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**CONDITIONS, RESERVATIONS, RESTRICTIONS, AND  
PROTECTIVE COVENANTS AFFECTING TITLE TO ALL LOTS  
IN BRIAR POINTE SUBDIVISION, SECTION ONE  
A SUBDIVISION LOCATED IN VANDERBURGH COUNTY,  
INDIANA, ACCORDING TO THE RECORDED PLAT THEREOF**

The undersigned, BRIAR POINTE DEVELOPMENT, LLC, an Indiana limited liability company, being the developer (hereinafter the "Developer") of all lots and lands comprising the recorded subdivision known and designated as Briar Pointe Subdivision, Section One, as per plat thereof, recorded in Plat Book V at page 159 as Instrument Number 2023R00001673 in the office of the Recorder of VANDERBURGH County, Indiana (hereinafter the "Subdivision"), and being the owner of one or more lots in Briar Pointe Subdivision, does hereby make and adopt the following covenants, conditions, restrictions and reservations for the use and occupancy of the lots and lands comprising Section One, of Briar Pointe Subdivision (sometimes hereinafter referred to as the "Restrictions"), which covenants, conditions, reservations and restrictions shall run with the land and shall be binding upon all owners of the lots and lands in Section One of Briar Pointe Subdivision and shall supersede all prior recorded covenants and restrictions pertaining to Section One of Briar Pointe Subdivision except for (i) that certain Protective Covenants Agreement by and between Princeton Mining Company, Inc. (Developer's predecessor in title) and Evansville Vanderburgh School Corporation (herein referred to as "EVSC") dated December 30, 2003 and recorded January 2, 2004 as Instrument Number 2004R00000133 in the Office of the Recorder of Vanderburgh County, Indiana., the "EVSC Agreement" and (ii) a certain Deed of Use Restrictions by and between Martin & Bayley, Inc. and Developer dated March 3, 2022 and recorded as Instrument Number 2022R00005874 on March 9, 2022 in the office of the Vanderburgh County Recorder (hereinafter the "M & B Agreement"). The Developer may develop additional real estate to be included within Briar Pointe Subdivision. As used herein, the term Briar Pointe Subdivision" shall include Section One of Briar Pointe Subdivision, as per plat thereof recorded in Plat Book V at page 159, the legal description of which is attached hereto as Exhibit "A", as well as all other real estate which the Developer and/or any successors or assigns of Developer may plat and develop as additional sections of Briar Pointe Subdivision. It is recognized, however, that these Restrictions shall not necessarily identically apply to such other portion(s) of Briar Pointe Subdivision as such portion is platted and developed, and the Developer expressly reserves the right to revise, correct, amend, delete or add to the Restrictions for such other portion(s) of Briar Ridge Subdivision as the Developer may deem necessary in its sole discretion.

**1. USE OF LOTS; COMPLIANCE WITH LAWS.** All lots in the Subdivision (hereinafter referred to collectively as "Lots" and individually as a "Lot") shall be known and described and used only for single family residential purposes, except for (i) Lots 268 and 269 which may be used for commercial purposes (the "Commercial Lots") as hereinafter provided, and (ii) Lots 270, 271, 272, and 273 which may be used for an apartment development (the "Apartment

Lots") as hereinafter provided. As such, the provisions of this document shall not be applicable to the Commercial Lots or the Apartment Lots except as expressly provided herein.

No use of any Lot or building in the Subdivision shall be in violation of the Vanderburgh County Zoning Code. Each Lot owner shall maintain his or her respective Lot in compliance with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to such Lot.

Use of the Commercial Lots and the Apartment Lots shall be subject to the terms of the EVSC Agreement, to the extent applicable. To the extent all or part of a Commercial Lot or Apartment Lot is not covered by the terms of the EVSC Agreement, the entire area of such Commercial Lots or Apartment Lots shall be limited to uses set forth in the City of Evansville Zoning Code for Residential Districts (R-1 through R-5), Commercial Districts (C-1 through C-4), and for a Light Industrial District (M-1) and all uses permitted under any such zoning classification; provided, however, that the following uses are not permitted even if such uses are permissible under R-1 through R-5, C-1 through C-4, or M-1 zoning classifications or special uses permitted under any such zoning classification: (i) dumping, disposal, incineration or reduction of garbage, trash, sewage, offal, dead animals or refuse, or the construction or operation of water or sewage treatment plants; (ii) junk or salvage yards and recycling facilities; (iii) commercial excavation of building or construction materials (but not excluding excavation in connection with the construction of improvements); (iv) extraction or refining of petroleum or of its products; (v) distillation of bones; (vi) smelting of iron, tin, zinc, or other ores; (vii) fat rendering; (viii) livestock sale or auction, stockyard or slaughter of animals; (ix) cemeteries, mausoleums, columbaria, or crematoria; (x) labor camps and migrant worker camps; (xi) jails or honor farms; (xii) mobile home parks; (xiii) animal breeding and raising; and (xiv) massage parlors, adult arcades, adult bookstores, adult novelty stores, adult video stores, adult cabarets, adult theaters, adult motion picture theaters, nude model studios, sexual encounter centers, and peep show facilities.

In addition to the foregoing, the Commercial Lots and the Apartment Lots shall be subject to the terms of the M & B Agreement which generally prohibits the use of such Lots for a convenience store with fueling facilities; provided, however, convenience stores without fueling facilities are permitted.

As to the Commercial Lots and the Apartment Lots, no structure shall be erected, placed or altered on any Lot until the construction plans and specifications and a plot plan showing the location of the structure on the Lot (hereinafter the "Design Plans") have been approved by the Developer as to quality of workmanship and material, harmony of external design with existing structures, suitability to the general appearance of the Subdivision, and as to locations with respect to topography and finish grade elevation. Approval of said structure shall be within the reasonable discretion of the Developer. It is the responsibility of the Lot owner to obtain such approval of the Design Plans prior to commencement of any construction on any Lot. Once Design Plans have been approved, there shall be no modifications or changes whatsoever to said Design Plans without the prior written consent of Developer.

**2. TYPE OF PERMITTED STRUCTURE.** No structure shall be erected, altered, placed or permitted to remain on any Lot other than (i) one (1) single family dwelling, not to exceed two and one-half (2 ½) stories in height, exclusive of basements or walk-out basements, and a private attached garage for not less than two (2) cars nor more than three (3) cars, and either (ii) a yard barn which conforms to the requirements of Paragraph 3 of these Restrictions, or (iii) a detached garage or accessory building conforming with the requirements of this paragraph 2. Notwithstanding the foregoing, the Developer may approve or deny any request for a four (4) car garage, in the Developer's sole discretion. No above ground swimming pools shall be permitted. All television and radio antennas, satellite dishes, swing sets, and play areas shall be placed in rear yards and, if deemed necessary or appropriate by the Developer, concealed from view by a privacy fence. Placement of any television and radio antennas, satellite dishes, swing sets and place areas on the Commercial Lots and/or the Apartment Lots shall require the prior written approval of the Developer, including approval of the location for placement of any such items. Approval must be obtained from the Developer prior to installation of any television antenna, radio antenna or satellite dish, and no television antenna, radio antenna, or satellite dish, regardless of size, shall, under any circumstances, be mounted on the front of the home or anywhere on the side of the home which is on the front half of the home. Notwithstanding the foregoing, basketball goals shall be permitted in the driveway to the dwelling provided they are not attached to the dwelling and provided they are not placed in such a manner as to obstruct sidewalks or any public right-of-way. Approval must be obtained from the Developer prior to installation of any solar panels or solar collectors whether such items would be installed on a home or whether they would be placed elsewhere on a Lot. Neither solar panels nor solar collectors may be placed on the front of a home or in the front yard and no part of the installation may be visible above the roof line, unless approved in advance, in writing, by the Developer. Any proposed installations of solar panels and/or solar collectors shall be expected to maintain architectural harmony with the existing structures in Briar Pointe Subdivision and be consistent with the overall general appearance of Briar Pointe Subdivision. Until such time as all Lots in the Subdivision, including any future expansions of Briar Pointe Subdivision, have been sold by Developer and/or Developer's successors or assigns as to any sections of Briar Pointe Subdivision developed by someone other than Developer, and homes have been built on said Lots, the approvals provided in this paragraph 2 of these Restrictions must be obtained from the Developer. Such approvals are not to be obtained from any of Developer's successors or assigns with respect to any sections of Briar Pointe Subdivision developed by someone other than Developer, unless such authority is expressly delegated to such successor(s) or assign(s) in writing by the Developer. At such time as all Lots in the Subdivision, including any future expansions of Briar Pointe Subdivision have been sold by the Developer and/or Developer's successors or assigns as to any sections of Briar Pointe Subdivision developed by someone other than Developer, and homes have been built on said Lots, the rights of Developer under this paragraph 2 shall pass to the Homeowners Association consisting of the owners of Lots within Briar Pointe Subdivision.

All detached garages and accessory buildings in the Subdivision shall be subject to Developer's prior approval as outlined in Paragraph 4, below, entitled "Architectural Control". At

a minimum detached garages and accessory buildings must comply with the following requirements:

- (i) The exterior veneer of any detached garage or accessory building must be constructed of brick, stone, vinyl siding or stucco veneer. In the sole and absolute discretion of the Developer, the Developer may approve an upgraded composite or vinyl siding on the detached garage or accessory building above a brick or stone wainscot, but any such approval by the Developer must be obtained in writing, in advance.
- (ii) The total square footage of the dwelling constructed on the lot and any detached garage or accessory building may not exceed the coverage requirements under the applicable zoning ordinance.
- (iii) One or more detached garages and/or accessory buildings shall be permitted on each lot so long as any such buildings are in compliance with the applicable zoning ordinance and any requirements of the Area Plan Commission.
- (iv) Any detached garage or accessory building located on a Lake Lot must be located at least ten (10) feet from the rear of the dwelling and may not encroach on any lake maintenance easement and must be in compliance with the applicable zoning ordinance and any requirements of the Area Plan Commission.
- (v) No detached garage or accessory building may be located, in whole or in part, within any easement.
- (vi) No detached garage or accessory building may be constructed on a Lot until the dwelling on the Lot has been completed.
  
- (vii) Any detached garage or accessory building roofs shall have dimensional shingles. Roof pitch for any detached garage or accessory building must be approved by the Developer, in writing, in advance.
- (viii) All utilities servicing the detached garage or accessory building must be underground.

