



Department of
Community Investment

Memorandum

November 12, 2015

TO: South Bend Redevelopment Commission
FROM: David Relos, Economic Resources *DR*
SUBJECT: Resolution No. 3315 – Amending Blackthorn Covenants & Guidelines

On October 27th the annual Blackthorn Owners' Association meeting was held. One agenda item was proposed changes to the Declaration of Protective Covenants & Restrictions (Covenants) and Development Guidelines (Guidelines). Per Article 12.1 of the Covenants, they may be amended only with the approval of the Commission and a majority of the members of the Owners' Association.

After discussion of the various items being changed, the attached summary of final changes were agreed upon with a unanimous vote of the owners present. The most important of these changes are:

- Light Industrial uses allowed in limited eastern areas of the Park (map attached)
 - Core office area kept the same
- Free standing restaurants removed as a prohibited use
- Hotel use allowed anywhere within the Park as opposed to only one designated lot
- 26 acre natural retention area has always been identified as a "Common Area" yet paid dues; beginning in 2017 this site will not be assessed dues

Staff requests approval of the amended Covenants and Guidelines, which clarifies and updates certain items and allows Light Industrial uses within limited areas of the Park.



BLACKTHORN COVENANTS CHANGE SUMMARY

Nov. 12, 2015 RDC meeting

- 1) Deleted references to the Redevelopment Authority as owner or Declarant, since in March 2014 properties were deeded to RDC after the bonds were paid off
- 2) Clarified in certain sections that the RDC has final approval of certain changes; *reason: unclear in some sections; as long as RDC owns at least 5% of Blackthorn, they have authority to change / approve rezonings, variances, subdivisions, and lot redesignations*
- 3) Now allow a lot to be subdivided, rezoned, seek a variance or special exception without seeking RDC approval; *reason: still have to follow Covenants' allowed uses, setbacks, etc.*
- 4) Prohibited uses – it appeared the Design Review Committee (Committee) had equal say for approval; changed so the Committee can weigh in, subject to RDC review; *reason: see # 2 above*
- 5) Deleted from prohibited uses: free standing restaurants; *reason: want to encourage restaurants*
- 6) Deleted general business activity prohibition on semi-truck traffic (3 axle over 10,000 gross weight); *reason: semi-trucks routinely use Nimtz to get from Bendix to the bypass*
- 7) Use designation reference – changed Exhibit B to highlight Light Industrial lots; *reason: to allow LI uses within certain lots of the Park; many are already zoned LI*
- 8) Opened up hotel use from the one designated lot to all “office” designated lots; *reason: to allow a hotel to land on more than only one lot within Blackthorn*
- 9) Light Industrial use defined per zoning ordinance: “may be used for office, warehouse, distribution, wholesale, light assembly, or light manufacturing facilities that are clean, quiet, and free of hazardous or objectionable elements, such as noise, odor, dust, smoke or glare.”; *reason: to define what LI means*
- 10) Deleted items to be submitted to the Committee, including brief description of mechanical and structural systems, floor plans, roof construction and appurtenances, grading, drainage, refuse collection, and bike paths (all references to bike paths deleted throughout the document); *reason: to streamline submittal process and Bldg. Dept. will review many of these items; no funding in place for multi-use bike path*
- 11) Added Section 5.5.8, allowing a RDC review process if someone does not agree with the Committee’s decision; *reason: see # 2 above*
- 12) Exhibit C highlights the Common Areas in Blackthorn, which are defined as the 26 acre RDC owned natural retention parcel and the landscape easement areas on each side of the streets. The natural retention parcel is not developable and has been assessed dues in the past, even though the landscape easement areas are not. Language was added to the dues assessment section that common areas may not have dues, assessments, charges, costs or fines levied against them. *Reason: would like to transfer this to Parks, who will not want to pay dues; last year this 26 acre site paid almost \$9,000 in dues, even though it will never be developed, adds to the nature preserve feel of Blackthorn, and is defined as a common area with the other common areas not paying dues (effective for 2017 dues).*

- 13) Since the Open Space requirement was deleted from the Covenants in 2007, references to it were deleted in various areas.
- 14) Items covered in the Guidelines were deleted from Section VIII of the Covenants:
reason: duplicative and to streamline the document
- 15) Added that exterior lighting shall be dark sky compliant; *reason: so lighting shines down and not out and / or up*

BLACKTHORN GUIDELINES CHANGE SUMMARY
October 2015

- 1) Some items from Covenants Section VIII were included under the same heading in the Guidelines, to enable the Covenants section to be deleted (and / or vice versa)
- 2) Added language that variances are subject to Section V of the Covenants (RDC has authority to approve)
- 3) Deleted common brick and concrete block from prohibited exterior materials; *reason: have been allowed in the past*
- 4) Added external loudspeakers or public address systems to prohibited systems; *reason: could be obtrusive to neighboring properties*

RESOLUTION NO. 3315

**A RESOLUTION OF THE SOUTH BEND REDEVELOPMENT COMMISSION
AMENDING THE DECLARATION OF PROTECTIVE COVENANTS &
RESTRICTIONS OF THE BLACKTHORN CORPORATE PARK AND THE
DEVELOPMENT GUIDELINES FOR BLACKTHORN CORPORATE PARK**

WHEREAS, the South Bend Redevelopment Commission (the “Commission”), governing body of the South Bend Department of Redevelopment, exists and operates under the provisions of I.C. 36-7-14, as amended (the “Act”); and

WHEREAS, to further the public purposes of developing the real property located in the City of South Bend, Indiana (the “City”) commonly known as Blackthorn Corporate Park (“Blackthorn”), the Commission and the South Bend Redevelopment Authority (the “Authority”) jointly adopted the Declaration of Protective Covenants & Restrictions of the Blackthorn Corporate Park dated March 19, 1993 (the “Declaration”), which binds the real property located within the boundaries of Blackthorn and has been amended from time to time; and

WHEREAS, prior to the date of this Resolution, the Authority has conveyed all of its interests in the real property comprising Blackthorn to the Commission; and

WHEREAS, the Commission desires to amend the Declaration pursuant to Section 12.1 of the Declaration; and

WHEREAS, for consistency with the amended Declaration, the Commission desires to amend the Development Guidelines for Blackthorn Corporate Park (the “Guidelines”) pursuant to Sections 1.13 and 5.2 of the Declaration; and

WHEREAS, the Authority, as the joint-declarant of the Declaration, is expected to approve and ratify the amended Declaration and the amended Guidelines.

NOW, THEREFORE, BE IT RESOLVED by the South Bend Redevelopment Commission as follows:

1. The Commission hereby approves, adopts, and establishes the amended Declaration attached hereto as **Exhibit A** and the amended Guidelines attached hereto as **Exhibit B**.

2. The Commission hereby authorizes and instructs David Relos or Brock Zeeb, each of the City’s Department of Community Investment, to present an executed copy of the amended Declaration to the parties entitled to notice of the amendments under the terms of the Declaration.

3. The Commission hereby authorizes and instructs David Relos or Brock Zeeb, each of the City’s Department of Community investment, to present an executed copy of the

amended Declaration to the Authority at its next regular meeting and request the Authority's approval and ratification of the amended Declaration.

4. This Resolution will be in full force and effect upon its adoption by the Commission.

ADOPTED at a Regular Meeting of the South Bend Redevelopment Commission held on November 12, 2015, at 1308 County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana 46601.

CITY OF SOUTH BEND,
DEPARTMENT OF REDEVELOPMENT, by and
through its governing body, the South Bend
Redevelopment Commission

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

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EXHIBIT A

Declaration of Protective Covenants & Restrictions of the Blackthorn Corporate Park

[See attached.]



