

provided, however, that in no event shall Developer be entitled to make any amendment which has a material adverse effect on the rights of any Mortgagee, or which substantially impairs the rights granted by this Declaration to any Owner or substantially increases the obligations imposed by this Declaration on any Owner.

11.3 Recording. Each amendment to this Declaration need be executed only by Developer in any case where Developer has the right to amend this Declaration pursuant to Paragraph 11.2 and, otherwise, by the President or Vice President and Secretary of the Association; provided, however, that any amendment requiring the consent of Developer pursuant to Paragraph 11.1 shall contain Developer's signed consent. All amendments shall be recorded in the Office of the Recorder of Marion County, Indiana, and no amendment shall become effective until so recorded.

## ARTICLE XII

### MISCELLANEOUS

12.1 Right of Enforcement. Violation or threatened violation of any of the covenants, conditions or restrictions enumerated in this Declaration or in a Plat of any part of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, shall be grounds for an action by Developer, the Association, any Owner and all persons or entities claiming under them, against the person or entity violating or threatening to violate any such covenants, conditions or restrictions. Available relief in any such action shall include recovery of damages or other sums due for such violation, injunctive relief against any such violation or threatened violation, declaratory relief and the recovery of costs and attorneys fees reasonably incurred by any party successfully enforcing such covenants, conditions and restrictions; provided, however, that neither Developer, any Owner nor the Association shall be liable for damages of any kind to any person for failing or neglecting for any reason to enforce any such covenants, conditions or restrictions.

12.2 Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party, including without limitation the Association and the Developer, to invoke any available remedy with respect to any violation or threatened violation of any covenants, conditions or restrictions enumerated in this Declaration or in a Plat of any part of the Real Estate shall constitute a waiver by that party of, or an estoppel of that party to assert, any right available to it upon the occurrence, recurrence or continuance of such violation.

12.3 Duration. These covenants, conditions and restrictions and all other provisions of this Declaration (as the same may be amended from time to time as herein provided) shall run with the land comprising the Real Estate and shall be binding on all persons and entities from time to time having any right, title or interest in the Real Estate or any part thereof, and on all persons claiming under them, until December 31, 2017, and thereafter shall continue automatically until terminated or modified by vote in the majority of all Owners at any time thereafter; provided, however, that no termination of this Declaration shall terminate or otherwise affect any easement

hereby created and reserved unless all persons entitled to the beneficial use of such easement shall consent thereto.

12.4 Severability. Invalidation of any of the covenants, conditions or restrictions contained in this Declaration by judgment or court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect.

12.5 Applicable Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Indiana.

12.6 Annexation. Additional land adjacent to the Real Estate may be annexed by Developer to the Real Estate (and from and after such annexation shall be deemed part of the Real Estate for all purposes of this Declaration) by execution and recordation by Developer in the Office of the Recorder of Marion County, Indiana, of a supplemental declaration, and such action shall require no approvals or other action of the Owners.

### ARTICLE XIII

#### DEVELOPER'S RIGHTS

13.1 Access Rights. Developer hereby declares, creates and reserves an access license over and across all of the Real Estate for the use of Developer and its representatives, agents, designees, contractors and affiliates during the Development Period. Notwithstanding the foregoing, the area of the access license created by this section 13.1 shall be limited to that part of the Real Estate which is not in, on, under, over, across or through a building or the foundation of a building properly located on the Real Estate. The parties for whose benefit this access license is herein created and reserved shall exercise such access rights only to the extent reasonably necessary and appropriate and such parties shall, to the extent reasonably practicable, repair any damage or destruction caused by reason of such parties' exercise of this access license.

13.2 Signs. Developer and its designees shall have the right to use signs of any size during the Development Period and shall not be subject to the Plat Covenants with respect to signs during the Development Period. The Developer and its designees shall also have the right to construct or change any building, improvement or landscaping on the Real Estate without obtaining the approval of the Architectural Review Committee at any time during the Development Period.