**3. TEMPORARY STRUCTURES; YARD BARNS.** Except as is provided in paragraph 2 of these Restrictions, no pole barns and no structure of a temporary character, trailer, tent, shack, garage, barn or other out building shall be used on any Lot in the Subdivision or any part thereof at any time as a residence or otherwise, either temporarily or permanently; provided, however, a Lot may contain either a detached garage or accessory building conforming to the requirements of paragraph 2 of these Restrictions or a yard barn may be permitted on a Lot within the Subdivision, so long as it is not located within any easement within the Subdivision and it meets the requirements of this paragraph 3. Except for yard barns which meet the requirements of

this paragraph 3, no structure shall be moved onto any Lot; and all structures shall be newly erected thereon. No modular or pre-Fab homes shall be allowed in the Subdivision.

Any yard barn located on a Lot within the Subdivision must comply with the following requirements:

- (a) May contain a finished floor area not to exceed 144 square feet, not to exceed twelve (12) feet in width or twelve (12) feet in length, and, when combined with the square footage of the dwelling constructed on the Lot, the total square footage of the dwelling and the yard barn may not exceed the coverage requirements under the applicable zoning ordinance.
- (b) Must be wood frame construction and must have the exterior covered by wood veneer or vinyl siding with wood veneer painted to match the exterior color of the home, or as otherwise approved by Developer.
- (c) Have the same or similar color trim and dimensional shingles as the house.
- (d) Yard barn must not exceed twelve (12) feet in height and if the yard barn is elevated off of the ground more than twelve (12) inches, the area beneath the bottom of the yard barn must be concealed with lattice or skirting around the base of the structure.
- (e) Only one such yard barn shall be permitted on each Lot and must be located behind and at least ten (10) feet away from the dwelling and at least two (2) feet from the side property lines, and, if located on a corner lot, any such building must not be located closer to the street than the side building setback line.
- (f) All utilities servicing the yard barn must be underground.
- (g) Any variations from these requirements must be approved by the Developer, or the Homeowners Association after architectural control of the Subdivision has been transferred to the Homeowners Association.

Notwithstanding anything contained herein to the contrary, and in addition to the requirements set forth above, yard barns may be placed on Lake Lots but must not be located within any easements behind the dwelling.

**4. ARCHITECTURAL CONTROL.** Until such time that all of the Lots in the Subdivision, including any future expansions of Briar Pointe Subdivision, have been sold by Developer and/or Developer's successors or assigns as to any sections of Briar Pointe Subdivision developed by someone other than Developer, and homes have been built on said Lots, no structure shall be erected, placed or altered on any Lot until the construction plans and specifications and a plot plan showing the location of the structure on the Lot (the "Design Plans") have been approved by the Developer as to quality of workmanship and material, harmony of external design with existing structures, suitability to the general appearance of the Subdivision, and as to locations with respect to topography and finish grade elevation. Approval of said structure shall be within the reasonable discretion of the Developer. It is the responsibility of the Lot owner to obtain such

approval of the Design Plans prior to commencement of any construction on any Lot. After all Lots in the Subdivision, including any future expansions of Briar Pointe Subdivision, have been sold by the Developer and/or Developer's successors or assigns as to any sections of Briar Pointe Subdivision developed by someone other than Developer, and homes have been built on said Lots, the Homeowners Association consisting of the owners of Lots within Briar Pointe Subdivision shall have the same authority with respect to architectural control as the Developer hereunder. Once Design Plans have been approved, there shall be no modifications or changes whatsoever to said Design Plans without the prior written consent of Developer or the Homeowners Association, as the case may be. The terms of this paragraph 4 shall apply to all construction on a Lot including, without limitation, any construction of additions or alterations (such as sunrooms) after the initial Design Plans have been approved. Notwithstanding the foregoing, after all Lots in Briar Pointe Subdivision have been sold by the Developer and/or Developer's successors or assigns and homes have been built on said Lots, in the event the Homeowners Association fails to act upon a request for approval of Design Plans within fifteen (15) days, then such approval shall be conclusively deemed unnecessary for such construction in the Subdivision.

**5. CONSTRUCTION OF BUILDINGS.** The following sets forth the minimum finished living area, exclusive of basements, porches, and attached garages, and certain other requirements for various types of houses for Lots in the Subdivision:

- (a) One story dwellings shall have a minimum finished living area of 1500 square feet. Two story dwellings shall have a minimum finished living area of 1800 square feet, with 1000 square feet minimum on the main level. One and one-half (1½) story dwellings shall have either a minimum of 1500 square feet on the main level or a total of 1800 square feet, with a minimum of 1000 square feet on the main level. All exterior walls on the main level of the front of the dwelling from the left front corner across the entire front of the dwelling to the right front corner, excluding any side elevations between these two corners, must be eighty percent (80%) brick or stone, unless otherwise approved by the Developer. In the sole and absolute discretion of the Developer, the Developer may approve an upgraded composite or vinyl siding on the main level above a brick or stone wainscoting, but any such approval by the Developer must be obtained in writing, in advance. The balance of the home may be brick, stone or stucco veneer, wood, or vinyl siding; provided, however, the sides and rear of the home may have an exposed block foundation so long as the exposed foundation does not exceed sixteen inches (16") in height. All homes require stick-built construction, to be built on site, of either wood or metal components, or a combination of the two, unless otherwise approved by the Developer. No modular or pre-Fab construction shall be permitted in the Subdivision. All homes in the Subdivision shall have a footprint of not less than Forty-five (45) feet in width.
- (b) All storm water drainage must be run from home toward the front of the Lot or to drainage easements at back of Lots, and not to side yards; provided, however, drainage must comply with all applicable governmental laws, ordinances and

regulations. All storm water drainage from each individual Lot must be sent toward the front of the home and/or to rear yard drainage easements. Notwithstanding the foregoing, all swimming pool discharge lines must be discharged into the street in front of the home and all foundation drains may drain to the front or rear of the home. Swales between Lots must be maintained by homeowners to keep water from entering homes.

- (c) All metal fireplace flues which are exposed above the chimney more than thirty-six inches (36") must be wrapped with an approved exterior veneer, such as brick, wood, aluminum, stucco, or vinyl siding. The flue liners are to have no more than 16" exposed above chimney.
- (d) All homes are to have a roof pitch of no less than a 6/12 pitch (unless otherwise approved by Developer), to be used on the front elevation of the home, and all roofs are to receive dimensional shingles.
- (e) All homes are to have either (i) a lamp post, to be located in the front yard, 5' to 6' in height, or (ii) a coach light on the front of the home. All such lamps or lights are to be operated by a photocell or timer and are required to be maintained and lit at all times from dusk to dawn. No Lot is to have an outdoor light with more than 200 watts. There shall be no high intensity lights directed toward street or adjacent Lots.
- (f) Privacy fence design and material are to be approved by Developer. Privacy fences must be vinyl and must be approved by Developer in all respects including, without limitation, the quality of the vinyl. Fences shall not be located across any lake maintenance easements, storm drainage easements or utility easements. No fence shall be located closer to streets than the front and side setback lines. Fences installed on Lots adjoining a lake within the Subdivision (hereinafter "Lake Lots") may be no more than six (6) feet in height to a point not to exceed twelve (12) feet from the rear of the dwelling. The remainder of said fence, if any, extending past twelve (12) feet from the rear of the house may not exceed four (4) feet in height; provided, however, if required by applicable code or regulations of any governmental entity that the privacy fence be six (6) feet in height beyond twelve (12) feet from the rear of the dwelling, said fence must be wrought iron, aluminum or other see-through type material approved by Developer. No chain link or wire fences allowed unless enclosed by an approved fence. All approved fences shall be installed with the finished side of the fence to face adjoining Lots or adjoining streets and shall be installed in accordance with all applicable laws, codes and ordinances. In order to obtain approval of privacy fence design, prior to installation the homeowner must submit to Developer, in writing, the fence design and description of the material to be used, along with a site plan drawn to scale with all measurements shown thereon so that Developer is able to determine whether the proposed privacy fence satisfies the requirements of this subparagraph (f). It is the sole responsibility of the Lot owner to install

**the fence so that it does not encroach on any easements or beyond the Lot owner's property lines.**

- (g) The Developer has built slopes at the rear of the Lots, to accommodate grade changes and drainage easements. These slopes have been installed for ease of maintenance by Lot owners. The utility companies have installed their utility lines and vaults in these areas. If at any time a Lot owner alters the grade at these locations, the utility companies and the Developer require not less than ten (10) days advance written notice. The alterations can require reinstallation of utility lines to reestablish proper depth of cover, or possibly require the need to raise the vaults, if fill has been added. Every Lot owner will be financially responsible for alterations which require repairs or reinstallation by utility companies. The Lot owner may be held financially responsible for any damages suffered by other Lot owners resulting from any grade changes to drainage easements which back storm water on adjacent Lots. The Developer or the Homeowners Association may take such action as is necessary to remedy any problems associated with grade alterations or changes made by a Lot owner. Any amounts expended by the Developer or the Homeowners Association on a Lot owner's behalf pursuant to this subparagraph shall be payable upon demand and any amounts not paid upon demand shall become a lien on the Lot owner's Lot and shall accrue interest at eighteen percent (18%) per annum.
- (h) Overhead garage doors are not to exceed ten (10')feet in height on homes, except with the prior written approval of the Developer.
- (i) The Developer and utility providers have installed or will install utility trenches throughout the Subdivision within dedicated easements and the Lot owners are advised that these trenches may not be compacted in all areas including, without limitation, in areas where driveways may be installed. As a result, settlement may occur on a Lot if the Lot owner does not ensure that areas where any improvements may be constructed within dedicated easements are sufficiently compacted prior to construction of any such improvements. Any liabilities or expenses incurred or suffered by the Lot owner due to the Lot owner's failure to compact all such areas of a Lot sufficiently shall be the responsibility of the Lot owner.
- (j) **All Lot owners shall be required to install sidewalks on their lots within two (2) years from the date of purchase or prior to occupying the home, whichever is earlier. All required sidewalks must be installed to the standards meeting the latest edition of the Evansville Municipal Code and all applicable standards required by the Americans with Disabilities Act (ADA) and the regulations thereunder. It shall be the responsibility of the Lot owner or his or her contractor to contact the City Engineer to arrange for inspection of the sidewalks. In the event the Lot owner occupies the home prior to completion of a satisfactory sidewalk inspection by the City Engineer, the Lot owner shall defend, indemnify, and hold the Developer harmless from and against any and**

all losses, damages, fines, penalties or any other negative repercussions suffered by Developer as a result thereof.