Declaration of Protective Covenants & Restrictions

Amended as of November 12, 2015

CONTENTS

ARTICLE I DEFINITIONS	1
ARTICLE II CHARACTER & PURPOSE	5
ARTICLE III DEVELOPMENT RESTRICTIONS	5
ARTICLE IV USE RESTRICTIONS.....	6
ARTICLE V ARCHITECTURAL AND SITE REVIEW COMMITTEE.....	8
ARTICLE VI OWNER'S ASSOCIATION AT BLACKTHORN.....	13
ARTICLE VII COMMON AREAS AND EASEMENTS	16
ARTICLE VIII REGULATION OF IMPROVEMENTS	19
ARTICLE IX VIOLATION OF PROVISIONS	20
ARTICLE X ACCEPTANCE OF COVENANTS	22
ARTICLE XI ASSIGNMENT AND LIMITATION OF LIABILITY.....	23
ARTICLE XII MISCELLANEOUS.....	24
AMENDMENTS.....	26

**Declaration of Protective Covenants & Restrictions
of
the Blackthorn Corporate Park**

THIS DECLARATION is jointly made this 19th day of March, 1993, by the SOUTH BEND REDEVELOPMENT AUTHORITY (referred to as "Authority"), and by the SOUTH BEND REDEVELOPMENT COMMISSION (referred to as "Commission"), to be jointly and severally referred to as "Declarant", as Owner and Lessee of that certain real Property hereinafter described and located in the City of South Bend, St. Joseph County, Indiana. The Authority and Commission hereby declare that all of the real property legally described in and referred to in Exhibit "A" attached to this Declaration, to be known as Blackthorn Corporate Park (referred to as "Blackthorn") is and shall be held, conveyed, hypothecated, encumbered, leased, transferred, sold, occupied, built upon or otherwise used or improved in whole or in part, subject to the Covenants and Restrictions (sometimes referred to as "Covenants") hereinafter set forth and all of said Covenants herein contained are declared and agreed to be in furtherance of a general plan for the subdivision, improvement and lease or sale of Blackthorn and are established for the purpose of enhancing the value, desirability and attractiveness of Blackthorn and every part thereof.

**ARTICLE I
DEFINITIONS**

Unless the context otherwise specifies or requires, the words and terms defined in Article I shall, for all purposes of this Declaration, have the meanings herein specified.

- 1.1 *Applicant.* "Applicant" shall mean an Owner or the agent of an Owner or a Person possessing valid power of attorney or other proxy or authorization of an Owner, sufficient in the reasonable judgment of the Committee to empower such person to act on Owner's behalf for the purposes of Article V hereof.
- 1.2 *Architect.* "Architect" shall mean a person holding valid and effective license to practice architecture in the State of Indiana.
- 1.3 *Architectural and Site Plan Review Committee.* "Architectural and Site Plan Review Committee" (hereinafter sometimes referred to as the "Committee") shall mean the so named Committee as originally created by Article V of these Covenants.

- 1.4 *Authority.* "Authority" shall mean the South Bend Redevelopment Authority.
- 1.5 *Beneficiary.* "Beneficiary" shall mean with respect to any Deed of trust on any portion of the Property, the holder of Record of the security interest under such Deed of Trust. The word, "Beneficiary," shall also include a mortgagee under a mortgage.
- 1.6 *Blackthorn.* "Blackthorn" shall mean the real property described in Exhibit "A" attached hereto and such additional real property as may be added from time to time as hereinafter provided.
- 1.7 *Board.* "Board" shall mean the Board of Directors of the Owner's Association of Blackthorn as created by this Declaration.
- 1.8 *Building.* "Building" shall mean and include the principal structure or structures on any Site, including all projections or extensions thereof, as well as all garages, outside buildings, decks and other ancillary structures and facilities.
- 1.9 *City.* "City" shall mean the City of South Bend, State of Indiana.
- 1.10 *Covenants.* "Covenants" shall mean the covenants and restrictions set forth in this Declaration and as it may be amended or supplemented from time to time.
- 1.11 *Commission.* "Commission" shall mean the South Bend Redevelopment Commission as Owner and/or Lessee of the real property known as Blackthorn and as the Declarant of these Covenants.
- 1.12 *Declarant.* "Declarant" shall mean the Commission, its successors and assigns, and Declarant's assigns shall be deemed to include any party whom Declarant designates, by means of a notice of Record in the Official Records, as the party who, from and after the date such notice is Recorded, will perform Declarant's functions under this Declaration. Any such designation may be made with respect to all or any portion of Blackthorn; provided that in the event that any Person or entity is so designated as Declarant for only a portion of Blackthorn, then the right and power to make, give or take any consent, approval of action required of the Declarant under this Declaration with respect to such portion of Blackthorn, shall be deemed lodged solely and exclusively in the Person or entity so designated as Declarant with respect to such portion of Blackthorn, and any Declarant of any other portion of Blackthorn shall have no right, power or authority hereunder with respect thereto.

- 1.13 *Guidelines.* "Guidelines" shall mean the written Development Guidelines made known by the Declarant to guide the development of Sites as the same may be modified or supplemented by the Declarant in accordance with Section 5.2 below, from time to time, which set forth in much greater specificity and detail design standards and requirements for the construction and maintenance of Improvements on a Site, which Guidelines shall be referred to by the Committee in determining the acceptability of a particular proposed Improvement and/or use of a Site under these Covenants, including without limitation the Committee's review under Section 5.2 below.
- 1.14 *Improvements.* "Improvements" shall mean and include without limitations, Buildings, structures, Signs, Site Furniture, driveways, parking, paved areas, grading changes, and all other structures or improvements of any type and kind, and any and all alterations and changes to a Site.
- Landscape Professional.* "Landscape Professional" shall mean a person holding valid and effective license to practice landscape architecture in the State of Indiana, or having seven years of experience in landscape planning and design.
- 1.15 *Lot.* "Lot" shall mean any parcel of real estate contained within Blackthorn as divided or subdivided on a Subdivision Plat or map Recorded in the Official Records.
- 1.16 *Occupant.* "Occupant" shall mean any Person, other than an Owner, and the successors and assigns of any thereof that is in possession of or otherwise occupying one or more Sites, at any particular time, whether as a lessee, sublessee, licensee or pursuant to any lease, sublease, license or other right of occupancy with or through the Owner of such Site or Sites.
- 1.17 *Official Records.* "Official Records" shall mean the records of the Office of the Recorder, St. Joseph County, Indiana.
- 1.18 *Office - Corporate Office.* "Corporate Office" shall mean space within a floor plan in which the actual work conducted can only be carried out in an office environment.
- 1.19 *Office - Support Office.* "Support Office" shall mean space within a floor plan in which the heating, air conditioning, lighting, and general work environment are consistent with or adaptable to general office uses or where the actual work conducted can be carried out in an office environment.

- 1.20 *Owner.* "Owner" shall mean, at any time, any Person, including the Declarant, and the successors and assigns of any thereof, that owns fee simple title to one or more sites, as shown by the Official Records; provided, however, that a Beneficiary shall not be deemed to be an Owner so long as its interest in the particular Site or Sites is for purposes of security only.
- 1.21 *Owner's Association.* "Owner's Association" (sometimes referred to as the "Association") shall mean the association of Owners created and described in Article VI.
- 1.22 *Person.* "Person" shall mean an individual, group of individuals, corporation, partnership, trust, unincorporated business association or such other legal entity as the context in which such term is used may imply.
- 1.23 *Record/Recorded.* "Record" or "Recorded" shall mean, with respect to any document, the recording of said document in the Official Records.
- 1.24 *Sign.* "Sign" shall mean any structure, device or contrivance and all parts thereof which are erected or used for advertising, directional or identification purposes or any poster, bill, bulletin, printing, lettering, painting, device or other advertising of any kind whatsoever, which is placed, posted or otherwise fastened or affixed to the ground and/or structure within Blackthorn.
- 1.25 *Site.* "Site" shall mean a contiguous area of land within Blackthorn which is owned of Record by the same Owner, whether shown as one Lot or as a combination of contiguous Lots or portions of contiguous lots on any Recorded subdivision plat or Recorded survey map of all or any portion of Blackthorn.
- 1.26 *Site Amenities.* "Site Amenities" shall mean any man-made or natural object used on the Site for decorative or incidental purposes and which is not a Building, Sign, paved area or landscaping. By way of illustration and not limitation flagpoles, fountains, statues, benches, tables and decorative walls are Site Amenities.
- 1.27 *Street.* "Street" shall mean any publicly dedicated thoroughfare within or adjacent to Blackthorn and shown on any Recorded subdivision map or survey.
- 1.28 *Trust Deed and Mortgage.* "Trust Deed" and "Mortgage" shall each mean, an instrument which has been Recorded and which creates a lien

on the portion of the Property or leasehold estate in the Property described therein.

