

MILL CREEK SUBDIVISION PHASE II
R-3 ZONED LOTS
DECLARATION OF RESTRICTIVE COVENANTS

WHEREAS, Abbington Development, Inc. (sometimes referred to as "Abbington" and sometimes referred to as "Developer") is the owner of the following described real estate in Tippecanoe County, Indiana, to-wit:

see Exhibit "A" attached hereto and made a part hereof,

which is commonly known as Mill Creek Subdivision - Phase II, R-3 Zoned Lots, ("Subdivision");

WHEREAS, it is the desire and intention of Abbington to sell the property described above and to impose on it mutual and beneficial restrictions under a general plan or scheme of improvement for the benefit of all the lots in the tract and the future owners of those lands;

NOW, THEREFORE, Abbington hereby declares that all of the property described above is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied, and improved subject to the following limitations, restrictions, conditions, and covenants, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvements, and sale of the lands and are established and agreed upon for the purpose of enhancing and protecting the value, desirability, and attractiveness of the lands and every part thereof. All of the following limitations, restrictions, conditions, and covenants shall run with the land and shall be binding on all parties having or acquiring any right, title, or interest in the described lands or any part thereof:

1. The use of the land shall be in conformity with the Unified Zoning Ordinance of Tippecanoe County, Indiana or any amendments thereto.
2. The lots in this subdivision are zoned as multi-family dwelling lots and shall not be further subdivided nor divided by plan development.
3. All lots shall be used for multi-residential purposes only. There are twelve (12) lots and one (1) outlot contained in this Subdivision. An approved set of plans and specifications shall be given to each owner in the Subdivision.
4. All buildings shall conform to certain plans and specifications approved by Tippecanoe County and the State of Indiana which have been developed for use in the Subdivision by the Developer. Said plans and specifications shall have been given to each owner of a lot which shall be sufficient to build a multi-residential building of a certain size and with a certain number of units. Included in said plans and specifications are the following specific requirements:

Exterior Brick:	Old Indiana Tudor from Lafayette Masonry
Vinyl Siding:	Norandex gray Dutch Lap
Soffit & Fascia:	Norandex White
Gutters:	White

DULY ENTERED FOR TAXATION
SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER.

Betty L. Michels
AUDITOR OF TIPPECANOE CO.
9-18-97

Windows:	Simonton or Comparable White Vinyl with white Mullion Bars
Exterior Trim:	Cedar Boards painted White to match soffit and fascia
Exterior Door:	Painted Glidden Valley Forge Blue
2nd Story balconies:	Painted Glidden to match Norandex gray siding
Shingles:	Tamko M-25 Thunderstorm Grey
Drainage:	All drainage of the lots shall be done according to a plan approved by the City of Lafayette Engineer
Parking Lot:	Concrete, which shall conform to the requirements of the City of Lafayette
Landscape:	Sod front and side yards and meet landscape plans as per the City of Lafayette

It is the intent of the Developer that the plans and specifications, including the above mentioned specific requirements, shall provide for quality improvements to be constructed and maintained and that a high quality use of the Subdivision be provided in order to enhance the value of the Subdivision and the adjoining lands. All buildings, improvements, construction, excavation, landscaping, fencing, walls, patios, decks, porches, screening and roofing, as well as painting and the colors associated therewith, shall specifically comply with said plans and specifications. In the event that a product becomes unavailable because the manufacturer no longer produces the product, the owner may request changes in the above specifications from the then owners of the Subdivision provided a majority of the lot owners consent to said change. Any change agreed to by the majority of the owners of the Subdivision shall be substantially the same in color, texture and quality of material to the original specifications.

5. The Lots shall be landscaped according to plans approved by the Developer. All shrubs, trees, grass and plantings of every kind shall be kept well maintained, properly cultivated and free of trash and other unsightly material. Initial landscaping as approved by the Developer shall be installed no later than thirty (30) days following the completion of the units. No wall, hedge, or shrub planting which obstructs sight-lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the Street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight-line limitations shall apply on any lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No trees shall be permitted to remain within such distances of such intersections, unless the foliage line is maintained at sufficient height to prevent obstruction of such sight-lines. No shrub planting of over thirty-six (36) inches in height shall be permitted on any lot from the front lot line to the building setback line.

In the event that a tree, shrub or other foliage dies or becomes in need of replacement, the owner must duplicate and not change the landscape plan. The Owner may request changes in

the above specifications from the then owners of the Subdivision provided a majority of lot owners consent to said change. Any change agreed to by the majority of the owners of the Subdivision shall be substantially the same in landscape design as the original specifications.

6. No fencing of any kind shall be built on any of the lots in the subdivision except around trash receptacles.

7. No noxious or offensive activity shall be carried on or upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. Without limiting any of the foregoing, no exterior lights, the principal beam of which shines upon portions of a lot other than the lot upon which they are located, or which otherwise causes unreasonable interference with the use and enjoyment of a lot by the occupants thereof, shall be permitted. No speakers, horns, whistles, bells or other sound devices, shall be located, used or placed on the premises, except security devices used exclusively for security purposes which are activated only in emergency situations or for testing thereof. No lot shall be used or maintained as a dumping ground for rubbish. Sanitary containers shall be placed at each unit sufficient to handle all of the trash in the unit. Containers shall be concealed by means of a screening wall or material similar to and compatible with that of the unit or shall be concealed by sufficient landscaping to provide a permanent screen at all times of the year. Trash must be removed by an authorized trash removal company. No lines, poles or structures, temporary or permanent, may be erected for the purpose of the outdoor drying of clothes.