- (k) All homes built on Lots 242, 243, 244 and 245 shall face Venture Drive and all driveways and other vehicle access points shall enter the Lot from Venture Drive and not from Career Avenue.
- (l) Any home built on Lot 176 shall face Eli Drive and all driveways and other vehicle access points shall enter the Lot from Eli Drive and not from Career Avenue or any other road in Briar Pointe Subdivision.

**6. EXPOSED CONCRETE.** Except as is provided to the contrary in Paragraph 5(a)(ii): no completed structure shall have concrete blocks exposed on the exterior of said structures and, (ii) brick, stone, or stucco veneer shall be used over exposed concrete blocks.

**7. TIME OF CONSTRUCTION.** The construction of any home within the Subdivision shall be completed within eighteen (18) months from the date of commencement of construction; provided, however, this timeline may be extended by Developer on a case by case basis, in Developer's sole discretion. The completion of any additions, remodeling, or renovations shall be completed within nine (9) months from the date of commencement of such construction, unless otherwise approved by the Developer.

**8. CARE OF PROPERTY DURING CONSTRUCTION.** All Lots in the Subdivision are subject to the Indiana Department of Environmental Management's (I.D.E.M.) General Permit Rule #327 I.A.C. 15-5, which said rule generally provides that erosion control practices be used during development and construction and must minimize soil erosion and sediment laden water flowing from the building sites and requires that streets be kept free from transported soil from the building sites.

In compliance with this provision, a plan has been submitted to the Vanderburgh Soil and Water Conservation District, which said plan and its terms shall be binding upon all owners of Lots within the Subdivision. Said plan requires the construction of appropriate driveways for ingress and egress during construction and the implementation of measures to minimize sediment laden water from being discharged to streets and drainage ways.

During construction, adjoining Lots shall not be used for any construction equipment, vehicles, or material storage purpose. If a Lot owner's employees, contractors or agents are responsible for disturbing the vegetation on adjoining building sites, appropriate erosion control practices must be started immediately by the Lot owner who caused such disturbance, and such Lot owner shall be responsible to promptly restore, at such Lot owner's expense, such disturbed adjoining Lots to their original condition prior to the commencement of such construction, including, without limitation, regrading, reseeding and trash removal.

The provisions of Rule 327 IAC 15-5 and the plan for erosion control submitted to the Vanderburgh Soil and Water Conservation District shall become a part of these covenants and restrictions and shall be binding on all Lot owners as it pertains to their individual Lots and said

Lot owners shall hold the Developer harmless in connection with any and all violations thereof. Furthermore, all Lot owners shall be responsible for compliance with this provision and the referenced administrative rules and erosion control plans within the boundaries of each Lot owner's real estate. The Developer shall not be responsible and shall have no liability for silt or debris flowing into any lake, and the owners, together with their agents and builders, shall hold harmless and indemnify the Developer from any and all costs and expenses in connection with any violation thereof, including but not limited to all attorneys' fees and court costs.

In addition to the foregoing, all Lot Owners shall be responsible for keeping their Lot free of trash and debris during construction and shall take all appropriate measures to prevent trash and debris from blowing onto other property within the Subdivision. This obligation shall apply to the Lot Owner and to any builder or contractor who or which purchases a Lot in the Subdivision for purposes of constructing a home thereon. In the event any such Lot Owner fails to keep his or her property free from trash and debris and otherwise comply with the terms of this grammatical paragraph, the Developer may take such action as the Developer deems necessary or desirable to bring such Lot into conformance with these Restrictions and the owner shall be responsible for all costs incurred by the Developer in connection therewith.

**9. BUILDING LINES.** All residences and other building structures in the Subdivision shall be constructed in a manner that conforms to the Vanderburgh County side and rear Lot setback lines. The site plan for any residence constructed in the Subdivision must be approved by the Developer prior to commencement of any construction or site preparation on the Lot, which site plan must be to scale and fully dimensioned showing the proposed structure(s) and the Lot.

**10. DRIVEWAYS.** All driveways shall be paved with 4" thick concrete. As described more fully in paragraph 5(i) of these Restrictions, the Lot owner is responsible for making sure the area where the Lot owner's driveway will be constructed is sufficiently compacted to avoid settlement in areas above utility trenches within dedicated easements in the Subdivision.

**11. EASEMENTS.** The strips of real estate of the width shown on the recorded plat and marked as easements are hereby reserved for access, maintenance and/or for the use of any and all public utilities and for the installation of water, surface water drainage, sanitary and storm sewers, ducts, lines and wires, and for use by the Developer and the Association for access and maintenance of any and all signs, lighting, landscaping, sprinklers and any other items at any entrance to the Subdivision, subject at all times to the proper authorities and to the easements herein reserved. Notwithstanding the foregoing, the areas on the recorded plat marked "Drainage Easement" or "D.E." may not be used by or for any public utilities except for such public utility installations which go across such Drainage Easement(s) in a perpendicular fashion. No structures or other improvements, planting or other material including, without limitation, any fences, walls, trees or shrubs shall be erected or permitted to remain within the easements. The easement area of each Lot shall be maintained continuously by the owner of said Lot so as not to change the intended direction of flow of surface water within the easement. Developer and the Homeowners Association are hereby granted such permanent easements over any Lot(s) as may be necessary for ingress and egress to maintain any entrances to the Subdivision and to repair and maintain drainage swales within the Subdivision and to remedy any drainage issues which may

occur within the Subdivision or otherwise fulfill any responsibilities it may have under paragraph 13 of these Restrictions. If, in the discretion of the Developer or the Homeowners Association, any such action is necessitated by any act or omission of any Lot owner(s), then any costs incurred by Developer or the Homeowners Association, as the case may be, in connection with such action(s) shall be reimbursed by said Lot owner(s) in such amounts as may be determined by the Developer or the Homeowners Association, as the case may be, in their sole discretion. In addition, if so directed by the Developer or the Homeowners Association, the applicable Lot owner(s) shall be responsible for regrading and seeding of their respective Lots. If any Lot owner fails to make reimbursement to Developer or the Homeowners Association within ten (10) days of request by Developer or the Homeowners Association, said sum shall be payable to Developer or the Homeowners Association with interest at eighteen percent (18%) per annum plus any attorney's fees incurred by Developer or the Homeowners Association.

**12. RIGHTS OF WAY.** The strips of real estate of the width shown on the recorded plat and marked "right of way" are hereby reserved for future ingress and egress to abutting real estate. No structures or other improvements, planting or other material shall be erected or permitted to remain within the rights-of-way which may interfere with such ingress or egress. The rights-of-way shall be maintained to the centerline of the road abutting such right of way by the Lot owner abutting any such right-of-way. In the case of right-of-way located between two Lots for which a future street or road may be planned, each Lot owner shall be responsible for maintaining such right-of-way to the center point between the two Lots adjacent to the right-of-way.

**13. DRAINAGE OF WATER.** Water from down spouts, foundation tile or other surface water drainage systems shall not be drained or guided into the sanitary sewer. The down spout drains can be drained toward the front of the Lot and may be into the street, so long as it would not be a violation of any applicable laws, ordinances or regulations, or down spout drains may be drained into drainage swales at the back of the Lot, or into the center of the Lot, but may not be drained to the side onto neighboring Lots. Water must be discharged at a level above the street to prevent erosion under the street. The existing natural and manmade drainage courses shall not be altered without the approval of the Developer or its appointee. All Lot owners and/or their homebuilder or general contractor are responsible for achieving proper grading and slopes of their respective Lots, so as to achieve a positive drainage flow away from their foundations and homes and into the drainage easements or streets, with the Lot either sloping to the rear of the Lot, the front of the Lot, or both in order to achieve positive drainage flow away from the home. A drainage swale will be required between Lots, the construction of which shall be the responsibility of the Lot owner and his or her homebuilder or general contractor. Such swale shall be constructed correctly before the landscaping of the yard is completed and maintained correctly thereafter by the Lot owner of record.

In accordance with the Vanderburgh County Drainage Board, any Lot owners constructing improvements and/or their homebuilder or general contractor are hereby informed that:

- (a) the standard grading plan sheets are attached hereto as Exhibit "B". Additional copies may be obtained from the Vanderburgh County Recorder's Office;

- (b) such Lot owner, home builder and or general contractor are hereby directed to achieve positive storm water drainage away from the building foundations in accordance with the standard grading plan referred to in (a) above; the homebuilder or general contractor shall be determined by whose name appears on the building permit and by Lot owner, by owner of record;
- (c) it shall be the responsibility of the property owner of record to maintain a positive drainage away from such Lot owner's building as provided by the initial Lot grading and or subsequent re-grading in accordance with the standard grading plan and other regulations of record;
- (d) the adverse drainage conditions caused by any alterations of the Lot grades and/or drainage system after the initial Lot grading and/or drainage system is accomplished in conformance with the standard grading plan and the approved final drainage plan are totally the responsibility of the property owner of record to correct at his or her cost.

In the event a Lot owner fails to achieve positive storm water drainage away from the Lot owner's building as required by this paragraph 13, the Developer and/or the Homeowners Association may determine the action or actions required to create such positive drainage flow and, either direct the Lot owner or Lot owners to take such action at the Lot owner's sole cost and expense, or the Developer and/or the Homeowners Association may take such actions as are necessary to achieve and maintain positive storm water drainage and any such amounts expended by the Developer and/or the Homeowners Association shall be payable upon demand and any amounts not paid upon demand shall become a lien on the Lot owner's lot and shall accrue interest at 18% per annum, and shall be payable along with all attorney fees, court costs and other expenses incurred in connection with the enforcement of this paragraph 13.

In the event of any action taken by the Developer and/or the Homeowners Association pursuant to this paragraph 13, the Developer and/or the Homeowners Association shall have no liability or responsibility for any damages to the Lot owner's property in or around a drainage easement, where such damage is suffered as a result of action taken by the Developer or the Homeowners Association in order to create positive drainage flow as required by this paragraph 13. Any reseeding, re-sodding or similar action required to return a Lot owner's lot to the condition in which it existed prior to any action taken by the Developer, or the Homeowners Association shall be the sole responsibility of said Lot owner.