ARTICLE II CHARACTER & PURPOSE

- 2.1 *Character and Purpose.* This Declaration is made to ensure the proper use and development of the Blackthorn Corporate Park. It is the intent of this Declaration to ensure that the development of Blackthorn will have minimal impact on the natural landscape, vegetation and wildlife. Blackthorn will be maintained as a premier business environment in a natural setting, with Guidelines to promote only the highest quality development. It is also the intent of this Declaration to protect Owners and Occupants of Blackthorn against improper and undesirable uses and against construction of Improvements built of substandard design or materials. This Article II shall be used by the Commission, the Association and the Committee as a general standard in interpreting the provisions of this Declaration and judging performance hereunder, in the preparation and revisions of the Guidelines, in approving or disapproving the development of Sites, and in carrying out the overall development of Blackthorn.

ARTICLE III DEVELOPMENT RESTRICTIONS

- 3.1 *Subdivision.* No Lot shall be subdivided and no Lot's size, dimensions or boundaries shall be modified, changed or altered, whether by conveyance, lease, dedication, foreclosure proceedings, forfeiture or any other means, except as approved in accordance with applicable laws.
- 3.2 *Improvements to a Lot.* No Improvements shall be made to any Lot without the prior approval of the Committee in accordance with the requirements of Article V below.
- 3.3 *Use of Lots.* Each owner shall use its Lot for only such purpose or purposes which are approved by the Committee and/or the Commission in accordance with the requirements of Article IV below. All uses of a Lot and all Improvements to a Lot shall be in compliance with all local, state and federal laws, ordinances, statues and other governmental regulations or approvals applicable to the Lot or the Owner.

- 3.4 *Rezoning and Variances.* Any rezoning of a Lot or a variance from or special exception to any applicable zoning ordinances must be approved in accordance with applicable laws.

ARTICLE IV USE RESTRICTIONS

- 4.1 *Prohibited Uses.* Any use that, in the opinion of the Committee, subject to review by the Commission under Section 5.6.8 as appropriate, could produce adverse effects upon Blackthorn in terms of the health, safety or welfare of Persons, or which may be harmful to the Improvements thereon, or does not agree with the intent of the development plan for Blackthorn as generally described in Article II hereof and in the Guidelines is prohibited, including without limitation, the following:
- a. noxious, toxic or corrosive fumes, gases, or discharges
 - b. smoke or offensive odors
 - c. ground conditions which will produce dust
 - d. noise and/or vibration
 - e. intense glare or heat
 - f. outdoor storage of any type
 - g. drive-up facilities of any type
 - h. convenience stores and gas stations, or any type of automotive service
 - i. adult uses, as defined by the South Bend Municipal Code as of the date of the adoption of these Covenants
 - j. outdoor advertising signs, commonly referred to as billboards
- 4.2 *Uses not specifically permitted.* Uses not specified as permitted are prohibited unless approved by the Commission.
- 4.3 *Permitted Uses.* Permitted land uses in Blackthorn are limited to the following: (A) "Corporate Office", (B) "Support Office/Research", (C) "Hotel," (D) "Conference and Catering," (E) "Educational Use," and (F) "Light Industrial," as the same are described in Section 4.6 below.

- 4.4 *Use Designation.* The map attached hereto as Exhibit "B" designates the permitted use for each Lot in Blackthorn. No Owner may change the designated use of a Blackthorn Lot or establish or suffer a prohibited use on a Blackthorn Lot, as defined in this Declaration.
- 4.5 *Request for Re-designation.* An Owner may submit to the Commission, or the Board when the Declarant owns less than five percent (5%) of Blackthorn, a request to re-designate the use of the Owner's Lot or otherwise modify, change or adjust the established or existing use of the Lot. Any such request shall be in writing and delivered to (a) the Commission, with notification to the Board so long as the Declarant owns at least five percent (5%) of the land area in Blackthorn, or (b) if the Declarant no longer owns at least five percent (5%) of the land area in Blackthorn, the Board with notification to the Commission
- a. If the request is made to the Commission, the Commission and the Board shall approve or reject such request within sixty (60) days of Commission's receipt of the request. The Commission shall have the right in its sole and absolute discretion to accept or reject such request. Any such request shall be deemed rejected unless the Commission notifies the requesting Owner of approval within such (60) day period.
 - b. If the request is made of the Board, the Board and the Commission shall review the request and either accept or reject the request in writing or submit the request to a vote at a special meeting of the members of the Association. The Board's action shall be taken within sixty (60) days of its receipt of the request. If the Board fails to take action within said sixty (60) day period, the request is deemed rejected. If the Board submits the request to a vote of the Association members, the special meeting shall be held within ninety (90) days of the Board's receipt of the request. The request will be approved only upon a majority vote in favor of the approval. Any such request shall be deemed rejected unless so approved within the ninety (90) day period provided above.
- 4.6 *Description of Uses.* The following describes each use category. Parking structures are excluded from the calculation of the total gross floor area of a building.
- 4.6.1 *Corporate Office.* Lots designated "Corporate Office" are permitted to have only Buildings in which office space totals at least seventy-five percent (75%) of the total gross floor area of the Building. Retail use as part of a permitted Building is permitted so long as

the total floor area dedicated to retail use is less than ten percent (10%).

- 4.6.2 *Support Office/Research.* Lots designated "Support Office/Research" are permitted to have any use permitted on a Corporate Office Lot. At least thirty-three percent (33%) of the floor area of any Support Office/Research Building must be dedicated to office space. Other permitted uses on Support Office/Research designated Lots include:
- a. Free standing health, recreational and athletic clubs and facilities
 - b. Free standing day care facilities.
- 4.6.3 *Hotel.* Lots designated "Hotel" are permitted to have hotel or motel Buildings. Other hospitality uses, such as health, recreational and athletic clubs and facilities, restaurants and lounges, and retail are permitted uses as part of a permitted hotel or motel Building.
- 4.6.4 *Conference and Catering.* Conference and Catering uses are limited to Lot 1A, Blackthorn Corporate Office Park Minor Subdivision #3 recorded as Document Number 9536275 in the Office of the Recorder of St. Joseph County, Indiana on October 30, 1995, as indicated at Exhibit B.
- 4.6.5 *Educational Use.* Educational Use shall include such Educational Use, including the operation of a middle school (grades 7-9) and high school (grades 10-12), as well as adult education programs, as is authorized in areas zoned as "LI Light Industrial" per S.B. Municipal Code Section 21-04.01(a)(1)(B).
- 4.6.6 *Light Industrial.* Lots designated "Light Industrial" may be used for office, warehouse, distribution, wholesale, light assembly, or light manufacturing facilities that are clean, quiet, and free of hazardous or objectionable elements, such as noise, odor, dust, smoke, or glare.

ARTICLE V

ARCHITECTURAL AND SITE REVIEW COMMITTEE

- 5.1 *Establishment of Committee.* There is hereby established and created the Architectural and Site plan Review Committee (the "Committee") for Blackthorn. The Committee shall be a standing Committee of the

Association. The Committee shall consist of three (3) members, all of whom shall be appointed by the Commission so long as the Declarant owns at least five percent (5%) of Blackthorn. Thereafter, the Board shall appoint from time to time, but at least once every three (3) years, two (2) individual representatives of the Association to serve on the Committee. The Commission shall reserve the right to appoint one (1) individual representative of the Commission to serve on the Committee until such time the Commission relinquishes such rights in writing. The individual Committee members do not have to be members of the Association.