13.3 Sales Offices and Models. Notwithstanding anything to the contrary contained in this Declaration or a Plat of any part of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, Developer, any entity related to Developer and any other person or entity with the prior written consent of Developer, during the Development Period, shall be entitled to construct, install, erect and maintain such facilities upon any portion of the Real Estate owned by Developer, the Association or such person or entity as, in the sole

opinion of Developer, may be reasonably required or convenient or incidental to the development of the Real Estate or the sale of Lots and the construction or sale of Residence Units thereon. Such facilities may include, without limitation, storage areas or tanks, parking areas, signs, model residences, construction offices or trailers and sales offices or trailers.

IN WITNESS WHEREOF, this Declaration has been executed by Developer as of the date first above written.

Davis Homes, LLC, an Indiana limited liability company, by its manager-member

Davis Holding Corporation, an Indiana corporation

By: Christopher R. White  
Christopher R. White,  
Vice President

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

Before me, a Notary Public, in and for the State of Indiana, personally appeared Christopher R. White., Vice President of Davis Holding Corporation, an Indiana corporation, who acknowledged the execution of the foregoing Declaration.

WITNESS my hand and Notarial Seal this 21<sup>st</sup> day of July, 1997.

My Commission Expires:

4-21-00

County of Residence:

Hamilton

Li-Ching Wu  
Notary Public  
Li-Ching Wu  
Printed Name



This instrument was prepared by and return recorded instrument to: Ronald F. Shady, Jr., Vice President of Davis Holding Corporation, 3755 East 82nd Street, Suite 120, Indianapolis, Indiana 46240, (317) 595-2900.

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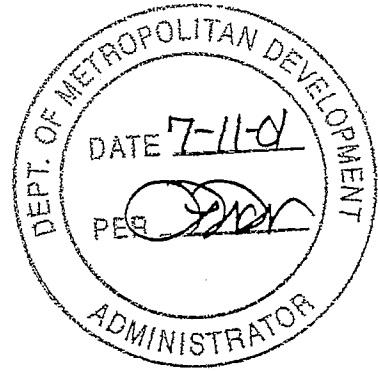
WANDA MARTIN  
MARION COUNTY RECORDER

43 FILED

JUL 11 2001

*Martha A. Womack*

SECOND SUPPLEMENT TO  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF BRIARBROOK VILLAGE



This second Supplement is made this 9th day of July, 2001, by Davis Homes, LLC, an Indiana limited liability company (the "Developer").

1. Developer is the owner of certain real estate more particularly described in Exhibit "A" attached hereto (the "Additional Real Estate").

2. Developer executed that certain Declaration of Covenants, Conditions and Restrictions of Briarbrook Village, dated July 21, 1997 and recorded the same on July 22, 1997 as Instrument No. 97-101319 in the Office of the Recorder of Marion County, Indiana (the "Declaration").

3. Developer reserved in said Declaration the right from time to time, acting alone, to subject to the terms and provisions of the Declaration certain additional real estate located within the tracts adjacent to the Initial Real Estate (as defined in the Declaration) by execution and recordation in the Office of the Recorder of Marion County of a supplemental declaration so annexing all or any part of such real estate.

4. The Additional Real Estate constitutes a part of the tract adjacent to the Initial Real Estate.

NOW, THEREFORE, Declarant, in accordance with the rights reserved in the Declaration, makes this First Supplement as follows:

1. Definitions. All terms used in this Second Supplement not otherwise defined in this Second Supplement shall have the meanings set forth in the Declaration. Accordingly, the Additional Real Estate shall hereafter for all purposes be included in the definition of Real Estate in the Declaration, as the same may be amended or supplemented from time to time as therein provided.

2. Second Supplement to Declaration. Developer hereby expressly declares that the Additional Real Estate, together with all improvements of every kind and nature whatsoever located thereon, shall be annexed to the Real Estate and made subject to the provisions of the

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*cms*  
WARREN TWP ASSESSOR  
MARION COUNTY

Inst. # 2001-0118694

Declaration, as the same may be amended or supplemented from time to time as therein provided, and the Real Estate is hereby expanded to include the Additional Real Estate, all as if the same had originally been included in the Declaration. The Additional Real Estate shall be hereafter held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to all of the provisions, agreements, covenants, conditions, restrictions, easements, assessments, charges and liens of the Declaration, as the same may be amended or supplemented from time to time as therein provided.

