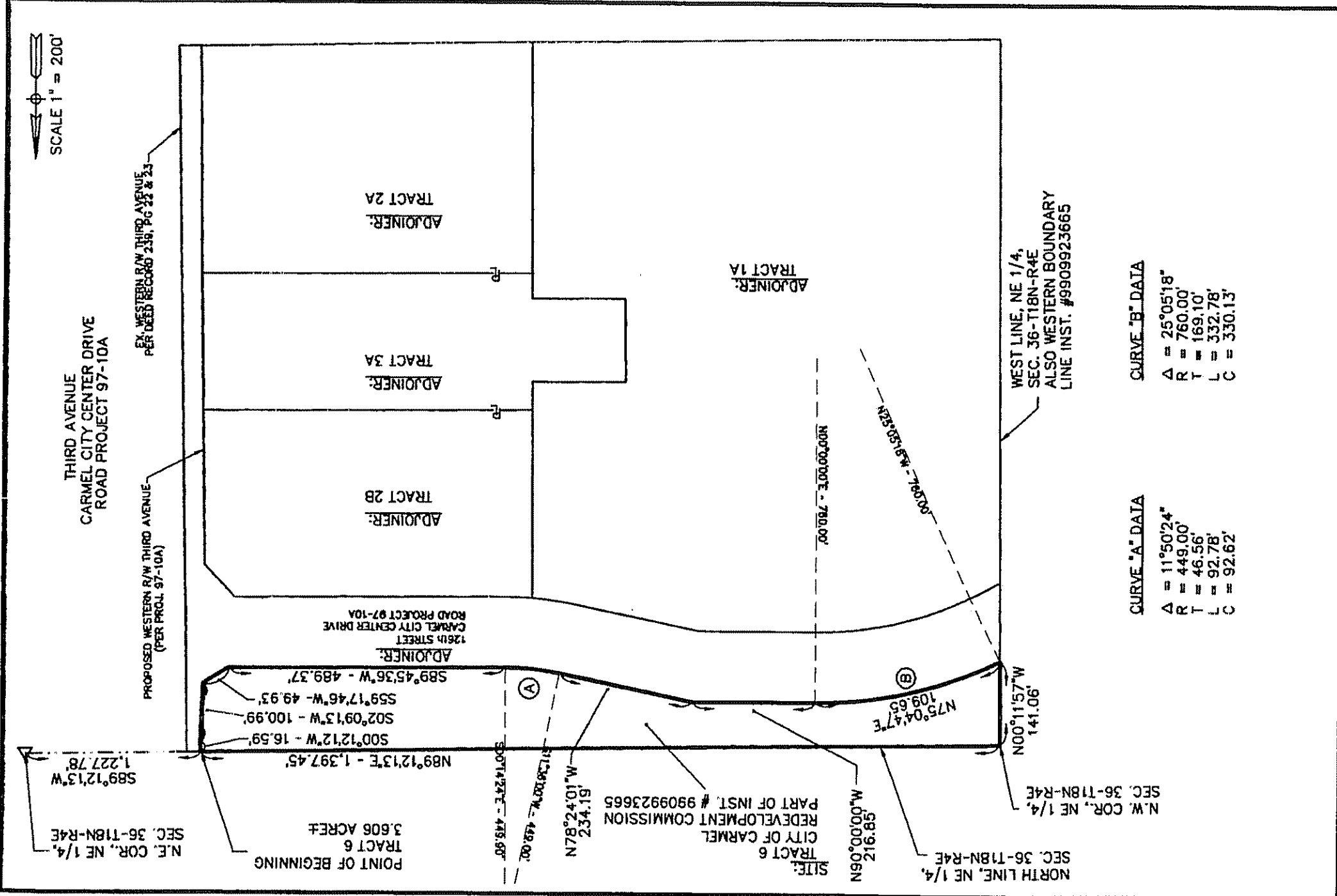
Part of the Northeast Quarter of Section 36, Township 18 North, Range 3 East, City of Carmel, Hamilton County, Indiana being more particularly described as follows:

Commencing at the Northeast Corner of the Northeast Quarter of said Section 36; South 00 degrees 13 minutes 54 seconds East (an assumed bearing) 271.62 feet along the East Line of said northeast quarter; thence North 89 degrees 57 minutes 02 seconds West 45.00 feet to the intersection of the western right of way line of Range Line Road and southern right-of-way line of 126th Street (as per Carmel City Center Drive Road Plans Project No. 97-10A), said point also being the POINT OF BEGINNING of this description; thence South 00 degrees 13 minutes 54 seconds East 1,317.02 feet along the western right-of-way line of Range Line Road to the southern boundary line of the 0.89 acre tract of land granted to the City of Carmel recorded as Instrument Number 9709725081 of the Office of the Recorder of Hamilton County, Indiana; thence South 89 degrees 14 minutes 06 seconds West 341.68 feet along the southern boundary line of the 0.89 acre tract of land; thence North 00 degrees 13 minutes 54 seconds West 321.54 feet parallel with the East Line of said northeast quarter; thence North 10 degrees 49 minutes 42 seconds West 81.31 feet; thence North 00 degrees 13 minutes 54 seconds West 920.49 feet parallel with the East Line of said northeast quarter to the southern right-of-way line of 126th Street; thence South 89 degrees 57 minutes 02 seconds East 356.62 feet along the southern right-of-way line of 126th Street to the POINT OF BEGINNING containing 10.679 acres, more or less.

D:\99\527(CSO_CARMEL_CENTER)\00398D01(PROP_TRACT).doc
Job # 00398

EXHIBIT B-5 SINGLE FAMILY PARCEL

SCALE 1" = 200'



CURVE "A" DATA

A = 11°50'24"
R = 449.00'
T = 46.56'
L = 92.78'
C = 92.62'

CURVE "B" DATA

A = 25°05'18"
R = 760.00'
T = 169.10'
L = 332.78'
C = 330.13'

TRACT 6 PARCEL EXHIBIT

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DRAWN BY: EJS	1 of 2
JOB NO. 99-527	

EXHIBIT B-5 SINGLE FAMILY PARCEL

Tract 6 Land Description
 Part of Instrument Number 9909923665
 Owned by The City of Carmel Redevelopment Commission
 April 10, 2000

Part of the Northeast Quarter of Section 36, Township 18 North, Range 3 East, Clay Township, Carmel, Indiana being more particularly described as follows:

Beginning at the intersection of the western right-of-way line of proposed Third Avenue as depicted by Hamilton County Highway Department Project "97-10A" Road Plans and the North Line of Northeast Quarter of said Section 36, said point being located South 89 degrees 12 minutes 13 seconds West (on assumed bearing) 1227.78 feet from the Northeast Corner of said northeast quarter, the following two (2) courses are along the western right-of-way line of said proposed Third Avenue: 1) thence South 00 degrees 12 minutes 12 seconds West 16.59 feet; 2) thence South 02 degrees 09 minutes 13 seconds West 100.99 feet to northern right-of-way line of proposed 126th Street as depicted by Hamilton County Highway Department Project "97-10A" Road Plans, the next six (6) courses are along the northern right-of-way line of proposed 126th Street; 1) thence South 59 degrees 17 minutes 46 seconds West 49.93 feet; 2) thence South 89 degrees 45 minutes 36 seconds West 489.37 feet to the point of curvature to the right, said point being South 00 degrees 14 minutes 24 seconds East 449.00 feet from the radius point of said curve; 3) thence Westerly 92.78 feet along said curve its point of tangency, said point being South 11 degrees 36 minutes 00 seconds West 449.00 feet from the radius point of said curve; 4) thence North 78 degrees 24 minutes 01 second West 234.19 feet; 5) thence North 90 degrees 00 minutes 00 seconds West 216.85 feet to the point of curvature to the left, said point being North 00 degrees 00 minutes 00 seconds East 760.00 feet from the radius point of said curve; thence Westerly 332.78 feet along said curve to the western boundary line of the tract of land described in instrument number 9909923665 of the Office of the Recorder in Hamilton County (said line also being the West Line of said northeast quarter), said point being located North 25 degrees 05 minutes 18 seconds West 760.00 feet from the radius point of said curve; thence North 00 degrees 11 minutes 57 seconds West 141.06 feet along the West Line of said northeast quarter (said line also being the western boundary line of said tract of land) to Northwest Corner of said northeast quarter; thence North 89 degrees 12 minutes 13 seconds East 1397.45 feet along the North Line of said northeast quarter (said line also being the northern boundary line of said tract of land) to the POINT OF BEGINNING containing 3.606 acres, more or less.

TRACT 6 PARCEL EXHIBIT**AMERICAN CONSULTING, INC.**

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 Engineers*

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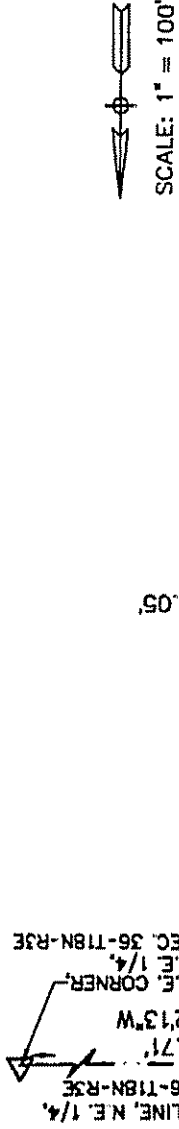
of

JOB NO. 99-527

2

DESC. FILE: 99527009.dbc

LAND USE PROJECT DEFINITION FUND



500°12'13"W - 26.53'

500°46'33"E - 554.73'

THIRD AVENUE

POINT OF BEGINNING
TRACT 3A
3.568 ACRES±

500°46'33"E - 230.01'
WESTERN R/W THIRD AVENUE
(PER PROJ. 97-10A)

589°48'03"W - 60.05'

ADJOINER:
TRACT 2B
PART OF MISC. RECORD
48, PAGES 462 & 463

ADJOINER:
TRACT 2A
PART OF MISC. RECORD
48, PAGES 462 & 463

SITE:
TRACT 3A
3.568 ACRES±

PART OF MISC. RECORD
48, PAGES 462 & 463

589°48'03"W - 579.48'

00°11'57"W - 45.00'

160.00'
N89°48'03"E

160.00'
S89°48'03"W

00°11'57"W - 45.00'

ADJOINER:
TRACT 1A
PART OF MISC. RECORD
48, PAGES 462 & 463

00°11'57"W - 140.00'

TRACT 3A

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JOB NO. 99 - 527	

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PLOT SCALE: 1:100,000
PLOT ORIGIN: 0.00,0.00

SPLOTTED: 12/07/99
EDIT DATE: 12/09/99 10:47:36
EDITED BY: CER - 582

DESC. FILE: 98527005.DOC

EXHIBIT C PROJECT DEFINITION PLAN

Tract 3A Land Description
 City of Carmel Pond Area
 Part of Deed Record 48, Page 462
 Owned by Helen Moffitt Mueller
 December 08, 1999

Part of the Northeast Quarter of Section 36, Township 18 North, Range 3 East, Clay Township, Carmel, Indiana being more particularly described as follows:

Commencing at the Northeast Corner of the Northeast Quarter of said Section 36; thence South 89 degrees 12 minutes 13 seconds West (an assumed bearing) 1177.71 feet along the North Line of said quarter to the centerline of Third Avenue as shown on the Carmel City Center Drive Road Plans Project No. 97-10A, the following two (2) courses are along the centerline of Third Avenue; 1) thence South 00 degrees 12 minutes 13 seconds West 26.53 feet; 2) thence South 00 degrees 46 minutes 33 seconds East 554.73 feet; thence South 89 degrees 48 minutes 03 seconds West 60.05 feet to the western right of way line of Third Avenue and POINT OF BEGINNING of this description; thence South 00 degrees 46 minutes 33 seconds East 230.01 feet along the western right-of-way line of Third Avenue; thence South 89 degrees 48 minutes 03 seconds West 579.48 feet; thence North 00 degrees 11 minutes 57 seconds East 45.00 feet; thence South 89 degrees 48 minutes 03 seconds West 160.00 feet; thence North 00 degrees 11 minutes 57 seconds West 140.00 feet; thence North 89 degrees 48 minutes 03 seconds East 160.00 feet; thence North 00 degrees 11 minutes 57 seconds West 45.00 feet; thence North 89 degrees 48 minutes 03 seconds East 577.16 feet to the point of beginning, containing 3.568 acres more or less.

TRACT 3A

AMERICAN CONSULTING, INC.

*Architects
 Consultants
 Engineers*

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 INDIANAPOLIS, IN 46205-2998
 (317) 547-5580 FAX: (317) 543-0270

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DATE: 12/07/99	SHEET NO.
DRAWN BY: CNM	2
JOB NO. 99 - 527	of 2

EXHIBIT D - SCREENING, SIGNAGE AND LANDSCAPE STANDARDS

ORDINANCE No. Z-343

AN ORDINANCE ESTABLISHING THE

C-1 CITY CENTER DISTRICT

UNDER THE CARMEL/CLAY

ZONING ORDINANCE

WHEREAS, The City of Carmel has initiated a proposal to create the Carmel City Center, a central mixed-use complex of retail, residential, office and community facilities designed to meet the cultural and economic needs of the community, and

WHEREAS, The Carmel City Center development is intended to stabilize an area that has fallen into disuse, and provide an energetic focus to the City's central business district; and

WHEREAS, After a public hearing duly noticed and held on March 21, 2000, the Carmel/Clay Plan Commission has given a favorable recommendation to the creation of a new Zone District to be designated the C-1 City Center District;

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Carmel, Indiana, pursuant to I.C. 36-7-4-507, it adopts this Ordinance as an amendment to the Carmel/Clay zoning Ordinance Z-289.

20E.2 Permitted Special Uses: (See Section 21.0 for additional regulations.)

Other uses similar and comparable to the above permitted uses

20E.2.1 Minimum Area Requirements: None.

20E.2.2 Other Requirements: None.

20E.3 Accessory Buildings and Uses (See Section 25.0 for additional requirements.)

1. Enclosed Accessory Uses which are incidental to, maintained on the same lot and directly associated with the operation of a permitted use, including recreational areas for employees and lodging facilities for owners, guards or caretakers.
2. Any detached accessory building on any lot shall be compatible in architectural style and construction materials with the principal building(s) with which it is associated.

20E.4 Height and Area Requirements (See Section 26.0 for additional requirements.)**20E.4.1 Maximum Height - Residential Uses:**

1. Forty-five (45) feet, if adjacent to an existing or platted single-family residence or residential subdivision.
2. Fifty-five (55) feet when adjacent to all other uses.

20E.4.2 Maximum Height - Commercial and Civic Uses:

1. Forty-five (45) feet if adjacent to an existing or platted single-family residence or residential subdivision.
2. Eighty-five (85) feet when adjacent to all other uses.

20E.4.3. Minimum Lot Frontage: One hundred (100) feet (except for residential use which shall be a minimum of thirty-five (35) feet.

20E.4.4. Minimum Lot Size: 20,000 square feet per principal building (except for residential use which shall be a minimum of 4000 square feet with public sewer and water).

20E.4.5. Maximum Lot Coverage: eighty percent (80%).

20E.5 Landscaping Requirements

20E.5.1. Street Trees: Shade trees shall be planted along all streets within the rights-of-ways, parallel to the street. Species, size, and installation shall be per the standards of the City of Carmel.

20E.5.2. Bufferyards: Where a lot or parcel of ground used for business purposes in the C-1 District abuts land used for residential purposes, a bufferyard shall be provided along any abutting boundary line.

1. Minimum Bufferyard width:
 - a. ten (10) feet for landscape bufferyards.
 - b. five (5) feet for bufferyards consisting of 6' high screen wall of solid wood or masonry.
2. Encroachments. Accessory buildings may encroach within a landscape bufferyard up to five (5) feet.
3. Plantings within landscape buffers shall consist primarily of shade trees and shrubbery, however, whenever possible, existing vegetation within bufferyards should be preserved.

20E.0 C-1 City Center District**March 24, 2000****20E.0.1 Purpose and Intent**

The purpose of the C-1 City Center District is to create and protect land areas for the development of the Carmel City Center, a central mixed-use complex of retail, residential, office, and community facilities designed to meet the cultural and economic needs of the community. The development is intended to stabilize an area that has fallen into disuse, and provide an energetic focus to the city's central business district. The combination of retail shopping and entertainment is intended to provide a destination for families. The office complex included in the project is intended to attract the very best corporate citizens to the community. The City Center will be bisected by the Menon Trail, further developing the attractiveness of the linear park project. When coupled with a museum/exhibit hall and performing arts center, the City Center will provide the attractions necessary to support a retail and entertainment complex and will lend itself to hosting large cultural and entertainment events. To promote the development of the City Center district, the City of Carmel will provide master land planning, land acquisition, street improvements, landscaping and utility infrastructure.

20E.0.2 Tract Requirements

Land areas shall be rezoned C-1 only upon application by the City of Carmel itself. All activities associated with commercial, transportation, service, office and residential activities shall be conducted within completely enclosed buildings in such a manner that any nuisance factors are not emitted outside of the building. Visual screening of the outside activities including, but not limited to, storage and trash collection areas shall be included.

20E.0.3 Approval of Development Plan

In conjunction with its application to rezone any real property to the C-1 zoning district, the City of Carmel shall submit a Development Plan that includes the following development requirements for that property: architectural design, exterior lighting, landscaping and signage (ADLS). Pursuant to IC 36-7-4-1400, *et seq.*, the Director (as the staff of the Plan Commission) is hereby authorized to conduct a public hearing to determine whether the Development Plan complies in all respects with the Zoning Ordinance and any commitments made by the owner of the real property under IC 36-7-4-613. The Director shall then make written findings concerning his or her decision to approve or disapprove the Development Plan, and the Director is hereby designated as the official who is responsible for signing the written findings. The approval or disapproval of a Development Plan by the Director under this Section 20E.0.3 is a final decision of the Commission that may be reviewed only as provided in IC 36-7-4-1016. After initial approval of the architectural design, exterior lighting, landscaping and signage (ADLS) under this section 20E.0.3, the ADLS shall not be materially or substantially changed or altered without the prior approval of the Commission under its rules of procedure.

20E.1 Permitted Uses:

Commercial recreational enterprise or facility
 Commercial (Wholesale) sale of products,
 including service establishments
 General Offices
 Museum
 Residential uses
 Theater

Commercial (Retail) Sales
 Community Center

Hotel
 Performing Arts Center
 Restaurant

20E.1.1 Minimum Area Requirements: None.**20E.1.2 Other Requirements: None.**

20E-1

4. Bufferyards shall be planted at the time of construction. Trees shall be planted at intervals not less than ten (10) feet, not more than fifty (50) feet. Shrubbery may be planted informally or in rows and shall screen parking areas, outside storage areas, loading berths, trash and refuse containers and so forth from adjoining residential properties.
5. Multiple-family residential developments within the C-1 District shall also be subject to the protection afforded by the landscaping and bufferyard requirements established herein.