5.2 *Necessity of Architectural and Site Plan Review and Approvals; Guidelines.*

- a. No Improvements, of any kind, shall be commenced, constructed, erected, placed, altered, maintained, or suffered upon any Blackthorn Lot, nor shall any addition, change, or alteration thereon or thereof be made without the prior approval of the Committee. The Committee shall review proposed plans and specifications for compliance with the Covenants and Guidelines and shall use its discretion to insure that all Improvements harmonize with other existing or proposed Improvements to Blackthorn with respect to external design, color scheme, shape, height, type of materials, quality of workmanship, location, topography, finish grade elevation, preservation of views, natural resource conservation, circulation patterns, vehicular access, pedestrian circulation, parking, landscaping and easements so that development will further the purposes of Article II hereof.

- b. So long as the Declarant owns any part of Blackthorn, the Guidelines may be amended upon the affirmative vote of the Declarant and a majority of the members of the Association, based on the voting rights established in Section 6.4 herein. At such time as the Declarant does not own any part of Blackthorn or the Declarant relinquishes rights to appoint a member of the Board, the Guidelines may be amended upon the affirmative vote of a majority of the members of the Association, based on the voting rights as established in Section 6.4 herein.

5.3 *Right to Disapprove Similar Plans.* Declarant hereby acknowledges that the Committee, in the exercise of the reasonable judgment of the members thereof may from time to time approve plans and specifications for an Improvement which, after completion, produces an effect and/or gives the appearance which, in retrospect, is determined to be inconsistent with the intention of Article II hereof. Therefore, Declarant hereby declares that the construction of an Improvement pursuant to plans and specifications approved by the Committee shall not be deemed

to create any right whatsoever on the part of any party to demand or require, either by legal proceedings or otherwise, that the Committee approve plans and specifications which are either identical to or substantially the same as plans and specifications previously approved by the Committee for other Improvements, and the Declarant and the Committee hereby reserves the right to disapprove subsequently presented plans and specifications similar or identical to those previously approved.

5.4 *Submittals to Committee.* To request the Committee's approval of plans and specifications or to seek a variance from the Guidelines, an Applicant must submit the following to the Committee:

- a. Plans and specifications for the Owner's proposed development setting forth Building location, elevations, types of materials, exterior colors, and exterior Lot lighting;
- b. A Site plan showing the location and design of all Improvements, including without limitation: lighting plan, number, size and layout of parking spaces, ingress/egress, setbacks, easements, utilities, and sign locations;
- c. Complete landscaping plan showing type, species, variety, location and size (at installation) of all plantings including trees, shrubs, turf (seed or sod), irrigation plans and natural conservation areas;
- d. Sign and/or Signage plans showing size, height, design, color, materials, location, construction and lighting with respect to each intended Sign;
- e. A written explanation and a graphical depiction of all variances from the Guidelines sought by the Owner, if applicable; and
- f. Such other information as the Committee may require which is pertinent to the evaluation of the plans and specifications.

5.5 *Application Review Process.* The Committee will approve or disapprove all plans and specifications and requests for variances from the Guidelines within thirty (30) days after receipt of the items described in Section 5.4 hereof, provided, however, that the Committee may reasonably extend such review period in the event it requires further information or documents after the Applicant's initial submittals to inform its determination of the Applicant's application.

- 5.5.1 In the event the Committee fails to approve or disapprove such plans and specifications or requests for variances from the Guidelines within the time period described in Section 5.5, then the same shall be deemed rejected.
- 5.5.2 The Committee reserves the right to approve plans and specifications or a request for a variance from the Guidelines subject to the Applicant's acceptance of specific changes, alterations, or adjustments provided by the Committee. If the Applicant accepts the specific changes, alterations, or adjustments, the Applicant will resubmit only those items as listed in Section 5.4 which are affected by such changes, alterations, or adjustments within thirty (30) days of the Applicant's receipt of the notice of conditional approval, and the Committee will review said items within fifteen (15) days of receipt. If the Committee takes no further action on the application within such 15-day period, then the application, as amended by the Applicant's subsequent submittals, will be deemed approved.
- 5.5.3 In the event the Committee disapproves an Applicant's plans and specifications or a request for a variance from the Guidelines, the Committee may provide the Applicant with recommended changes, alterations or adjustments to the plans and specifications or request for a variance from the Guidelines, and the Applicant may submit a new application for review by the Committee.
- 5.5.4 The Committee may retain the services of such professionals, including architects or attorneys, as may be necessary to advise the Committee on technical issues.
- 5.5.5 If any Improvement is changed, modified, or altered without prior approval of the Committee, then the Declarant or the Association will require the Owner to cause the Improvements to be restored to comply with the plans and specifications originally approved by the Committee and the Owner shall bear all costs and expenses of such restoration, including the costs and reasonable attorney's fees of the Committee. In the event such costs or any other expenses of the Committee pursuant to any other provisions of this Declaration are not paid by the Owner, they shall become a lien of the Association on the Lot, pursuant to Section 6.7 herein.
- 5.5.6 Anything herein to the contrary notwithstanding, if any Improvement is erected or constructed on any Site without the prior compliance with the provisions of this Declaration or if any

Improvement shall be erected or constructed other than in accordance with approvals with respect thereto previously granted by the Committee, then, and in either of such events, the Association or Declarant may enforce the provisions of the Declaration including those set forth in Articles IX hereof. The Owner is required to promptly commence and to diligently prosecute to completion the construction of all approved Improvements in accordance with the approved construction schedule and to secure additional approval for any delay.

5.5.7 Nothing herein shall be construed as a waiver of Applicant's obligation to comply with all statutes, ordinances, codes, rules and regulations of all public authorities having jurisdiction, or of Applicant's obligation to secure all required permits and licenses required by such public authorities at Applicant's expense.

5.5.8 Any Applicant or Owner aggrieved by a final decision of the Committee concerning the Applicant's or Owner's application for review of plans and specifications, request for variance from the Guidelines, or request for approval of alterations to an existing Improvement, then the Applicant or Owner may request that the Commission review such decision. Within thirty (30) days of receiving notice of the appeal, or such longer period as the Commission may determine, the Commission will issue its opinion affirming, reversing, or modifying the Committee's decision or take other appropriate action. Such opinion of the Commission will be final upon issuance.

5.6 *Liability.* Neither the Committee, the Commission, the Authority, the City or the Association or their respective successors, assigns, or employees, shall be held liable in damages to anyone submitting plans and specifications to them for approval, or to any Owner affected by this Declaration, by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any such plans and specifications. Every person who submits plans and specifications to the Committee for approval agrees, by submission of such plans and specifications, and every Owner or Occupant of any Blackthorn Lot, by acquiring title thereto, or an interest therein, that they will not bring any action or suit against the Committee, the Commission, the Authority, the City or the Association to recover any such damages.

5.7 *Limitation of Action.* Notwithstanding anything to the contrary herein contained, after the expiration of one (1) year from the date of issuance of a building permit by the appropriate governmental authority for any

Improvement, or three (3) months after the completion of any Improvement, whichever is later, said Improvements shall, in favor of purchasers and encumbrances, be deemed to be in compliance of this Article, unless actual notice of noncompliance or non-completion, executed by the Association, shall appear of Record of the Official Records, or unless legal proceedings shall have been instituted to enforce compliance or completion.