3. Effect of Covenants. All such provisions of the Declaration, as the same may be amended or supplemented from time to time as therein provided, shall be covenants running with the land and shall be binding upon, and inure to the benefit of Developer and any other person or entity having any right, title or interest in the Real Estate or any part thereof.

4. Declaration Continuous. Except as expressly supplemented by this Second Supplement, the Declaration shall continue unchanged and in full force and effect.

IN WITNESS WHEREOF, this Second Supplement has been executed by Developer as of the date first above written.

Davis Homes, LLC, an Indiana limited liability company, by its manager-member

Davis Holding Corporation,  
an Indiana corporation

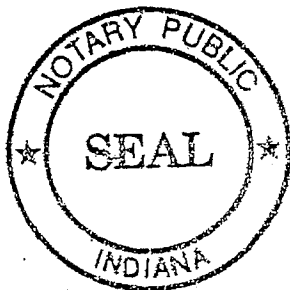
By: 

C. Richard Davis  
Vice President

STATE OF INDIANA        )  
                                  )  
COUNTY OF MARION        )        SS:

Before me, a Notary Public in and for the State of Indiana, personally appeared C. Richard Davis, Vice President of Davis Holding Corporation, who acknowledged the execution of the foregoing Second Supplement to Declaration of Covenants, Conditions and Restrictions of Briarbrook Village.

WITNESS my hand and Notarial Seal this 9th day of July, 2001.



Li Ching Wu  
Notary Public

Li Ching Wu  
Printed Name

My Commission Expires: 4/21/08

Residing in Hamilton County

This instrument was prepared by Ronald F. Shady, Jr., Vice President of Davis Holding Corporation, 3755 East 82nd Street, Suite 120, Indianapolis, Indiana 46240 (317) 595-2900

Exhibit "A"

Briarbrook Village Section Two  
Land Description

Part of the Northeast Quarter of the Northeast Quarter of Section 21, Township 16 North, Range 5 East of the Second Principal Meridian in Marion County, Indiana, more particularly described as follows:

Commencing at the Northeast corner of said Northeast Quarter; thence South  $00^{\circ}07'48''$  West along the East line of said Quarter Section a distance of 360.98 feet; thence South  $89^{\circ}45'08''$  West (assumed bearing parallel with the North line of said Quarter Section) parallel with the North line of said Quarter Section a distance of 915.94 feet to the POINT OF BEGINNING; thence continuing South  $89^{\circ}45'08''$  West parallel with the North line of said Quarter Section a distance of 424.01 feet to the West line of said Quarter Quarter Section; thence South  $00^{\circ}08'32''$  West along the West line of said Quarter Quarter Section a distance of 974.90 feet to the Southwest corner of said Quarter Quarter Section; thence North  $89^{\circ}46'40''$  East along the South line of said Quarter Quarter Section a distance of 517.75 feet; thence North  $01^{\circ}48'17''$  East a distance of 100.17 feet to a point on a curve concave Northerly having a central angle of  $07^{\circ}59'17''$  and a radius of 175.00 feet; thence Westerly along the arc of said curve a distance of 24.40 feet (said arc being subtended by a chord having a bearing of North  $84^{\circ}12'05''$  West and a length of 24.38 feet); thence North  $09^{\circ}47'34''$  East on a non-tangent line to last described curve a distance of 50.00 feet; thence North  $00^{\circ}07'48''$  East parallel with the East line of said Quarter Section a distance of 523.11 feet; thence South  $89^{\circ}46'40''$  West parallel with the South line of said Quarter Quarter Section a distance of 73.75 feet; thence North  $00^{\circ}13'20''$  West a distance of 150.00 feet; thence South  $89^{\circ}46'40''$  West parallel with the South line of said Quarter Quarter Section a distance of 5.00 feet; thence North  $00^{\circ}13'20''$  West a distance of 150.07 feet to the Point of Beginning. Containing 10.794 Acres (470,166 Square Feet), more or less.

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MAY 11 1999

WANDA MARTIN  
MARION COUNTY RECORDER

*Martha A. Womack*

**FIRST SUPPLEMENT TO  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF BRIARBROOK VILLAGE**

This First Supplement is made this 6 day of May, 1999, by Davis Homes, LLC, an Indiana limited liability company (the "Developer").

