

PROTECTIVE RESTRICTIONS, COVENANTS,
LIMITATIONS AND EASEMENTS
FOR ABBEY PLACE VILLAS - SECTION TWO

RECORDED
11/21/1996 15:08:27
RECORDER
VIRGINIA L. YOUNG
ALLEN COUNTY, IN

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Date 11/21/1996 15:08:25

DCFD 3.00
PLAT 38.00
PLAT 9.00
Total 50.00

PLAT cab. C PG 139

All of the Lots in the ABBEY PLACE VILLAS - SECTION TWO shall be subject to and impressed with the covenants, agreements, easements, restrictions, limitations, and charges hereinafter set forth; and they shall be considered a part of the conveyance of any lot in said Addition without being written therein. The Lots in this Abbey Place Villas, Section Two are numbered 45 through 105, both inclusive. The provisions herein contained are for the mutual benefit and protection of the owners, present or future, of any and all lots in said Addition; and they shall run with the land and inure to the benefit of and be enforceable by the owner of any land or lots included in said Addition, their respective legal representatives, heirs, successors, grantees and assigns. The owner, or owners, present or future, of any land or lot included in said Addition shall be entitled to injunctive relief against any violation or attempted violation of the provisions hereof and also damages for any injuries resulting from any violation thereof; but there shall be no right of reversion or forfeiture of title resulting from such violation.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to ABBEY PLACE VILLAS COMMUNITY ASSOCIATION, INC., a not-for-profit corporation to be organized under the laws of the State of Indiana, its successors and assigns.

Section 2. "Common Areas" shall mean and refer to such portions of the Properties as are shown on the plats of the various sections to be Common Areas. The Common Area specifically shown and described on the Plat appended hereto as "Common Area" is intended solely for the common use and enjoyment of the Owners of Lots in the ABBEY PLACE VILLAS, including its various sections, for recreation and other related activities and not for use by the general public.

Section 3. "Developer" shall mean Abbey Villas Development Corp., its successor or successors in interest as such developer, as designated by it or its successors.

Section 4. "Dwelling Unit" shall mean and refer to any building, structure, or portion thereof situated on the Properties designed and intended for use and occupancy as a residence by one (1) single family.

Section 5. "Common Areas for Purpose of Maintenance" shall mean those areas of the Lot or Dwelling Unit to be maintained by the Association.

Section 6. "Common Expenses" shall mean and refer to expenses of administration of the Association, and expenses for the upkeep, maintenance, repair, and replacement of the Common Area and Common Areas for Purpose of Maintenance and all sums lawfully assessed against the Owners by the Association, and all sums, costs, and expenses declared by this Instrument to be Common Expenses.

Section 7. "Lot" shall mean either (i) any of said lots as platted or (ii) any tract or tracts of land as conveyed originally or by subsequent owners which may consist of one or more lots or parts of one or more lots as platted upon which a residence may be erected in accordance with the restrictions hereinabove set out or such further restrictions as may be imposed by any applicable zoning ordinance; PROVIDED, HOWEVER, no tract of land consisting of part of any one lot or parts of more than one lot shall be considered a "Lot" unless said tract of land has a total square footage of 5,000.

DULY ENTERED FOR TAXATION

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AUDITORS NUMBER

AUDITOR OF ALLEN COUNTY

Section 8. "One-family dwelling" shall mean and refer to a building used for occupancy by one family.

Section 9. "One-family attached dwelling" shall mean and refer to that portion of a building used for occupancy by one family, living independently of any other family. Each such dwelling unit may be attached to no more than one other dwelling unit.

Section 10. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties; provided, however, that with respect to any Lot subject to a contract for conditional sale of real estate, the contract purchaser, rather than the holder of the fee simple title, shall be deemed the Owner.

Section 11. "Properties" shall mean and refer to that certain real estate herein described, and any future platted sections of ABBEY PLACE VILLAS together with any other additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 12. "Subdivision" shall mean ABBEY PLACE VILLAS and all of its platted sections.

ARTICLE II

DECLARATION; EASEMENT TO CORPORATION; ENCROACHMENT EASEMENT

Section 1. Declaration. The Real Estate shall be held, transferred, and occupied subject to the Restrictions. Subsequent owners or contract purchasers of any Lot subject to these Restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, or (ii) by the act of occupancy of any Lot, shall accept such deed, execute such contract, and/or occupy such Lot subject to each restriction and agreement herein contained. By acceptance of such deed or execution of such contract, and/or occupancy of such Lot, each Owner or contract purchaser acknowledges the rights and powers of the Association with respect to these Restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with the Developer, 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 agreements.