**14. STORM WATER DRAINAGE.** Except as may be designated by Developer or Developer's successors or assigns to the contrary pursuant to paragraph 15 of these Restrictions, the individual Lot owners shall be responsible, including financially, for lake maintenance and prevention of obstructions to creeks and natural surface watercourses and which exist on his or her property and for maintaining that part of the storm water drainage system and its easements which exist on his or her property in proper working order including:

- (a) mowing grass, controlling weeds and maintaining the design cover of the waterways, storage basins, and easements in accordance with applicable ordinances.
- (b) keeping all parts of the storm water drainage system operating as designed and constructed; and free of all trash, debris, and obstructions to the flow of water.
- (c) keeping the channels, embankments, shorelines, and bottoms of water ways and basins free of all erosion and sedimentation.
- (d) maintaining that part of the storm water drainage system which lies on his or her property in accordance with the conditions described in the approved street and/or drainage plans on file in the County Surveyor's Office, and/or in the County Engineer's Office, and in compliance with the County Drainage Ordinance.
- (e) preventing all persons or parties from causing any unauthorized alterations, obstructions, or detrimental actions from occurring to any part of the storm water drainage system, and easement which lies on his or her property.
- (f) NOTICE; Any pipe, fence, wall, building, pool, patio, planting, stored material, excavation, fill, or other construction, improvement, addition to, or alteration of the land within a drainage easement in this Subdivision requires the prior written approval of the City or County Drainage Board.

Notwithstanding the foregoing, the Homeowners Association shall bear a responsibility, financially and otherwise, for repairing any structural failures in any portion of the storm water drainage system which exist including, without limitation, structural failure in storm sewer pipes, pipe collars, drop boxes, aprons, inlets, manholes, junction boxes, and piped or paved outlet structures of the storm water control basis, all of which are parts of the approved and constructed storm water drainage system shown on the as built plans for this Subdivision and which are in drainage easements and outside of the county accepted road rights of way as shown on the plat of this Subdivision. In addition, the Developer may, in its sole and absolute discretion, designate any other waterways within the Subdivision to be maintained by the Homeowners Association where the Developer determines that it is in the best interest of the Subdivision for the Homeowners Association to maintain such waterways.

In the event a Lot owner fails to maintain that portion of the storm water drainage system lying on the Lot owner's Lot as required by this paragraph 14, the Developer and/or the Homeowners Association shall have no liability for such failure and may determine the action or actions required to maintain such portion(s) of the storm water drainage system and, either direct the Lot owner or Lot owners to take such action at the Lot owner's sole cost and expense, or the Developer and/or the Homeowners Association may take such actions as are necessary to maintain such portion(s) of the storm water drainage system and any such amounts expended by the Developer and/or the Homeowners Association shall be payable upon demand and any amounts not paid upon demand shall become a lien on the Lot owner's lot and shall accrue interest at 18% per annum.

In the event of any action taken by the Developer and/or the Homeowners Association pursuant to this paragraph 14, the Developer and/or the Homeowners Association shall have no liability or responsibility for any damages to the Lot owner's property in or around a drainage easement, where such damage is suffered as a result of action taken by the Developer or the Homeowners Association in order to maintain the storm water drainage system as required by this paragraph 14. Any reseeding, re-sodding or similar action required to return a Lot owner's lot to the condition in which it existed prior to any action taken by the Developer, or the Homeowners Association shall be the sole responsibility of said Lot owner.

**15. HOMEOWNERS ASSOCIATION.** Except as is provided to the contrary herein, each Lot owner shall automatically become a member of the Briar Pointe Homeowners Association, with one (1) vote per Lot. Such membership shall terminate upon the sale or other disposition by such member of his Lot ownership, at which time the new owner of such Lot shall automatically become a member of the Homeowners Association. The Board of Directors and officers of the Homeowners Association elected as provided in the By-laws of the Homeowners Association shall exercise the powers, discharge the duties and be vested with the rights conferred by operation of law by the By-laws, and by these Restrictions upon the Homeowners Association, except as otherwise specifically provided. Notwithstanding anything contained herein to the contrary, the Developer shall retain all rights provided for the Developer herein and shall maintain the common areas constructed in the Subdivision, until the Homeowners Association is formed, or such later time as the Developer may designate. Either at the time the Homeowners Association is formed or such later time as the Developer shall designate, the Homeowners Association shall become responsible for the supervision, repair, maintenance and replacement of any common areas and recreational facilities, for maintenance of all storm drainage pipes and structures within the Subdivision as described in Paragraph 14, above, water treatment of all private lakes within Briar Pointe Subdivision (all other maintenance of banks and slopes adjacent to the private lakes and maintenance of the shoreline is the responsibility of each individual Private Lake Lot owner, including owners of the Commercial Lots and the Apartment Lots), maintenance and upkeep of any ditches on the perimeter of the Subdivision, maintenance and upkeep of any entry signs, lighting, sprinklers and landscaping at any entrances to Briar Pointe Subdivision (including any signs, lighting, sprinklers and landscaping within any landscape easements, maintenance of any other areas in Briar Pointe Subdivision to the extent designated in writing by the Developer or Developer's successors or assigns to the Homeowners Association, and the purchase of any insurance required in connection with the Subdivision. The Developer will convey the common areas and facilities to the Homeowners Association free and clear of any liens and encumbrances, either at the time the Homeowners Association is formed or such later time as the Developer shall designate. In the event the Developer chooses to convey the common areas and facilities to the Homeowners Association prior to the time all Lots in Briar Pointe Subdivision have been sold, and homes built on said Lots, all other rights reserved to the Developer hereunder, including, without limitation, the Developer's rights regarding architectural control under paragraph 4 of these Restrictions, shall continue to be exercised by the Developer only, until such time as the Developer owns no Lots in the Subdivision, including any future expansions of Briar Pointe Subdivision, and homes have been built on said Lots, or such earlier time as the Developer

may designate to the Homeowners Association. Thereafter, the Homeowners Association shall have the same authority and rights as the Developer hereunder, in all respects. In the event the Developer chooses to create the Homeowners Association prior to the time all Lots in Briar Pointe Subdivision have been sold, the Developer shall be a Member of the Homeowners Association and shall have one (1) vote per Lot owned by the Developer; provided, however, the Developer shall not be obligated to pay any charges, dues or assessments for any unsold Lots.

Any charges and assessments of the Homeowners Association against any Lot or Lots shall be a lien against such Lot or Lots enforceable by the Homeowners Association by foreclosure in the same manner as mechanic's liens are recoverable in the State of Indiana, if not timely paid, together with interest thereon at the rate of eighteen percent (18%) per annum and reasonable attorneys' fees on foreclosure; provided, however, that such lien or liens shall be secondary and inferior to the lien of any bona fide mortgage of record at any time against such Lot or Lots.

Notwithstanding anything contained herein to the contrary, a contractor or builder shall not become a member of the Association by virtue of the purchase of a Lot (and shall have no voting rights with respect to the Association), and such Lot shall not be subject to any dues or assessments by the Homeowners Association until the earlier of the time any dwelling constructed on such Lot is sold or at such time as any dwelling constructed on such Lot is occupied as a residence. However, the contractor or builder will be responsible for maintenance of such Lot in accordance with the last grammatical paragraph of Paragraph 18.

**16. WASTE DISPOSAL.** All Lot owners shall keep their Lots free of garbage, sewage, ashes, rubbish, bottles, cans, waste matter and other refuse. Trash, garbage or other waste or debris accumulated by the owner or occupant of any Lot within the Subdivision shall be kept in sanitary containers and shall be disposed of on a weekly basis. All containers or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition, in a location which cannot be seen from the street at the front of the home and shall be kept in such manner as to avoid an unsightly appearance within the Subdivision. No grass clippings or other debris should be placed on any vacant Lot. The Lot owner shall only use EPA approved products on his lawn and shrubs.

**17. LAKES.**

(a) Ownership and Use. The Plat for Section One of Briar Pointe Subdivision contains parts of two (2) lakes, each of which shall be private lakes. These lakes shall be for the sole, private use and benefit of the owners of Lots which adjoin or lie under portions of such private lake, and their respective families and guests.

Ownership of a Lot adjoining a private lake within Briar Pointe Subdivision (hereinafter "Private Lake Lot" or "Lake Lot") automatically includes ownership of an undivided interest in the right to use such private lake as a tenant in common with all other owners of such adjoining Private Lake Lots. Except as otherwise provided, no owner of any Private Lake Lot shall have the right to partition this tenancy in common or otherwise appropriate to himself any rights in such private lake not enjoyed by all owners of such adjoining Private Lake Lots.

Each owner of a Private Lake Lot (including owners of the Apartment Lots and the Commercial Lots), and their respective families, guests, and tenants, shall have a non-exclusive right, subject to these Restrictions, to reasonably use and enjoy the entire surface, lakebed and water of such adjoining private lake in common with all other owners of such adjoining Private Lake Lots, for recreational purposes only, including, without limitation, boating and fishing; however swimming is expressly not permitted in any private lake. These private lake use rights do not include use of the shoreline or docks owned by other Private Lake Lot owners. Lot owners must accompany their guests at all times when their guests use such private lake or lakes. A Private Lake Lot owner's access to a particular private lake shall be through that owner's Private Lake Lot. No access to any private lake through or over any portion of any Private Lake Lot may be sold, leased, rented or otherwise transferred to any other person by the owner of a Private Lake Lot, separate from the sale of the entire Private Lake Lot. Access during development will be over necessary temporary easements.

(b) Maintenance of Private Lakes. Subject to the reimbursement obligation of the owners of Lot 268 and Lot 270 described in Paragraph 17(c), the Developer shall be responsible for the water treatment of the private lakes until such time as the Developer forms a Homeowners Association, or such later time as the Developer may designate, at which time responsibility for water treatment shall become the responsibility of the Homeowners Association. Each Private Lake Lot Owner shall permit access to the private lake by the Developer and/or the Homeowners Association over his or her Private Lake Lot in order to perform such water treatment of the private lakes. All other maintenance, care, repair and general upkeep of the private lakes shall be the responsibility of the Private Lake Lot owners whose Lots comprise the private lake, including the Commercial Lot owners and the Apartment Lot owners.