1. Developer is the owner of certain real estate more particularly described in Exhibit "A" attached hereto (the "Additional Real Estate").

2. Developer executed that certain Declaration of Covenants, Conditions and Restrictions of Briarbrook Village, dated July 21, 1997 and recorded the same on July 22, 1997 as Instrument No. 97-101319 in the Office of the Recorder of Marion County, Indiana (the "Declaration").

3. Developer reserved in said Declaration the right from time to time, acting alone, to subject to the terms and provisions of the Declaration certain additional real estate located within the tracts adjacent to the Initial Real Estate (as defined in the Declaration) by execution and recordation in the Office of the Recorder of Marion County of a supplemental declaration so annexing all or any part of such real estate.

4. The Additional Real Estate constitutes a part of the tract adjacent to the Initial Real Estate.

NOW, THEREFORE, Declarant, in accordance with the rights reserved in the Declaration, makes this First Supplement as follows:

1. Definitions. All terms used in this First Supplement not otherwise defined in this First Supplement shall have the meanings set forth in the Declaration. Accordingly, the Additional Real Estate shall hereafter for all purposes be included in the definition of Real Estate in the Declaration, as the same may be amended or supplemented from time to time as therein provided.

2. First Supplement to Declaration. Developer hereby expressly declares that the Additional Real Estate, together with all improvements of every kind and nature whatsoever located thereon, shall be annexed to the Real Estate and made subject to the provisions of the



Declaration, as the same may be amended or supplemented from time to time as therein provided, and the Real Estate is hereby expanded to include the Additional Real Estate, all as if the same had originally been included in the Declaration. The Additional Real Estate shall be hereafter held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to all of the provisions, agreements, covenants, conditions, restrictions, easements, assessments, charges and liens of the Declaration, as the same may be amended or supplemented from time to time as therein provided.

3. Effect of Covenants. All such provisions of the Declaration, as the same may be amended or supplemented from time to time as therein provided, shall be covenants running with the land and shall be binding upon, and inure to the benefit of Developer and any other person or entity having any right, title or interest in the Real Estate or any part thereof.

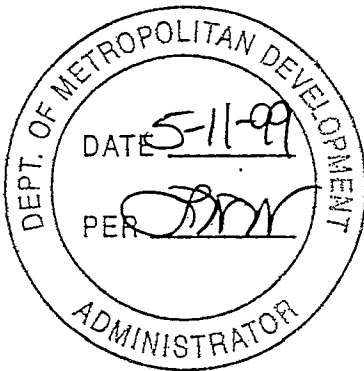
4. Declaration Continuous. Except as expressly supplemented by this First Supplement, the Declaration shall continue unchanged and in full force and effect.

IN WITNESS WHEREOF, this First Supplement has been executed by Developer as of the date first above written.

Davis Homes, LLC, an Indiana limited liability company, by its manager-member

Davis Holding Corporation,  
an Indiana corporation

By Christopher R. White  
Christopher R. White  
Vice President



2 APPROVED THIS 17th  
DAY OF MAY 19 99  
ASSESSOR OF WARREN TOWNSHIP  
Christine Stewart DRAFTSMAN

STATE OF INDIANA     )  
                                  )  
COUNTY OF MARION    )

SS:

Before me, a Notary Public in and for the State of Indiana, personally appeared Christopher R. White, Vice President of Davis Holding Corporation, who acknowledged the execution of the foregoing First Supplement to Declaration of Covenants, Conditions and Restrictions of Briarbrook Village.

WITNESS my hand and Notarial Seal this 6th day of May, 1999.