20E.5.3 Parking Lot Landscaping.

1. Interior Landscaping. A minimum of one (1) shade tree and five (5) shrubs shall be planted within each parking lot for every ten (10) spaces provided. Planting areas shall be evenly dispersed throughout the parking area.
2. Parking Lot Perimeter Planting. A five (5) foot wide perimeter planting strip shall be provided along the all sides which abut adjoining properties.
 - a. The minimum required planting unit for this area shall include: three (3) shade trees and twenty (20) shrubs per 100 linear feet.
 - b. The perimeter planting area may contribute to or fulfill bufferyard planting requirements.

20E.5.4 Landscaping Installation and Maintenance

1. Installation. All required landscaping shall be installed prior to the issuance of a Certificate of Occupancy by the Department of Community Services Administrator. If it is not possible to install the required landscaping because of weather conditions, the property owner shall post a bond for an amount equal to the total cost of the required landscaping prior to the issuance of the Final Certificate of Occupancy.
2. Maintenance. It shall be the responsibility of the owners and their agencies to insure proper maintenance of the landscaping, in accordance with the standards set by this Ordinance. This is to include, but is not limited to, replacing dead plantings with identical varieties or a suitable substitute, and keeping the area free of refuse and debris.

20E.6 Fencing

20E.6.1 Maximum Height. eight (8) feet side and rear yard, four (4) feet front yard.

20E.6.2 Materials. Fences shall be constructed solid wood or masonry, and shall be approved by the Director at the time of final Development Plan approval. Stockade or shadow box fences shall not be permitted within the C-1 District

20E.7 Parking

20E.7.1 Parking lots shall generally be located at the rear or at the side of buildings and shall be screened from the sidewalk/street by low walls, fences or hedges.

20E.7.2 In parking areas designed to accommodate more than four rows of vehicles, a landscaped, separated pedestrian pathway shall be provided for safe access through the parking area to the front door.

20E.7.3 Bicycle parking with bike racks should be provided.

20E.8 Streets and Circulation

20E.8.1 Vision clearance on corner lots and at the intersections of streets and driveways shall be observed.

PROPOSED ADDITION TO ZONING ORDINANCES

- 20E.8.2 Conflicts between pedestrians, bicycles and autos should be minimized. Separation of circulation systems should be created through design elements such as changes in grade, material, screens, structures, etc.
- 20E.8.3 Sidewalks shall be required along all public streets, and shall be constructed to the standards of the City of Carmel. Where pedestrians are forced to cross traffic lanes, changes in paving and narrowing of roadways can alert drivers to pedestrian traffic.
- 20E.8.4 Vehicular traffic serving the C-1 District should not be routed into or through a residential development or onto a street serving a school or community facility.
- 20E.8.5 Truck traffic serving the C-1 District should be prohibited from using surrounding residential streets.

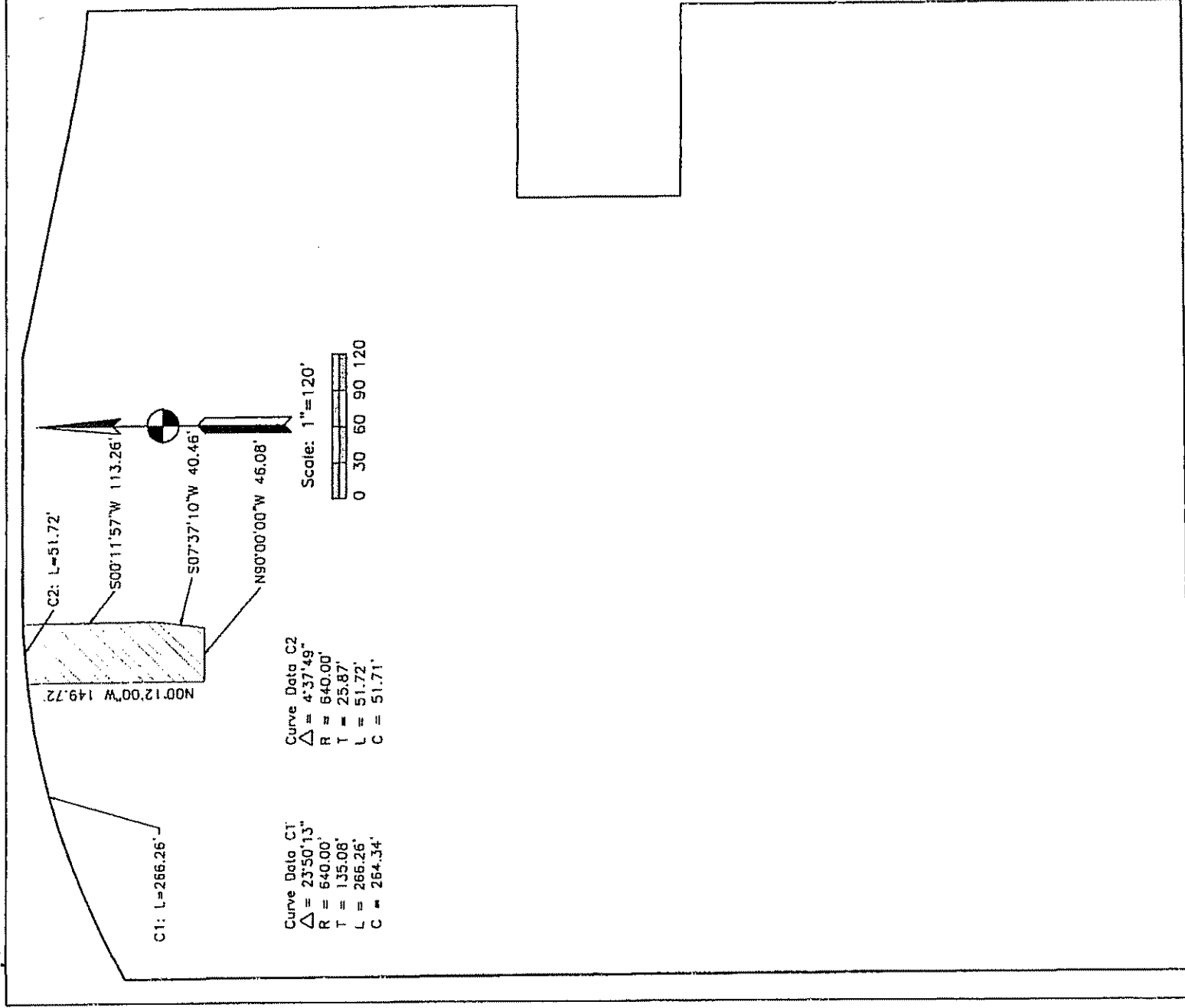


EXHIBIT "E"
Ingress-Egress Easement



**CSO Architects
Engineers & Interiors**

9100 Eaststone Crossing
Suite 200
Indianapolis, Indiana 46240
317.848.7800
FAX 317.574.0957

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Date	Drawn By	Checked By	Sheet No.
10/10/00	MLC	JMB	1
Scope Drafting	CSO Architects Engineers & Interiors 9100 Eaststone Crossing Suite 200 Indianapolis, Indiana 46240 317.848.7800 FAX 317.574.0957		of 1 Sheets
File No.	Ingress-Egress		Project No. 20498

Exhibit E
Ingress-Egress Easement Description
Part of Parcel 1

A 15 foot easement for a sanitary sewer line being part of the Northeast Quarter of Section 36, Township 18 North, Range 3 East, Clay Township, Carmel, Indiana. The center line of said easement being more particularly described as follows;

Commencing at the brass plug marking the Northeast Corner of said Quarter Section, said corner being North 00 degrees 13 minutes 54 seconds West (an assumed bearing) 2648.02 feet, measured along the East line of said Quarter Section, from the brass plug marking the Southeast Corner of said Quarter Section; thence South 89 degrees 12 minutes 13 seconds West 2625.23 feet along the North line of said Quarter Section to the iron pin with a Woolpert cap set at the Northwest corner of said quarter section; thence South 00 degrees 11 minutes 57 seconds East 276.14' along the West Line of said Quarter Section, said line also being the Western boundary line of a tract of land as recorded in Instrument Number 9909923665 in the Office of the Recorder of Hamilton County, Indiana, to the Southern right-of-way line of 126th Street as shown on the Carmel City Center Drive Road Plans project No. 97-10A, said point being located on a non tangent curve concave to the Southeast and being North 30 degrees 11 minutes 04 seconds West 640.00 feet from the radius point of said curve, the following two (2) courses area along the Southern right-of-way line of 126th Street; thence Northeasterly and Easterly 226.26 feet along said curve to the **Point of Beginning** of this description, said point being North 06 degree 20 minutes 50 seconds West 640.00 feet from the radius point of said curve; thence Easterly 51.72 feet along curve to a point, said point being North 01 degree 43 minutes 02 seconds West 640.00 feet; thence South 00 degrees 11 minutes 57 seconds East 113.26 feet; thence South 07 degrees 37 minutes 10 seconds West 40.46 feet; thence North 90 degrees 00 minutes 00 seconds West 46.08 feet; thence North 00 degrees 12 minutes 00 seconds West 149.72 feet to the Point of Beginning and containing 0.177 acres more or less.

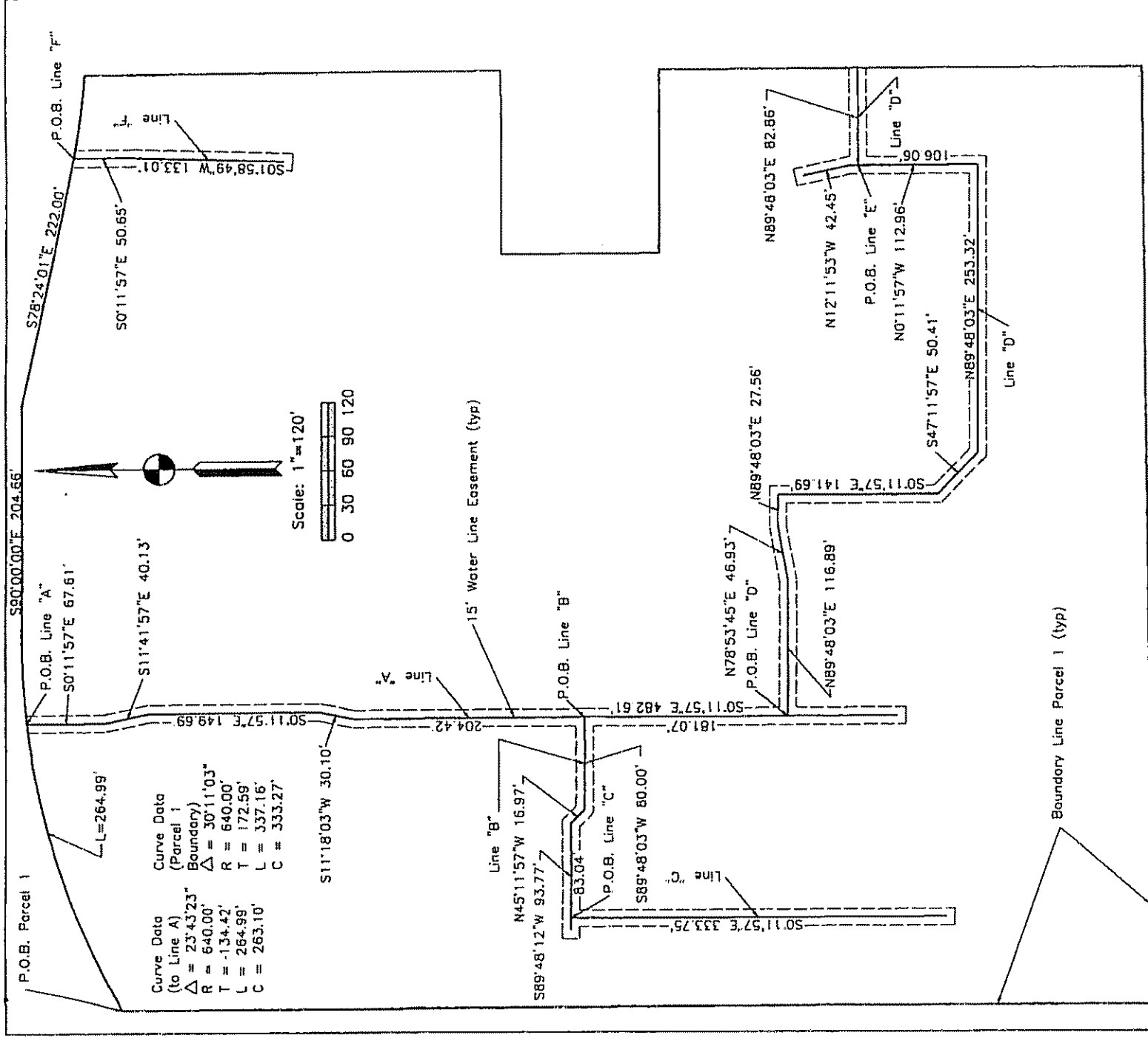


EXHIBIT "E"
Water Line Easements

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Date	Drawn By	Checked By	Sheet No.
10/10/00	MLC	JMB	1
Name Coverage 10/10/00			of 1 Sheets
File No.	Water Line		Project No.
			20498

Exhibit E
Water Line Easements Descriptions – Lines A, B, C, D, E, and F
Part of Parcel 1

15 foot easements for a water lines being part of the Northeast Quarter of Section 36, Township 18 North, Range 3 East, Clay Township, Carmel, Indiana. The center line of said easements being more particularly described as follows;

Commencing at the brass plug marking the Northeast Corner of said Quarter Section, said corner being North 00 degrees 13 minutes 54 seconds West (an assumed bearing) 2648.02 feet, measured along the East line of said Quarter Section, from the brass plug marking the Southeast Corner of said Quarter Section; thence South 89 degrees 12 minutes 13 seconds West 2625.23 feet along the North line of said Quarter Section to the iron pin with a Woolpert cap set at the Northwest corner of said quarter section; thence South 00 degrees 11 minutes 57 seconds East 276.14' along the West Line of said Quarter Section, said line also being the Western boundary line of a tract of land as recorded in Instrument Number 9909923665 in the Office of the Recorder of Hamilton County, Indiana, to the Southern right-of-way line of 126th Street as shown on the Carmel City Center Drive Road Plans project No. 97-10A, said point being located on a non tangent curve concave to the Southeast and being North 30 degrees 11 minutes 04 seconds West 640.00 feet from the radius point of said curve; thence Northeasterly 264.99 feet along said curve to a point being North 6 degrees 27 minutes 41 seconds West 640.00 feet from the radius point of said curve and being **the Point of Beginning of Line A**; thence South 00 degrees 11 minutes 57 seconds East 67.61 feet; thence South 11 degrees 41 minutes 57 seconds East 40.13 feet; thence South 00 degrees 11 minutes 57 seconds East 149.69 feet; thence South 11 degrees 03 seconds West 30.10 feet; thence South 00 degrees 11 minutes 57 seconds East 482.61 feet to the Point of Termination. The side lines of the 15 foot easement are to be extended or shortened to meet at the angle points and to terminate in the North boundary of parcel one and 7.5 feet beyond the termination point.

Line B

Commencing at the Point of Beginning of Line A; thence South 00 degrees 11 minutes 57 seconds East 67.61 feet; thence South 11 degrees 41 minutes 57 seconds East 40.13 feet; thence South 00 degrees 11 minutes 57 seconds East 149.69 feet; thence South 11 degrees 18 minutes 03 seconds West 30.10 feet; thence South 00 degrees 11 minutes 57 seconds East 204.42 feet to the **Point of Beginning of Line B**; thence South 89 degrees 48 minutes 03 seconds West 80.00 feet; thence North 45 degrees 11 minutes 57 seconds West 16.97 feet; thence South 89 degrees 48 minutes 12 seconds West 93.77 feet to the Point of Termination. The side lines of the 15 foot easement are to be extended or shortened to meet at the angle points and to terminate in the Western easement line of Line A and 7.5 feet beyond the termination point.

Line C

Commencing at the Point of Beginning of Line B; thence South 89 degrees 48 minutes 03 seconds West 80.00 feet; thence North 45 degrees 11 minutes 57 seconds West 16.97 feet; thence South 89 degrees 48 minutes 12 seconds West 83.04 feet to the **Point of Beginning of Line C**; thence South 00 degrees 11 minutes 57 seconds East 333.75 feet to the Point of Termination. The side lines of the 15 foot easement are to be extended or shortened to terminate in the Southern easement line of Line B and 7.5 feet beyond the termination point.

Line D

Commencing at the Point of Beginning of Line B; thence South 00 degrees 11 minutes 57 seconds East 181.07 feet to the **Point of Beginning of Line D**; thence North 89 degrees 48 minutes 03 seconds East 116.89 feet; thence North 78 degrees 53 minutes 45 seconds East 46.93 feet; thence North 89 degrees 48 minutes 03 seconds East 27.56 feet; thence South 00 degrees 11 minutes 57 seconds East 141.69 feet; thence South 47 degrees 11 minutes 57 seconds East 50.41 feet; thence North 89 degrees 48 minutes 03 seconds East 253.32 feet; thence North 00 degrees 11 minutes 57 seconds West 112.96 feet; thence North 12 degrees 11 minutes 53 seconds West 42.45 feet to the Point of Termination. The side lines of the 15 foot easement are to be extended or shortened to meet at the angle points and to terminate in the Eastern easement line of Line A and 7.5 feet beyond the termination point.

Line E

Commencing at the Point of Beginning of Line D; thence North 89 degrees 48 minutes 03 seconds East 116.89 feet; thence North 78 degrees 53 minutes 45 seconds East 46.93 feet; thence North 89 degrees 48 minutes 03 seconds East 27.56 feet; thence South 00 degrees 11 minutes 57 seconds East 141.69 feet; thence South 47 degrees 11 minutes 57 seconds East 50.41 feet; thence North 89 degrees 48 minutes 03 seconds East 253.32 feet; thence North 00 degrees 11 minutes 57 seconds West 106.06 feet to the **Point of Beginning of Line E**; thence North 89 degrees 48 minutes 03 seconds East 82.86 feet to the Point of Termination. The side lines of the 15 foot easement are to be extended or shortened to terminate in the Eastern easement line of Line D and the Eastern boundary line of Parcel 1.