ARTICLE VI

OWNER'S ASSOCIATION AT BLACKTHORN

- 6.1 *Formation of Association.* The Declarant shall cause to be incorporated a not-for-profit corporation under the laws of the State of Indiana, to be called the Owner's Association at Blackthorn. The Association shall be governed in accordance with the Articles and Bylaws of its incorporation. The Bylaws may further define the rights and obligations of the Association and its members, but this Declaration shall govern, in the event of an inconsistency between these Covenants and the Bylaws.
- 6.2 *Purposes of the Association.* The purposes of the Association are as follows:
- a. to enforce these Covenants;
 - b. to maintain certain common landscaped areas;
 - c. to receive, account for and budget funds belonging to and/or entrusted with the Association, including without limitation: dues or assessments for the operation, maintenance and/or benefit of the Owners at Blackthorn;
 - d. to pay the expense of the Committee as budgeted herein;
 - e. to appoint the members of the Committee from and after the date the Declarant ceases to make such appointments;
 - f. to assume such other obligations with respect to Blackthorn as the Association deems appropriate; and
 - g. to assume such other purposes as the Declarant may deem necessary or appropriate to enable the Association to carry out the purpose and intent of this Declaration.

6.3 *Members.* Each Owner and a representative of the Declarant, so long as the Declarant owns any portion of Blackthorn, shall automatically be and become a member of the Association. Membership in the Association is compulsory for Owners other than the Declarant. The Association is entitled to carry on such business as is authorized by its Articles and Bylaws, including, but not limited to, the powers granted the Association under this Declaration.

6.4 *Voting Rights.* Each Owner, including the Declarant shall be entitled to one (1) vote per acre of land in the Owner's Lot. However, each Owner will be entitled to only one (1) vote per Lot under the following circumstances:

- a. when voting to appoint any Board member;
- b. when voting to amend these Covenants, the Guidelines or the Bylaws of the Association;
- c. when voting as stated in Section 4.5(b); and
- d. under special elections as determined by the Board in accordance with the Bylaws.

The Declarant may waive its right to vote on any issue or question called before the Association.

6.5 *Management.* The Association shall be managed by its Board of Directors in accordance with the Articles and Bylaws of the Association. The Board shall consist of three (3) directors who are appointed by the Declarant and shall serve on initial terms of one, two and three years, respectively. Succeeding directors shall each serve a term of three (3) years. The Declarant shall retain the right to appoint:

- a. three (3) directors so long as the Declarant owns not less than twenty-five percent (25%) of the total land area of Blackthorn; (exclusive of areas dedicated to public authority and landscaped areas); and
- b. two (2) directors so long as the Declarant owns not less than fifteen percent (15%) of the total land area of Blackthorn; (exclusive of areas dedicated to public authority and landscaped areas); and
- c. one (1) director until such time the Declarant relinquishes its right to appoint a director of the Association.

Any director not appointed by the Declarant shall be elected by the Owners at times and in a manner pursuant to the Bylaws of the Association and Section 6.4 herein.

- 6.6 *Assessments.* As a member of the Association, each Owner by acquiring legal or equitable title to a Lot, agrees for itself, its heirs, personal representatives, successors and assigns, to pay the Association any dues, assessments, charges, costs or fines, as may from time to time be levied by the Association for any lawful reason. Notwithstanding the foregoing sentence, the Association may not levy dues, assessments, charges, costs or fines against the Common Areas.
- 6.7 *Failure to Pay Assessments.* In the event an Owner fails to pay any dues, assessments, charges, costs or fines tendered by the Association to it, or its successors and assigns, the Association will serve the Owner with a notice of delinquency. The Owner will, within thirty (30) days after receipt of such notice, pay the Association no less than the delinquent amount.

If at the end of such thirty (30) day period the Owner has not paid the amount due to the Association, interest will be added to the delinquent amount at an annual rate equal to the maximum legal rate or three percent (3%) above the Wall Street Journal Prime Rate as of the date of the notice of delinquency, whichever is lower. The rate will be adjusted annually on the anniversary date of said notice of delinquency.

The owner will be liable for reasonable attorney's fees incurred in the collection of delinquent dues, assessments, charges, costs or fines, and any accrued interest thereon.

The delinquent amount, plus accrued interest, shall automatically become a lien upon the Lot(s) of the delinquent Owner, which lien shall be superior to all claims to such Lot except as provided in Section 9.3, as well as an enforceable personal obligation of the Owner. The Association, or its successors and assigns, may upon failure of an Owner to pay any statement tendered by the Association, record notice of its claim of lien against any such Lot and thereafter pursue an action to foreclose said lien in any manner now or in the future permitted by law or equity. The Association may, in addition to, or instead of, foreclosure, obtain a personal judgment against the Owner.

ARTICLE VII

COMMON AREAS AND EASEMENTS

- 7.1 *Common Areas.* Common Areas in Blackthorn shall consist of all real and/or personal property which the Declarant and/or the Association owns or has an interest in for the common use of the members of the Association, including, but not limited to, landscape, entry features, drainage, landscape medians, security, safety, bicycle paths, roads, project lighting and recreational areas or any other use to which a majority of the membership of the Association may accede. Common Areas, as described and defined in Exhibit "C," will also include the strip of land between the outer edge of the curb and the edge of the right-of-way line along all Public Rights of Way. Improvements including, without limitations, Signs and landscaping will be designed and constructed by the Declarant at such time Declarant sees fit. Common Areas will be maintained by the Association, until such time as the adjacent property is developed. The Association may not levy dues, assessments, charges, costs or fines against the Common Areas.
- 7.2 *Reservation of Landscape Easements.* The Declarant hereby reserves unto itself, its successors, successors in interest and assigns a perpetual easement under, over, along, across and upon those areas of Blackthorn that is within thirty feet of all Public Rights-of-Way as Landscape Easement Areas for the purposes and uses which in the Declarant's sole judgment are reasonable in order to create and maintain such attractive landscape areas in furtherance of this Declaration. These said purposes and uses may include without limitation: entering upon, planting, locating, installing, replanting, relocating, reinstalling, maintaining, removing, treating, repairing, irrigating, fencing and husbanding all trees, hedges, shrubs, bushes, plantings, plants, grasses, flowers and other vegetation.
- 7.2.1 Exclusive use by the Declarant of the Landscape Easement Areas is not hereby reserved. The Owner's right to use the Landscape Easement Areas is not hereby reserved. The Owner's right to use the Landscape Easement Areas for purposes not incompatible with their use for landscaping and for uses not incompatible with the other Covenants set forth in this Declaration is hereby granted. In the event of a conflict between the use of such areas for the purposes set forth in this Declaration and a different use by the Owner or Occupant of a Site, the use for the purposes set forth in this Declaration shall prevail.
- 7.2.2 The Declarant for itself, its successors, successors in interest and assigns expressly reserves the right to assign all or any of the easements hereby created and all its right, title and interest therein to any third party including without limitation the City, other public authorities or the Association. No such assignment or the

acceptance thereof will extinguish, limit or modify the easements hereby created unless expressly so stated in such instrument.

7.2.3 All the provisions of these easement reservations, including the benefits and burdens, run with the land and are binding upon and shall inure to the benefit of the successors, successors in interest, assigns, heirs, tenants, and personal representatives of the Owners and Occupants from time to time of Blackthorn.

7.2.4 The rule of strict construction does not apply to the easement reservations herein above set forth. Such reservations shall be given a reasonable construction so that the intention of the Declarant as set forth in Article II of the Declaration is carried out.

7.3 *Reservation of Conservation Easements.* In furtherance of Article II herein, the Declarant may reserve unto itself, its successors, successors in interest and assigns a perpetual easement under, over, along, across and upon certain areas of Blackthorn to be known as Conservation Easement Areas for the exclusive purpose and use of conserving portions of Blackthorn in its pre-development, natural state and to further the intent of this Declaration. It is the intent of these Conservation Easement Areas to preserve certain unique natural systems located within Blackthorn.

7.3.1 Upon review of the plans and specifications for proposed improvements, the Committee may decide to reserve no more than ten percent (10%) of the area of a Lot as a Conservation Easement. An Owner may reserve for the Declarant, as much as twenty-five percent (25%) of the Owner's Lot as a Conservation Easement, upon approval of the Committee.