Section 2. Easement to Association. The Association shall have a non-exclusive easement for the maintenance of the Common Areas and Common Areas for Purpose of Maintenance. Said easement shall permit the Association or its agents to enter into any Dwelling Unit and onto any Lot or Common Area to make emergency repairs or to do other work reasonably necessary for the proper maintenance or operation of the subdivision and to enter into any Dwelling Unit and onto any Lot for the purpose of reconstruction and restoration in the event of casualty.

Section 3. Encroachment Easements. If any Dwelling Unit encroaches upon another Lot as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of the improvements, a valid easement shall be deemed to exist and run to the Owner of the encroaching Dwelling Unit for the encroachment and for the maintenance thereof so long as aid encroachment exists.

Section 4. Easement to Developer. The Developer shall have a non-exclusive easement over the Common Areas to improve the Common Areas.



ARTICLE III

ABBEY PLACE VILLAS COMMUNITY ASSOCIATION

Section 1. Association. Prior to the closing of the sale of the first Lot in the Addition, Developer shall cause an Indiana not-for-profit corporation to be formed with the name ABBEY PLACE VILLAS COMMUNITY ASSOCIATION, INC.

Section 2. Membership. Every Owner of a Lot in the Subdivision shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 3. Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners exclusive of Developer and shall be entitled to one (1) vote for each Lot owned, in the event the lot is unimproved or one (1) vote for each Dwelling Unit in the event construction of the Dwelling Unit or Units has commenced. When more than one person holds an ownership interest, all such persons shall be members. The vote for such Lot or Dwelling Unit shall be exercised as they determine, but in no event shall more than one vote be cast with respect to said Lot or Dwelling Unit, as the case may be.

Class B. The Class B member shall be Developer and shall be entitled to three (3) votes for each Lot owned. Class B Membership shall cease and be converted to Class A Membership upon the happening of either of the following events, whichever occurs earlier:

- a. When fee simple title to 75% of the Lots in Abbey Place Villas, Section Two have been conveyed by Developer; or,
- b. On December 31, 2000.

Section 4. Functions. The Association has been formed to perform such functions as may be designated for it to perform under these Restrictive Covenants, and for the following purposes:

A. The Association shall provide for the maintenance, repair, replacement, administration, operation and ownership of the Common Areas, to pay taxes assessed against and payable with respect to the Common Areas, to pay any other necessary expenses and costs in connection with the Common Areas and to oversee the maintenance of the Dwelling Units and Lots within the subdivision..

B. In addition, in order to insure that the Subdivision is developed and maintained in a park-like setting, the Association shall be responsible:

- a. for maintenance of the yards once they have been initially completed, which shall include but shall not be limited to the fertilizing, mowing, and replanting when necessary of the grass. It shall include the care and maintenance of shrubs, trees, flowers or other plants which have been planted by the Association, but shall not include the care and maintenance of shrubs, trees, flowers or other plants which have been planted by someone other than the Association or the watering of the yards which shall be the responsibility of each Lot Owner.
- b. for mowing and weed control on unimproved lots.
- c. for operation, maintenance and repair of the subdivision identification sign and adjoining landscaping.



- d. for plowing snow from the streets.
- e. Maintenance of all driveways, both shared driveways (access easements) and private driveways.

All of which shall hereinafter be referred to as Common Areas for Purpose of Maintenance and the cost of which shall be considered as part of the Common Expenses. The authorized representatives of the Association and their agents shall be entitled to reasonable access to any Lot or Dwelling Unit as may be required in connection with maintenance, repairs, or replacements of or to the items deemed as Common Areas for Purposes of Maintenance.

C. Further, the Association shall be responsible for the perpetual maintenance and repair of the storm water detention basins to be constructed by Developer to serve all sections of the ABBEY PLACE VILLAS, such construction to be in accordance with plans and specifications on file with the Allen County Surveyor. Maintenance shall include but not be limited to cosmetic maintenance (including structural) to the basins from and after construction, including mowing, weed control, trash pickup, algae and mosquito control, and maintenance so as to avoid the basins becoming an attractive nuisance for children. All maintenance will be done so as to assure that all storm runoff will be detained and that rate of runoff will not be increased after the improvements have been completed by the Developer. Developer shall construct the storm water detention basins in accordance with the aforesaid plans and specifications. The Association shall maintain the storm water detention basin in a condition acceptable to the Allen County Drainage Board or other governmental authority having jurisdiction over storm water drainage for so long as the detention basin exists. Should the Association fail to maintain or to make the appropriate repairs to the storm detention basin in a manner acceptable to the Allen County Drainage Board within thirty (30) days after notification in writing by the Allen County Drainage Board of the maintenance or repairs required, then the Allen County Drainage Board shall have the right of entry over and upon any and all portions of the Abbey Place Villas for the purpose of repairing and maintaining the storm water detention basin. At any time the Allen County Drainage Board is required to enter and make repairs, the same shall be billed to the Association and should the same not be paid within thirty (30) days, the Allen County Drainage Board shall have the right to place a lien upon all Lots for costs incurred by it in the repair and maintenance of the storm water detention basin, including interest at the rate of fourteen per cent (14%) per annum and attorney fees. All costs incurred by the terms of this paragraph shall constitute a part of the Common Expenses.