8. No building shall be located nearer to the front lot line nor nearer to the side street line than the building setback lines shown on the recorded plat. All buildings shall be placed on the lots as per the site plans approved by the City of Lafayette.

9. Surface drainage easements and common areas used for drainage purposes as shown on the plat are intended for either periodic or occasional use as conductors for the flow of surface water runoff to a suitable outlet and the land surface shall be constructed and maintained so as to achieve this intention. Such easements shall be maintained in an unobstructed condition and the Tippecanoe County Surveyor or a proper public authority having jurisdiction over storm drainage shall have the right to determine if any obstruction exists and to repair and maintain or to require such repair and maintenance as shall be reasonably necessary to keep the conductors unobstructed.

10. No trailer, basement, tent, shack, garage, barn, or other outbuilding erected in any lot shall be at any time used as a residence, temporarily or permanently, nor shall any structure of a temporary character be used as a residence.

11. 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 and parking lot lighting or ornamental yard lighting serviced by underground wires or cables. 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.

12. No vehicle, other than individual renters automobile or light truck used for their primary personal means of transportation, shall be permitted to be parked on any lot or anywhere in the subdivision for more than twenty-four (24) hours.

13. All swingsets and recreational equipment installed by the owner or occupant of a unit must be placed in the rear yard of the units only.

14. Every owner of a lot within the subdivision shall be a member of the Mill Creek Home Owners Association ("Association"). The owner of each lot, including future owners of each lot through acceptance of a Deed to the title to such lot, whether or not expressly stated in such Deed, is deemed to covenant and agree to abide by the rules and regulations of the Association, including the requirement of the lot owner to pay a prorata share of the common area fees.

15. Every owner shall have a right and easement of enjoyment in and to any of the Common Areas which shall be owned by the Association, and which shall be appurtenant to and shall pass with the title to every lot.

16. Outlot C shall be designated as a Common Area. Outlot A and Outlot B have been designated as Common Areas in Mill Creek Subdivision, Phase I, R1-B and R-2.

17. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of residents of Mill Creek, and in particular for the improvement and maintenance of the entrance ways, the maintenance of which shall be the obligation of the Association, and all other Common Areas, including but not limited to, repair, maintenance, the cost of labor, equipment and materials, supervision, security, lighting, lawn care, snow removal, insurance, taxes, and all other things necessary or desirable in the opinion of the Association in connection therewith.

In the event The Association fails to exercise its authority, obligation and responsibility for maintenance of the Common Areas of Mill Creek lying outside of public rights of way, the Tippecanoe County Drainage Board may perform such maintenance and all other actions necessary to make such storm water facilities perform properly. The cost of any such maintenance or other action performed by the Tippecanoe County Drainage Board shall be paid by The Association.

18. The Association or the Developer shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of these restrictions and the rules and regulations of the Association. In addition to any other remedy hereunder, the Association or the Developer, as the case may be, shall be entitled to recover liquidated damages in the amount of Five Hundred Dollars (\$500.00) per day for each day that the owner is in breach hereof. Such amount of liquidated damages is not intended to be a penalty and is supplemental to all other damages to which the Association or the Developer, as the case may be, is entitled hereunder, at law or in equity. In any proceeding brought to enforce any of the above remedies, the Association or the Developer, as the case may be, shall be entitled to recover its costs, interest at the rate of one and one-half percent (1½%) per month and reasonable attorney fees. Failure

by the Association or the Developer to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter, and shall not operate to deprive an owner from enforcing said covenant or restriction.

19. The foregoing covenants, restrictions, and conditions shall run with the land and shall be binding on all parties owning or claiming any interest in any lot, thereof, in said subdivision and all persons claiming under them until January 1, 2022, at which time they shall be automatically extended for successive periods of ten (10) years, unless by vote of majority of the then owners of the lots, it is agreed to change or abolish said covenants in whole or in part.

20. Invalidation of any one of these covenants by judgment or decree shall not in any way affect the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, Abbington Development, Inc., Owner of the real estate described above, has set its hand and seal this 16 day of SEPTEMBER 1997.

ABBINGTON DEVELOPMENT, INC.

By: *Derrin P. Sorenson* Pres
Derrin P. Sorenson, President

ATTEST:

Ronald H. Whistler, Sec.
Ronald H. Whistler, Secretary

STATE OF INDIANA)
) SS:
TIPPECANOE COUNTY)

Before me, a Notary Public in and for said County and State personally appeared ABBINGTON DEVELOPMENT, INC., by Derrin P. Sorenson, its President, and Ronald H. Whistler, its Secretary, this 16 day of September 1997, and acknowledged the execution of the above and foregoing DECLARATION OF RESTRICTIVE COVENANTS to be its voluntary act and deed, and swore to the truth of the matters contained therein.

WITNESS my hand and Notarial Seal. I am a resident of Tippecanoe County, Indiana.

My Comm. Expires: 1998
 *Henry Warner*
HENRY WARNER
Notary Public, Tippecanoe County, IN
Commission Expires April 26, 2000
NOTARY PUBLIC

This instrument prepared by: Daniel A. Teder, of the firm REILING TEDER & SCHRIER, 117 N. 4th St., P.O. Box 260, Lafayette, IN 47902, Telephone: (765) 423-5333, FAX: (765) 423-4564