Li-Ching Wu  
Notary Public



Li-Ching Wu  
Printed Name

My Commission Expires: 4-21-00

Residing in Hamilton County

This instrument was prepared by Ronald F. Shady, Jr., Vice President of Davis Holding Corporation, 3755 East 82nd Street, Suite 120, Indianapolis, Indiana 46240 (317) 595-2900

Exhibit "A"

LAND DESCRIPTION

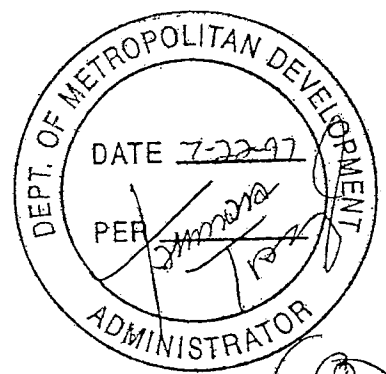
Part of the Northeast Quarter of the Northeast Quarter of Section 21, Township 16 North, Range 5 East of the Second Principal Meridian in Marion County, Indiana, more particularly described as follows:

Commencing at a Brass Plug at the Northeast corner of said Northeast Quarter; thence South 00°07'48" West along the East line of said Quarter Section a distance of 360.98 feet to the Northeast corner of Briarbrook Village Section One per plat thereof recorded as Instrument No. 970101322 in the Office of The Recorder of Marion County, Indiana; (the following fifteen (15) courses are along the Northerly, Easterly and Southerly lines of said Briarbrook Village Section One); (1) thence South 89°45'08" West (assumed bearing parallel with the North line of said Quarter Section) a distance of 915.94 feet; (2) thence South 00°13'20" East a distance of 150.07 feet to the POINT OF BEGINNING; (3) thence North 89°46'40" East parallel with the South line of said Quarter Quarter Section a distance of 500.00 feet; (4) thence North 78°00'36" East a distance of 122.58 feet; (5) thence North 89°46'40" East parallel with the South line of said Quarter Quarter Section a distance of 205.17 feet; (6) thence South 00°07'48" West parallel with the East line of said Quarter Section a distance of 290.00 feet; (7) thence South 89°46'40" West parallel with the South line of said Quarter Quarter Section a distance of 80.00 feet; (8) thence South 86°03'13" West a distance of 90.83 feet; (9) thence North 87°16'56" West a distance of 29.43 feet; (10) thence North 70°59'03" West a distance of 58.85 feet; (11) thence South 89°46'40" West parallel with the South line of said Quarter Quarter Section a distance of 240.00 feet; (12) thence South 00°04'38" West a distance of 368.56 feet; (13) thence South 89°46'40" West a distance of 99.87 feet; (14) thence North 00°07'48" East parallel with the East line of said Quarter Section a distance of 8.56 feet; (15) thence South 89°46'40" West a distance of 150.13 feet; thence North 00°07'48" East parallel with the East line of said Quarter Section a distance of 460.01 feet; thence South 89°46'40" West parallel with the South line of said Quarter Quarter Section a distance of 78.75 feet; thence North 00°13'20" West a distance of 150.00 feet to the Point of Beginning. Containing 6.878 Acres (299,593 Square Feet), more or less.