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

Section 5. Maintenance By Owners. Each Owner shall, at his own expense, be responsible for, and shall promptly perform as the need therefor arises, all maintenance, repairs, and decoration of his entire Dwelling Unit. In addition, each Owner shall furnish and be responsible for the maintenance of all portions of his Lot, except for such portions thereof as may, in accordance with the terms of this Declaration, be designated as a part of the Common Areas for Purpose of Maintenance only. All fixtures and equipment installed within or as part of a Lot, commencing at the points where the utility lines, pipes, wires, conduits or systems enter the Lot shall be maintained and kept in repair by the

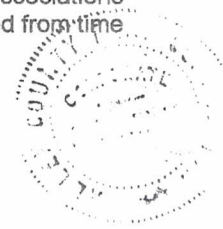
Owner thereof. Each Owner shall promptly perform all maintenance and repair of his Lot and Dwelling Unit which, if neglected, might adversely affect any other Lot or Dwelling Unit.

If any Owner shall fail to properly maintain any of the foregoing to the satisfaction of the Association, then the Association shall have the right to provide such maintenance, and replacement if necessary, and to include the costs thereof as an assessment against the Lot upon which said labor and material are furnished; and said assessment shall be a lien upon the Lot as provided herein.

Section 6. Maintenance By Developer. The Developer shall, at his own expense, be responsible for, and shall promptly perform as the need therefor arises, all maintenance of the Common Areas until all improvements thereto have been completed. Further, Developer shall maintain all unimproved Lots until the conveyance of title thereto to a bona fide purchaser.

Section 7. Assessment.

- A. 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 of Directors of the Association shall cause to be prepared and to be furnished to each Owner a financial statement prepared by a public accountant or firm of public accountants then serving the Association, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.
- B. Proposed Annual Budget. Annually, on or before the date of the annual meeting of the Association, the Board of Directors shall cause to be prepared a proposed annual budget for the current fiscal year estimating the total amount of the Common Expenses for the current fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the annual meeting of the Association for adoption and, if so adopted, shall be the basis for the Regular Assessments and Unimproved Lot Assessments (hereinafter defined) for the current fiscal year. At the annual 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 that any increase of more than ten percent (10%) must be approved by a vote of sixty percent (60%) of the combined votes entitled to be cast; provided further, however, that in no event shall the annual 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, the Unimproved Lot Assessments, and all other sums assessed by the Association shall be established by using generally accepted accounting principles applied on a consistent basis. The annual budget and the Regular Assessments and Unimproved Lot 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 and Common Areas for Purpose of Maintenance, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses of the Common Areas for Purpose of Maintenance. Such replacement reserve fund for capital expenditures and replacement and repair of the items deemed Common Areas for Purpose of Maintenance 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 Allen County, Indiana, selected from time



to time by the Board. 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 of release in any manner of the obligations of the Owners to pay the Common Expenses as provided, whenever determined. Whenever, whether before or after the annual meeting of the Association, there is no annual budget approved by the Owners as herein provided for such current fiscal year, the Owners shall continue to pay Regular Assessments and Unimproved Lot Assessments based upon the last approved budget or, at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

- C. Regular Assessments and Unimproved Lot Assessments. The annual budget as adopted by the Owners shall, based on the estimated cash requirement for the Common Expenses in the current fiscal year as set forth in said budget, contain a proposed equal assessment against each Dwelling Unit, which shall be a sum sufficient to cover: (1) the costs of maintaining the Common Areas, including the storm water detention basins, as well as the costs of taxes and insurance on the Common Areas, and (2) the costs of maintenance, repair and upkeep of the Common Areas for Purpose of Maintenance only on those Lots on which Dwelling Units have been erected.

The annual budget as adopted by the Owners shall also, based on the estimated cash requirement for the Common Expenses in the current fiscal year as set forth in said budget, contain a proposed equal assessment against each Unimproved Lot, which shall be a sum sufficient to cover: (1) the costs of maintaining the Common Areas, including the storm water detention basin, as well as the costs of taxes and insurance on the Common Areas, and (2) unimproved lot maintenance; i.e., mowing and weed control. A Lot shall be considered unimproved until ninety (90) days after a Building Permit has been issued.

Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his respective Dwelling Unit (herein called the "Regular Assessment") or against his respective Unimproved Lot (herein called the "Unimproved Lot Assessment"). In the event the Regular Assessment or Unimproved Lot Assessment for a particular fiscal year is initially based upon a temporary budget, such assessments shall be revised, within fifteen (15) days following adoption of the final annual budget by the owners, to reflect the assessment against each Dwelling Unit and Unimproved Lot based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments and Unimproved Lot Assessments shall be equal to the total amount of expenses provided and included in the final budget, including reserve funds as hereinabove provided.

The Regular Assessment and Unimproved Lot Assessment against each Dwelling Unit and Unimproved Lot shall be paid in advance in equal quarterly installments commencing on the first day of the first month of each fiscal year and quarterly thereafter through and including the first day of the last quarter of such fiscal year. Payment of the quarterly installments of the Regular Assessment and Unimproved Lot Assessment shall be made to the Board of Directors; provided, however, Owners may elect to pay quarterly assessments semi-annually or annually, in advance. At the election and option of the Board, the Regular Assessment and Unimproved Lot Assessment may be required to be paid by the Owners in advance in equal monthly installments rather than quarterly installments. In the event the Regular Assessment and Unimproved Lot Assessment for a particular fiscal year of the Association was initially based upon a temporary budget

- (a) if the Regular Assessment and Unimproved Lot Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the said Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Assessment which is due shall be paid with such next payment and such next payment, and all payments thereafter during such fiscal year, whether quarterly or monthly, shall be increased so that the Regular Assessment and Unimproved Lot Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year, or
- (b) if the Regular Assessment and Unimproved Lot Assessment based upon the temporary budget exceeds the said Assessment based upon the final annual budget adopted by the Owners, such excess shall be credited against the next payment or payments of the said Assessment coming due, whether quarterly or monthly, until the entire amount of such excess has been so credited; provided, however, that if an Owner had paid his Regular Assessment or Unimproved Lot Assessment either semi-annually or annually in advance, then the adjustments set forth under (a) or (b) above shall be made by a cash payment by, or refund to, the Owner on the first day of the second month following the determination of the Regular Assessment and Unimproved Lot Assessment based upon the annual budget finally adopted by the Owners.

The Regular Assessment and Unimproved Lot Assessment for the current 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 Assessment may not have been made by that Date. The fact that an Owner has paid his Regular Assessment or Unimproved Lot Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys, or transfers his Lot or any interest therein, shall not relieve or release such Owner or his successor as owner of such Lot from payment of the Regular Assessment or Unimproved Lot Assessment for such Lot as finally determined, and such Owner and his successor as owner of such Lot shall be jointly and severally liable for the Regular Assessment or Unimproved Lot Assessment as finally determined. Any statement of unpaid assessment furnished by the Association hereof prior to the final determination and adoption of the annual budget and Regular Assessment and Unimproved Lot Assessment for the year in which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment and Unimproved Lot Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. Quarterly or monthly (if so determined by the Board) installments of Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Association, and neither the Board nor the Association shall be responsible for providing any notice or statements to Owners for the same.

- D. Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time unless otherwise provided in this Instrument, the Articles, or the By-Laws the Board of Directors of the Association shall have the full right, power and authority to make special assessments which, upon resolution for the Board, shall become a lien on each Lot, pro-rated in equal shares (herein called "Special Assessment"); provided, that any such assessment shall have the assent of sixty percent (60%) of the combined votes entitled to be cast. Without limiting the generality the foregoing

provision, 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 casualty or disaster to the extent insurance proceeds are insufficient therefor.

- E. Restoration Assessments. The Association may levy a Restoration Assessment upon any Lot whose Owner fails to maintain such Lot, as provided in Section 5 of Article III. Restoration Assessments shall be limited to the actual amount necessary to meet the cost of restoration and the cost of collection thereof.
- F. Failure of Owner to Pay Assessments. No Owner may exempt himself from paying assessments, whether they be Regular Assessments, Unimproved Lot Assessments, Special Assessments, or Restoration Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Areas and items deemed Common Areas for Purpose of Maintenance, and toward any other expense lawfully agreed upon by abandonment of the Lot belonging to him. Each Owner shall be personally liable for the payment of all assessments. Where the Owner constitutes more than one Person, the liability of such Persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any assessment when due, the lien for such assessment on the Owner's Lot may be filed and foreclosed by the Board of Directors for and on behalf of the Association as a mortgage on real property or as otherwise provided by law. Upon the failure of an Owner to make timely payments of any assessments, when due, the Board may in its discretion, accelerate the entire balance of the unpaid assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. In any action to foreclose the lien for any assessments, the Owner and any occupant of the Lot shall be jointly and severally liable for the payment to the Association of reasonable rental for such Lot, and the Board shall be entitled to be appointment of a receiver for the purpose of preserving the Lot and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid assessment without foreclosing or waiving the lien securing the same. In any action to recover an assessment, 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 costs and expenses of such action incurred (including but not limited to reasonable attorney's fees) and interest from the date such assessments were due, until paid, at a rate equal to the "prime interest rate" then being charged by Summit Bank of Fort Wayne, Indiana, to its largest and best corporate customers (or if said Bank is no longer in existence, then such rate charged by another bank in Allen County, Indiana selected by the Board of Directors).