The owner of each Private Lake Lot, including the Commercial Lot owners and the Apartment Lot owners whose Lots include a portion of a private lake, shall be required to mow the grass to the water line for that owner's respective Lot and maintain, at that owner's expense, a clean and uncluttered waterfront and shoreline and keep lake free of weeds, , and other undesirable growth or materials, in and around lake. In providing such maintenance, the original shoreline shall not be changed by the removal of sand, dirt, gravel or other material of which the shoreline is formed and the Private Lake Lot owners, including the Commercial Lot owners and the Apartment Lot owners, shall be fully responsible for preventing erosion due to the condition of their respective shoreline unless the Developer or the Homeowners Association determines that such erosion is due to drainage from the Subdivision and not from the Private Lake Lot owner's failure to properly maintain the shoreline, in which case the Developer, or the Homeowners Association, as the case may be, shall take responsibility for any such maintenance or repairs. No Private Lake Lot, including any Private Lake Lots owned by the Commercial Lot owners or the Apartment Lot owners, shall be increased in size by filling in the water it adjoins.

Except for the Commercial Lot owners and Apartment Lot owners, owners of Private Lake Lots may construct and maintain a boat dock only within their own property lines as shown on the recorded plat of the Subdivision, which shall not extend into the water more than eight (8) feet from the normal high-water line, and only in such a manner that such structure will not become hazardous to others using such private lake. Notwithstanding anything herein to the contrary, no boat dock may be constructed on a private lake without the prior written consent of a majority of the owners of the Private Lake Lots which adjoin such private lake; provided, however, in determining whether a majority of the owners of the Private Lake Lots have approved a boat dock, only the owners of single family residential homes within the Subdivision shall be included and the owners of the Commercial Lots and the Apartment Lots shall not be included. Owners of the Commercial Lots and the Apartment Lots may construct a boat dock within their own property lines, but only after written approval of the Developer or the Homeowners Association, as the case may be. There shall be no usage of any motorized watercraft that can expel any oil or gas products, upon the private lake, including, without limitation, "Personal Watercraft" as defined by applicable Indiana law (i.e. wave runners, jet skis or their equivalent) and there shall be no swimming permitted in any private lake including by any Commercial Lot owners or Apartment Lot owners whose Lots include a portion of a private lake, and including their respective tenants,. Only one (1) non-motorized watercraft belonging to any Private Lake Lot owner or his or her guests shall be permitted upon such private lake at any time. Piping water from any private lake within Briar Pointe Subdivision, by anyone other than the Developer, is prohibited. Use of the private lake shall also be subject to and governed by any additional rules and regulations that may be promulgated by the Developer, in its discretion. After all of the Private Lake Lots adjoining the private lake have been sold and conveyed by the Developer, the rules and regulations governing the usage of that particular private lake shall be determined by a majority of the owners of the Private Lake Lots that adjoin such private lake, including any owners of Commercial Lots or Apartment Lots whose Lots include a portion of a private lake, or a committee appointed by a majority of such Lot owners.

Use of any private lake within Briar Pointe Subdivision shall be at the risk and liability of the owners, including the Commercial Lot owners and the Apartment Lot owners whose Lots include a portion of a private lake, other than the Developer, of the Lots which adjoin such private lake. The owners of such Private Lake Lots shall indemnify, defend and hold harmless the Developer from any and all liabilities, obligations, indebtedness, costs, expenses, attorney fees or judgments arising out of, resulting from, related to or connected with any use, whether authorized or unauthorized, of any private lake which adjoins their Private Lake Lots.

(c) Adjacent Lake Lot Owners Maintenance Obligations. For the Private Lake which is not comprised of the Commercial Lots and the Apartment Lots, all costs of water

treatment incurred by the Homeowners Association shall be shared equally between all Private Lake Lot owners whose Lots comprise the Private Lake. The costs of water treatment of Private lake which is comprised of the Commercial Lots, the Apartment Lots and other Private Lake Lots shall be allocated in the following manner: (i) the Owner of Commercial Lot # 268 shall pay Five percent (5%) of the cost of water treatment of the private lake which is a part of their respective Lot(s) , (ii) the Owner of Apartment Lot # 270 shall pay Twenty-five percent (25%) of said costs and, (iii) the remaining Seventy Percent (70%) of such costs shall the responsibility of the Homeowners Association. The owners of Lots 268 and 270 shall pay their portion of such costs, from time to time, to the Developer, or the Homeowners Association, after the Developer has turned over responsibility for said private lake to the Homeowners Association, with payment due not later than thirty (30) days following receipt of an invoice for such costs from the Developer or the Homeowners Association, as the case may be. In the event of failure to pay, the outstanding invoices shall bear interest at the rate of Eighteen percent (18%) per annum and shall be due along with all attorney fees, costs and expenses incurred in collecting the same. In addition, the Developer and/or the Homeowners Association may file a lien against the Lot of the delinquent Owner.

**18. APPEARANCE OF LOTS.** All Lots, including the Commercial Lots and the Apartment Lots whose Lots include a portion of a private lake, must be kept free of debris and other objectionable matter at all times. In the event any Lot is not properly maintained as required herein, Developer shall have the right to take all remedial measure to bring said Lot into conformity with the standards of the Subdivision. The offending owner shall be required to reimburse the Developer for said maintenance costs within ten (10) days from the date said owner is presented with a statement for the costs thereof. If not timely paid, said sum shall be payable, together with interest at the rate of eighteen percent (18%) per annum and attorney fees. After all Lots in Briar Pointe Subdivision have been sold by the Developer and/or Developer's successors or assigns as to any Sections of Briar Pointe Subdivision developed by someone other than Developer, or at such earlier time as the Developer may designate, the aforesaid right shall pass to the Homeowners Association. Maintenance and upkeep include the following items:

- (a) Keeping Lot mowed on a regular basis, maintain a stand of quality grass, and keeping landscaping free of weeds and other undesirable growth.
- (b) Maintain erosion control on Lot.
- (c) Keep lot free of trash, debris, toys, bicycles and any other objectionable items which, in the opinion of the Developer, detract from the appearance of the Subdivision.
- (d) Maintaining the Lot in accordance with Paragraph 8 of these Restrictions during construction.

Notwithstanding anything contained in these Restrictions to the contrary, Lot owners shall not be required to mow any unbuilt Lots on a regular basis as is required under paragraph 18(a),

above, but instead shall mow such Lots a minimum of five (5) times per calendar year and said Lots shall be mowed frequently enough so that the grass on such Lots does not exceed twelve (12) inches in height at any time. Once a house has been constructed on a Lot, the requirements of paragraph 18(a) above shall apply; provided, however, nothing contained above in this Paragraph 18 shall apply to unsold Lots or Lots which have been sold to contractors or builders. Such Lots shall be maintained by the Developer (as to unsold Lots) or by the applicable contractor or builder in a manner which is reasonable in light of weather conditions, including rainfall, or the lack thereof.

19. VEHICLE PARKING. No vehicle of any kind shall be parked overnight on a street in the Subdivision. No camper, motorhome, recreational vehicle, motorcycle, trailer, two or four wheeled vehicles or other similar vehicles or boats or other items similar vehicles or boats or other items used for water activities shall be parked or located on any Lot unless parked or located within an enclosed garage, and they shall not be parked or left overnight on a street in the Subdivision.

20. FUEL TANKS. No oil, gas or other fuel tanks or unsightly objects shall be allowed on any Lot in the Subdivision or placed in the basement or garages of any dwelling unless approved by the Developer and in compliance with all governmental laws.

21. SIGNS. No signs shall be permitted in the Subdivision except the following:

- (a) The owner of any Lot who desires to sell said Lot shall be permitted to place a "FOR SALE" sign on said Lot;
- (b) Model home or display signs shall be permitted in connection with original construction on any Lot; and
- (c) Homeowners may display one (1) sign indicating that their home is protected by a "commercial home security system"; provided, however, such sign may not exceed 12" by 12" in size and each Lot may not contain more than one (1) such sign at any one time. For purposes of the immediately preceding sentence "commercial home security system" shall mean a security system which the homeowner has purchased from a business engaged in the sale of home security systems to homeowners. Signs such as "Beware of Dog", "Home Protected by 357 Magnum", "No Trespassing" and similar signs are specifically not included within the definition of "commercial security system" as used in this subsection (c) and are not permitted within the Subdivision.

22. ANIMALS. No animals, livestock or poultry of any kind shall be raised, bred or kept upon any Lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes; and provided further that no household may have more than a total of four (4) household pets at one time. Pets shall be controlled by their owners throughout the Subdivision, including, without limitation, all yards and streets, in such a manner as to not become an annoyance or nuisance to neighbors. All pet

facilities maintained and/or located on any Lot must be approved by the Developer, in advance, in writing.

23. **NUISANCES.** No noxious or offensive trade or 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. Garage sales shall require the approval of the Developer or the Homeowners Association.

24. **FIREARMS.** There shall be no hunting with or discharge or shooting of any firearms, bows or any other weapon upon any of the real estate included within the Subdivision.

25. **FRACTIONAL LOTS.** No residence may be erected or placed on less than a full Lot, except where less than one full Lot is utilized in connection with an adjacent or abutting full Lot for the construction and maintenance upon the combined parcel of real estate of a single-family dwelling in all other respects complying with the terms and provisions of these covenants.

26. **WAIVER OF REMONSTRATION RIGHTS.** Each Lot Owner in the Subdivision hereby waives his or her right to remonstrate against, or in connection with, any rezoning, re-platting or changes or amendments to the Plat, or any similar proceeding filed by the Developer on any portion of Briar Pointe Subdivision or any property adjacent to Briar Pointe Subdivision, including without limitation any future sections of Briar Pointe Subdivision. Each Lot Owner acknowledges that a violation of the covenants in this Paragraph 26 will cause irreparable injury to the Developer. In the event of the violation or threatened violation of this Paragraph 26, the Developer may, in addition to any other legal or equitable rights that it may have, obtain specific enforcement of this Paragraph 26 by means of court ordered temporary restraining orders and preliminary and permanent injunctions enjoining and restraining a Lot Owner from committing, continuing or attempting to commit any such violation, and the Developer shall be entitled to recovery of court costs and attorney's fees incurred in seeking such relief. Nothing contained herein shall be construed as prohibiting the Developer from pursuing any other remedy available to it for such breach or threatened breach, including recovery of damages from a Lot Owner.

27. **ACCEPTANCE OF DEED.** The acceptance of a deed of conveyance to any Lot or a part thereof in the Subdivision by any person shall be construed to be acceptance and an affirmation by said person of each and all of the covenants, conditions, reservations and restrictions aforesaid, whether or not the same be set out or specified in such conveyance.