Line F

Commencing at the brass plug marking the Northeast Corner of said Quarter Section, said corner being North 00 degrees 13 minutes 54 seconds West (an assumed bearing) 2648.02 feet, measured along the East line of said Quarter Section, from the brass plug marking the Southeast Corner of said Quarter Section; thence South 89 degrees 12 minutes 13 seconds West 2625.23 feet along the North line of said Quarter Section to the iron pin with a Woolpert cap set at the Northwest corner of said quarter section; thence South 00 degrees 11 minutes 57 seconds East 276.14' along the West Line of said Quarter Section, said line also being the Western boundary line of a tract of land as recorded in Instrument Number 9909923665 in the Office of the Recorder of Hamilton County, Indiana, to the Southern right-of-way line of 126th Street as shown on the Carmel City Center Drive Road Plans project No. 97-10A, said point being located on a non tangent curve concave to the Southeast and being North 30 degrees 11 minutes 04 seconds West 640.00 feet from the radius point of said curve; the following three (3) courses are along the Southern right-of-way line of 126th Street; 1) thence Northeasterly and Easterly 337.17 feet along said curve, said point being North 00 degrees 00 minutes 00 seconds East 640.00 feet from the radius point of said curve; 2) thence South 90 degrees 00 minutes 00 seconds East 204.66 feet; 3) thence South 78 degrees 24 minutes 01 seconds East 222.00 feet to the **Point of Beginning for Line F**; thence South 00 degrees 11 minutes 57 seconds East 50.65 feet; thence South 01 degree 58 minutes 49 seconds West 133.01 feet to the Point of Termination. The side lines of the 15 foot easement are to be extended or shortened to meet at the angle points and to terminate in the North boundary of parcel one and 7.5 feet beyond the termination point.

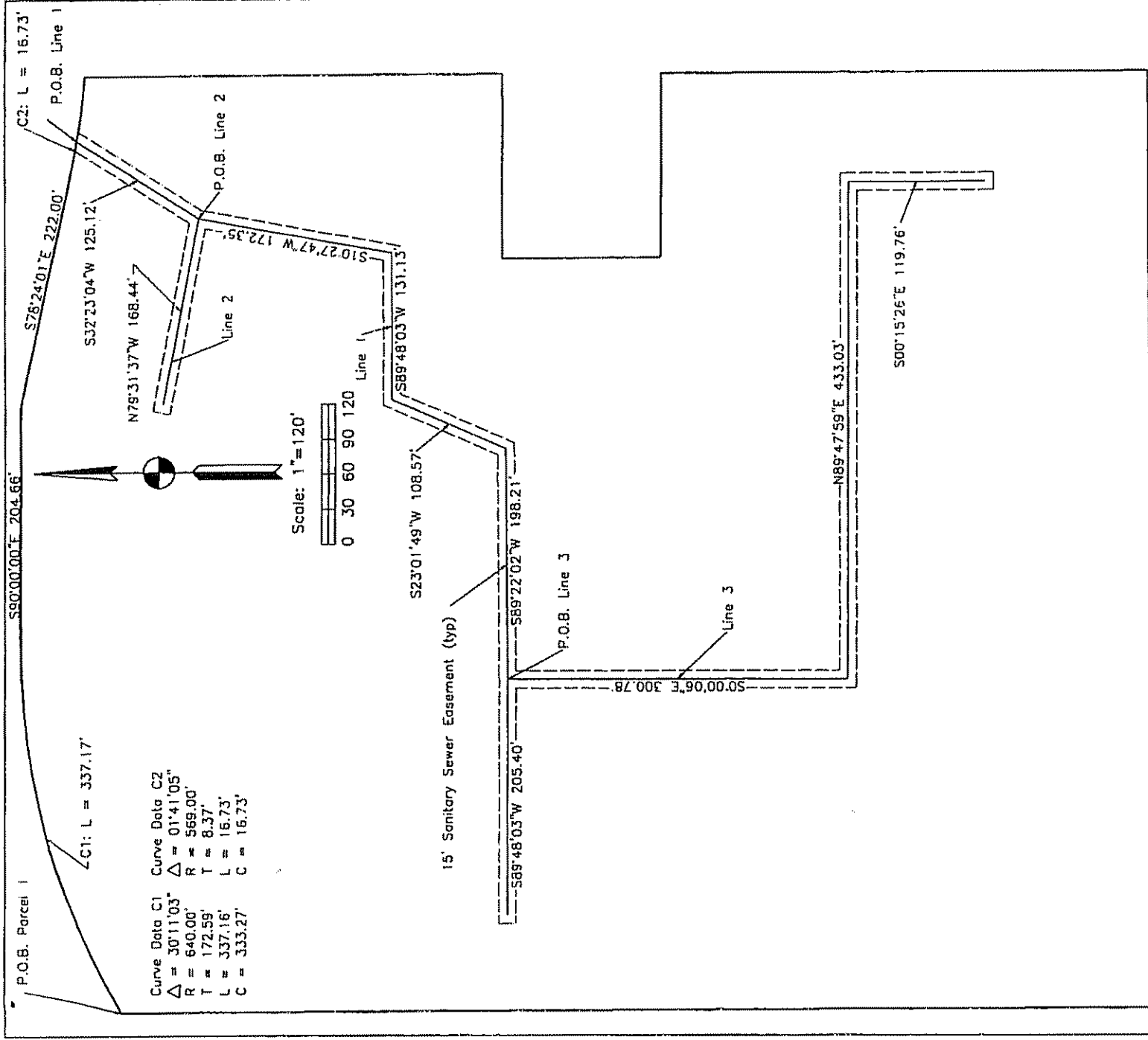


EXHIBIT "E"
Sanitary Sewer
Easements



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Date 10/10/00	Drawn By MLC	Checked By JMB	Sheet No. 1
Scope Drainage			of 1 Sheets
File No. Sanitary Sewer		Project No. 20498	

Exhibit E
Sanitary Sewer Easements Descriptions – Lines 1, 2, and 3
Part of Parcel 1

A 15 foot easement for a sanitary sewer line being part of the Northeast Quarter of Section 36, Township 18 North, Range 3 East, Clay Township, Carmel, Indiana. The center line of said easement being more particularly described as follows;

Commencing at the brass plug marking the Northeast Corner of said Quarter Section, said corner being North 00 degrees 13 minutes 54 seconds West (an assumed bearing) 2648.02 feet, measured along the East line of said Quarter Section, from the brass plug marking the Southeast Corner of said Quarter Section; thence South 89 degrees 12 minutes 13 seconds West 2625.23 feet along the North line of said Quarter Section to the iron pin with a Woolpert cap set at the Northwest corner of said quarter section; thence South 00 degrees 11 minutes 57 seconds East 276.14' along the West Line of said Quarter Section, said line also being the Western boundary line of a tract of land as recorded in Instrument Number 9909923665 in the Office of the Recorder of Hamilton County, Indiana, to the Southern right-of-way line of 126th Street as shown on the Carmel City Center Drive Road Plans project No. 97-10A, said point being located on a non tangent curve concave to the Southeast and being North 30 degrees 11 minutes 04 seconds West 640.00 feet from the radius point of said curve, the following four (4) courses are along the Southern right-of-way line of 126th Street; 1) thence Northeasterly and Easterly 337.17 feet along said curve, said point being North 00 degrees 00 minutes 00 seconds East 640.00 feet from the radius point of said curve; 2) thence South 90 degrees 00 minutes 00 seconds East 204.66 feet; 3) thence South 78 degrees 24 minutes 01 seconds East 222.00 feet to a Point of Curvature of a curve to the left, said point being South 11 degrees 35 minutes 59 seconds West 569.00 feet from the radius point of said curve; 4) thence Southeasterly 16.73 feet along said curve, said point being South 9 degrees 54 minutes 54 seconds West 569.00 feet from the radius point of said curve and being the **Point of Beginning of Line 1**; thence South 32 degrees 23 minutes 04 seconds West 125.12 feet; thence South 10 degrees 27 minutes 47 seconds West 172.35 feet; thence South 89 degrees 48 minutes 03 seconds West 131.13 feet; thence South 23 degrees 01 minute 49 seconds West 108.57 feet; thence South 89 degrees 22 minutes 02 seconds West 198.21 feet; thence South 89 degrees 48 minutes 03 seconds West 205.40 feet to the Point of Termination. The side lines of the 15 foot easement are to be extended or shortened to meet at the angle points and to terminate in the North boundary of parcel one and 7.5 feet beyond the termination point.

Line 2

Commencing at the Point of Beginning of Line 1; thence South 32 degrees 23 minutes 04 seconds West 125.12 feet to the **Point of Beginning of Line 2**; thence North 79 degrees 31 minutes 37 seconds West 168.44 feet to the Point of Termination. The side lines of the 15 foot easement are to be extended or shortened to terminate in the Northwesterly easement line of Line 1 and 7.5 feet beyond the termination point.

Line 3

Commencing at the Point of Beginning of Line 1; thence South 32 degrees 23 minutes 04 seconds West 125.12 feet; thence South 10 degrees 27 minutes 47 seconds West 172.35 feet; thence South 89 degrees 48 minutes 03 seconds West 131.13 feet; thence South 23 degrees 01 minute 49 seconds West; thence South 89 degrees 22 minutes 02 seconds West 198.21 feet to the **Point of Beginning of Line 3**; thence South 00

degrees 00 minutes 06 seconds East 300.78 feet; thence North 89 degrees 47 minutes 59 seconds East 433.03 feet; thence South 00 degrees 15 minutes 26 seconds East 119.76 feet to the Point of Termination. The side lines of the 15 foot easement are to be extended or shortened to meet at the angle points and to terminate in the South easement line of Line 1 and 7.5 feet beyond the termination point.

200200029058
Filed for Record in
HAMILTON COUNTY, INDIANA
MARY L CLARK
04-18-2002 08:55 am.
DEC COV RES 114.00

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
THE TOWNHOMES AT CITY CENTER**

Hamilton County, Indiana

PRIOR DEED REFERENCE: 2001-00061267

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR THE TOWNHOMES AT CITY CENTER

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR FIREHOUSE SQUARE (the “**Declaration**”) is made as of _____, 2002 by **RH OF INDIANA, L.P.**, an Indiana limited partnership (the “**Declarant**”).

RECITALS:

- A. The Declarant is, or at the time of recordation of this Declaration will be, the owner of certain real property located in Hamilton County, Indiana, which is more specifically described in Exhibit A, which is attached hereto and incorporated herein by reference (the “**Property**”).
- B. The Declarant desires to create on the Property a residential community (the “**Community**”) which shall have permanent open spaces and other common facilities for the benefit of the residents of the Community.
- C. The Declarant desires to provide for the preservation of the values of the Community and such other areas as may be subjected to this Declaration, and to provide for the maintenance of the open spaces and other facilities, and, to this end, declare and publish their intent to subject the Property to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, it being intended that they shall run with title to the Property and shall be binding on all persons or entities having or acquiring any right, title or interest in the Property or any part thereof and shall inure to the benefit of each owner thereof.
- D. The Declarant has deemed it desirable for the efficient preservation of the values of the Community to create an association to be known as the Firehouse Square Homeowners Association, Inc., an Indiana not-for-profit corporation (the “**Association**”) to which shall be delegated and assigned the powers of owning, maintaining and administering the common areas and facilities, administering and enforcing the covenants and restrictions made in and pursuant to this Declaration, collecting and disbursing the assessments and charges hereafter created, and promoting the recreation, health, safety and welfare of the owners of Property and all parts thereof.

NOW, THEREFORE, the Declarant, for and in consideration of the premises and the covenants contained herein, grants, establishes and conveys to each owner of each Lot (as herein defined), mutual, non-exclusive rights, privileges and easements of enjoyment on equal terms and

in common with all other owners of Lots in and to the use of any common areas and facilities; and further, the Declarant declares that the Property shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved, and occupied subject to the provisions, agreements, covenants, conditions, restrictions, reservations, easements, assessments, charges and liens hereinafter set forth, all of which are for the purpose of protecting the value and desirability of, and shall run with, the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their respective successors and assigns, and shall inure to the benefit of Declarant and its successors in title to the Property or any part or parts thereof.

ARTICLE I

DEFINITIONS

Section 1.1. **“Association”** shall mean and refer to The Townhomes at City Center Homeowners Association, Inc., an Indiana not-for-profit corporation, and its successors and assigns.

Section 1.2. **“Authority Transfer Date”** shall have the meaning ascribed in Section 3.1 of this Declaration.

Section 1.3. **“Articles”** shall mean and refer to the Articles of Incorporation of the Association as same may be amended from time to time.

Section 1.4. **“Board of Directors”** shall mean the elected body having its normal meaning under Indiana corporate law.

Section 1.5. **“Bylaws”** shall mean and refer to the Code of Bylaws of the Association, as the same may be amended from time to time.

Section 1.6. **“City”** shall mean the City of Carmel, Indiana.

Section 1.7. **“Common Area”** or **“Common Areas”** shall mean and refer to all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Members. All of the Property which is not included in any particular Lot, as shown on current or future approved plats of the Property and/or as described herein, shall be considered to be a part of the Common Area.

Section 1.8. **“Common Expenses”** shall mean and refer to expenses of administration of the Association and expenses for the upkeep, maintenance, repair and replacement of Common Areas, and all sums lawfully assessed against the Owners by the Association, and all sums, costs and expenses declared by this Declaration to be Common Expenses.

Section 1.9 **“County”** shall mean the County of Hamilton, Indiana.

Section 1.10. **“Declarant”** shall mean and refer to RH of Indiana, L.P., an Indiana limited partnership, and its successors or assigns to whom RH of Indiana, L.P., an Indiana limited partnership, assigns any or all of its rights as Declarant pursuant to this Declaration by assignment recorded in the Office of the Recorder of Hamilton County, Indiana.

Section 1.11. **“Declaration”** shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for The Townhomes at City Center, which is to be recorded in the Office of the Recorder of Hamilton County, Indiana.

Section 1.12. **“Development Period”** means the period of time commencing with Declarant’s acquisition of the Property and ending when Declarant has completed the development and sale of, and no longer owns, any Lot. The Development Period shall recommence each time the Declarant acquires any part (or all) of the Additional Property.

Section 1.13. **“Dwelling Unit”** shall mean and refer to any improvement to the Property intended for any type of independent ownership for use and occupancy as a residence by a single household and shall, unless otherwise specified, include within its meaning (by way of illustration but not limitation) townhouses and detached homes.

Section 1.14. **“Federal Agencies”** shall mean (by way of illustration but not limitation) the Federal Housing Authority, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Veterans Administration or any other governmental agency.

Section 1.15. **“Local Governing Authority”** shall mean the City and/or the County, individually or collectively.

Section 1.16. **“Lot”** shall mean and refer to any plot of land created by and shown on a lawfully recorded subdivision plat of the Property upon which a Dwelling Unit could be constructed in accordance with applicable zoning ordinances, with the exception of the Common Area and streets dedicated to public use. Each Lot shall include such property to the centerline of any party wall separating Dwelling Units in the same Structure (as herein defined) and shall include an area equal to the exterior face of the rear wall of each Dwelling Unit.

Section 1.17. **“Maintenance Costs”** means all of the costs necessary to keep the facilities to which the term applies operation and in good condition, including but not limited to the cost of all upkeep, maintenance, repair, replacement, of all or any part of any such facility, payment of all insurance with respect thereto, all taxes imposed on the facility and on the underlying land, leasehold, easement or right-of-way, and any other expense related to continuous maintenance, operation or improvement of the facility.

Section 1.18. **“Member”** shall mean and refer to every person or entity who holds a membership in the Association, as more particularly set forth in Article II below.

Section 1.19. **“Mortgage”** shall mean and refer to any person or entity secured by a first mortgage or first deed of trust on any Lot or the Common Area who has notified the Association of this fact in writing. An **“Eligible Mortgagee”** shall be a Mortgagee who has given notice to the Association of its interest and requested all rights afforded Eligible Mortgagees under Article XII.

Section 1.20. **“Owner”** shall mean and refer to the record owner, whether one (1) or more persons or entities, of the fee simple title to any Lot, including a contract seller but excluding those holding such interest in a Lot solely by virtue of a contract to purchase a Lot or as security for the performance of an obligation. If more than one (1) person or entity is the record owner of a Lot, the term Owner as used herein shall mean and refer to such owners collectively, so that there shall be only one (1) Owner of each Lot.

Section 1.21. **“Permitted Signs”** shall mean customary real estate sale or lease signs which have received the prior written approval of the Architectural Review Board.

Section 1.22. **“Person”** shall mean an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof.

Section 1.23. **“Property”** shall mean that certain real property located in Hamilton County, Indiana, which is more specifically described in Exhibit A, which is attached hereto and incorporated herein by reference as the same may be duly subdivided and platted, and any additions thereto which, from time to time, may be subjected to the covenants, conditions, restrictions, reservations, easements, charges and liens of this Declaration.

Section 1.24. **“Regular Assessment”** shall mean and refer to assessments levied against all Lots to fund Common Expenses.

Section 1.25. **“Restrictions”** shall mean and refer to the agreements, conditions, covenants, restrictions, easements, assessments, charges, liens, and other provisions set forth in this Declaration, as same may be amended from time to time.

Section 1.26. **“Special Assessment”** shall mean and refer to assessments levied in accordance with Section 5.7 of this Declaration.

Section 1.27. **“Structure”** means any temporary or permanent improvement or building or portion thereof, including, without limitation, walls, decks, patios, stairs, windows, window boxes, doors, fences, play equipment, greenhouses, skylights, address markers, mail boxes, name plates, flag poles, lawn ornaments, trees, hedges, shrubbery, solar panels, satellite dishes, antennae, shutters, awnings, fences, pools, hot-tubs, pavement, walkways, driveways, garages and/or garage doors, or appurtenances to any of the aforementioned.

ARTICLE II

MEMBERSHIP

Every Owner of a Lot which is subject to this Declaration shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. No Owner shall have more than one (1) membership in the Association for each Lot it owns.

ARTICLE III

VOTING RIGHTS

Section 3.1. Classes. The Association shall have two (2) classes of voting membership as follows:

Class A: Class A Members shall be all Members with the exception of the Class B Member. A Class A Member shall be entitled to one (1) vote for each Lot in which it holds the interest required for membership pursuant to Article II herein with respect to each matter submitted to a vote of members upon which the Class A members are entitled to vote.

Class B: The Class B Member shall be the Declarant and all successors and assigns of Declarant designated by Declarant as Class B Members in a written notice mailed and delivered to the resident agent of the Association. A Class B Member shall be entitled to three (3) votes for each Lot in which it holds the interest required for membership pursuant to Article II herein. The Declarant's Class B membership interest shall be converted to and shall become a Class A membership interest with one (1) vote for each Lot in which it holds an interest upon the happening of any of the following events, whichever occurs first (the "**Authority Transfer Date**"):

- (a) within four (4) months after the total votes outstanding in the Class B membership equal the total votes outstanding in the Class B membership; or
- (b) seven (7) years from the date of recordation of this Declaration; or
- (c) sixty (60) days after the Declarant abandons construction (i.e., no new dwelling construction has been initiated for a period of eighteen (18) months, unless there is evidence of continuing construction).