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Notwithstanding anything contained in this Section or elsewhere in this Instrument, the Articles or the By-Laws, any sale or transfer of a Lot to a Mortgagee pursuant to a foreclosure on 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 the mortgage foreclosures, shall extinguish the lien of any unpaid installment of any assessment as to such installments 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 therefor. No such sale, transfer, or conveyance shall relieve the Lot or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments, Unimproved Lot Assessments, Special Assessments or Restoration Assessments thereafter becoming due or from the lien therefor. Such unpaid share of any assessment, the lien for which has been divested as aforesaid, shall be deemed to be a Common



Expense, collectible from all Owners (including the party acquiring the subject Lot from which it arose).

- G. Initial Budgets and Assessments. Notwithstanding anything to the contrary contained herein, in the Articles, in the By-Laws or otherwise, until June 30, 1998, the annual budget and all Regular Assessments, Unimproved Lot Assessments, and Special Assessments shall be established by the Board of Directors without meetings of or concurrence of the Owners of Lots in Section Two.

Further, until June 30, 1998, the Regular Assessments and Unimproved Lot Assessments for Section Two are and shall be established as follows:

- (a) the Regular Assessment shall be Thirty-Five Dollars (\$50.00) per month on each Dwelling Unit commencing ninety (90) days after the Building Permit has been issued, pro-rated on a daily basis for a period of time less than a month.
- (b) the Regular Assessment shall be ten per cent (10%) of the amount of the Regular Assessment set forth in subparagraph (a) for each Dwelling Unit owned by a Builder constructing same for resale to a Future Owner, commencing ninety (90) days after the Building Permit has been issued until one hundred eighty (180) days after the Building Permit has been issued, at which time the Regular Assessment for that Lot shall be raised to the full amount set forth in subparagraph (a). A Builder shall be exempt from the Unimproved Lot Assessment.
- (c) the Unimproved Lot Assessment shall be Ten Dollars (\$10.00) per month on each Unimproved Lot owned by someone other than Developer or a Builder, pro-rated on a daily basis for any period of time less than one month.

Notwithstanding the foregoing or anything else contained herein, and in light of Developer's obligation to maintain all unimproved Lots until conveyance of title thereto to a bona fide purchaser, Developer shall be exempt from all assessments, unless he constructs a Dwelling Unit upon a Lot, in which case he shall be subject to the Regular Assessment on that Dwelling Unit only.

ARTICLE IV

ARCHITECTURAL CONTROL

No building, fence, wall or other structure of any kind whatsoever, nor any exterior addition to or change or alteration therein (all such buildings, fences, walls, structures, additions, changes, and alterations being herein called "improvements") shall be commenced, erected or maintained upon any lot until two (2) sets of plans and specifications showing the nature, kind, shape, height, materials, and the location of the same shall have been submitted to and approved in writing as to harmony of external design and the location in relation to surrounding structures and topography by Developer or his designated representative as the Architectural Control Representative. In the event of death or incapacity of Developer, the Board of Directors shall also have full authority by means of a majority vote of the Board of Directors to appoint a successor. In the event the Architectural Control Representative fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to him, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and this Article will be deemed to have been fully complied with. All improvements shall be constructed in accordance with the plans and specification submitted to and approved in writing by the Architectural Control Representative, and any improvements not so constructed shall be subject to immediate removal and the Lot shall be restored to its condition prior thereto, all at Owner's expense.



In the event the Association shall prevail in any litigation brought for the purpose of enforcing compliance with the provisions of this Article or Article III hereof, it shall be entitled to recover from the defendant(s) reasonable attorney fees and costs incurred by the Association in such enforcement.

ARTICLE V

PARTY WALLS IN ONE-FAMILY ATTACHED DWELLING UNITS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of a Dwelling Unit upon a Lot and placed on the dividing line between the 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 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs With 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 Owner's successors in title.

Section 6. Easement. The Owner of any lot on which the Dwelling Unit has a party wall or was constructed close to lot line for the purpose of having a party wall shall have an easement over a reasonable portion of the adjacent Lot for purposes of maintaining, replacing and repairing the exterior of the Dwelling Unit. Any damage to an adjacent lawn or landscaping shall be repaired at the expense of the Owner of the benefitted Dwelling Unit.