28. **INJUNCTIVE RELIEF.** Each and all of the covenants, reservations, conditions and restrictions contained herein shall inure to the benefit of all owners of Lots in the Subdivision jointly and severally and may be enforced by them or by any of them, individually, or by the Developer or the Homeowners Association, as the case may be, in any court of competent jurisdiction by injunction or other appropriate remedy. The party adjudged to have violated any of said restrictions shall be liable to the aggrieved party for reasonable attorney fees incurred in the enforcement thereof. The owner of any Lot in this subdivision and/or the Developer and/or the Homeowners Association established hereby shall have the right to enforce said covenants,

conditions and restrictions without proof of pecuniary damage to any Lot owner's property in the Subdivision or otherwise.

Notwithstanding the foregoing, neither the Developer, the Homeowners Association nor any Lot owner shall have an affirmative obligation to seek enforcement of the covenants, conditions and restrictions contained herein and the failure of any party to strictly enforce these covenants, conditions and restrictions shall not constitute a waiver of such party's or any other party's right in the event of any subsequent violation of these covenants, conditions and restrictions.

**29. PASSAGEWAY.** Except as is provided to the contrary herein, no owner shall permit or authorize anyone to use a portion of any Lot as a passageway or means of ingress or egress to or from any contiguous property including, without limitation, contiguous property owned by the Lot owner, nor shall any utility easements be granted by a Lot owner without the approval of the Developer, nor shall a Lot owner permit the use of any drainage easements by or for any public utilities except for such public utility installations which go across drainage easements in a perpendicular fashion; however, the terms of this Paragraph 29 shall not apply to any Lots then owned by the Developer. The Developer shall have the right to enforce this Paragraph 29 for a period of five (5) years following the date upon which the Developer no longer owns any lots in Briar Pointe Subdivision, in addition to any other enforcement rights of the Developer contained in these Restrictions.

**30. CHANGING OF LOT DIMENSIONS.** It is expressly understood and agreed that the subdivision Developer shall have the right to change, alter, adjust or re-adjust the dimensions of any Lot owned by the Developer situated in the Subdivision.

**31. DRAINAGE OF WATER FROM ADJOINING REAL ESTATE.** All owners of Lots in this Subdivision, including, without limitation, all future expansions of Briar Pointe Subdivision, are hereby notified that due to the topography of the portions of the real estate which lie adjacent to or nearby the Subdivision and other real estate which may be included within Briar Pointe Subdivision, it may be necessary to drain surface water, including storm water, from such real estate located outside the Subdivision across common areas of the Subdivision and into any lake or lakes of the Subdivision, including future expansions of Briar Pointe Subdivision. All such Lot owners agree that such drainage shall be permitted.

**32. INVALIDATION OF A RESTRICTION OR CONDITION.** Invalidation of any of the foregoing covenants, conditions or restrictions by judgment or order of a court shall in no way affect any of the other covenants, conditions, or restrictions, all of which shall remain in full force and effect.

**33. ENFORCEMENT OF THESE RESTRICTIONS.** Each of these Restrictions shall inure to the benefit of and be enforceable by any one or more of the following:

- (a) any Lot owner in the Subdivision;
- (b) the Developer; and

(c) the Homeowners Association.

Enforcement may be by injunction or for damages or other appropriate remedy. The party adjudged to have violated any of these Restrictions shall be liable to the aggrieved party for any reasonable attorneys' fees incurred in connection with enforcement of these Restrictions, which amount shall be fixed by the court hearing said matter. Those entitled to enforce these Restrictions shall have the right to enforce these Restrictions without proof of pecuniary damage.

In the event of any remedial action taken by the Developer and/or the Association as a result of any Lot Owner's failure to comply with the Restrictions contained herein, or any losses, damages, fines, penalties, or other negative repercussions from a Lot Owner's failure to comply with the Restrictions, the Lot Owner shall be required to reimburse the Developer or the Association, as the case may be, for all costs incurred in connection with such remedial action, upon demand. Any such amounts which are not paid upon demand shall become a lien against such Lot enforceable by the Developer or the Association by foreclosure in the same manner as mechanic's liens are enforceable in the State of Indiana, together with interest at 18% per annum, plus reasonable attorney fees and costs. The Developer's enforcement rights contained in these Restrictions shall continue after the Developer's sale of all Lots in the Subdivision.

**34. GRIEVANCE PROCEDURES.** Notwithstanding anything contained herein to the contrary, the grievance procedures set forth in IC 32-25.5-5, et. seq. (the "Grievance Procedures") shall apply to the Association and to all members of the Association with respect to any "claims" as defined in IC 32-25.5-5-2. However, in the event the application of the Grievance Procedures does not result in resolution of a particular claim and legal proceedings are thereafter commenced, these Restrictions shall control the resolution of a claim, including the provisions of the Restrictions which provide for recovery of attorney fees incurred in enforcement of these Restrictions, and the Grievance Procedures shall have no further application to that particular claim. Further notwithstanding anything contained herein to the contrary, the Grievance Procedures shall not be applicable to the Developer, in any event, in the exercise of any of the Developer's rights hereunder or in the enforcement or any of the terms contained in these Restrictions.

**35. BINDING EFFECT OF RESTRICTIONS; AMENDMENT.** Except as is provided to the contrary in this paragraph 36, these Restrictions shall run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these restrictions and covenants are recorded. Thereafter, said restrictions and covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by Seventy-five percent (75%) of the then owners of the Lots in the Subdivision has been recorded agreeing to change, modify or eliminate said covenants and restrictions in whole or in part. Notwithstanding the foregoing, the Developer may amend these Restrictions at any time, in its sole discretion, until such time as the Developer no longer owns any Lots in Briar Pointe Subdivision and for a period of one (1) year thereafter. In addition, these Restrictions shall be subject to amendment, at any time, upon the consent of at least Seventy-five percent (75%) of the members of the Association provided, however, any such amendment shall require the consent of

the Developer so long as the Developer owns at least one Lot in the Subdivision and not more than seven (7) years have passed since the recording of these Restrictions.

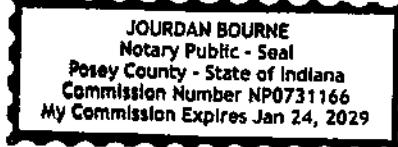
IN WITNESS WHEREOF, the Developer has caused these restrictions to be duly executed this 2nd day of February 2023.

BRIAR POINTE DEVELOPMENT, LLC

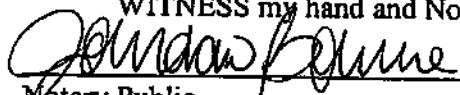
By: 

John J. Elpers, Manager

STATE OF INDIANA )  
COUNTY OF VANDERBURGH ) SS:



Before me, the undersigned, a Notary Public in and for said County and State, personally appeared the above-named John J. Elpers, a Manager of BRIAR POINTE DEVELOPMENT, LLC, an Indiana limited liability company, and acknowledged the execution of the foregoing instrument as his free and voluntary act and deed for and on behalf of said company.

WITNESS my hand and Notarial Seal this 2<sup>nd</sup> day of Feb., 2023.  
  
 Notary Public

Jourdan Bourne  
 Printed Signature

My Commission Expires: Jan. 24, 2029

My County of Residence: Posey

This instrument prepared by: Scott S. Stone, Esq.  
**Stone & Stratman, LLP**  
915 Main Street, Suite 404  
P. O. Box 1135  
Evansville, Indiana 47706-1135  
Telephone: (812) 425-5345  
Facsimile: (812) 425-5430

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. /s Scott S. Stone

**CROSS-REFERENCE TO INSTRUMENT NO.** Plat Book V at page 159

**EXHIBIT "A"****Briar Pointe Section One****Legal Description**

Part of the Southwest Quarter and part of the Southeast Quarter of Section 9, Township 6 South, Range 10 West in Center Township, Vanderburgh County, Indiana and being more particularly described as follows:

Commencing at the Northeast Corner of the Southeast Quarter of said Section 9; thence along the north line of said Quarter Section, North 88 Degrees 34 Minutes 10 Seconds West 1126.46 feet to the northwest corner of a tract of land conveyed to the Evansville-Vanderburgh School Corporation (EVSC) in Document Number 2003R00058617 in the Office of the Recorder of Vanderburgh County, Indiana; thence along the boundary of said EVSC tract, South 01 Degree 25 Minutes 50 Seconds West 125.53 feet; thence continue along the boundary of said EVSC tract, South 14 Degrees 17 Minutes 30 Seconds East 73.81 feet; thence continue along the boundary of said EVSC tract, South 01 Degree 25 Minutes 50 Seconds West 279.58 feet to the point of beginning; thence continue along the boundary of said EVSC tract the following three (3) calls:

South 01 Degree 25 Minutes 50 Seconds West 934.16 feet; thence

South 88 Degrees 34 Minutes 09 Seconds East 66.77 feet to the beginning of a curve to the left having a central angle of 01 Degree 55 Minutes 24 Seconds, a radius of 950.00 feet and a chord dimension of North 89 Degrees 31 Minutes 52 Seconds East 31.89 feet;

thence along the arc of said curve 31.89 feet to the beginning of a curve to the left having a central angle of 88 Degrees 04 Minutes 37 Seconds, a radius of 40.00 feet and a chord dimension of South 45 Degrees 28 Minutes 08 Seconds West 55.61 feet;

thence along the arc of said curve 61.49 feet;

thence South 01 Degree 25 Minutes 50 Seconds West 60.56 feet to the beginning of a curve to the right having a central angle of 17 Degrees 47 Minutes 02 Seconds, a radius of 100.00 feet and a chord dimension of South 10 Degrees 19 Minutes 21 Seconds West 30.91 feet;

thence along the arc of said curve 31.04 feet;

thence South 71 Degrees 38 Minutes 13 Seconds East 15.45 feet;

thence South 01 Degree 25 Minutes 50 Seconds West 198.52 feet;

thence North 88 Degrees 34 Minutes 10 Seconds West 292.54 feet;

thence South 01 Degree 25 Minutes 50 Seconds West 108.56 feet;

thence North 88 Degrees 34 Minutes 10 Seconds West 50.00 feet;

thence South 01 Degree 25 Minutes 50 Seconds West 44.51 feet;

thence North 88 Degrees 34 Minutes 10 Seconds West 807.00 feet;