Section 3.2: Expansion. If the Declarant exercises its rights to expand the Property to include additional real estate pursuant to this Declaration, and in the event that Class B membership

shall have ceased as provided in Section 3.1, above, the Declarant's Class B membership interest shall be revived with respect to all Lots owned by the Declarant, including those, if any to which it had previously had its Class B membership interest converted to Class A membership interests. In addition, in such event, all of Declarant's rights and privileges hereunder which it enjoyed prior to the Authority Transfer Date shall also be renewed and reinstated. Any such new and/or revived Class B membership interests shall cease and be converted to Class A membership interests upon the happening of any of the following events, whichever occurs first:

- (a) within four (4) months after the total votes outstanding in Class A membership in the additional property equal the total votes outstanding in the Class B membership in such additional property; or
- (b) five (5) years from the date of recordation of the document adding such additional property to the Property; or
- (c) sixty (60) days after the Declarant abandons construction (i.e., no new dwelling construction has been initiated for a period of eighteen (18) months, unless there is evidence of continuing construction).

Section 3.3. Multiple Ownership Interests. 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. The vote for such Lot shall be exercised as the Owners of the Lot among themselves determine and may be exercised by any one (1) of the people or entities holding such ownership interest, unless any objection or protest by any other holder of such ownership interest is made prior to the completion of a vote, in which case the vote for such membership interest shall not be counted, but the Member whose vote is in dispute shall be counted as present at the meeting for quorum purposes if the protest is lodged at such meeting. In no event shall more than one (1) vote be cast with respect to any Lot.

ARTICLE IV

DECLARATION OF RESTRICTION AND STATEMENT OF PROPERTY RIGHTS

Section 4.1. Declaration. Declarant hereby expressly declares that the Property and any additions thereto pursuant to this Declaration, shall be held, transferred and occupied subject to these Restrictions. The Owners of any Lot subject to these Restrictions, and all other Persons, (i) by acceptance of a deed from Declarant, or its successors, conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall conclusively be deemed to have accepted such deed, executed such contract and undertaken such occupancy subject to each Restriction and agreement herein contained. By acceptance of such deed, or execution of such contract, or undertaking such occupancy, each Owner and all other Persons acknowledge the rights and powers of Declarant, the Architectural Review Board and of the Association with respect to these Restrictions, and also, for itself, its heirs, personal representatives, successors and assigns, covenant, agree and consent to and with Declarant, the Architectural Review Board,

the Association, and the Owners and Subsequent Owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreement.

Section 4.2. Property Rights. Every Owner shall have a right and easement of use, access, and enjoyment in and to the Common Areas, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to:

- (a) this Declaration as it may be amended from time to time and to any restrictions or limitations contained in any deed conveying any part of the Property to the Association;
- (b) the right of the Association to limit the number of guests of Members on the Common Area or to make any part of the Common Area available to occupants of adjacent real estate or members of the general public;
- (c) the right of the Association to adopt and enforce rules and regulations governing the use of the Common Area and the personal conduct of Owners, occupants and guests thereon, including, without limitation, the imposition of fines for the violation thereof;
- (d) the right of the Association to impose reasonable membership requirements and charge reasonable admission or other fees for the use of any recreational facility situated upon the Common Area;
- (e) the right of the Association to suspend the voting rights, the right to run for office within the Association, and rights of a Member to the use of any nonessential services offered by the Association, to the extent that access and the provision of utilities to the Lot through the Common Area are not precluded, for any period during which any assessment against such Member's Lot remains unpaid or for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (f) the right of the Association at any time, or upon dissolution of the Association, and consistent with the then-existing zoning and subdivision ordinances of the City and/or the County and consistent with its designation of the Common Area as "open space", to transfer all or any part of the Common Area to an organization conceived and organized to own and maintain common open space, or, if such organization will not accept such a transfer, then to a Local Governing Authority or other appropriate governmental agency, or, if such a transfer is declined, then to another entity in accordance with the laws governing the same, for such purposes and subject to conditions as may be agreed to by the Members. Except in the case of dissolution, any such transfer shall have the assent of at least two-thirds (2/3) of each class of Members entitled to vote and who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present, written notice of which having been sent to all Members not less than twenty-five (25) days nor more than fifty (50) days in advance of the meeting setting forth the purpose of the meeting. Upon such assent and in accordance therewith, the officers of the Association shall execute

the necessary documents. The re-subdivision or adjustment of the boundary lines of the Common Area and the granting of easements by the Association shall not be deemed a transfer within the meaning of this Article;

(g) the right of the Association to grant, with or without payment to the Association, licenses, rights-of-way and easements through or over any portion of the Common Area;

(h) the right of the Association to lease the Common Area, provided however that such lease(s) must:

- (i) be only to non-profit organizations;
- (ii) prohibit assignment and subleasing;
- (iii) require the prior, written approval of the Association of uses of the Common Area and facilities, which must be in accordance with this Declaration;
- (iv) be consistent with the then-existing ordinances of the Local Governing Authority; and
- (v) be consistent with the open space designation of the Common Area;

(i) the right of the Declarant or the Association to re-subdivide and/or adjust the boundary lines of the Common Area consistent with applicable zoning and subdivision ordinances as either deems necessary for the orderly development of the subdivision;

(j) all rights reserved by the Declarant in Article VIII hereof; and

(k) the right of the Declarant to erect, maintain and operate real estate sales and construction offices, displays, signs and other facilities for sales, marketing and construction purposes.

The Association, acting through the Board of Directors, may exercise these rights without the need for any approval from any Member, Mortgagee or any Federal Agency, unless provided otherwise in this Declaration.

Section 4.3. Common Area.

(a) Ownership. Declarant shall convey title to the Common Area to the Association; provided, however, that the Declarant may retain legal title to the Common Area during the Development Period, but shall convey the Common Area free and clear of all liens and other financial encumbrances, exclusive of the lien for taxes not yet due and payable, no later than the end of the Development Period. The Common Areas shall remain private, and neither Declarant's execution, or recording of an instrument portraying the

Common Areas, nor the doing of any other act by Declarant is, or is intended to be, or shall be construed as, a dedication to the public of the Common Areas. Declarant or the Association may, however, dedicate or transfer all or any part of the Common Areas to any public agency or utility for use as roads, utilities, parks or other public purposes.

(b) Maintenance. The Association shall be responsible for maintaining the Common Area and the Maintenance Costs thereof shall be assessed as a Regular Assessment against all Lots subject to assessment.

(c) Control. The Association, subject to the rights of Declarant and the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon and, except as otherwise provided herein or in a Supplemental Declaration, shall keep the Common Areas in good, clean, attractive and sanitary condition, order, and repair.

(d) No Permanent Structures. Except for underground utility facilities, no permanent improvements shall be made to or installed on the Common Area other than lighting, seating, walkways, planting structures, and fountains or other non-recreational water features. The use of the Common Area shall be subject to rules and regulations adopted by the Board of Directors which are not inconsistent with the provisions of this Declaration or any Supplemental Declaration.

(e) Delegation of Use. Any Member may delegate its right of enjoyment to the Common Area and facilities to the members of its immediate household, its tenants or contract purchasers who reside on the Member's Lot. However, by accepting a deed to such Lot, every Owner covenants that should the Owner desire to rent its Lot, the rental agreement shall contain specific conditions which require the tenant to abide by all Association covenants, rules and regulations, and any Owner desiring to rent a Lot further covenants that the tenant will be provided a complete set of all Association covenants, rules and regulations.

(f) Damage or Destruction by Owner. In the event any Common Area is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents, members of his family, or any other Person having or gaining access to the Owner's Lot with the knowledge and consent of such Owner, such Owner authorizes the Association to repair said damaged area; the Association shall repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association in the discretion of the Association. An amount equal to the costs incurred to effect such repairs shall be assessed against such Owner as a Special Assessment and shall constitute a lien upon the Lot of said Owner.

(g) Density of Use. Declarant expressly disclaims any warranties or representations regarding the density of use of the Common Areas or any facilities located thereon.

ARTICLE V

ASSESSMENTS

Section 5.1. Creation of the Lien and Personal Obligation for Assessments. The Declarant covenants, for each Lot owned, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other instrument of conveyance, is deemed to covenant and agree to pay to the Association: (a) Regular Assessments, (b) Special Assessments, and any other amounts as may be provided for hereunder to be due from any Owner in connection with his, her or its ownership of a Lot in the Community. Such assessments are to be established and collected as hereinafter provided. The Association's Regular Assessments and Special Assessments, together with interest thereon, late fees (as contemplated in Section 5.6(d), below) and costs of collection thereof, as hereinafter provided, shall be a charge on each applicable Owner's Lot and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment fell due. The Regular Assessments and Special Assessments, when assessed upon resolution of the Board of Directors for each year, shall become a lien on the Lot in the amount of the entire Regular Assessment or Special Assessment, but shall be payable in two equal installments collected on a semi-annual basis.

Section 5.2. Purpose of Assessment. The assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the residents and Owners of the Property, for the improvement, maintenance and landscaping of the Common Area, including but not limited to the payment of taxes, construction of improvements and maintenance of services, facilities, irrigation/sprinkler systems, trees, lawns, shrubbery and other plantings, and devoted to these purposes or related to the use and enjoyment of the Common Area or other property which the Association has the obligation to maintain, and for such other purposes as the Board of Directors may determine to be appropriate.

Section 5.3. Annual Accounting. Annually, after the close of each fiscal year of the Association and prior to the date of the annual meeting of the Association next following the end of such fiscal year, the Board shall cause to be prepared and furnished to each Owner a financial statement prepared by a certified public accountant or firm of certified public accountants then serving the Association, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

Section 5.4. Proposed Annual Budget. Annually, on or before the date of the annual or special meeting of the Association at which the budget is to be acted upon, the Board of Directors shall cause to be prepared a proposed annual budget for the next ensuing fiscal year estimating the total amount of the Common Expenses for such next ensuing fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the designated meeting of the Association for adoption and, if so adopted, shall be the

basis for the Regular Assessments for the next ensuing fiscal year. At such annual or special meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Owners; provided, however, that in no event shall such meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all sums assessed by the Association shall be established by using generally accepted accounting principles applied on a consistent basis. The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined. Whenever, whether before or after the meeting of the Association at which the budget is to be acted upon, there is no annual budget approved by the Owners as herein provided for the current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, Regular based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

Section 5.5. Establishment of Regular Assessment. The Association must levy in each of its fiscal years a Regular Assessment against each Lot. The amount of such Regular Assessment shall be established by the Board of Directors, subject to the limitations imposed by Section 5.4, below, and written notice of such shall be sent to every Owner at least thirty (30) days in advance of the commencement of each Regular Assessment period. The Regular Assessment shall become applicable as to all Lots (as shown on a recorded subdivision plat) on the first day of the month following the first conveyance of a Lot to an Owner who is not the Declarant. The first Regular Assessment shall be adjusted according to the number of months remaining in the calendar year. Regular Assessments shall be payable in two equal semi-annual installments.

Section 5.6. Basis and Regular Assessment. Until January 1 of the year immediately following conveyance of the first Lot to an Owner other than the Declarant, the Regular Assessment shall be Twelve Hundred Dollars (\$1,200.00).

(a) From and after January 1 of the year immediately following the first conveyance of a Lot to an Owner other than the Declarant, the Regular Assessment shall increase, effective January 1 of each year, without the need for a vote of the Members, by an amount equal to (i) the anticipated increase in costs of insurance, taxes, snow removal, recycling, trash and waste removal, plus (ii) an amount equal the amount of the prior year's Regular Assessment times ten percent (10%).

(b) The Board of Directors may determine not to increase the Regular Assessment to the full extent of the automatic increase provided by subparagraph (a) of this Section, in which case the Board of Directors may determine to increase the Regular Assessment by any lesser amount.

(c) From and after January 1 of the year immediately following the first conveyance of a Lot to an Owner other than the Declarant, the Regular Assessment may be increased above that established by subparagraph (a) Regularly, provided that, to be

effective, any such change shall have the assent of more than fifty percent (50%) of the votes of those Members who are entitled to vote and who, in fact, do vote, in person or by proxy, at a meeting duly called for this purpose at which a quorum is present, written notice of which (setting forth the purpose of the meeting) shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

(d) The Regular Assessment against each Lot shall be paid in full in advance by a date specified by the Board of Directors which date shall not be earlier than fifteen (15) days after the written notice of such Regular Assessment is given to the Owners. Semi-annual installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board of Directors or the Association, and neither the Board nor the Association shall be responsible for providing any notice or statements to Owners for the same. If an Owner fails to pay any semi-annual installment of any such Regular Assessment on or before the due date established by the Board of Directors, a late fee in the amount of \$25.00 will be added to the amount due, and any such installment, together with an such late fee, will be and remain, immediately due and payable.

(e) Payment of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors.

(f) The Regular Assessment for each fiscal year of the Association shall become a lien on each separate Lot as of the first day of each fiscal year of the Association, even though the final determination of the amount of such Regular Assessment may not have been made by that date.

Section 5.7. Special Assessments. In addition to the Regular Assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvements upon the Common Area, including the fixtures and personal property related thereto, or for any other specified purpose. Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefore under the circumstances described in this Declaration. Except in the case of damage or destruction caused by an Owner as contemplated by Section 4.4(f), any such Special Assessment shall be levied against all of the Lots which benefit from the construction, reconstruction, repair or replacement of capital improvements giving rise to the Special Assessment, pro rata according to each Lot's benefit, as reasonably determined by the Board of Directors, which determination shall be final. In the case of damage or destruction caused by an Owner as contemplated by Section 4.4(f), the Special Assessment may be levied solely against that Owner. To be effective, any such assessment shall have the assent of more than two-thirds (2/3) of the votes of each class of Members who are entitled to vote and who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present, written

notice of which setting forth the purpose of the meeting having been sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

Section 5.8. Quorum for any Action Authorized Under Sections 5.4 or 5.5. At the first calling of a meeting under Section 5.6 or Section 5.7 of this Article, the presence at the meeting of Members or proxies entitled to cast sixty percent (60%) of all the votes of each class of Members shall constitute a quorum. If the required quorum does not exist at any such meeting, another meeting may be called subject to the notice requirements set forth in Section 5.6 and Section 5.7 and to applicable law, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 5.9. Working Capital Assessment. In addition to the Regular and Special Assessments authorized above, the Association shall establish and maintain a working capital fund. At each settlement on the initial sale or any re-sale by a Declarant of a Lot for which a residential use permit has been issued, the purchaser of such Lot shall pay to the Association a working capital assessment in an amount equal to one-sixth (1/6th) of the then current Regular Assessment for said Lot, which payment shall be non-refundable and shall not be considered as an advance payment of an Assessment or other charge owed to the Association with respect to such Lot. The annual budget and the Regular Assessments shall, in addition, be established to include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Areas, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses of the Common Areas. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Areas shall be maintained by the Association in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Hamilton County or Marion County, Indiana selected from time to time by the Board.

Section 5.10. Rate of Assessment. The Regular Assessment shall be fixed at a uniform rate for all Lots, except for unoccupied Lots owned by the Declarant. Except in the case of damage or destruction caused by an Owner as contemplated by Section 4.4(f), and except for unoccupied Lots owned by the Declarant, the Special Assessments shall be fixed at a uniform rate for all Lots which benefit from the construction, reconstruction, repair or replacement of capital improvements giving rise to the Special Assessment, pro rata according to each Lot's benefit, as reasonably determined by the Board of Directors, which determination shall be final. Notwithstanding the foregoing or anything else contained herein, no Regular Assessments or Special Assessments or other charges shall be owed or payable by Declarant with respect to any Lot or other portion of the Property owned by Declarant while the same is owned by Declarant, nor shall any such Assessments or charges become a lien on any such Lot or other portion of the Property owned by Declarant.

Section 5.11. Notice of Assessment and Certificate. Written notice of the Regular Assessments and any Special Assessments shall be sent to every Member. The due dates for payment of the Regular Assessments and any Special Assessments shall be established by the Board of Directors. The Association shall, upon demand at any time, furnish a certificate in writing

signed by an officer or authorized agent of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 5.12. Remedies of the Association in the Event of Default. Each Owner shall be personally liable for the payment of all Regular and Special Assessments against his Lot. Where the Owner constitutes or consists of more than one Person, the liability of such Persons shall be joint and several. If any assessment pursuant to this Declaration is not paid within thirty (30) days after its due date, the assessment shall bear interest from the date of delinquency at the rate charged by the Internal Revenue Service on delinquent taxes. In addition, in its discretion, the Association may:

- (a) impose a penalty or late charge as previously established by rule;
- (b) bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot, and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. A suit to recover a money judgment for nonpayment of any assessment levied pursuant to this Declaration, or any installment thereof, may be maintained without perfecting, foreclosing or waiving the lien provided for herein to secure the same;
- (c) suspend a Member's voting rights, right to hold an office within the Association, and right to use nonessential services offered by the Association to the extent that access and the provision of utilities to the Lot through the Common Area are not precluded. An Owner, whose rights have been suspended in this manner, shall have no right to any refund or suspension of his, her or its obligations to pay such assessments for the duration of such suspension or otherwise; and
- (d) accelerate the due date of the unpaid assessment so that the entire balance shall become immediately due, payable and collectible.

No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or facilities, abandonment of its Lot, or the failure of the Association or the Board of Directors to perform their duties.

In any action to foreclose the lien for any Assessments, the Owner and any occupant of the Lot and Dwelling Unit which are the subject of such action shall be jointly and severally liable for the payment to the Association of reasonable rental for such Lot and Dwelling Unit, and the Board of Directors shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and Dwelling Unit and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid Regular or Special Assessments. The Board of Directors may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing (and without thereby being deemed to have waived) the lien securing the same. In any action to recover any Regular

Assessment or Special Assessment, or any other debts, dues or charges owed the Association, whether by foreclosure or otherwise, the Board, for and on behalf of the Association, shall be entitled to recover from the Owner of the respective Lot and Dwelling Unit all of the costs and expenses of such action incurred (including but not limited to reasonable attorneys' fees) and interest from the date such Assessments or charges were due, until paid.