JOHN R. VON ARX  
MARION COUNTY AUDITOR

093267 JUL 22 5

SUBJECT TO FINAL ACCEPTANCE  
FOR TRANSFER



PLAT COVENANTS AND RESTRICTIONS

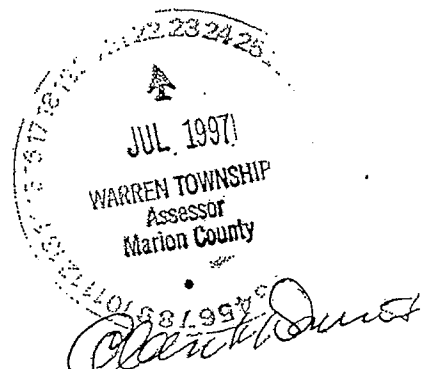
BRIARBROOK VILLAGE

SECTION 1

The undersigned, DAVIS HOMES, LLC, an Indiana limited liability company (the "Developer"), is the Owner of the real estate more specifically described in Exhibit "A" attached hereto (the "Real Estate"). The Developer is concurrently platting and subdividing the Real Estate as shown on the plat for Briarbrook Village, Section 1, which is filed of record July 22, 1997, in the office of the Recorder of Marion County, Indiana (the "Plat") and desires in the Plat to subject the Real Estate to the provisions of these Plat Covenants and Restrictions. The subdivision created by the Plat (the "Subdivision") is to be known and designated as "Briarbrook Village, Section One". In addition to the covenants and restrictions hereinafter set forth, the Real Estate is also subject to those covenants, conditions and restrictions contained in the Declaration of Covenants, Conditions and Restrictions of Briarbrook Village, dated July 21, 1997, and recorded on July 22, 1997 as Instrument No. 97-101319 in the office of the Recorder of Marion County, Indiana, as the same may be amended or supplemented from time to time as therein provided (the "Declaration"), and to the rights, powers, duties and obligations of the Briarbrook Village Community Association, Inc. (the "Association"), set forth in the Declaration. If there is any irreconcilable conflict between any of the covenants and restrictions contained herein and any of the covenants and restrictions contained in the Declaration, the covenants and restrictions contained in the Declaration shall govern and control, but only to the extent of the irreconcilable conflict, it being the intent hereof that all covenants and restrictions contained herein shall be applicable to the Real Estate to the fullest extent possible. Capitalized terms used herein shall have the same meaning as given in the Declaration.

In order to provide adequate protection to all present and future Owners of Lots or Residence Units in the Subdivision, the following covenants and restrictions, in addition to those set forth in the Declaration, are hereby imposed upon the Real Estate:

1. PUBLIC RIGHT OF WAY. The rights-of-way of the streets as shown on the Plat, if not heretofore dedicated to the public, are hereby dedicated to the public for use as a public right-of-way.



Inst. # 1997-0101320

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2. COMMON AREAS. There are areas of ground on the Plat marked "Common Area". Developer hereby declares, creates and grants a non-exclusive easement in favor of each Owner for the use and enjoyment of the Common Areas, subject to the conditions and restrictions contained in the Declaration.

3. UTILITY, DRAINAGE AND SANITARY SEWER EASEMENTS. There are areas of ground on the Plat marked "Utility Easements, Drainage Easements and Sanitary Sewer Easements", either separately or in combination. The Utility Easements are hereby created and reserved for the use of all public utility companies (not including transportation companies), governmental agencies and the Association for access to and installation, maintenance, repair or removal of poles, mains, ducts, drains, lines, wires, cables and other equipment and facilities for the furnishing of utility services, including cable television services. The Drainage Easements are hereby created and reserved for (i) the use of Developer during the "Development Period" (as such term is defined in the Declaration) for access to and installation, repair or removal of a drainage system, either by surface drainage or appropriate underground installations, for the Real Estate and adjoining property and (ii) the use of the Association and the Department of Capital Asset Management of the City of Indianapolis for access to and maintenance, repair and replacement of such drainage system. The owner of any Lot in the Subdivision subject to a Drainage Easement, including any builder, shall be required to keep the portion of said Drainage Easement on his Lot free from obstructions so that the storm water drainage will be unimpeded and will not be changed or altered without a permit from the Department of Capital Asset Management and the prior written approval of the Developer. The Sanitary Sewer Easements are hereby created and reserved for the use of the Department of Capital Asset Management and, during the Development Period, Developer for access to and installation, repair, removal, replacement or maintenance of an underground sanitary sewer system. The delineation of the Utility, Drainage and Sanitary Sewer Easement areas on the Plat shall not be deemed to be a limitation on the rights of any entity for whose use any such easement is created and reserved to go on any Lot subject to such easement temporarily to the extent reasonably necessary for the exercise of the rights granted to it by this Paragraph 3. Except as installed by Developer or installed as provided above, no structures or improvements, including without limitation decks, patios, fences, walkways or landscaping, shall be erected or maintained upon said easements.

4. ACCESS EASEMENT: There is an area of the ground on the Plat marked "Access Easement" which is hereby created and reserved for vehicular and other access thru the Common Area shown on the Plat as "Common Area 4" from Cedar Pine Drive to Lots 7 through 12.

5. LANDSCAPE EASEMENTS. There are areas of ground on the Plat marked "Landscape Easements" which are hereby created and reserved: (i) for the use of the Developer during the Development Period for access to and the installation, maintenance and replacement of foliage, landscaping, screening materials, entrance walls, signs, irrigation and other improvements and (ii) for the use of the Association for access to and the installation, maintenance and replacement of foliage, landscaping, screening materials, entrance walls, signs, irrigation and other similar improvements. Except as installed by Developer or installed and maintained by the