Section 7. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE VI

INSURANCE

The Owner of each Lot upon which a Dwelling Unit is located shall be required to obtain insurance for the property against loss or damage by fire, vandalism, malicious mischief, and such other hazards as are covered under standard extended coverage provisions for the full insurable replacement cost of the improvements, and against such other hazards and for such amounts as the Board of Directors of the Association shall deem advisable. Insurance replacement cost shall be deemed the cost of restoring the improvements or any part thereof to substantially the same condition in which they existed prior to damage or destruction. Each Owner shall cause a Certificate of Insurance to be issued to the Association evidencing such coverage. If the improvements are damaged by fire or other



casualty which is insured against, the insurance proceeds shall be paid to the Owner of said Lot and his mortgagee, if any, and such Owner and mortgagee shall use the same to rebuild the improvements.

ARTICLE VII

GENERAL PROVISIONS

Section 1. No Lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot other than one one-family dwelling or one one-family attached dwelling, none of which shall exceed two (2) stories in height. Each Dwelling Unit shall include not less than a one-car garage, which shall be built as part of said structure and attached thereto.

Section 2. No Dwelling Unit shall be built on any Lot having a ground floor area upon the foundation, exclusive of one-story open porches, breezeway, or garage, of less than 900 total square feet.

Section 3. No Dwelling Unit shall be located on any Lot nearer to the street lines than the minimum building setback lines shown on the recorded plat. No Dwelling Unit shall be located on any interior Lot nearer than 25 feet to the rear lot line. No Dwelling Unit shall be located on any Lot nearer than 7 feet to an interior lot line; provided, however, that no side yard shall be required on the side of the Lot where one-family attached dwellings abut.

Section 4. No one-family dwelling or two-family dwelling shall be erected or placed on any Lot having a total area of less than 5,000 square feet.

Section 5. All driveways from the street to the garage shall be poured concrete not less than twelve (12) feet in width. Access easements as shown on the recorded plat are mutual easements to provide access for ingress and egress by means of shared driveways benefitting all of the lots adjacent to or crossed by the access easement. The driveways, private or shared, shall be Common Areas for the Purpose of Maintenance.

Section 6. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. No owner of any Lot shall erect or grant to any person, firm or corporation, the right, license or privilege to erect or use or permit the use of overhead wires, poles, or overhead facilities of any kind for electrical, telephone or television service (except such poles and overhead facilities that may be required at those places where distribution facilities enter and leave the Subdivision). Nothing herein shall be construed to prohibit street lighting or ornamental yard lighting services by underground wires or cables. Electrical service entrance facilities installed for any house or other structure connecting the same to the electrical distribution system of any electric public utility shall be provided by the owners of all Lots and shall carry not less than three (3) wires and have a capacity of not less than 200 amperes. Any electric public utility charged with the maintenance of any underground installation shall have access to all easements in which said underground installations are located for operation, maintenance and replacement of service connections. Any such electric public utility shall not be liable for damage to walks, driveways, lawn or landscaping which may result from installation, repair or maintenance of such service.

Section 7. Surface Drainage Easements as shown on the plat are intended for either periodic or occasional use as conductors for the flow of surface water run-off to a suitable outlet, and then land surface shall be constructed and maintained so as to achieve this intention. Such easements shall be maintained in an unobstructed condition and the County Surveyor or a proper public authority having jurisdiction over storm drainage shall have the right to determine if any obstructions exist and to repair and maintain, or to require such repair and maintenance as shall be reasonably necessary to keep the conductors unobstructed.



Section 8. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 9. No structure of a temporary character, tent, shack, garage, barn, detached storage shed, dog house, or other outbuilding shall be either used or located on any Lot at any time, except for a single garden equipment storage shed provided that it conforms to the following restrictions:

- (a) The exterior construction shall be compatible in style, building materials, and color with the exterior of the Dwelling Unit located on such Lot;
- (b) It has a shingle roof that is compatible in both style and color with the roof of the Dwelling Unit located on such Lot;
- (c) Its size, location, plans and specifications have been approved by the Architectural Control Committee.

No accessory structure of 144 square feet in area or larger may be built or located on any Lot unless the owner of the Lot has first obtained from the Allen County Zoning Administrator an Improvement Location Permit for the structure.

Section 10. When a structure consists of two Dwelling Units, both Dwelling Units shall be constructed of like materials, and the colors of all exterior finishes shall be the same throughout the structure.

Section 11. No sign of any kind shall be displayed to the public view on any Lot except one sign of not more than six square feet, advertising the property for sale, or signs used by a builder to advertise the property during the construction and sales period.

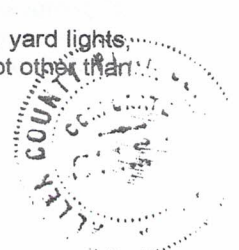
Section 12. No radio or television antenna or satellite receiver ("dish") with more than 20 square feet of grid area or which attains a height in excess of 4 feet above the highest point of the roof shall be attached to any Dwelling Unit. No free standing radio or television antenna, satellite receiver ("dish"), or similar structure shall be permitted on any Lot.