Section 5.13. Subordination of the Lien to Mortgages. The lien for the assessments provided for herein shall be subordinate to the lien of any properly recorded first mortgage or deed of trust encumbering a Lot. Notwithstanding anything contained in this Section 5.11 or elsewhere in this Declaration, any sale or transfer of a Lot to a Mortgagee pursuant to a foreclosure of its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid assessments (or periodic installments, if applicable) which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior Owner from personal liability therefore; and further provided, that any Person taking title to such Lot subsequently shall have no right to use the non-essential services or amenities of the Community until such time as all Assessments for such Lot shall be brought current. No such sale, transfer or conveyance shall relieve the Lot, or the purchaser thereof at such foreclosure sale, or the grantee in the event of conveyance in lieu thereof, from liability for any assessments (or periodic installments of such assessments, if applicable) thereafter becoming due or from the lien for such assessments.

Section 5.14. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein: (a) all property dedicated to and accepted by a local public authority; and (b) the Common Area; however, except as otherwise provided in Section 5.10 hereof, no developed or undeveloped Lot, land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 5.15. Reserves for Replacements. The Association shall establish and maintain a reserve fund for the maintenance, repair and replacement of the Common Area and improvements located thereon by the allocation and payment to such reserve fund of an amount to be designated from time to time by the Board of Directors, which reserve fund shall be sufficient, in the sole opinion of the Board of Directors, to accommodate such future maintenance, repair and replacement and which shall be a component of the Regular Assessment. Such fund shall be conclusively deemed to be a Common Expense of the Association and may be deposited with any banking institution, the accounts of which are insured by any state or by any agency of the United States of America or may, in the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. The reserve for replacement of the Common Area may be expended only for the purpose of effecting the replacement of the Common Area, major repairs to, replacement and maintenance of any improvements within the Common Area, including but not limited to, sidewalks, parking areas, landscape improvements, street or common area lighting, streets or roadways developed as a part of the Property, equipment replacement, and for start-up expenses and operating contingencies of a nonrecurring nature relating to the Common Area. The Association may establish such other reserves for such other purposes as the Board of Directors may from time to time consider to be necessary or appropriate. The

proportional interest of any Member in any such reserves shall be considered an appurtenance of the Member's Lot and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot.

ARTICLE VI

USE, RESTRICTIONS AND ARCHITECTURAL CONTROL

Section 6.1. Residential Use. The Property shall be used exclusively for residential purposes except as provided in Section 6.19 hereof. The Declarant reserves the right, pursuant to a recorded subdivision or re-subdivision plat, to alter, amend, and change any Lot line or subdivision plan or plat. No structure shall be erected, altered, placed or permitted to remain on any Lot other than one Dwelling Unit and appurtenant structures, approved by the Association and appropriate Local Governing Authorities, for use solely by the occupant of the Dwelling Unit.

Section 6.2. Architectural Review Board Approval. No Structure (as herein defined) or addition to a Structure shall be erected, placed, painted, altered or externally modified or improved on any Lot until the plans and specifications, including design, elevation, material, shape, height, color and texture, and a site plan showing the location of all improvements with grading modifications, shall be filed with and approved in writing by the Architectural Review Board, and, if required, by appropriate Local Governing Authorities and, where required, appropriate construction permits obtained. As used herein, the term

Section 6.3. Laundry. No clotheslines may be erected on any Lot, and no clothing, sheets, blankets, rugs, laundry or wash shall be hung out, exposed, aired or dried on any portion of the Property within public view.

Section 6.4. Sight Lines. No fence, wall, tree, hedge or shrub shall be maintained in such a manner as to obstruct sight lines for vehicular traffic.

Section 6.5. Lot Maintenance. An Owner shall, at all times, maintain its Dwelling Unit and all appurtenances thereto free of debris or rubbish and in good repair and in a state of neat appearance from all exterior vantage points. While the Association will perform all routine maintenance to all structures and landscape improvements, the Owners are responsible for all extraordinary items of maintenance to any Structure or landscape improvement or amenity, including, without limitation, trees and shrubs, and for repair of any damage or destruction maintenance to any Structure or landscape improvement or amenity, including, without limitation, trees and shrubs whether or not caused by an Owner, third party, elements of nature, or acts of God.

Section 6.6. Additions to Landscape Improvements. No tree, shrub, or other vegetation or landscape improvement originally installed by Declarant shall be removed or altered unless such item is dead or decayed and dangerous to human health, safety, or welfare, and the removal has been approved by the Architectural Review Board or unless removal is ordered by a Local Governing Authority or by the Architectural Review Board to maintain proper sightlines. No

approval for removal of any trees or shrubs will be granted by the Architectural Review Board unless appropriate provisions are made for replacing the removed trees or shrubs. Owners are permitted to add to the landscape features within approved flowerbeds. Prior to adding any such landscape, however, the Owner of such Lot must submit a written landscape plan to the Architectural Review Board for its review and approval or disapproval.

Section 6.7. Nuisance. No noxious or offensive activity shall be carried on upon the Property, nor shall anything be done or placed thereon which is or may become an annoyance or nuisance to the neighborhood. Nothing shall be done or kept by an Owner in any Dwelling Unit, or on any Lot, or on any of the Common Areas, which will cause an increase in the rate of insurance paid by the Association or any other Owner. No Owner shall permit anything to be done or kept in his Dwelling Unit or on his Lot which will result in a cancellation of insurance on any part of the Common Area or any other Owner, or which would be a violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau. No Dwelling Unit or Lot shall be used in any unlawful manner or in any manner which might cause injury to the reputation of the Community or which might be a nuisance, annoyance, or inconvenience, or which might cause damage, to other Owners and occupants of Dwelling Units or neighboring proper, including, without limiting the generality of the foregoing, noise by the use of any musical instrument, radio, television, loud speakers, electrical equipment, amplifiers or other equipment or machines. No exterior lighting on a Lot shall be directed outside the boundaries of the Lot. No outside toilets shall be permitted on any Lot (except during a period of construction and then only with the consent of the Architectural Review Board), and no sanitary waste or other wastes shall be permitted to be exposed.

Section 6.8. Signs. The only signs permitted on the Property shall be Permitted Signs. No more than one (1) Permitted Sign shall be displayed to public view on any Lot and must be less than or equal to six (6) square feet in total surface area and may not be illuminated. All Permitted Signs advertising the property for sale or rent shall be removed within three (3) days from the date of the conveyance of the Lot or of the execution of the lease agreement, as applicable.

Section 6.9. Animals. No domesticated or wild animal shall be kept or maintained on any Lot, except that no more than three (3) common household pets such as dogs and cats may be kept or maintained, provided that they are not kept, bred or maintained for commercial purposes and do not create a nuisance or annoyance to surrounding Lots or the neighborhood and are kept in compliance with applicable laws and ordinances of the Local Governing Authority. Excessive barking of dog(s) or vicious animals shall constitute a nuisance and may be ordered removed from the Property by the Association. Pets will not be permitted outside of a Dwelling Unit unless on a leash and any Owner walking a pet within the Community or on any Common Area will immediately clean up any solid animal waste and properly dispose of the same. Failure to remove any solid animal waste shall subject the owner to a fine not to exceed \$50.00 per occurrence as determined by the Board. Law enforcement and animal control personnel shall have the right to enter the Property to enforce local animal control ordinances.

Section 6.10. Trash Storage. Trash shall be collected and stored in trash receptacles only and not solely in plastic bags. Trash and garbage receptacles shall not be permitted to remain in

public view and shall remain inside of each Owner's garage except on days of trash collection, except those receptacles designed for trash accumulation located in the Common Area. No accumulation or storage of litter, new or used building materials, or trash of any kind shall be permitted on the exterior of any Dwelling Unit. No rubbish, garbage or other waste shall be allowed to accumulate on any Lot or Common Area. No homeowner or occupant of a Lot shall burn or bury any garbage or refuse on any Lot or Common Area.

Section 6.11. Antennae Systems. To the extent not inconsistent with federal law, exterior television and other antennae, including satellite dishes, are prohibited, unless approved in writing by the Architectural Review Board. The Architectural Review Board shall adopt rules for the installation of such antennae and/or satellite systems, which rules shall require that antennae and satellite dishes be placed as inconspicuously as possible and only when fully screened from public view on the rear and above the eave line of any Dwelling Unit. To the extent not inconsistent with federal law, satellite dishes will not exceed 18 inches in diameter. It is the intent of this provision that the Architectural Review Board shall be able to strictly regulate exterior antennae and satellite dishes to the fullest extent of the law and should any regulations adopted herein or by the Architectural Review Board conflict with federal law, such rules as do not conflict with federal law shall remain in full force and effect.

Section 6.12. Painting. No Owner shall cause or permit any alterations or changes of the exterior design and/or color scheme of any Dwelling Unit, Structure or building. No person shall paint the exterior of any building, or portion thereof, except contractors and agents employed by Declarant or the Association. Any and all such painting of the exterior of any building or any portion thereof shall be done by the Association, and the costs thereof will be assessed to the Owners either as a part of the Regular Assessments due hereunder or, if necessary, as a Special Assessment, as determined by the Board of Directors in its discretion under Article V, above. All Dwelling Units in the Community will, at all times, be painted in a uniform color, without variation. To the extent that the Association should deem it necessary to paint only a portion of a building, by way of example, without limitation, in the case of damage affecting only one Dwelling Unit, and, if a matching paint cannot be located or if, when applied, the paint does not match the finish on the adjacent Dwelling Units, the Association, in its sole discretion to paint the exteriors of the entire building, with the costs thereof being assessed to the Owners either as a part of the Regular Assessments due hereunder, or, if necessary, as a Special Assessment, as determined by the Board of Directors in its discretion.

Section 6.13. Finished Exteriors. The exteriors of all Structures, including, without limitation, walls, doors, windows and roofs, shall be kept in good maintenance and repair. No Structure shall be permitted to stand with its exterior in an unfinished condition for longer than six (6) months after the commencement of construction. In the event of fire, windstorm or other damage, the exterior of a Structure shall not be permitted to remain in a damaged condition for longer than three (3) months, unless expressly excepted by the Board in writing. If the Board of Directors of the Association determines that any Structure or Dwelling Unit is not in compliance with the provisions of this Section, the Association will send written notice to the Owner of that Structure or Dwelling Unit identifying, with reasonable specificity, the items in need of repair or maintenance (a "Repair Notice"). If an Owner fails to comply with the provisions of this Section

after its receipt of such a Repair Notice, the Association shall be entitled to enforce the provisions of this Section in the manner contemplated under Section 11.1(I), below, and in any other manner permitted hereunder or by applicable law.

Section 6.14. Fences. No fence or similar enclosure shall be erected or built on the Property.

Section 6.15. Vehicles. No inoperable, junk, unregistered or unlicensed vehicle shall be kept on the Property. No portion of the Property shall be used for the repair of a vehicle.

Section 6.16. Commercial Vehicles. Except upon the prior written approval of the Architectural Review Board, no commercial or industrial vehicle, such as but not limited to moving vans, trucks, tractors, trailers, vans, wreckers, tow trucks, hearses and buses, shall be regularly or habitually parked or parked overnight on the Property, nor shall any such vehicle be located on the Property for longer than twenty-four (24) hours.

Section 6.17. Recreational Vehicles. No recreational vehicles or equipment, such as but not limited to boats, boating equipment, jet-skis, wave runners, travel trailers, fuel tanks, camping vehicles or camping equipment shall be parked on the Property without the prior, written approval of the Architectural Review Board, as to location, size, screening and other relevant criteria. The Association shall not be required to provide a storage area for these vehicles.

Section 6.18. Towing. The Board of Directors shall have the right to tow any vehicle parked or kept in violation of the covenants contained within this Article, upon twenty-four (24) hours' notice and at the vehicle owner's sole expense.

Section 6.19. Garage Usage. Any conversion of any garage that will preclude the parking of vehicles within that garage is prohibited. Owners shall keep their garages at all times in a manner that will permit the usage of such garage for parking of passenger automobiles, vans and/or trucks.

Section 6.20. Rental Agreements. Any rental agreement for a Dwelling Unit must be for an initial period of at least six (6) months, must be in writing and must be subject to the rules and regulations set forth in this Declaration and in the other Association documents. Every such rental agreement must include a provision stating that any failure by the tenant, its household members or guests, to comply with the terms of this Declaration shall be a default under the rental agreement, and the Owner shall be responsible for enforcing that provision; provided, however, that the Association shall also have the right to enforce any of these Restrictions against the Owner or any tenant, or both, in its sole discretion, without regard to whether the Declarant or the Association were or are in privity with such tenant, and is not herein waiving its rights hereunder to enforce these Restrictions against a tenant or any other Person in possession of the Property or any part thereof.

Section 6.21. Initial Construction and Marketing. The Declarant or its assigns may, during its construction and/or sales period, erect, maintain and operate real estate sales and

construction offices, model homes, displays, signs and special lighting on any part of the Property and on or in any building or Structure now or hereafter erected thereon and shall not be bound by the provisions of this Article to the extent application thereof would delay, hinder or increase the cost of construction and/or marketing of Dwelling Units for sale in the Community.

Section 6.22. Dusk to Dawn Coach Lights. Each Owner shall maintain any and all coach lights installed as a part of the initial construction of each Dwelling Unit in good order, condition and repair, including, without limitation, any necessary repairs or maintenance as may be required for the effective operation of all “dusk to dawn” photocell switches and replacement of light bulbs so that those coach lights remain continuously operational from dusk to dawn.

Section 6.23. Garages. Garage doors shall remain closed except when entering and exiting or otherwise having a need to access the garage.

Section 6.24. Storage Facilities. No permanent or temporary or portable storage facilities shall be permitted on any Lot; provided, however, that portable storage facilities are permitted so long as they located wholly within the Owner’s garage area and are removed within twenty-four (24) hours. No portable storage facility is permitted in any driveway, Common Area, or public right-of-way.

Section 6.25. Awnings. Except on Lots on which there is maintained a sales office or model home by the Declarant, or as approved by the Architectural Review Board, no metal, wood, fabric, fiberglass or similar type material awnings or patio covers will be permitted anywhere on the Property.

Section 6.26. Mailboxes. No mailboxes shall be permitted on any Lot.

Section 6.27. Address Markers. No address markers shall be permitted on any Lot.

Section 6.28. Pools and Hot Tubs. No pools or hot tubs shall be permitted on any Lot.

Section 6.29. Play Equipment. No children’s play equipment such as playhouses, sandboxes, swing and slide sets, and trampolines, shall be permitted on any Lot.

Section 6.30. Basketball Goals. No basketball goals, hoops, or backboards shall be permitted on any Lot.

Section 6.31. Business Use. No garage sale, moving sale, rummage sale or similar activity and no trade or business may be conducted in or from any Lot, except that an Owner or occupant resident on a Lot may conduct business activities within a Dwelling Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit; (b) no sign or display is erected that would indicate from the exterior that the Dwelling Unit is being utilized in part for any purpose other than that of a residence; (c) no commodity is sold upon the premises; (d) no person is employed other than a member of the immediate family residing in the Dwelling Unit; (e) no manufacture or assembly

operations are conducted; (f) the business activity conforms to all zoning requirements for the Property; (g) the business activity does not involve persons coming onto the Property who do not reside in the Property or door-to-door solicitation of residents of the Property; and (h) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the leasing of a Lot or Dwelling Unit shall not be considered a trade or business within the meaning of this section. This Section shall not apply to any activity conducted by the Declarant or its affiliates or a builder approved by the Declarant with respect to its development and sale of the Properties or its use of any Units which such entity owns within the Properties.

Section 6.32. Landscaping of Common Areas. No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Areas, except with express permission from the Board of Directors.

Section 6.33. Declarant's Use. Notwithstanding anything to the contrary contained herein or in the Articles or By-Laws, including but not limited to any covenants and restrictions set forth herein or otherwise, Declarant shall have, until the Authority Transfer Date, the right to use and maintain any Lots and Dwelling Units owned by Declarant and other portions of the Property (other than individual Dwelling Units and Lots owned by Persons other than Declarant), all of such number and size and at such locations as Declarant in its sole discretion may determine, as Declarant may deem advisable or necessary in its sole discretion to aid in the sale of Lots and the construction of Dwelling Units, or for the conducting of any business or activity attendant thereto, or for the construction and maintenance of Common Areas, including, but not limited to, model Dwelling Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. Declarant shall have the right to relocate any or all of the same from time to time as it desires. At no time shall any of such facilities so used or maintained by Declarant be or become part of the Common Areas, unless so designated by Declarant, and Declarant shall have the right to remove the same from the Property at any time.

Section 6.34. Nonapplicability to Association. Notwithstanding anything to the contrary contained herein, the covenants and restrictions set forth herein shall not apply to or be binding upon the Association in its ownership, management, administration, operation, maintenance, repair, replacement and upkeep of the Common Areas to the extent the application thereof could or might hinder, delay or otherwise adversely affect the Association in the performance of its duties, obligations and responsibilities as to the Common Areas.

Section 6.35. Additional Rules and Regulations. The Association shall have the authority to adopt such rules and regulations regarding this Article as it may from time to time consider necessary or appropriate.

ARTICLE VII

ARCHITECTURAL REVIEW BOARD

Section 7.1. The Architectural Review Board. As used herein, the term “**Architectural Review Board**” will mean and refer to a group of individuals who will administer the duties described in Section 7.4, below. During the Development Period, the Architectural Review Board will consist of two (2) committees: (i) the “**New Construction Committee**” and the “**Modification and Change Committee**.” Upon expiration of the Development Period, these committees will be dissolved and the Architectural Review Board will not be divided into committees.

Nothing contained in this Declaration or in the Articles or By-Laws will prohibit an individual from serving on both committees simultaneously; however, membership on any one committee will not entitle any individual to also be a member of the other committee. Likewise, nothing contained herein will require the appointment of an individual to either such committee simply because that individual is also a member of the other committee described herein.

The New Construction Committee shall consist of three (3) members who are appointed by the Declarant. The Modification and Change Committee shall consist of a number of members equivalent to the number of members of the Board of Directors of the Association and will consist of the individuals who are members of the Board of Directors of the Association. Upon expiration of the Development Period and dissolution of the New Construction Committee and the Modification and Change Committee, the rights and responsibilities of each such committee hereunder will simply be administered by the Architectural Review Board. Upon expiration of the Development Period, the individuals who are members of the Board of Directors of the Association will automatically become members of the Architectural Review Board, without the need for any previous member of either committee to submit any type of resignation or acknowledgement of the termination of such committee. The term of membership for any member of the Architectural Review Board will be coterminous with the term of that individual’s membership on the Board of Directors.

Section 7.2. Removal and Vacancies. Members of the New Construction Committee may be removed by the Declarant at any time, with or without cause. The Declarant will fill any vacancies on the New Construction Committee in the same manner that it has the right to initially appoint members of the New Construction Committee, in its sole discretion. Individuals who are members of the Modification and Change Committee may only be removed from that committee to the extent that such individual is removed or otherwise ceases to be a member of the Board of Directors of the Association. After the Development Period, individuals who are members of the Architectural Review Board may only be removed from that board to the extent that such individual

is removed or otherwise ceases to be a member of the Board of Directors of the Association. Appointments to fill vacancies in unexpired terms (during the Development Period) on the Modification and Change Committee or (after the Development Period) on the Architectural Review Board, shall be made in the same manner as members are appointed or elected to the Board of Directors of the Association.