7.3.2 No alterations, modifications, or changes, including without limitation; planting, locating, installing, removing, treating, repairing, irrigating, may be made to any natural system found in such Conservation Easement, nor shall any man-made Improvement be built, constructed, erected or suffered within the boundaries of such Conservation Easement, nor shall the Owner, its representatives, successors, successors in interest and assigns, or employees, or the Declarant, assigns, or employees, attempt to mow, prune, irrigate, scythe or otherwise or artificially maintain the natural systems found in such Conservation Easement without prior written approval of the Committee.

7.3.3 All the provisions of these easement reservations, including the benefits and burdens, run with the land and are binding upon and shall inure to the benefit of the successors, successors in interest,

assigns, heirs, tenants, and personal representatives of the Owners and Occupants from time to time of Blackthorn.

7.3.4 The rule of strict construction does not apply to the easement reservations herein above set forth. Such reservations shall be given a reasonable construction so that the intention of the Declarant as set forth in Article II of the Declaration is carried out.

7.4 *Installation and Maintenance Responsibilities of Landscape Areas.* In furtherance of the purpose of these Declarations as stated in Article II herein, the following establishes installation and maintenance responsibilities of the Common Areas, the Landscape Easement Areas, Parking Landscape Areas, and Conservation Easement Areas.

7.4.1 *Common Areas.* All those areas shown as "Common Areas" on Exhibit "C" initially will be landscaped and certain decorative Improvements constructed thereon by the Association. However, the Owner of developed lots may supplement these plantings on the Common Areas adjacent to their site. After initial installation, the landscaping shall be maintained by the Association in accordance with the provisions of this Declaration and the Guidelines. The lawn in the Common Areas between the outer-edge of the curb and the right-of-way line of all Public Rights of Way, when adjacent to a developed Blackthorn Site, will be maintained by the Owner of said Site.

7.4.2 *Landscape Easement Areas.* All those areas shown as "Landscape Easement Areas" on Exhibit "D" initially will be landscaped and certain decorative Improvements constructed thereon by Owner in accordance with the plans and specifications submitted to and approved by the Committee. After initial installation the landscaping in such areas shall be maintained by the Owner until such landscaping has remained healthy for a minimum of twelve (12) consecutive calendar months. Thereafter, the Association shall maintain landscaping in accordance with the provisions of this Declaration and the Guidelines.

7.4.3 *Parking Landscape Areas.* All those areas described as Parking Landscape Areas in the Guidelines shall be landscaped by the Owner in accordance with the plans approved by the Committee. The landscaping in such areas shall be maintained by the Owner.

7.4.4 *Conservation Easement Areas.* Conservation Easements are established in this Declaration to preserve and protect the natural systems found in Blackthorn. No Improvements or alterations of

any type are to be made to the Conservation Easement Areas. The Owner must protect the natural systems found in the Conservation Easement from any external, man-made interference; including without limitation; construction processes, site and parking lot drainage, lawn chemicals and snow storage. Artificial maintenance of the vegetation in said Conservation Easement Areas is prohibited without prior written approval of the Committee.

7.5 *Owner's Rights of Enjoyment.* Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title of portions of the Property, subject to the following:

- a. All provisions of this Declaration and of the Bylaws of the Association;
- b. Rules and regulations governing use and enjoyment of the Common Area adopted by the Association; and
- c. Restrictions contained on any and all plats of any part of the Common Areas or filed separately with respect to all or any part of Blackthorn.

ARTICLE VIII REGULATION OF IMPROVEMENTS

8.1 *Construction and Maintenance of Improvements.* Improvements on any Site shall be constructed and maintained by the Owner or the Occupant of such Site in accordance with the applicable approved standards and limitations set forth herein and in the Guidelines, including, but not limited to standards relating to building height, construction materials, exterior wall finish, concealment of exterior electrical and mechanical apparatus, equipment and fixtures, lighting and accessory structures, driveways, loading facilities, landscaping, parking, storage, fences, and Signs.

8.2 *Site Amenities.* No Site Amenities as defined herein and in the Guidelines, of any type shall be permitted without the prior written approval of the Committee. Design of such Site Amenities shall compliment the architectural design of the Building and the landscape design of the Site. Any Owner or Occupant who desires to place any type of Site Amenities on a site must first submit specifications and plans for such Site Amenities to the Committee. Said plans and specifications should include the style, color, material, texture, number, site locations and any other information about the character of said Site Amenities.

- 8.3 *Waste and Refuse.* All waste materials and refuse shall be stored within the Building or within a four-sided enclosure screened from view from any street or lot.
- 8.4 *Outside Storage and Equipment.* No vehicles, material, supplies, equipment or products shall be stored, installed or permitted to remain on any portion of Blackthorn outside a permanent structure. Temporary storage of materials, equipment and supplies in relation to and as a part of the construction of the Improvements upon a Site is permitted, provided that such materials, equipment and supplies are completely removed immediately upon completion of construction.
- 8.5 *Exterior Lighting.* Each Owner and Occupant shall be responsible for installing, maintaining and operating adequate exterior lighting on the Site to provide for the safety of its customers and employees and all such lighting shall be dark sky compliant and require prior written approval of the Committee.
- 8.6 *Maintenance Compliance.* If minimum maintenance standards are not met by the Owner or Occupant, the Board shall issue a notice to the Owner or Occupant requesting action. If the maintenance deficiency is not remedied within ten (10) days, the Board shall have the maintenance work performed and shall charge said Owner or Occupant all costs incurred. If such costs or any part thereof are not paid within ten (10) days after written demand therefore, the amount unpaid shall bear interest from the date thereof until the date of payment at the rate of interest set forth in Section 6.7 herein. If any such fees or costs are not paid on the due date thereof, the Association shall proceed as permitted in Article IX herein.

ARTICLE IX

VIOLATION OF PROVISIONS

- 9.1 *Abatement and Suit.* The Declarant, the Committee and the Association are each hereby granted the right to enter upon any Lot in Blackthorn at any reasonable time or times to inspect the same for purposes of determining compliance with Committee approved plans and specifications, the Covenants and the Guidelines. In the event any such violations and breaches are not cured within fifteen (15) days after written demand made upon the Owner or Occupant by the Declarant, Committee or Association, as the case may be, the Declarant and the Association jointly and separately have the right to enter upon the Lot upon which such violation or breach exists, and summarily abate and remove, or correct, repair or maintain, at the expense of the Owner and Occupant thereof, any

Improvement, thing or condition that may be or exist thereof contrary to the intent and meaning of the provisions hereof as interpreted by the Declarant, the Committee and the Association, and the Declarant, the Committee and the Association shall not, by reason thereon, be deemed guilty in any manner of trespass or conversion for such entry, abatement, removal, correction, repair, or maintenance or incur any liability on account thereof. The Declarant, the Association and every Owner (or Occupant, but only with the respective Owner's consent) of Blackthorn are further separately empowered to see by legal proceedings, either in law or in equity, appropriate remedies to abate or to otherwise prevent a continuing breach of any provision of the Declaration. The amounts of all expenses incurred by Declarant, the Committee and/or the Association pursuant to the provisions of this Section 9.1 which are not paid by Owner immediately on demand shall constitute a lien against the subject Site, shall bear interest until paid at the rate set forth in Section 6.7 hereof and may be foreclosed by the appropriate legal proceeding.

- 9.2 *Attorney's Fees and Liens.* If in connection with any enforcement of this Declaration, with respect to any Site, it shall be reasonably necessary to secure the services of attorneys, then the reasonable fees of such attorneys, and all other costs of enforcement shall be payable by the Owner of such Site. If such fees and other costs or any part thereof are not paid within ten (10) days after written demand therefore, the amount unpaid shall bear interest from the date thereof until paid at the rate of interest set forth in Section 6.7. If any such fees or costs are not paid on the due date thereof, the amount thereof together with interest thereon as aforesaid shall be and become a lien against such Site and may be foreclosed by any appropriate legal proceedings. In any legal or equitable proceedings for the interpretation or enforcement of or to restrain the violation of this Declaration or any provision hereof, the losing party or parties shall pay the reasonable attorneys' fees of the prevailing party or parties in such amount as may be fixed by the court in such proceedings.
- 9.3 *Subordination of Liens.* Any lien created pursuant to the provisions of this Declaration shall be subordinate to the lien of any Mortgage or Mortgages now or hereafter placed upon all or any portion of a Site or Sites which runs to an institutional lender and to the lien of any unpaid real property taxes.
- 9.4 *Deemed to Constitute a Nuisance.* The result of every action or omission whereby any Covenant set forth in this Declaration is violated in whole or in part, is hereby declared to be and shall constitute a nuisance and may be excised or abated by the Declarant, the Association, the City, any Owner (or Occupant who has been given such rights by the Owner of such Site) of a Site, or any of them.