thence South 62 Degrees 44 Minutes 52 Seconds West 14.31 feet;

thence North 16 Degrees 37 Minutes 54 Seconds West 211.34 feet to the beginning of a curve to the right having a central angle of 02 Degrees 53 Minutes 24 Seconds, a radius of 425.00 feet and a chord dimension of North 74 Degrees 48 Minutes 48 Seconds East 21.44 feet;

thence along the arc of said curve 21.44 feet;

thence North 13 Degrees 44 Minutes 30 Seconds West 156.07 feet;

thence South 88 Degrees 34 Minutes 10 Seconds East 38.01 feet;

thence North 02 Degrees 01 Minute 08 Seconds West 185.38 feet to the beginning of a curve to the right having a central angle of 02 Degrees 29 Minutes 37 Seconds, a radius of 425.00 feet and a chord dimension of North 89 Degrees 13 Minutes 41 Seconds East 18.50 feet;

thence along the arc of said curve 18.50 feet;

thence North 00 Degrees 28 Minutes 29 Seconds East 165.41 feet;

thence North 88 Degrees 34 Minutes 10 Seconds West 140.39 feet;

thence South 62 Degrees 44 Minutes 52 Seconds West 613.00 feet to the east right-of-way of US 41 as shown on INDOT Plans for Project Number U-36 Sec. A (3) dated 1940 and being 45.00 feet right of centerline (line AR) Station 132+08.67;

thence along said east right-of-way, North 01 Degree 32 Minutes 21 Seconds East 166.12 feet to the southwest corner of a tract of land conveyed to the State of Indiana in Deed Book 592, page 387-389 in the Office of said Recorder;

thence along the south line of said tract of land conveyed to the State of Indiana, South 88 Degrees 27 Minutes 39 Seconds East 6.00 feet;

thence along the east line of said tract of land conveyed to the State of Indiana, North 01 Degree 32 Minutes 21 Seconds East 728.10 feet to the southwest corner of Drury Minor Subdivision as recorded in Plat Book T, page 91 in the Office of said Recorder;

thence along the south line and the extended south line of said Drury Minor Subdivision, South 88 Degrees 34 Minutes 10 Seconds East 1397.54 feet to the beginning of a curve to the left having a central angle of 30 Degrees 00 Minutes 00 Seconds, a radius of 200.00 feet and a chord dimension of North 76 Degrees 25 Minutes 50 Seconds East 103.53 feet;

thence along the arc of said curve 104.72 feet;

thence North 61 Degrees 25 Minutes 50 Seconds East 130.48 feet to the beginning of a curve to the right having a central angle of 30 Degrees 00 Minutes 00 Seconds, a radius of 200.00 feet and a chord dimension of North 76 Degrees 25 Minutes 50 Seconds East 103.53 feet;

thence along the arc of said curve 104.72 feet;

thence South 88 Degrees 34 Minutes 10 Seconds East 95.28 feet to the point of beginning and containing a gross area of 45.415 Acres, more or less.

Also, the following offsite easements which will remain in full force and effect until the next section of this subdivision or a new subdivision, affecting all or a portion these easements is recorded in the Vanderburgh County Recorder's Office.

1. A 15-foot Public Utility Easement and Landscape Easement lying east of Career Avenue and south of Venture Drive. Said Easement is east of and adjacent to a Storm Sewer Easement described in Document 2004R00000135 in the office of the Recorder of Vanderburgh County, Indiana. The limits of this easement are defined by the dimensions shown on this plat.
2. A 15-foot Public Utility Easement lying east of the northeast corner of Lot 122. The limits of this easement are defined by the dimensions shown on this plat.
3. A Variable Width Sanitary Sewer Easement that extends south from the southeast corner of Lot 122 to a Corrections Water and Sewer Easement conveyed to the Evansville Water and Sewer Utility Department in Deed Drawer 12, card 9221 in the office of the Recorder of Vanderburgh County, Indiana. The limits of this easement are defined by the dimensions shown on this plat.
4. A Lake Maintenance and Storm Drainage Easement lying south of and adjacent to the south line of Lot 176 through Lot 187. The limits of this easement are defined by the dimensions shown on this plat.
5. A 10-foot Drainage Easement that extends south from the south line of Offsite Easement Number 4 to an existing drainage ditch. The limits of this easement are defined by the dimensions shown on this plat.

6. A 20-foot Public Utility Easement lying southwest of the southwest corner of Lot 205. The limits of this easement are defined by the dimensions shown on this plat.
7. A Variable Width Public Utility Easement lying west of the northwest corner of Lot 205 and west of the southwest corner of Lot 204. The limits of this easement are defined by the dimensions shown on this plat.
8. A 20-foot Public Utility Easement lying west of the northwest corner of Lot 206. The limits of this easement are defined by the dimensions shown on this plat.
9. A 13-foot Public Utility Easement lying west of the southwest corner of Lot 226. The limits of this easement are defined by the dimensions shown on this plat
10. A Lake Maintenance and Storm Drainage Easement lying south of and adjacent to the south line of Lot 270 and west of Lot 226. The limits of this easement are defined by the dimensions shown on this plat.

Also, rights to and subject an Ingress and Egress and Public Utility Easement which will remain in full force and effect until it is dedicated to the City of Evansville, Indiana as right-of-way. This Ingress and Egress and Public Utility Easement is part of the Southeast Quarter of Section 9, Township 6 South, Range 10 West in Center Township, Vanderburgh County, Indiana and it is more particularly described as follows:

Commencing at the Northeast Corner of the Southeast Quarter of said Section 9; thence along the north line of said Quarter Section, North 88 Degrees 34 Minutes 10 Seconds West 1126.46 feet to the northwest corner of a tract of land conveyed to the Evansville-Vanderburgh School Corporation (EVSC) in Document Number 2003R00058617 in the Office of the Recorder of Vanderburgh County, Indiana; thence along the boundary of said EVSC tract, South 01 Degree 25 Minutes 50 Seconds West 125.53 feet; thence continue along the boundary of said EVSC tract, South 14 Degrees 17 Minutes 30 Seconds East 73.81 feet; thence continue along the boundary of said EVSC tract, South 01 Degree 25 Minutes 50 Seconds West 279.58 feet to the point of beginning; thence continue along the boundary of said EVSC tract, South 01 Degree 25 Minutes 50 Seconds West 70.00 feet to the beginning of a curve to the left having a central angle of 90 Degrees 00 Minutes 00 Seconds, a radius of 40.00 feet and a chord dimension of North 43 Degrees 34 Minutes 10 Seconds West 56.57 feet; thence along the arc of said curve 62.83 feet; thence North 88 Degrees 34 Minutes 10 Seconds West 55.28 feet to the beginning of a curve to the left having a central angle of 30 Degrees 00 Minutes 00 Seconds, a radius of 170.00 feet and a chord dimension of South 76 Degrees 25 Minutes 50 Seconds West 88.00 feet; thence along the arc of said curve 89.01 feet; thence South 61 Degrees 25 Minutes 50 Seconds West 121.82 feet to the beginning of a curve to the right having a central angle of 30 Degrees 00 Minutes 00 Seconds, a radius of 225.00 feet and a chord dimension of South 76 Degrees 25 Minutes 50 Seconds West 116.47 feet; thence along the arc of said curve 117.81 feet; thence North 88 Degrees 34 Minutes 10 Seconds West 894.49 feet; thence North 01 Degree 25 Minutes 50 Seconds East 50.00 feet; thence South 88 Degrees 34 Minutes 10 Seconds East 874.49 feet to the beginning of a curve to the left having a central angle of 30 Degrees 00 Minutes 00 Seconds, a radius of 175.00 feet and a chord dimension of North 76 Degrees 25 Minutes 50 Seconds East 90.59 feet; thence along the arc of said curve 91.63 feet; thence

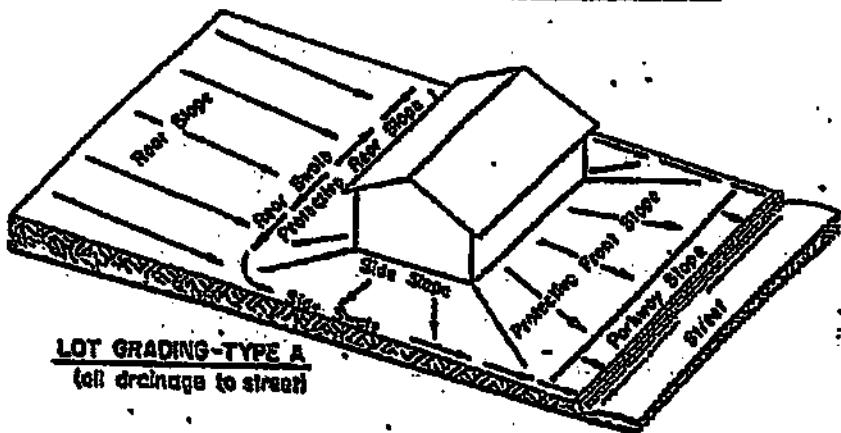
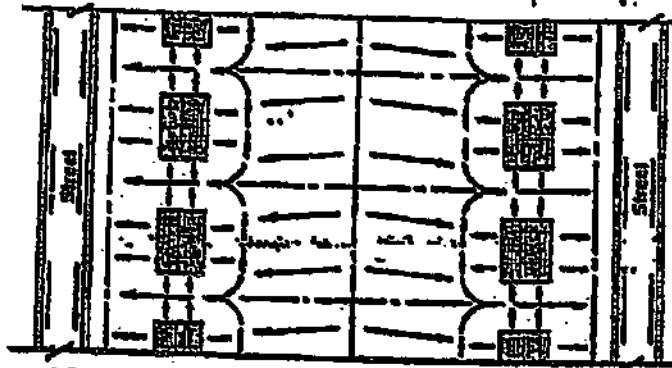
North 61 Degrees 25 Minutes 50 Seconds East 139.14 feet to the beginning of a curve to the right having a central angle of 30 Degrees 00 Minutes 00 Seconds, a radius of 230.00 feet and a chord dimension of North 76 Degrees 25 Minutes 50 Seconds East 119.06 feet; thence along the arc of said curve 120.43 feet; thence South 88 Degrees 34 Minutes 10 Seconds East 55.28 feet to the beginning of a curve to the left having a central angle of 90 Degrees 00 Minutes 00 Seconds, a radius of 40.00 feet and a chord dimension of North 46 Degrees 25 Minutes 50 Seconds East 56.57 feet; thence along the arc of said curve 62.83 feet to a point on the boundary of said tract of land conveyed to the Evansville-Vanderburgh School Corporation (EVSC) in Document Number 2003R00058617; thence along the boundary of said EVSC tract, South 01 Degree 25 Minutes 50 Seconds West 70.00 feet to the point of beginning.