Section 13. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot. No derrick or other structure designed for the use in boring for oil or natural gas shall be erected, maintained or permitted on any Lot.

Section 14. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall be kept in appropriate sanitary containers inside the Dwelling Unit except for a period not to exceed twenty-four (24) hours for scheduled trash collection. No incinerators or outside incinerators shall be kept or allowed on any Lot.

Section 15. All buildings shall be constructed in a substantial and good workmanlike manner and of new materials. No roll siding, asbestos siding, or siding containing asphalt or tar as one of its principal ingredients shall be used in the exterior construction of any building on any Lot of said Subdivision, and no roll roofing of any description or character shall be used on the roof of any dwelling house or attached garage on any of said Lots. No free standing solar panels, chasers, or similar structures shall be permitted upon any Lot. Solar panels, chasers, or similar structures may be attached to the roof of a Dwelling Unit; however, they may not extend height than four (4) inches from the surface of the roof. Further, no log cabins shall be permitted upon any Lot.

Section 16. In order to maintain a park-like setting, no landscape lighting, yard lights, trees, shrubs, flowers or plantings shall be placed in the front yard on any Lot other than



those approved by the Architectural Control Committee or the Board of Directors of the Association.

Section 17. No individual sewage disposal system shall be installed or used on any Lots in this subdivision.

Section 18. In addition to the utility easements herein designated, easements in the streets, as shown on this plat, are hereby reserved and granted to all Public Utility Companies, the proprietors of the land herein platted, and their respective successors and assigns, to install, lay, erect, construct, renew, operate, repair, replace, maintain and remove all and every type of gas main, water main and sewer main (sanitary and/or storm) with all necessary appliances, subject, nevertheless, to all reasonable requirements of any governmental body having jurisdiction thereof as to maintenance and repair of said streets.

Section 19. No rain and storm water run off of such things as roof water, street pavement and surface water, caused by natural precipitation, shall at any time be discharged into or permitted to flow into the Sanitary Sewer System, which shall be a separate sewer system from the Storm Water and Surface Water Run Off System. No sanitary sewage shall at any time be discharged or permitted to flow into the above-mentioned Storm Water and Surface Water Run Off Sewer System.

Section 20. Before any house or building on any Lot or tract in this Subdivision shall be used or occupied as a dwelling or as otherwise provided by the Subdivision restrictions above, the developer or any subsequent owner of said Lot or tract shall install improvements serving said Lot or tract as provided in said plans and specifications for this Addition filed with the Allen County Plan Commission. This covenant shall run with the land and be enforceable by the County of Allen, State of Indiana, or by an aggrieved Lot owner in this Subdivision.

Section 21. Before any Lot or tract may be used or occupied, such user or occupier shall first obtain from the Zoning Administrator the Improvement Location Permit and Certificate of Occupancy as required by the Allen County Zoning Ordinance.

Section 22. The Association, the Developer, or any Owner shall have the right to enforce, by any proceedings, at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of these covenants and restrictions. Failure by the Association, the Developer, or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 23. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 24. No Lot or combination of Lots may be further subdivided until approval therefor has been obtained from the Allen County Plan Commission.

Section 25. The covenants and restrictions herein contained shall run with the land, and be effective for a term of twenty (20) years from the date these covenants and restrictions are recorded, after which time they shall automatically be extended for successive periods of ten (10) years; provided these covenants and restrictions may be amended by an instrument signed by not less than 67% of the Lot Owners, and provided further, the Developer shall have the exclusive right for two (2) years from the date of recording of the plat to amend any of the Covenants and Restrictions, with the approval of the Allen County Plan Commission, except Section 2 of this Article VII.

Section 26. All utility easements as dedicated on the face of the plat shall be kept free of all permanent structures, and any structure, shrubbery, trees or other installation thereon whether temporary or permanent shall be subject to the paramount right of the entities for which such easements are intended to benefit to install, repair, maintain or replace their



utility facilities. The removal of any obstructions by the utility company shall in no way obligate the utility company in damages or to restore the obstruction to its original form.

Section 27. Notwithstanding anything in these restrictions to the contrary otherwise providing, the Developer shall have the right from time to time to maintain a temporary field office and sales office on any one Lot or parcel within this subdivision and shall have the further right, subject only to the approval of the Architectural Control Representative, to place and maintain signs promoting the development of the Subdivision.

Section 28. Common Area shall be used and enjoyed only for the purposes for which they are designed and intended and shall be used subject to the rules and regulations from time to time adopted by the Board of Directors of the Association.

Section 29. In the event of separate ownership of units with common party walls, the sewer tap servicing the two (2) units shall be shared and maintained by the respective owners as provided in the case of party walls in Article V hereof.