- 9.5 *Remedies Cumulative.* All remedies provided herein or available at law or in equity shall be cumulative and not exclusive.
- 9.6 *Failure to Enforce Not a Waiver of Rights.* The failure of Declarant, or any other Person entitled to enforce this Declaration, to enforce any Covenant herein contained shall in no event be deemed to be a waiver of the right to do so nor of the right to enforce any other Covenant.
- 9.7 *Damages Inadequate.* Damages for any breach of the Covenants are hereby declared not to be adequate compensation and such breach and/or the continuance thereof may be mandated, enjoined or abated by appropriate proceedings by any Person entitled to enforce this Declaration as provided in this Article IX.

ARTICLE X

ACCEPTANCE OF COVENANTS

- 10.1 *Owner and Occupant Acceptance.* Each Owner and Occupant, by the acceptance of a deed of conveyance, lease, sublease, license or other right to enter on or occupy any Lot of Blackthorn, and every other person at any time having or acquiring any right, title, interest, lien, or estate in, on or to any portion of Blackthorn accepts the same subject to all of the provisions of this Declaration and the jurisdictions, rights, and powers of the Declarant, the Committee, and the Association. Said Owner, Occupant and/or Person also accepts all easements, rights, benefits and privileges of every character hereby granted, reserved or created and thereby covenants and agrees for themselves, their successors, successors in interest, heirs, personal representatives and assigns to be bound by the Covenants. All obligations hereby imposed are covenants running with the land and shall bind every Owner and Occupant of every part and parcel of Blackthorn and interest therein, and every such other Person and inure to the benefit of every Owner and Occupant and such other persons and as though the provisions of the Declaration were recited and stipulated at length in each and every deed of conveyance, lease, sublease, license or other agreement granting any right of entry or occupancy, or in any other instrument or document by which any such right, title, interest, lien, or estate is created or acquired. All Covenants, and agreements contained herein are made for the direct, mutual and reciprocal benefit of each and every part and parcel of Blackthorn and shall create mutual, equitable servitudes upon each portion of Blackthorn in favor of every other portion of Blackthorn.

ARTICLE XI

ASSIGNMENT AND LIMITATION OF LIABILITY

- 11.1 *Assignment of Owners.* No Owner may assign all or any part of its rights, benefits, duties or obligations hereunder, except as an appurtenance to and in conjunction with the sale of the Owner's land.
- 11.2 *Assignment by Declarant.* Any and all of the duties, rights, powers, privileges and reservations of Declarant herein contained may be assigned to any party (herein called "Successor Declarant"), either in toto or pro tanto as to any portion of Blackthorn specifically described and identified in any assignment of such duties, rights, powers, privileges and reservations, who will assume the duties of Declarant pertaining to the particular right, power and reservations assigned. Any such assignment shall be conclusively evidenced by a written assignment and acceptance thereof duly executed and acknowledged by Declarant and Successor Declarant and Recorded in the Official Records. Such Successor Declarant shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. If at any time Declarant ceases to exist and has not made an assignment, a Successor Declarant may be appointed by the Board with approval of at least fifty-one percent (51%) of the Association membership.
- 11.3 *Limitation of Liability.* Neither the Declarant, the City, the Committee, the Association or the Board or any member, staff member, consultant, director, officer, agent or employee of the Declarant, the City, the Committee, the Association or the Board shall be liable to any Owner or to any person for any loss, damage, or injury, or claim thereof, arising out of, or in any way connected with, the performance of the Declarant's, the City's, the Committee's, the Association's or the Board's duties under this Declaration unless due to the willful misconduct or bad faith of the Declarant, the City, the Committee, the Association or the Board, or any one of their directors, officers, agents, or employees, as the case may be. The Committee shall review and take action on all plans and specifications submitted to it for any proposed Improvement, including the construction, alteration or addition thereof or thereto, or any proposed property use, and shall make determinations with respect to the Character and Purpose of Blackthorn as set out in Article II herein and the provisions as set forth in this Declaration. The Committee shall not be responsible for reviewing any plans or specifications from the standpoint of structural safety, engineering soundness, or conformance with building or other codes, nor shall the Committee's approval of any plans or specifications verify the

structural safety, engineering soundness, or conformance of the Improvement to the building or other codes. Furthermore, the Committee shall not be responsible or liable for structural, engineering, or other building defects in the Improvements for which plans were approved or for violations of building, zoning or other land-use codes or regulations.

ARTICLE XII

MISCELLANEOUS

- 12.1 *Amendment.* This Declaration and its covenants and restrictions shall run with the land and be binding until December 31, 2023. So long as the Declarant owns any part of Blackthorn, these restrictions may be amended or extended, only in writing, and then only upon the affirmative vote of the Declarant and a majority of the members of the Association, based on voting rights established in Section 6.4 herein. At such time as the Declarant does not own any part of Blackthorn or the Declarant relinquishes rights to appoint a member of the Board, these covenants may be amended or modified by action of the Association, with voting rights as established in Section 6.4 herein. Amendments shall become effective ten (10) days after notice of adoption of said amendment, together with a copy of the recorded amendment, is mailed to all Blackthorn Owners. Notwithstanding the foregoing provisions of this Section 12.1, the easements reserved and granted in this Declaration under Article VII shall be binding perpetually, and no amendment shall modify or terminate such easements.
- 12.2 *Termination and Extension.* This Declaration shall be and remain in full force and effect until December 31, 2023 after which date this Declaration may be extended for successive periods of ten (10) years by the Recording in the Official Records a written instrument declaring the extension of the term hereof, duly executed by Declarant, if the Declarant owns some portion of Blackthorn, not including easements reserved and granted herein under Article VII, and, if the Declarant does not own any portion of Blackthorn, so described, the written instrument shall be executed and acknowledged by a majority of the members of the Association, with voting rights as established in Section 6.4.
- 12.3 *Owner's Liability Subsequent to Sale.* Upon sale of a Site, the Owner so selling shall have no further liability for the obligations with respect thereto which accrue against the Site sold after the date of conveyance, provided, however, that nothing herein shall be construed so as to relieve an Owner of any Site from any liabilities or obligations which shall have accrued prior to the date of such conveyance.

- 12.4 *Notices.* Any notice, demand, request, consent, approval, designation or other communication which any party is required or desirous to give or make to any other party shall be in writing and shall be given or made by United States registered or certified mail, return receipt requested, with postage fully prepaid thereon, and addressed to the parties at their current addresses. Any notice, demand, request, consent, approval, designation or other communication so sent shall be deemed to have been given or made on the date delivered, or on the date delivery was refused.
- 12.5 *Headings.* The headings of the Articles and Sections hereof are for convenience only and are not intended to be part of this Declaration nor in any way to define, limit or describe the scope or intent of the particular provision to which they refer.
- 12.6 *Singular and Plural.* Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine or feminine, as is reasonable in the context.
- 12.7 *Effect of Invalidation.* If any provision of this Declaration is held to be invalid, the invalidity of such provision shall not affect the remaining provisions hereof.
- 12.8 *Interpretation.* The provisions of this Declaration shall be construed pursuant to the laws of the State of Indiana and shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and use of the property.
- 12.9 *Time.* Time is of the essence of this Declaration.
- 12.10 *Waiver.* No waiver or failure to enforce any of the provisions of this Declaration shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver be a continuing waiver.
- 12.11 *Binding Effect.* The provisions of this Declaration will be binding on the parties hereto and their respective successors, assigns and mortgagees to the extent herein provided.
- 12.12 *Governing Law.* These Covenants shall be construed in accordance with the laws of the State of Indiana.