Subject to all other easements and rights-of-ways of record.

**EXHIBIT "B"**  
**STANDARD GRADING PLAN SHEETS**

## LAND GRADING - URBAN AREAS

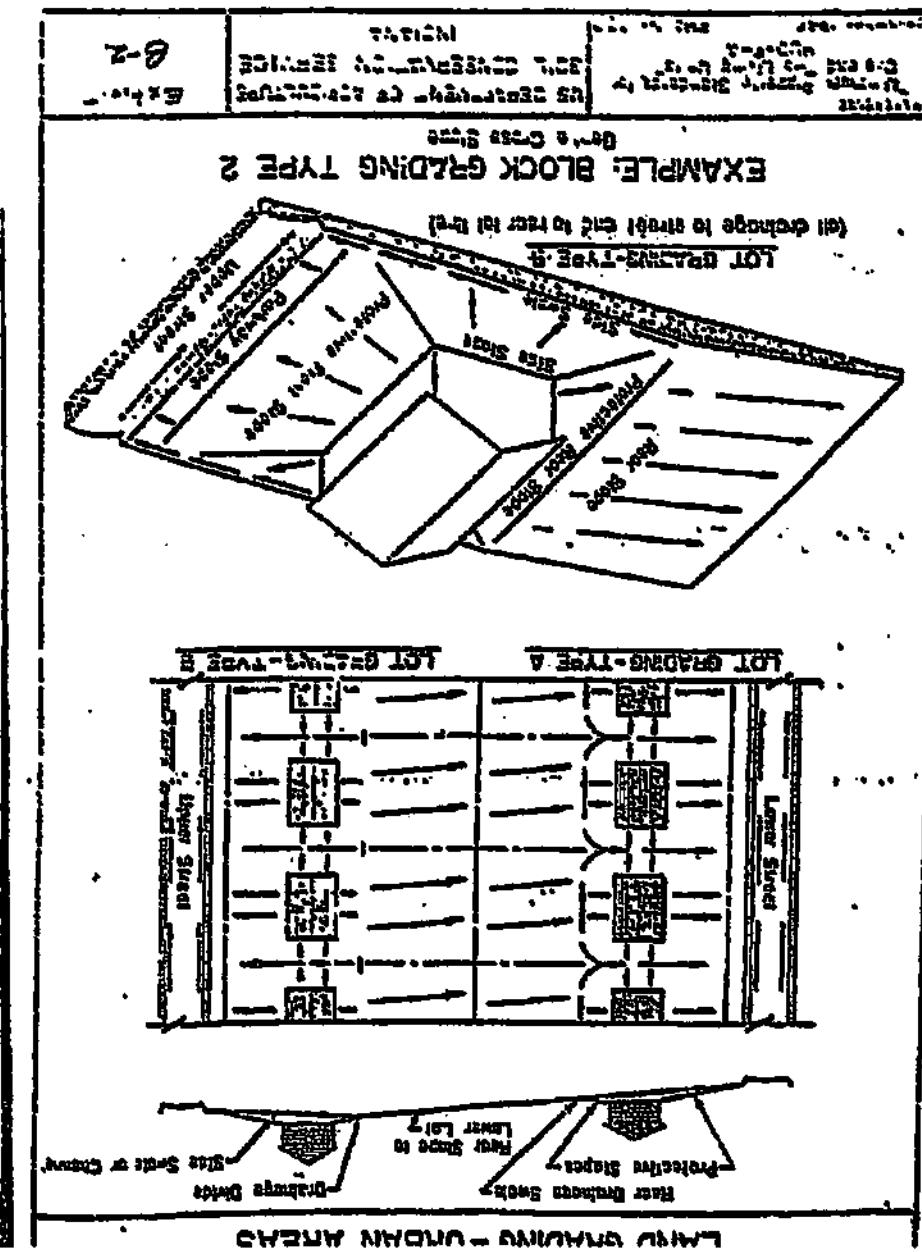
Protective Slopes      Side Slopes or Channels  
 Rear Drainage Slopes

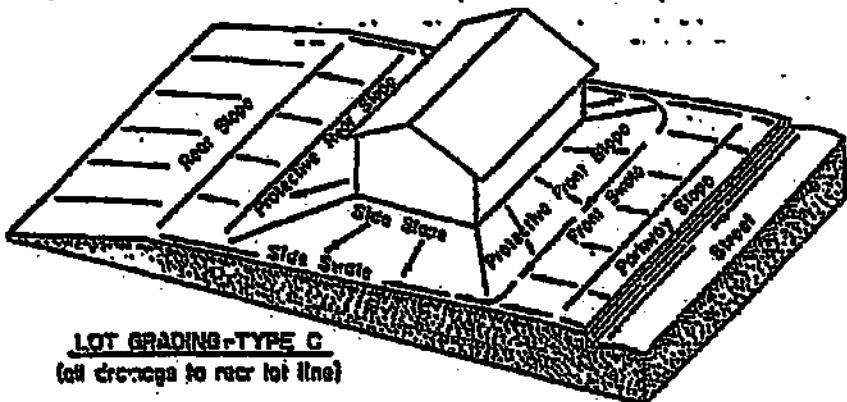
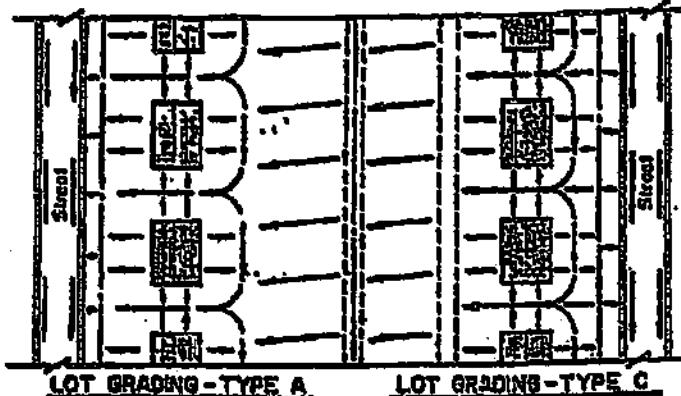
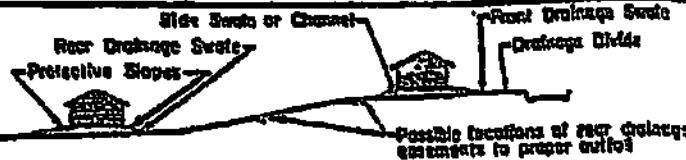


### EXAMPLE: BLOCK GRADING TYPE 1

Ridge Along Rear Lot Lines

Minimum Property Standards for One and Two Living Units HUD-HVA November 1958	US DEPARTMENT OF AGRICULTURE SOIL CONSERVATION SERVICE INDIANA	Exhibit B-4
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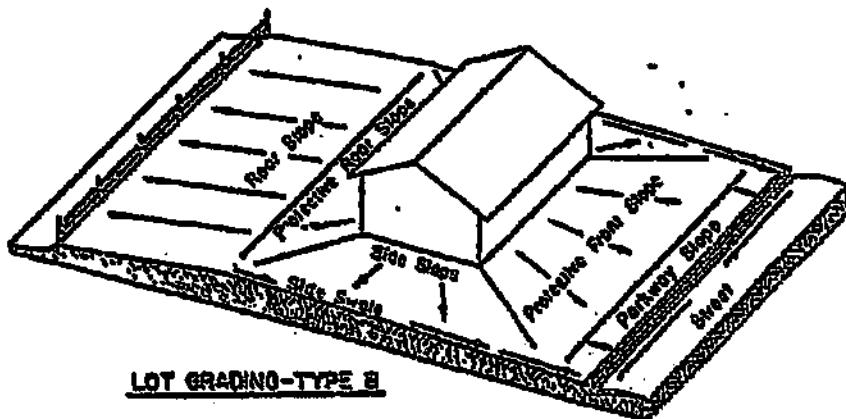
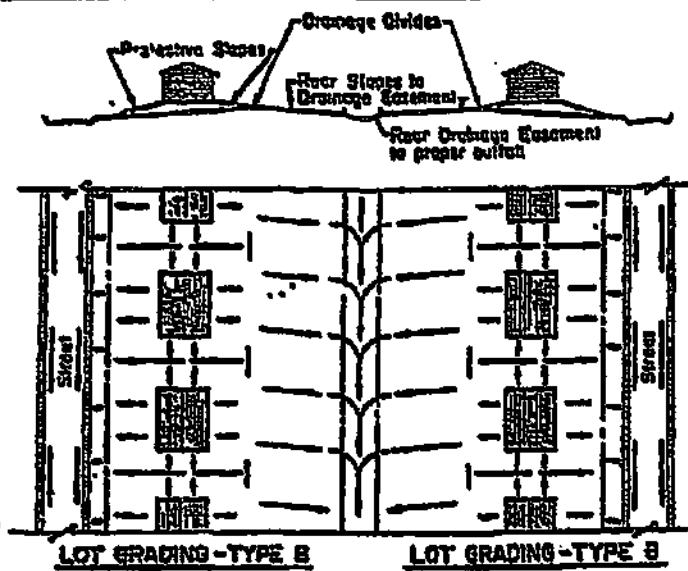
**EXAMPLE: BLOCK GRADING TYPE 3**  
Steep Cross-Slopes

Approved: *John D. Murray, Director for  
Civ. and For. Living Units*  
Date: *10-22-62*  
FHA No. *330*

U.S. DEPARTMENT OF AGRICULTURE  
SOIL CONSERVATION SERVICE  
INDIANA

Exhibit  
B-3

WATER UTILIZATION - URBAN METHODS



EXAMPLE: BLOCK GRADING TYPE 4

Valley Along Rear Lot Lines

Soil Conservation Service for  
the U.S. Soil Conservation Service  
U.S. Department of Agriculture  
1952

U.S. DEPARTMENT OF AGRICULTURE  
SOIL CONSERVATION SERVICE  
INDIANA

Exhibit

B-7



64  
Briar Pointe  
21 mt. Ashby Rd  
Wansville, Va 47711