Section 30. No motorized vehicles, including but not limited to snowmobiles and motorcycles, go-carts, and all terrain vehicles, shall be permitted on any of the easements or Common Areas except such as are necessary in connection with utility uses.

Section 31. In order to minimize potential damages from surface water, flood protection grades are established as set forth below. All dwellings shall be constructed at or above the minimum flood protection grades; such grades shall be the minimum elevation of a first floor or the minimum sill elevation of any opening below the first floor. The flood protection grades for the following lots shall be as follows:

<u>Lot Number</u>	<u>Feet Above Mean Sea Level</u>
Lots 65 through 70, both inclusive	828.70
Lots 88 through 91, both inclusive	828.70
Lots 103 through 105, both inclusive	836.10

Section 32. The Owner of each Dwelling Unit will cause a yard light equipped with an electric photocell to be installed in the front yard approximately fourteen (14) feet nor more than sixteen (16) feet from the edge of the curb along the public right-of-way. Such yard light will be of such design and construction as shall be approved by the Architectural Control Committee. Any change in the location of said yard light must first be approved by the Allen County Plan Commission or its successor agency. The Owners of the Lot upon which said yard light shall have been installed shall cause said yard light to be illuminated at all times other than daylight hours.

Section 33. No unlicensed or unregistered automobiles or motorized vehicles may be parked or maintained on any Lot. No motor vehicle may be disassembled or be allowed to remain in a state of disassembly on any Lot but, instead, shall be equipped at all times for on-road driving. No on-street parking shall be permitted, except for special functions or temporary guests.

Section 34. No pole lighting erected by a Lot Owner shall exceed six (6) feet in height nor shall lighting attached to a dwelling be above the roof line.

Section 35. No tenant of a Dwelling Unit shall be permitted to have pets on the premises and all rental agreements shall have or be deemed to have such a restriction. Owner occupied Dwelling Units may have two pets such as cats or dogs; however, such will not be permitted outside of the Dwelling Unit unattended.

Section 36. Nothing contained in or omitted from this Article VII shall be construed to permit any improvement (as that term is defined in Article IV) to be constructed for

maintained without first obtaining the approval of the Architectural Control Representative as required by Article IV.

Section 37. Limited Use of the Ponds. The Ponds are intended for (1) detention basins for storm water runoff for Abbey Place Villas, and (2) for limited recreational use (i.e., skating and fishing only, both at the sole risk of the user) by the Owners of Lots in Abbey Place Villas and their invitees. The Ponds are not intended for other recreational uses, and as such no swimming, boating, or other recreational use of the Ponds shall be permitted.

Section 38. Sidewalks shall be constructed adjacent to the following lots, within the right-of-way of the stated streets, which sidewalks shall be Common Areas for Purpose of Maintenance.

Lots 45 through 64
Lot 71
Lots 79 through 87

Montclair Drive
Glen Gelder Circle
Glen Gelder Circle

Installation of said sidewalks shall be the obligation of the Owner of any such Lot, exclusive of the Developer, and shall be completed in accordance with said plans and specifications and prior to the issuance of a Certificate of Occupancy for any such Lot and the cost of said installation shall be a lien against any such Lot enforceable by the Allen County Plan Commission or its successor agency. Should such Certificates of Occupancy be issued to the Developer, said individual or corporation shall be considered an owner for the purposes of the enforcement of this covenant.

CONSENT

Abbey Villas Development Corp., the Developer named in the foregoing Protective Restrictions, Covenants, Limitations and Easements for Abbey Place Villas, Section Two, hereby agrees to perform all of the functions to be performed by Developer as set forth above and agrees to be bound thereby.

Dated this 24th day of October, 19 96.

ABBHEY VILLAS DEVELOPMENT CORP.

By: Joseph L. Sullivan
Joseph L. Sullivan, President

IN WITNESS WHEREOF, the undersigned has hereunto set his hand this 24th day of October, 19 96



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ABBEY VILLAS DEVELOPMENT CORP.

By: Joseph L. Sullivan
Joseph L. Sullivan, President

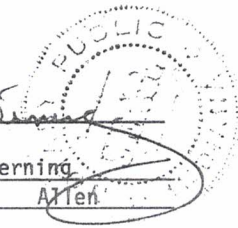
STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said County and State, this 24th day of October, 1996, personally appeared Joseph L. Sullivan, the President of Abbey Villas Development Corp., known to me to be such officer of said corporation, and acknowledged the execution of the foregoing instrument for and on behalf of said corporation. Witness my hand and notarial seal.

My Commission Expires:

July 24, 2000


Notary Public
Printed Phyllis Berning
County of Residence Allen



This instrument prepared by: Charles D. Bash, Attorney, 803 S. Calhoun St., Suite 500,
Fort Wayne, Indiana 46802.