Section 7.3. Officers. At the first meeting of the Modification and Change Committee of the Architectural Review Board following each annual meeting of Members, the Modification and Change Committee shall elect from among themselves a chairperson, a vice-chairperson and a secretary who shall perform the usual duties of their respective offices.

Section 7.4. Duties. The Committees of the Architectural Review Board shall regulate the external design and appearance of the Property and the external design, appearance and location of the improvements thereon in such a manner so as to preserve and enhance property values and to maintain harmonious relationships among Structures and the natural vegetation and topography in the Community. During the Development Period, the New Construction Committee shall regulate all initial construction, development or improvements on the Property and the Modification and Change Committee shall regulate all modifications and changes to existing improvements on the Property. In furtherance thereof, the Architectural Review Board (acting through the designated committees during the Development Period and of its own accord after the Development Period) shall:

- (a) review and approve or disapprove written applications of Owners for proposed alterations or additions to Lots;
- (b) periodically inspect the Property for compliance with adopted, written architectural standards and approved plans for alteration;
- (c) adopt and publish architectural standards subject to the confirmation of the Board of Directors;
- (d) adopt procedures for the exercise of its duties; and
- (e) maintain complete and accurate records of all actions taken by the Architectural Review Board.

No request for approval by the Architectural Review Board or any committee thereof will be reviewed or otherwise considered unless submitted in writing by the Owner requesting such approval. Approval by the Architectural Review Board of a correctly filed application shall not be deemed to be an approval by Local Governing Authorities nor a waiver of the Association's right to require an applicant to obtain any required approvals from any such Local Governing Authorities or to otherwise comply with applicable local ordinances. No approval of the Architectural Review Board or any committee thereof shall be effective unless in writing and signed by the members of the Architectural Review Board or applicable committee whose approval is required hereunder.

Section 7.5. Failure to Act. Failure of the Architectural Review Board, any committee thereof or the Board of Directors to respond to any request for approval, enforce the architectural standards contained in this Declaration or to notify an Owner of noncompliance with architectural standards or approved plans for any period of time shall not constitute a waiver by the Architectural Review Board or the Board of Directors of any provision of this Declaration requiring such approval hereunder or otherwise prevent the Architectural Review Board or the Board of Directors from enforcing this Declaration at any later date. If approval has not been issued in writing within thirty (30) days after submission of an application to the Change and Modification Committee, then any such request to the Change and Modification Committee shall be deemed to be denied.

Section 7.6. Discretion. Declarant intends that the members of the Architectural Review Board, and all committees thereof, exercise discretion in the performance of their duties, and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members.

Section 7.7. Enforcement. Any exterior addition, change or alteration made without a written application to, and approval of, the Architectural Review Board shall be deemed to be in violation of this Declaration and may be required by the Board of Directors to be restored to its original condition at the offending Owner's sole cost and expense.

Section 7.8. Appeal. Any aggrieved party may appeal a decision of the Architectural Review Board to the Board of Directors by giving written notice of such appeal to the Association or any director within twenty (20) days of the adverse ruling.

Section 7.9. Liability of the Architectural Review Board, Declarant, Association. Neither the Architectural Review Board, nor any committee or any agent thereof, nor the Declarant, nor the Association shall be liable in any way for any costs, fees, damages, delays, or any charges or liability whatsoever relating to the approval or disapproval of any plans submitted to it, nor shall the Architectural Review Board or any committee thereof, the Declarant, or the Association be responsible in any way for any defects in any plans, specifications or other materials submitted to it, or for any defects in any work done according thereto. Further, the Architectural Review Board and its constituent committees, the Declarant, and the Association make no representations or warranties as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used. All parties should seek professional construction advice, engineering, and inspections on each lot prior to proposing construction.

Section 7.10. Inspection. The Architectural Review Board and the Declarant may inspect work being performed to assure compliance with these Restrictions, the restrictions contained in any plat of the Property and applicable regulations. However, neither the Architectural Review Board, nor any committee or member thereof, nor the Declarant, nor any agent or contractor employed or engaged by the Architectural Review Board, any committee thereof, or the Declarant, shall be liable or responsible for defects or deficiencies in any work inspected or approved by it or them, or on its or their behalf. Further, no such inspection or approval given by or on behalf of the Architectural Review Board, any committee thereof or the

Declarant shall be taken or deemed to be or constitute a warranty or guaranty of the work so inspected or approved.

ARTICLE VIII

EASEMENTS

Section 8.1. General Easement Rights. The Declarant hereby grants a blanket easement over, across, through and under the Property to the Association, its directors, officers, agents and employees, to any manager employed by or on behalf of the Association, and to all police, fire, ambulance personnel and all similar persons, to enter upon the Property, in the exercise of the functions provided for by this Declaration, Articles, By-Laws and rules of the Association, and in the event of emergencies and in the performance of governmental functions. Declarant further grants a blanket easement over, across, through and under the Property for ingress, egress, installation, replacement, repair and maintenance of underground utility and service lines and systems, including but not limited to water, sewer, gas telephones, electricity, television, cable or communication lines and systems. By virtue of this easement it shall be expressly permissible for Declarant or the providing utility or service company to install and maintain facilities and equipment on the Property and to excavate for such purposes if Declarant or such company restores the disturbed area as nearly as is practicable to the condition in which it was found. No sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or relocated except as proposed and approved by Declarant. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Association shall have the right to grant such easement on the Property without conflicting with the terms hereof. This blanket easement shall in no way affect any other recorded easements on the Property, shall be limited to improvements as originally constructed, and shall not cover any portion of a Lot upon which a Dwelling Unit has been constructed.

Section 8.2. Limitation on General Easement Rights. When not an emergency situation or a governmental function, the rights accompanying the easements provided for in Section 8.1 of this Article shall be exercised only during reasonable daylight hours and then, whenever practicable, only after advance notice to, any Owner or tenant directly affected.

Section 8.3. Plat Easements. In addition to such easements as are created elsewhere in this Declaration or in a Supplemental Declaration and as may be created by Declarant pursuant to written instruments recorded in the office of the Recorder of Hamilton County, Indiana, Lots are subject to drainage easements, sewer easements, utility easements, and common area access easements, either separately or in any combination thereof, as shown on the Plats, which are reserved for the use of Declarant, Owners, the Association, the Architectural Review Board, and any committee thereof, public utility companies and governmental agencies as follows:

- (a) Drainage Easements (DE) are hereby created for the mutual use and benefit of the Declarant and the Owners and are intended to provide paths and courses for the area and local storm drainage, either overland or in adequate underground conduit to serve the

needs of the Community and adjoining ground and/or public drainage systems. Under no circumstance shall said easement be blocked in any manner by the construction or reconstruction of any improvement, nor shall any grading restrict, in any manner, the waterflow. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage, by Declarant, by the Association and by the Architectural Review Board, but neither Declarant nor the Association nor the Architectural Review Board shall have any duty to undertake any such construction or reconstruction. The Owner of each Lot, by acceptance of a deed thereto, consents to the temporary storage (detention) of storm water within the Drainage Easement (DE) on such Owner's Lot.

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

(c) IWC Easements ("IWC ESMT") are created for the benefit and use of the Indianapolis Water Company, and any successor company providing public potable water to the Community for the purposes of installation and maintenance of the water distribution system within the Community.

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

(e) Common Area Access Easements (CAE) are created for the use of Declarant and the Association for the purpose of gaining access to the Common Areas in the course of maintenance, repair or replacement thereof and for the use of Owners for the purpose of gaining access to such Common Area to enjoy the use thereof to the extent authorized herein.

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

Section 8.4. Encroachments. If any improvement on the Property now or hereafter encroaches on any other portion of the Property by reason of (a) the original construction thereof by the Declarant or its assigns, which shall include, but not be limited to, any party wall or driveway which encroaches over a Lot's boundary line and any drainage of stormwater from roofs and

gutters, (b) deviations within normal construction tolerances in the maintenance, repair, replacement or reconstruction of any improvement, or (c) the settling or shifting of any land or improvement, an easement is hereby granted to the extent of any such encroachment for the period of time the encroachment exists. The owner of the encroaching improvement shall also have an easement for the limited purpose of maintenance of the encroaching improvement. This easement does not relieve any Owner or any other person from liability for such Owner's or other person's negligence or willful misconduct.

Section 8.5. Ingress Egress Easement. The Declarant, its agents and employees shall have a right of ingress and egress over the Common Area, as required for construction on and development of the Property and otherwise as necessary over any internal roadways within the Community for access, ingress and egress to and from such Owner's Dwelling Unit.

Section 8.6. Reservation of Right to Grant Future Easements. There is reserved to the Declarant a right to grant non-exclusive easements over any Lot or Common Area for the purposes of installing, repairing and/or maintaining utility lines of any sort, including but not limited to storm drains and drainage swales, sanitary sewers, gas lines, electric lines and cables, water lines, telephone lines, telecommunication lines and cables, and the like, and for any purpose necessary for the Declarant or its assigns to obtain the release of any bonds posted with a municipality, governmental agency or regulatory agency, and non-exclusive easements over the Common Area to any municipal agency or private entity for any other purpose consistent with the "open space" designation thereof. This right to grant easements shall automatically expire as to any Lot or Common Area seven (7) years from the date of submission of such Lot or Common Area to this Declaration.

Section 8.7. Bonds and/or Dedication Requirements. There is reserved to the Declarant an easement and the right to grant and reserve easements or to vacate or terminate easements across all Lots and Common Area as may be required by any governmental agency or authority or utility in connection with the release of improvement bonds or the acceptance of public streets for state maintenance with respect to the Property.

Section 8.8. Easements for Corrective Work. There is reserved to the Declarant a non-exclusive easement over all Lots and the Common Area for the purposes of correcting drainage, regrading, maintenance, landscaping, mowing and erecting street intersection signs, directional signs, temporary promotional signs, entrance features, lights and wall features, and for the purpose of executing any of the powers, rights, or duties granted to or imposed on the Association herein. This easement shall automatically expire as to any Lot seven (7) years from the date of submission of such Lot to this Declaration.

Section 8.9. Reciprocal Cross-Easements for Adjoining Dwelling Units. There is hereby created a reciprocal cross-easement and right of entry for all adjoining Dwelling Units covering all encroaching party walls, roofs, roof overhangs, eaves, downspouts, gutters, and splash blocks for the purposes of repairing and maintaining same at reasonable times; provided, however, that the Owner exercising the right of entry upon the adjoining Owner's Lot shall be responsible for

preserving and restoring the adjoining Owner's Lot to the same condition prior to the exercise of the right of entry.

ARTICLE IX

PARKING

No Owner, tenant, or any other Person regularly residing in the Community shall park any type of vehicle in any Common Area. Visitors, guests and invitees shall be permitted to park in those portions of the Common Area designated by the Declarant or the Association as parking areas; provided, however, that such parking shall be permitted only on a temporary and intermittent basis and further provided that no such parking shall be permitted in any portion of the Common Area which has not been designated as a parking area. Temporary parking on or within any public right-of-way within or adjacent to the Property is permitted only to the extent permitted by Local Governing Authorities, and subject to any restrictions or limitations relating thereto, including, without limitation, fees. To the extent that any local Governmental Authority shall prohibit parking on or within any such public right-of-way, it shall likewise be a violation of these Restrictions to park within such right-of-way. The Board of Directors may promulgate such additional rules and regulations as it deems appropriate to regulate the use of any Common Areas to permit temporary parking for purposes of loading and unloading passengers and materials. Those rules and regulations may include the towing of any vehicles parked in violation of this Declaration, with no notice of towing required and at the vehicle owner's sole expense.

ARTICLE X

PARTY WALLS

Section 10.1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Dwelling Units upon the Property and placed on the dividing line between Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 10.2. Sharing of Repair and Maintenance and Destruction by Fire or Other Casualty. If any such party wall is damaged or destroyed by fire or other casualty or by some cause other than the act of one of the adjoining Owners, its agents, family, household or guests (including ordinary wear and tear and deterioration from lapse of time), then in such event both such adjoining Owners shall proceed forthwith to rebuild or repair the structural components of such wall, sharing equally the cost thereof, and each individual Owner shall proceed forthwith to rebuild or repair the non-structural components of such wall in proportion to their respective uses of the party wall. Any and all such reconstruction and/or repairs shall be completed immediately to the extent that the failure to commence and/or complete such reconstruction and/or repairs would result in an immediate risk to human health and/or safety. All other reconstruction and/or repairs shall be completed within three (3) months following the casualty or other event that damaged or destroyed

such party wall, unless a longer period of time is approved of by the Association. If the damage is of such a nature that it has resulted, or will (if left uncorrected) result in damage or destruction of such party wall, the reconstruction and/or repairs will be completed within a reasonable time, not exceeding six (6) months following the initial discovery of the condition. Any and all such reconstruction and/or repair shall be made in compliance with all requirements of Local Governing Authorities and otherwise in compliance with all applicable laws, to the same or better condition as existed prior to such damage or destruction.

Section 10.3. Repairs for Damage Caused by One Owner. If any such party wall is damaged or destroyed through the act of one or more adjoining Owners, or their respective agents, families, households or guests (collectively the “Offending Parties”), whether or not such act is negligent or otherwise culpable, so as to deprive another adjoining Owner of the full use and enjoyment of the wall, then the Owner(s) of the Dwelling Unit(s) from whence the Offending Parties committed the act that caused the damage or destruction, shall forthwith proceed to rebuild and repair the same, in the manner required under Section 10.2, above, without cost to the adjoining Owner.

Section 10.4. Other Changes. In addition to meeting the other requirements of these restrictive covenants and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild its Dwelling Unit in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of the adjoining Owner, whose consent shall not be unreasonably withheld. If the adjoining Owner has not responded in writing to the requesting Owner within twenty-one (21) days of its receipt of any such written request, given by registered or certified mail, return receipt requested, such consent of the adjoining Owner shall be deemed received.

Section 10.5. Right to Contribution Runs with the Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner’s successors in title.

Section 10.6. Dispute. In the event of a dispute between Owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of the cost thereof, then upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board of Directors, who shall decide the dispute in the capacity as arbitrators.

ARTICLE XI

POWERS AND DUTIES OF THE ASSOCIATION

Section 11.1. Discretionary Powers and Duties. The Association shall have the following powers and duties which may be exercised in its discretion:

- (a) to enforce any covenants or restrictions which are imposed by the terms of this Declaration or which may be imposed on any part of the Property. Nothing contained herein shall be deemed to prevent the Owner of any Lot from enforcing any building

restriction in its own name. The right of enforcement shall not serve to prevent such changes, releases or modifications of the restriction or reservations placed upon any part of the Property by any party having the right to make such changes, releases or modifications in the deeds, contracts, declarations or plats in which such restrictions and reservations are set forth; and the right of enforcement shall not have the effect of preventing the assignment of those rights by the proper parties wherever and whenever such right of assignment exists. Neither the Association nor the Board of Directors shall have a duty to enforce the covenants by an action at law or in equity if, in its or their opinion, such enforcement is not in the Association's best interest. The expenses and costs of any enforcement proceedings shall be paid out of the general fund of the Association as herein provided for, provided, however, that the foregoing authorization to use the general fund for such enforcement proceedings shall not preclude the Association from collecting such costs from the offending Owner;

- (b) to build facilities upon the Common Area;
- (c) to use the Common Area and any improvements, Structures or facilities erected thereon, subject to the general rules and regulations established and prescribed by the Association and subject to the establishment of charges for their use;
- (d) to regularly mow and re-sow or re-seed or re-sod lawn areas and fertilize lawn areas at least three (3) times each year within the Common Areas and on each Lot and to operate and maintain in-ground irrigation/sprinkler systems in the Common Areas and in the landscaped areas of each Lot;
- (e) to care for, spray, trim, protect, plant, replant and prune trees, shrubs and other landscaping, maintenance and upkeep of the Common Area and to pick up and remove from the Common Area all loose material, rubbish, filth and accumulation of debris; and to do any other thing necessary or desirable in the judgment of the Association to keep the Common Area in neat appearance and in good order, including, but not limited to, cleaning the private streets and maintaining the gas street lights located in the Common Areas;
- (f) to arrange for plowing and/or removal of snow and ice on all Common Areas, streets and public walks within the Community;
- (g) to exercise all rights, responsibilities and control over all easements which the Association may from time to time acquire, including but not limited to those easements specifically reserved to the Association in the Article VIII herein;
- (h) to create, grant and convey easements and licenses upon, across, over and under all Common Areas, including but not limited to easements for the installation, replacement, repair and maintenance of utility lines serving the Property;

(i) subject to the limitations set forth in Section 11.3 hereof, to employ counsel and institute and prosecute such suits as the Association may deem necessary or advisable, and to defend suits brought against the Association;

(j) to retain as an independent contractor or employee a manager of the Association and such other employees or independent contractors as the Board deems necessary, and to prescribe the duties of employees and scope of services of independent contractors;

(k) to enter on any Lot to perform emergency repairs or to do other work reasonably necessary for the proper maintenance or protection of the Property;

(l) to enter (or have the Association's agents or employees enter) on any Lot to repair, maintain or restore the Lot, all improvements thereon, and the exterior of the Dwelling Unit and any other improvements located thereon if such is not performed by the Owner of the Lot, and to assess the Owner of the Lot the costs thereof, such assessment to be a lien upon the Lot equal in priority to the lien provided for in Article V herein; provided, however, that the Board of Directors shall only exercise this right after giving the Owner written notice of its intent at least fourteen (14) days prior to such entry;

(m) to re-subdivide and/or adjust the boundary lines of the Common Area but only to the extent such re-subdivision or adjustment does not contravene the requirements of zoning and other ordinances applicable to the Property;

(n) to adopt, publish and enforce rules and regulations governing the use of the Common Area and facilities and with respect to such other areas of responsibility assigned to it by this Declaration, except where expressly reserved herein to the Members. Such rules and regulations may grant to the Board of Directors the power to suspend a Member's voting rights and the Member's right to use non-essential services for non-payment of assessments and to assess charges against Members for violations of the provisions of the Declaration or rules and regulations;

(o) to declare the office of a member of the Board of Directors vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors;

(p) to arrange for the collection of trash and recyclable items on a weekly basis from approved locations and from appropriate receptacles in the manner contemplated in Section 6.9, above.

Section 11.2. Mandatory Powers and Duties. The Association shall exercise the following powers, rights and duties:

(a) to accept title to the Common Area and to hold and administer the Common Area for the benefit and enjoyment of the Owners and occupants of Lots, and to cause the

Common Area and facilities to be maintained in accordance with the standards adopted by the Board of Directors;

(b) to transfer part of the Common Area to or at the direction of the Declarant, for the purpose of adjusting boundary lines or otherwise in connection with the orderly subdivision or development of the Property, but only to the extent such re-subdivision or adjustment does not contravene the requirements of zoning and other ordinances applicable to the Property;

(c) after the termination of the Class B membership, to obtain and maintain without interruption liability coverage for any claim against a director or officer for the exercise of its duties and fidelity coverage against dishonest acts on the part of directors, officers, trustees, managers, employees or agents responsible for handling funds collected and held for the benefit of the Association. The fidelity bond shall cover the maximum funds that will be in the custody of the Association or its management agent at any time while the bond is in place. The fidelity bond coverage shall be in an amount as may be determined to be reasonably prudent by the Board of Directors;

(d) to obtain and maintain without interruption a comprehensive coverage of public liability and hazard insurance covering the Common Area and easements of which the Association is a beneficiary, if available at reasonable cost. Such insurance policy shall contain a severability of interest clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. The scope of coverage shall include all coverage in kinds and amounts commonly obtained with regard to projects similar in construction, location and use as determined by the Board of Directors. Further, the public liability insurance must provide coverage of at least \$1,000,000.00 for bodily injury and property damage for any single occurrence;

(e) to provide for the maintenance of any and all (i) improvements, Structures or facilities which may exist or be erected from time to time on the Common Area; (ii) easement areas of which the Association is the beneficiary and for which it has the maintenance responsibility, and (iii) facilities, including but not limited to fences and signs authorized by the Association and erected on any easements granted to the Association;

(f) to pay all proper bills, taxes, charges and fees on a timely basis;

(g) to maintain its corporate status; and

(h) to maintain all private streets, open space and landscaping within the Common Area.

Section 11.3. Limitation on Association Action. The Association shall hold a duly authorized, duly noticed special meeting of the Members of the Association prior to commencing or prosecuting any judicial or administrative proceeding, and no judicial or administrative proceedings shall be commenced or prosecuted by the Association except upon the affirmative vote of at least

seventy-five percent (75%) of the votes cast at said special meeting by Members entitled to vote authorizing the commencement and prosecution of the proposed action. This Section shall not apply to (a) actions brought by the Association to enforce the provisions of this Declaration, the By-Laws, or rules and regulations adopted by the Board of Directors (including, without limitation, any action to recover Regular or Special Assessments or other charges or fees or to foreclose a lien for such items) or (b) counterclaims brought by the Association in connection with proceedings instituted against it.

Section 11.4. Board Authority to Act. Unless otherwise specifically provided in the Association's documents, all rights, powers, easements, obligations and duties of the Association may be performed by the Board of Directors. Notwithstanding anything to the contrary contained herein, any rules or regulations which are promulgated by the Board may be repealed or amended by a majority vote of the Members cast, in person or by proxy, at a meeting convened for such purpose in accordance with the By-Laws.

Section 11.4. Compensation. No director or officer of the Association shall receive compensation for services as such director or officer except to the extent expressly authorized by a majority vote of the Class A Members.

Section 11.5 Non-liability of Directors, Officers and Board Members. The directors and officers of the Association and members of the Architectural Review Board, and all committees thereof, 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 or members of the Architectural Review Board, or any Committee thereof, except for their own individual willful misconduct or gross negligence. It is intended that the directors and officers of the Association and members of the Architectural Review Board, and all committees thereof, shall have no personal liability with respect to any contract made by them on behalf of the Association, and the Association shall indemnify and hold harmless each of the directors, officers, Architectural Review Board members, or committee members against any and all liability to any person, firm or corporation arising out of contracts made on behalf of the Association unless any such contract shall have been made in bad faith.

Section 11.6. Indemnity of Directors and Officers and Members of the Architectural Review Board. Except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in any civil action, suit, or proceeding that such person is liable for gross negligence or willful misconduct in the performance of his or her duties or to which it shall be adjudged in any criminal action, suit or proceeding that such person had reasonable cause to believe that such person's conduct was lawful or that person had no reasonable cause to believe that such person's conduct was unlawful, the Association shall indemnify, hold harmless and defend any person, his or her heirs, assigns and legal representatives (collectively, the "Indemnitee") made or threatened to be made a party to any action, suit or proceeding, or subject to any claim, by reason of the fact that he or she is or was a director or officer of the Association or member of the Architectural Review Board, or any committee thereof, from and against (1) all liability, including, without limitation, the reasonable cost of settlement of, or the amount of any judgment, fine, or penalty rendered or assessed in any such claim, action suit, or proceeding; and (2) all costs and

expenses, including attorneys fees, actually and reasonably incurred by the Indemnitee in connection with the defense of such claim, action, suit or proceeding, or in connection with any appeal thereof. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against an Indemnitee, no director or officer or member of the Architectural Review Board, or any committee thereof, shall be considered or deemed to be guilty of or liable for gross negligence or willful misconduct in the performance of his or her duties where, acting in good faith, such director, officer or member of the Architectural Review Board, or committee thereof, relied on the books and records of the Association or statements or advice made by or prepared by any managing agent of the Association or any director or officer of the Association, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service, unless such director or officer had actual knowledge of the falsity or incorrectness thereof; nor shall a director be deemed guilty of gross negligence or willful misconduct by virtue of the fact that he or she failed or neglected to attend a meeting or meetings of the Board of Directors or the Architectural Review Board, on any committee thereof. The costs and expenses incurred by an Indemnitee in defending any action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Indemnitee to repay the amount paid by the Association if it shall ultimately be determined that the Indemnitee is not entitled to indemnification or reimbursement as provided in this Section.

ARTICLE XII

RIGHTS OF MORTGAGEES

Unless a right is waived by the appropriate Federal Agency, all Mortgagees shall have the following rights:

Section 12.1 Veterans Administration. If any of the Lots are security for a loan guaranteed by the Veteran's Administration (the "VA") and if there is a Class B Member:

(a) The Declarant must provide a copy of all amendments to the VA. The Association may not make any Material Amendment or take any Extraordinary Action as such terms are defined in Article XIII without the approval of the VA.

(b) Eligible Mortgagees shall have the following rights:

- (i) the right to inspect Association documents and records on the same terms as the Members;
- (ii) notice of any Material Amendment to the Association documents;
- (iii) notice of any Extraordinary Action of the Association;
- (iv) notice of any property loss, condemnation or eminent domain proceeding affecting the Common Area resulting in a loss greater than ten percent

(10%) of the annual budget or affecting any Lot insured by the Association in which the Eligible Mortgagee has an interest;

(v) notice of any termination, lapse or material modification of an insurance policy held by the Association;

(vi) notice of any default by an Owner of a Lot subject to a mortgage held by the Eligible Mortgagee in paying assessments or charges to the Association which remains uncured for sixty (60) consecutive days;

(vii) notice of any proposal to terminate the Declaration or dissolve the Association at least thirty (30) days before any action is taken;

(viii) the right of a majority of the Eligible Mortgagees to demand professional management; and

(ix) the right of a majority of the Eligible Mortgagees to demand an audit of the Association's financial records.

Section 12.2. Federal Housing Authority. If any of the Lots are security for a loan insured by Federal Housing Authority (the "FHA") and if there is a Class B Member, the following actions will require the prior approval of the FHA:

- (a) annexation of additional properties, except the land described in Article XIII, below;
- (b) mergers, consolidations and dissolution of the Association;
- (c) mortgaging or conveyance of the Common Area; and
- (d) amendment of this Declaration.

Section 12.3. Freddie Mac. Assuming that Mortgagees may securitize pools of mortgages, including mortgages on Lots and/or Dwelling Units in the Community, with the Federal Home Loan Mortgage Corporation (a/k/a "Freddie Mac"), the following requirements shall apply to all Lots and Dwelling Units in the Community:

(a) Unless at least two-thirds (2/3rds) of the first Mortgagees (based on one vote for each first mortgage owned) or two-thirds of the Class A Members have given their prior written approval, the Association shall not take any of the following actions:

- (i) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area. The re-subdivision and/or adjustment of boundary lines of the Common Area and the granting of easements by the

Association shall not be deemed a transfer or subdivision within the meaning of this clause.

(ii) change the method of determining the obligations, assessments, dues, or other charges that may be levied against an Owner.

(iii) by act or omission waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Dwelling Units and their appurtenances, the exterior maintenance of Dwelling Units and their appurtenances, the maintenance of the Common Area, common fences and driveways, and the upkeep of lawns and plantings in the Property.

(iv) fail to maintain fire and extended coverage insurance on insurable parts of the Common Area or other Association property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value, based on current replacement costs, not including land value.

(v) use hazard insurance proceeds for losses to the Common Area or other Association property for other than the repair, replacement or reconstruction of such property.

(b) A Mortgagee shall be given written notification from the Association of any default in the performance of any obligation under this Declaration or related Association documents by the Owner of a Lot that is the security for the indebtedness due the Mortgagee which is not cured within sixty (60) days after the Owner's receipt of notice of the default.

(c) A Mortgagee may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy for such Common Area. The Mortgagee making such payments shall be owed immediate reimbursement therefor from the Association.

(d) The assessments imposed by the Association shall include an adequate reserve fund for maintenance, repairs and replacements for those parts of the Common Area which may be replaced or require maintenance on a periodic basis. Such reserves shall be payable in regular installments rather than by Special Assessment.

Section 12.4. Fannie Mae. Assuming that Mortgagees may secure funding for mortgage loans by selling mortgage loans, including mortgages on Lots and/or Dwelling Units in the Community, to the Federal National Mortgage Association (a/k/a "**Fannie Mae**"), the following requirements shall apply to all Lots and Dwelling Units in the Community:

(a) A Mortgagee shall be given written notification from the Association of the following:

(i) any condemnation or casualty loss that affects either a material portion of the Common Area or the Lot that is the security for the indebtedness due the Mortgagee;

(ii) any default in the performance of any obligation under this Declaration or related Association documents by the Owner of a Lot that is the security for the indebtedness due the Mortgagee which is not cured within sixty (60) days after the Owner's receipt of notice of the default;

(iii) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(iv) any proposed action that would require the consent of a specified percentage of Mortgagees.

(b) Provided that improvements have been constructed in the Common Area and provided that a Mortgagee gives written notice to the Association that it has relied on the value of the improvements in making a loan on a portion or all of the Property, then subject to the right of the Declarant to annex additional areas as provided in Article XIII herein, unless at least sixty-seven percent (67%) of the Members and Mortgagees representing at least fifty-one percent (51%) of those Lots that are subject to mortgages or deeds of trust have given their prior written approval, the Association shall not add or amend any material provision of this Declaration or related Association documents concerning the following:

(i) voting rights of any Member;

(ii) assessments, assessment liens, or subordination of such liens;

(iii) reserves for maintenance, repair and replacement of those parts of the Common Area that may be replaced or require maintenance on a periodic basis;

(iv) responsibility for maintenance and repair of the Property;

(v) reallocation of interests in the Common Area or rights to its use, except as provided in Article III and Article IV herein;

(vi) converting Lots into Common Area or vice versa;

(vii) annexation or withdrawal of property to or from the Property (other than annexation of those properties referred to in Article XIII;

(viii) insurance or fidelity bonds;

(ix) leasing of Dwelling Units;

(x) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey its property;

(xi) a decision by the Association to establish self-management when professional management has been required previously by a Mortgagee;

(xii) restoration or repair of the Property after a hazard damage or partial condemnation;

(xiii) any provisions that are for the express benefit of Mortgagees; and

(xiv) termination of the legal status of the Association after substantial destruction or condemnation of the subdivision occurs.

An addition or amendment to this Declaration or related Association documents shall not be considered material if it is for the purpose of clarification or correcting errors. A Mortgagee who receives a written request to approve additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days of receipt of such request shall be deemed to have approved such request.

Section 12.5. General.

(a) **Condemnation.** In the event that there is a condemnation or destruction of the Common Area or other Association property, to the extent practicable, condemnation or insurance proceeds shall be used to repair or replace the condemned or destroyed property.

(b) **Books and Records.** A Mortgagee shall have the right to examine and copy at its expense the books and records of the Association during normal business hours and upon reasonable notice to the Association.

(c) **Notice.** As set forth in this Article, Mortgagees shall have the right, upon request, to receive notice of (a) the decision of the Owners to abandon or terminate the Planned Unit Development (as defined by Fannie Mae); (b) any material amendment to the Declaration, the By-Laws or the Articles; and (c) if professional management has been required by a Mortgagee, the decision of the Association to terminate such professional management and assume self-management.

(d) **Excess Proceeds.** Should there be excess insurance or condemnation proceeds after the renovation, repair or reconstruction called for herein, such excess proceeds may be distributed equally to the Owners, apportioned equally by Lot; subject, however, to the priority of a Mortgagee with regard to the proceeds applicable to the Lot securing said Mortgagee and in accordance with Indiana law.

(e) **Audited Financial Statement.** The Association must provide an audited financial statement for the preceding fiscal year to a Mortgagee upon its written request.

(f) **Termination.** Eligible Mortgagees representing at least sixty-seven percent (67%) of the votes of the mortgaged Lots must consent to the termination of the legal status of the Association for reasons other than substantial destruction or condemnation of the Property.

(g) **Damage to Common Area.** The Association shall cause the immediate repair, reconstruction or renovation of any damage to the Common Area unless a decision not to repair, reconstruct or renovate is approved by the Board of Directors and a majority of the Mortgagees.

ARTICLE XIII

GENERAL PROVISIONS

Section 13.1. Enforcement. The Association or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens and charges now or hereafter imposed by the provisions of this Declaration or other Association documents unless such right is specifically limited. Failure by the Association or by any Owner to enforce any right, provision, covenant or condition which may be granted by this Declaration shall not constitute a waiver of the right of the Association or an Owner to enforce such right, provision, covenant or condition in the future. All rights, remedies and privileges granted to the Association or any Owner pursuant to any term, provision, covenant or condition of the Declaration shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies nor shall it preclude the party exercising the same from exercising such privileges as may be granted to such party by this Declaration or at law or in equity.

Section 13.2. Severability; Headings; Conflict. Invalidation of any one of the provisions of this Declaration by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect. Titles of paragraphs are for convenience only and are not intended to limit or expand the covenants, rights or obligations expressed therein. In the case of any conflict between the Articles and this Declaration, this Declaration shall control; in the case of any conflict between this Declaration and the By-Laws, this Declaration shall control.

Section 13.3. Duration. The covenants and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, unless such right is specifically limited, for a term of twenty (20) years from the date this Declaration is recorded, after which time the covenants and restrictions of this Declaration shall be automatically extended for successive periods of twenty (20) years each, unless terminated by a written and recorded instrument approved of in advance by the affirmative and unanimous vote of all Members of the Association and their respective Mortgagees.

Section 13.4. Material Amendment/Extraordinary Action.

(a) **Approval Requirements.** In accordance with Federal Agencies' requirements, material amendments ("**Material Amendments**") or extraordinary actions ("**Extraordinary Actions**") must be approved by Members entitled to cast at least sixty-seven percent (67%) of the votes of Members present and voting, in person or by proxy, at a meeting held in accordance with the notice and quorum requirements for Material Amendments and Extraordinary Actions contained in the By-Laws, such vote including the vote of a majority of the Class A Members present and voting, in person or by proxy, at such meeting.

(b) **Material Amendment.** A Material Amendment includes adding, deleting or modifying any provision regarding the following:

- (i) assessment basis or assessment liens;
- (ii) any method of imposing or determining any charges to be levied against individual Owners;
- (iii) reserves for maintenance, repair or replacement of common area improvements;
- (iv) maintenance obligations;
- (v) allocation of rights to use Common Areas except as provided in Article III and Article IV herein;
- (vi) any scheme of regulation or enforcement of standards for maintenance, architectural design or exterior appearance of improvements on Lots;
- (vii) reduction of insurance requirements;
- (viii) restoration or repair of common area improvements;
- (ix) the annexation or withdrawal of land to or from the Property other than annexation or withdrawal of those properties referred to in this Article XIII;
- (x) voting rights;
- (xi) restrictions affecting leasing or sale of a Lot; or
- (xii) any provision which is for the express benefit of Mortgagees.

(c) **Extraordinary Action.** Alternatively, an Extraordinary Action includes:

- (i) merging or consolidating the Association (other than with another non-profit entity formed for purposes similar to this Association);
 - (ii) determining not to require professional management if that management has been required by the Association documents, a majority of eligible Mortgagees or a majority vote of the Members;
 - (iii) expanding the Association to include land not previously described as annexable which increases the overall land area of the project or number of Lots by more than ten percent (10%);
 - (iv) abandoning, partitioning, encumbering, mortgaging, conveying, selling or otherwise transferring the Common Area except for (i) granting easements; (ii) dedicating Common Area as required by a public authority; (iii) re-subdividing or adjusting the boundary lines of the Common Area or (iv) transferring Common Area pursuant to a merger or consolidation with a non-profit entity formed for purposes similar to the Association;
 - (v) using insurance proceeds for purposes other than reconstruction or repair of the insured improvements; or
 - (vi) making capital expenditures (other than for repair or replacement of existing improvements) during any period of twelve (12) consecutive months costing more than twenty percent (20%) of the annual operating budget.
- (d) **Class Amendments.** Any Material Amendment which changes the rights of any specific class of Members must be approved by Members entitled to cast at least fifty-one percent (51%) of the votes of all Members of such class present and voting, in person or by proxy, at a meeting held in accordance with the requirements contained in the By-Laws.

(e) **Material Amendment and/or Extraordinary Actions Amendments.** The following Material Amendments and Extraordinary Actions must be approved by Members entitled to cast at least sixty-seven percent (67%) of the total authorized votes of all Members of the Association, including at least a majority of the total authorized votes entitled to be cast by Class A Members:

- (i) termination of this Declaration or the termination of the project;
- (ii) dissolution of the Association except pursuant to a consolidation or merger; and
- (iii) conveyance of all Common Areas.

(f) **VA Amendments.** If the VA has guaranteed any loans secured by a Lot, so long as there is a Class B Member all Material Amendments and Extraordinary Actions must have the approval of the VA.

Section 13.5. Amendment. Amendments other than Material Amendments or Extraordinary Actions shall be approved by at least sixty-seven percent (67%) of the votes entitled to be cast by all Members present and voting, in person or by proxy, at any duly called and conveyed meeting, or in writing by Members entitled to cast at least sixty-seven percent (67%) of the total authorized votes of all Members.

Any amendment must be properly executed and acknowledged by the Association (in the manner required by law for the execution and acknowledgment of deeds) and recorded among the appropriate land records.

Section 13.6. Special Amendment. Notwithstanding anything herein to the contrary, the Declarant may unilaterally amend this Declaration for any reason prior to the first conveyance of a Lot to an Owner other than the Declarant and thereafter may make any amendment required by any of the Federal Agencies or by the Local Governing Authorities, as a condition of the approval of this Declaration, by the execution and recordation of such amendment following notice to all Members.

Section 13.7. Waiver. The Declarant, as the present most interested party in maintaining the high quality of development which by these covenants is sought to be assured for the Property, hereby expressly reserves unto itself (so long as these restrictions are in effect), the unqualified right to waive or alter from time to time such of the herein contained restrictions as it may deem best, as to any one or more of the Lots, which waiver or alteration shall be evidenced by the mutual written consent of the Declarant and the then-Owner of the Lot as to which some or all of said restrictions are to be waived or altered; such written consent to be duly acknowledged and recorded in the Office of the Recorder of Marion County, Indiana.

Section 13.8. Annexation of Additional Property. The Association may annex additional areas and provide for maintenance, preservation and architectural control of Lots and Common Area within such areas, and so may add to its membership under the provisions of Article II herein, with the written consent of more than fifty percent (50%) of each class of Members. Any future improvements on the annexed property must be consistent with or better than the initial improvements on the Property in terms of quality, design and construction and comparable in style, size and cost.

Section 13.9. Casualty Insurance. Notwithstanding anything to the contrary contained in this Declaration, each and every Owner shall maintain a casualty insurance policy affording fire and extended coverage insurance insuring the Dwelling Unit in an amount equal to the full replacement value of the improvements which in whole or in part, comprise the Dwelling Unit, including, without limitations any Party Walls. Each and every Owner shall, in addition, also procure endorsements naming the Association as an additional insured under such insurance policies. Each Owner of each Lot and/or Dwelling Unit, (regardless of whether or not its

ownership is encumbered or is to be encumbered by a mortgage, deed of trust or similar indenture) will furnish to the Association, at or prior to the closing of its acquisition of that Lot or Dwelling Unit, a certificate of insurance and endorsement, in form and content acceptable to the Association, evidencing the insurance coverage described herein. Each such Owner shall, prior to the expiration of the term of any such insurance policy, procure and deliver to the Association a renewal or replacement policy in form and content acceptable to the Association, including an endorsement naming the Association as an additional insured. If any such Owner fails to provide evidence of such coverage satisfactory to the Association, the Association will have the right, but no obligation, to procure such coverage at the expense of the applicable Owner, and the cost of procuring such insurance will be assessed to that Owner as a Special Assessment and shall be immediately due and payable upon demand.

Section 13.10. Withdrawable Real Estate.

- (a) The Declarant shall have the unilateral right, without the consent of the Class A Members or any Mortgagee, to execute and record an amendment to this Declaration withdrawing any portion of the Property on which Dwelling Units have not been constructed; provided, however, that not more than five (5) years have lapsed since the date of the recordation of this Declaration.
- (b) Upon the dedication or the conveyance to any public entity or authority of any portion of the Property for public street purposes, this Declaration shall no longer be applicable to the land so dedicated or conveyed.

Section 13.11. Management Contracts. For such time as the Declarant has Class B membership status, the Declarant shall have the right to enter into professional management contracts on behalf of the Association for the management of the Property for terms not to exceed one (1) year; provided, however, that the Association shall have the right to terminate such contracts, with or without cause, upon thirty (30) days' written notice to the other party and without payment of a termination fee.

Section 13.12. Dissolution. The Association may be dissolved with the assent given in writing and signed by at least two-thirds (2/3) of each class of Members and in accordance with Article 13 of the Act. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association, both real and personal, shall be offered to an appropriate public agency to be devoted to purposes and uses that would most nearly reflect the purposes and uses to which they were required to be devoted by the Association. In the event that such offer of dedication is refused, such assets shall be then offered to be granted, conveyed or assigned to any non-profit corporation, trust or other organization devoted to similar purposes and in accordance with Indiana law. Any such dedication or transfer of the Common Area shall not be in conflict with then-governing zoning ordinances or the designation of the Common Area as "open space".


Section 13.13. Negligence. Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any

member of his family or his or their guests, employees, agents, invitees or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Association. An Owner shall pay the amount of any increase in insurance premiums occasioned by his violation of any of the Restrictions or any violation thereof by any member of his family or his or their guests, employees, agents, invitees or tenants.

Section 13.14. Acceptance and Ratification. All present and future Owners, Mortgagees, tenants and occupants of the Lots and Dwelling Units, and other Persons claiming by, through or under them, shall be subject to and shall comply with the provisions of this Declaration, the Articles, the By-Laws and the rules, regulations and guidelines as adopted by the Board of Directors and (to the extent of its jurisdiction) the Architectural Review Board, or any committee thereof, as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Lot or Dwelling Unit shall constitute an agreement that the provisions of this Declaration, the Articles, the By-Laws and rules, regulations and guidelines, as each may be amended or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any Person having at any time any interest or estate in a Lot or Dwelling Unit or the Property, all as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All Persons who may own, occupy, use, enjoy or control a Lot or Dwelling Unit or any part of the Property in any manner shall be subject to this and guidelines applicable thereto as each may be amended or supplemented from time to time.

WITNESS the following signatures:

RH OF INDIANA, L.P.
an Indiana limited partnership

By: 
Name: KENNETH S. WINKLER
Title: LAND RESOURCE MANAGER

STATE OF Indiana)
)SS:
COUNTY OF Meridian)

Before me, a Notary Public in and for said County and State, personally appeared Kenneth E. Winder, by me known to be the Lead Resource Manager of RH of Indiana, L.P., who acknowledged the execution of the foregoing "Declaration of Covenants, Conditions and Restrictions for The Townhomes at City Center" on behalf of said corporation.

Witness my hand and Notarial Seal this 17th day of April, 20012



Notary Public

James L. Frakes

(Printed Signature) Terance L. Frakes

My Commission Expires: 4-30-08

My County of Residence: Henry

This instrument was prepared by and after recording return to:

Melissa Rhodes Garrard, Esq.
Attorney at Law
P.O. Box 478
Lebanon, Indiana 46052

Legal Description:

The Townhomes at City Center – Parcel 1 (as described by record deed (Parcel 6-D))

Part of the Northeast Quarter of Section 36, and part of the Southeast Quarter of Section 25, both in Township 18 North, Range 3 East, Clay Township, Carmel, Indiana, and more particularly described as follows:

Commencing at the Northeast Corner of the Northeast Quarter of Section 36, Township 18 North, Range 3 East; thence South 89 degrees 12 minutes 13 seconds West (bearing from a survey by American Consulting, Inc., dated May 31, 2000) 1227.79 feet along the North line of said Northeast Quarter Section to a point on the West right-of-way line of Third Avenue Southwest; thence North 00 degrees 12 minutes 12 seconds East 6.50 feet along said right-of-way to the proposed South right-of-way of Autumn Drive; thence South 89 degrees 12 minutes 13 seconds West 622.01 feet along said proposed right-of-way to the Point of Beginning; thence South 00 degrees 12 minutes 12 seconds West 41.26 feet; thence South 27 degrees 25 minutes 57 seconds East 39.39 feet; thence South 29 degrees 56 minutes 41 seconds East 27.35 feet; thence South 07 degrees 20 minutes 30 seconds West 51.69 feet to the proposed North right-of-way line of 126th Street and a point on a non-tangent curve being concave to the Northeast, have a radius of 461.00 feet and a central angle of 4 degrees 15 minutes 29 seconds; thence Northwesterly 34.26 feet along said proposed right-of-way to the Point of Tangency; the following four courses are along said proposed right-of-way, thence North 78 degrees 24 minutes 01 seconds West 181.15 feet to the Point of Curvature of a curve being concave to the Southwest, having a radius of 559.00 feet and a central angle of 11 degrees 35 minutes 58 seconds; thence Westerly 113.17 feet to the Point of Tangency; thence North 90 degrees 00 minutes 00 seconds West 153.97 feet to the Point of Curvature of a curve being concave to the South, having a radius of 749.00 feet and a central angle of 25 degrees 29 minutes 05 seconds; thence Southwesterly 333.15 feet to the West line of said Northeast Quarter Section, thence North 00 degrees 11 minutes 57 seconds West 153.30 feet along said line to the North line of said Northeast Quarter; thence North 89 degrees 12 minutes 13 seconds East 235.52 feet along said line; thence North 00 degrees 13 minutes 40 seconds East 6.50 feet to the proposed South right-of-way line of Autumn Drive; thence North 89 degrees 12 minutes 13 seconds East 539.90 feet along said line to the Point of Beginning and containing 1.977 acres, more or less.

Legal Description:

The Townhomes at City Center – Parcel 2 (as described by record deed (Parcel 6-B))

Part of the Northeast Quarter of Section 36, and part of the Southeast Quarter of Section 25, both in Township 18 North, Range 3 East, Clay Township, Carmel, Indiana, and more particularly described as follows:

Commencing at the Northeast Corner of the Northeast Quarter of Section 36, Township 18 North, Range 3 East; thence South 89 degrees 12 minutes 13 seconds West (bearing from a survey by American Consulting, Inc., dated May 31, 2000) 1227.79 feet along the North line of said Northeast Quarter Section to a point on the West right-of-way line of Third Avenue Southwest; thence North 00 degrees 12 minutes 12 seconds East 6.50 feet along said right-of-way to the proposed South right-of-way of Autumn Drive; thence South 89 degrees 12 minutes 13 seconds West 165.04 feet along said proposed right-of-way to the Point of Beginning; thence South 00 degrees 12 minutes 12 seconds West 159.76 feet to the proposed right-of-way of 126th Street; thence South 89 degrees 45 minutes 36 seconds West 173.87 feet along said proposed right-of-way; thence North 02 degrees 10 minutes 57 seconds East 54.86 feet; thence North 68 degrees 55 minutes 42 seconds East 29.49 feet; thence North 16 degrees 37 minutes 44 seconds East 30.77 feet; thence North 70 degrees 57 minutes 47 seconds West 41.04 feet; thence North 00 degrees 12 minutes 12 seconds East 49.77 feet to the proposed South right-of-way line of Autumn Drive; thence North 89 degrees 12 minutes 13 seconds East 174.66 feet along said proposed right-of-way to the Point of Beginning and containing 0.602 acres more or less.

J:\3k\3696\001\docs\Rec_Desc1.doc
08/31/01 kdk

200100061268
Filed for Record in
HAMILTON COUNTY, INDIANA
MARY L. CLARK
09-26-2001 03:34 PM
AMEND DECL 18.00

18.00
18.00
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18.00

Cross Reference

The Declaration of Covenants and Easements amended by this Amendment to Declaration of Covenants and Easements is recorded as Instrument No. 200000058577 in the Office of the Hamilton County Recorder.

AMENDMENT TO DECLARATION OF COVENANTS AND EASEMENTS

This Amendment to Declaration of Covenants and Easements (the "Amendment"), executed this 11th day of August, 2001, by and between The City of Carmel Redevelopment Commission ("CRC"), and RH of Indiana, L.P. ("RH"), WITNESSES:

Recitals

WHEREAS, CRC and RH have entered that certain Project Agreement dated March 26, 2001 (the "Project Agreement");

WHEREAS, pursuant to the Project Agreement, RH this day has acquired that certain real estate more particularly described on Exhibit A (the "RH Site")

WHEREAS, the RH Site is subject to that certain Declaration of Covenants and Easements recorded as Instrument No. 200000058577 in the Office of the Hamilton County Recorder (the "Declaration");

WHEREAS, the RH Site is the "Single Family Parcel" under the Declaration;

WHEREAS, CRC is the "Declarant" under the Declaration;

WHEREAS, in connection with the conveyance of the RH Site to RH, CRC, as Declarant has agreed to limit: (a) the Declared Easements to which the Single Family Parcel is subject; and (b) the areas of the Single Family Parcel that are subject to Declared Easements; as contemplated by Section 16 of the Declaration;

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, CRC and RH agree as follows:

- 1. Limitation.** Notwithstanding anything to the contrary set forth in the Declaration, the Single Family Parcel shall be subject only to Declared Easements for utilities, and to no other Declared Easements. The Declared Easements for utilities hereby are: (a) limited solely to; and (b) deemed to be Defined Easements with respect to the Single Family Parcel solely as to; the areas depicted and/or described on Exhibit B.
- 2. Waiver.** At such time as RH records a Declaration of Covenants, Conditions and Restrictions for the RH Site to which CRC has joined to evidence its consent thereto, Section 11 of the Declaration no longer shall bind or encumber the RH Site, and no other action by RH or CRC shall be required to effect such waiver of the applicability of Section 11 to the RH Site.
- 3. Miscellaneous.** All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Declaration. In the event of any conflict between the Declaration and this Amendment, the terms and conditions of this Amendment shall control. Except as expressly provided in this Amendment, all of the terms and conditions of the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, CRC and RH have executed this Amendment as of the day and year first written above.

THE CITY OF CARMEL REDEVELOPMENT
COMMISSION

By: 

Printed: Richard H. Roosa

Title: Pres

RH OF INDIANA, L.P.

By: RH Builders of Indiana, Inc., general
partner

By: 
Joseph P. Hawley, Assistant Vice President

ACKNOWLEDGMENTS

STATE OF INDIANA)
) SS:
COUNTY OF Hamilton)

Richard A. Boush the POSS Before me, a Notary Public in and for the State of Indiana, personally appeared having first been duly sworn, acknowledged the execution of the foregoing Amendment to Declaration of Covenants and Easements for and on behalf of such entity.

Witness my hand and Notarial Seal this 22nd day of AUGUST, 2001.



By: [Signature]
Notary Public

Printed Name: _____

My commission expires: _____

I am a resident of _____ County, Indiana.

STATE OF INDIANA)
) SS:
COUNTY OF Hamilton)

Before me, a Notary Public in and for the State of Indiana, personally appeared Joseph P, Harvey, Assistant Vice President of RH Builders of Indiana, Inc., general partner of RH of Indiana, L.P., who, having first been duly sworn, acknowledged the execution of the foregoing Amendment to Declaration of Covenants and Easements for and on behalf of such entity.

Witness my hand and Notarial Seal this 22nd day of AUG, 2001.



By: [Signature]
Notary Public

Printed Name: _____

My commission expires: _____

I am a resident of _____ County, Indiana.

Return to The City of Carmel Redevelopment Commission, One Civic Square, Carmel, Indiana 46032, Attn: Steve Engelking.

This instrument was prepared by Jennifer R. Shoup, Attorney-At-Law, Wallack Somers & Haas, One Indiana Square, Suite 1500, Indianapolis, Indiana, 46204.

File No.: 2010847

EXHIBIT A

(Parcel 6-B)

Part of the Northeast Quarter of Section 36, and part of the Southeast Quarter of Section 25, both in Township 18 North, Range 3 East, Clay Township, Carmel, Indiana, and more particularly described as follows:

Commencing at the Northeast Corner of the Northeast Quarter of Section 36, Township 18 North, Range 3 East; thence South 89 degrees 12 minutes 13 seconds West (bearing from a survey by American Consulting, Inc. dated May 31, 2000) 1227.79 feet along the North line of said Northeast Quarter Section to a point on the West right-of-way line of Third Avenue Southwest; thence North 00 degrees 12 minutes 12 seconds East 6.50 feet along said right-of-way to the proposed South right-of-way of Autumn Drive; thence South 89 degrees 12 minutes 13 seconds West 165.04 feet along said proposed right-of-way to the Point of Beginning; thence South 00 degrees 12 minutes 12 seconds West 159.76 feet to the proposed right-of-way of 126th Street; thence South 89 degrees 45 minutes 36 seconds West 173.87 feet along said proposed right-of-way; thence North 02 degrees 10 minutes 57 seconds East 54.86 feet; thence North 68 degrees 55 minutes 42 seconds East 29.49 feet; thence North 16 degrees 37 minutes 44 seconds East 30.77 feet; thence North 70 degrees 57 minutes 47 seconds West 41.04 feet; thence North 00 degrees 12 minutes 12 seconds East 49.77 feet to the proposed South right-of-way line of Autumn Drive; thence North 89 degrees 12 minutes 13 seconds East 174.66 feet along said proposed right-of-way to the Point of Beginning and containing 0.602 acres more or less.

(Parcel 6-D)

Part of the Northeast Quarter of Section 36, and part of the Southeast Quarter of Section 25 both in Township 18 North, Range 3 East, Clay Township, Carmel, Indiana, and more particularly described as follows:

Commencing at the Northeast Corner of the Northeast Quarter of Section 36, Township 18 North, Range 3 East; thence South 89 degrees 12 minutes 13 seconds West (bearing from a survey by American Consulting, Inc., dated May 31, 2000) 1227.79 feet along the North line of said Northeast Quarter Section to a point on the West right-of-way line of Third Avenue Southwest; thence North 00 degrees 12 minutes 12 seconds East 6.50 feet along said right-of-way to the proposed South right-of-way of Autumn Drive; thence South 89 degrees 12 minutes 13 seconds West 622.01 feet along said proposed right-of-way to the Point of Beginning; thence South 00 degrees 12 minutes 12 seconds West 41.26 feet; thence South 27 degrees 25 minutes 57 seconds East 39.39 feet; thence South 29 degrees 56 minutes 41 seconds East 27.35 feet; thence South 07 degrees 20 minutes 30 seconds West 51.69 feet to the proposed North right-of-way line of 126th Street and a point on a non-tangent curve being concave to the Northeast, having a radius of 461.00 feet and a central angle of 4 degrees 15 minutes 29 seconds; thence Northwesterly 34.26 feet along said proposed right-of-way to the Point of Tangency; the following four curves are along said proposed right-of-way, thence North 78 degrees 24 minutes 01 seconds West 181.15 feet to the Point of Curvature of a curve being concave to the Southwest, having a radius of 559.00 feet and a central angle of 11 degrees 35 minutes 58 seconds; thence Westerly 113.17 feet to the Point of Tangency; thence North 90 degrees 00 minutes 00 seconds West 153.97 feet to the Point of Curvature of a curve being concave to the South, having a radius of 749.00 feet and a central angle of 25 degrees 29 minutes 05 seconds; thence Southwesterly 333.15 feet to the West line of said Northeast Quarter Section; thence North 00 degrees 11 minutes 57 seconds West 153.30 feet along said line to the North line of said Northeast Quarter; thence North 89 degrees 12 minutes 13 seconds East 235.52 feet along said line; thence North 00 degrees 13 minutes 40 seconds East 6.50 feet to the proposed South right-of-way line of Autumn Drive; thence North 89 degrees 12 minutes 13 seconds East 539.90 feet along said line to the Point of Beginning and containing 1.977 acres, more or less.