AMENDMENTS

I. Original Declaration

On March 19, 1993, the South Bend Redevelopment Authority and the South Bend Redevelopment Commission, jointly and severally established the Declaration of Protective Covenants & Restrictions for the Blackthorn Corporate Park. The Commission approved the Covenants with its Resolution No. 1147, recorded with the Office of the Recorder, St. Joseph County, Indiana as Document No. 9324608. The Authority approved the Covenants with its Resolution No. 73, recorded with the Office of the Recorder, St. Joseph County, Indiana as Document No. 9322505.

II. Hotel Site Amendment

The original declaration of Covenants for Blackthorn did not include the intended site for a hotel-conference center as part of Blackthorn, nor did it specifically allow for such use in Blackthorn. This amendment added Lot 3 of the Blackthorn Corporate Office Park to the Covenants definition of Blackthorn AND added the Hotel use to list of Permitted Uses in Blackthorn. The Commission approved the amendment with its Resolution No. 1232, recorded with the Office of the Recorder, St. Joseph County, as Document No. 9410875. The Authority approved the amendment with its Resolution No. 87, recorded with the Office of the Recorder, St. Joseph County, as Document No. 9408339.

III. Billboard Amendment

This amendment added outdoor advertising signs or billboards to the list of prohibited uses at Blackthorn. The Commission approved this amendment with its Resolution No. 1361, recorded with the Office of the Recorder, St. Joseph County, as Document No. 9520538. The Authority approved the amendment with its Resolution No. 98, recorded with the Office of the Recorder, St. Joseph County, as Document No. 9520537.

IV. Conference and Catering Site Amendment

This amendment created a fifth Permitted Use, Conference and Catering. The amendment also limits the new Permitted Use to Lot 1A of Blackthorn Corporate Office Park Minor #3. The Declarant and all current Owners approved the amendment. The Commission's approval was through its Resolution No. 1445; the Authority's approval was through its Resolution No. 108. The Amendment was recorded in the Office of the Recorder, St. Joseph County as Document No. 9707058.

V. Office/Research and Open Space and Parking Landscape Areas Amendment

This amendment, approved by Resolution No. 2317 on March 2, 2007, changed the Support Office/Research floor requirement from 50% to 33% and revised the maintenance responsibilities for open space and parking landscape areas to the Owners Association. It also removed the 3 foot minimum requirement for shrubs planted as screen. Additionally, the entire set of Protective Covenants and Restrictions and Development Guidelines were re-approved with multiple smaller changes.

VI. Education Amendment

This amendment, approved by Resolution No. 2868 on 4/12/11, added Educational Use as a Permitted Use on Lot 3A. Educational Use includes the operation of a middle school (grades 7-9) and high school (grades 10-12), as well as adult education programs, as is authorized in areas zoned as "LI Light Industrial" per S.B. Municipal Code Section 21-04.01(a)(1)(B). The Amendment was recorded in the Office of the Recorder, St. Joseph County as Document No. 1112455.

VII. Amendments to Articles V and VIII

This amendment, dated March 27, 2012, eliminated the Review Fee associated with an application for review by the Committee under Article V. In addition, this amendment altered certain regulations under Article VIII concerning bike paths and landscaping plans.

VII. Light Industrial Amendment

The Association approved this amendment at its annual meeting held on October 27, 2015, and the Commission approved this amendment by Resolution No. 3315 on November 12, 2015. This amendment modified certain provisions pertaining to development and use restrictions in Articles III and IV, the Committee's design review process, and the scope of regulations in Article VIII, in addition to other various changes. This amendment also clarified that the Common Areas are not subject to dues, assessments, charges, costs, or fines of the Association. In addition, this amendment included other minor changes.

Executed copies of the above documents are available for inspection at the Redevelopment Commission's office or at the Office of Recorder, St. Joseph County.

IN WITNESS WHEREOF, the SOUTH BEND REDEVELOPMENT COMMISSION, has declared the above and foregoing Protective Covenants and Restrictions for the Blackthorn Corporate Park.

For the Declarant:
SOUTH BEND REDEVELOPMENT COMMISSION

Marcia I. Jones, President

ATTEST:

Don E. Inks, Secretary

State of Indiana)
) SS:
St. Joseph County)

Before me the undersigned, a Notary Public, in and for said County and State, personally appeared the South Bend Redevelopment Commission, by Marcia I. Jones, and Don E. Inks, President and Secretary, respectively, and acknowledged the execution of the foregoing Declaration.

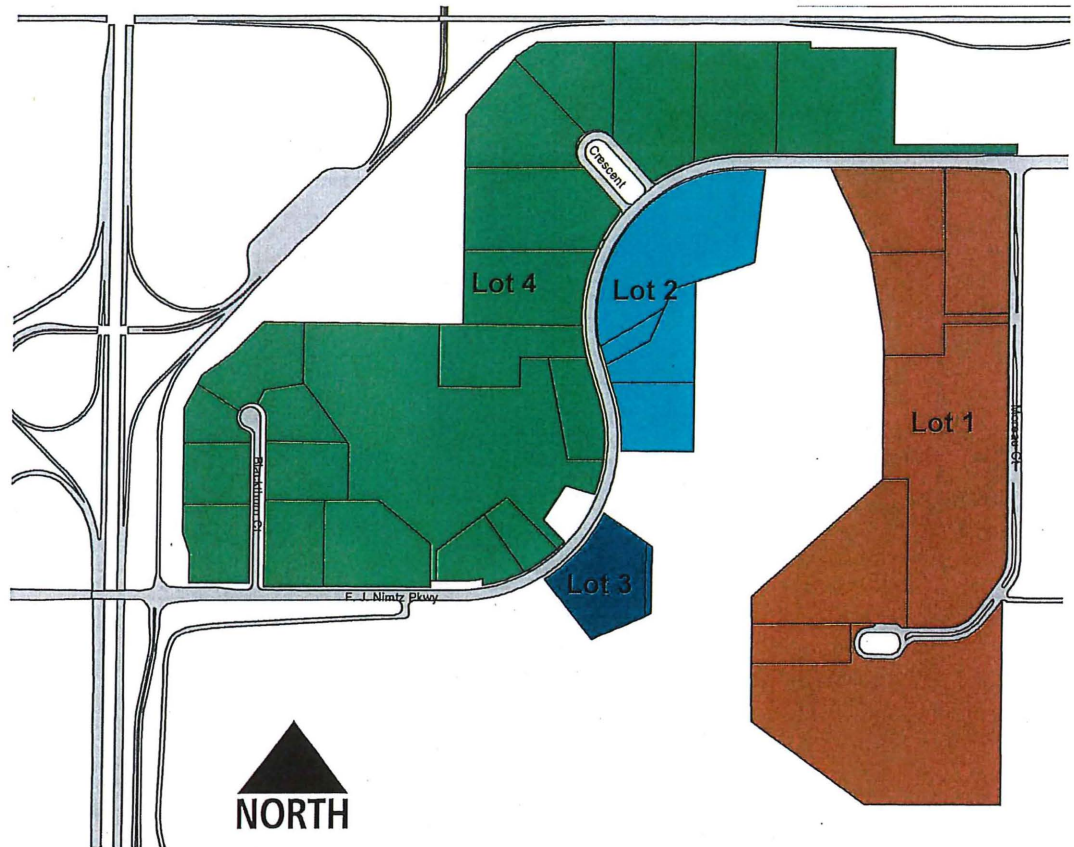
IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the _____ day of _____, 20__.

Notary Public
Residing in St. Joseph County, Indiana

My Commission Expires: _____

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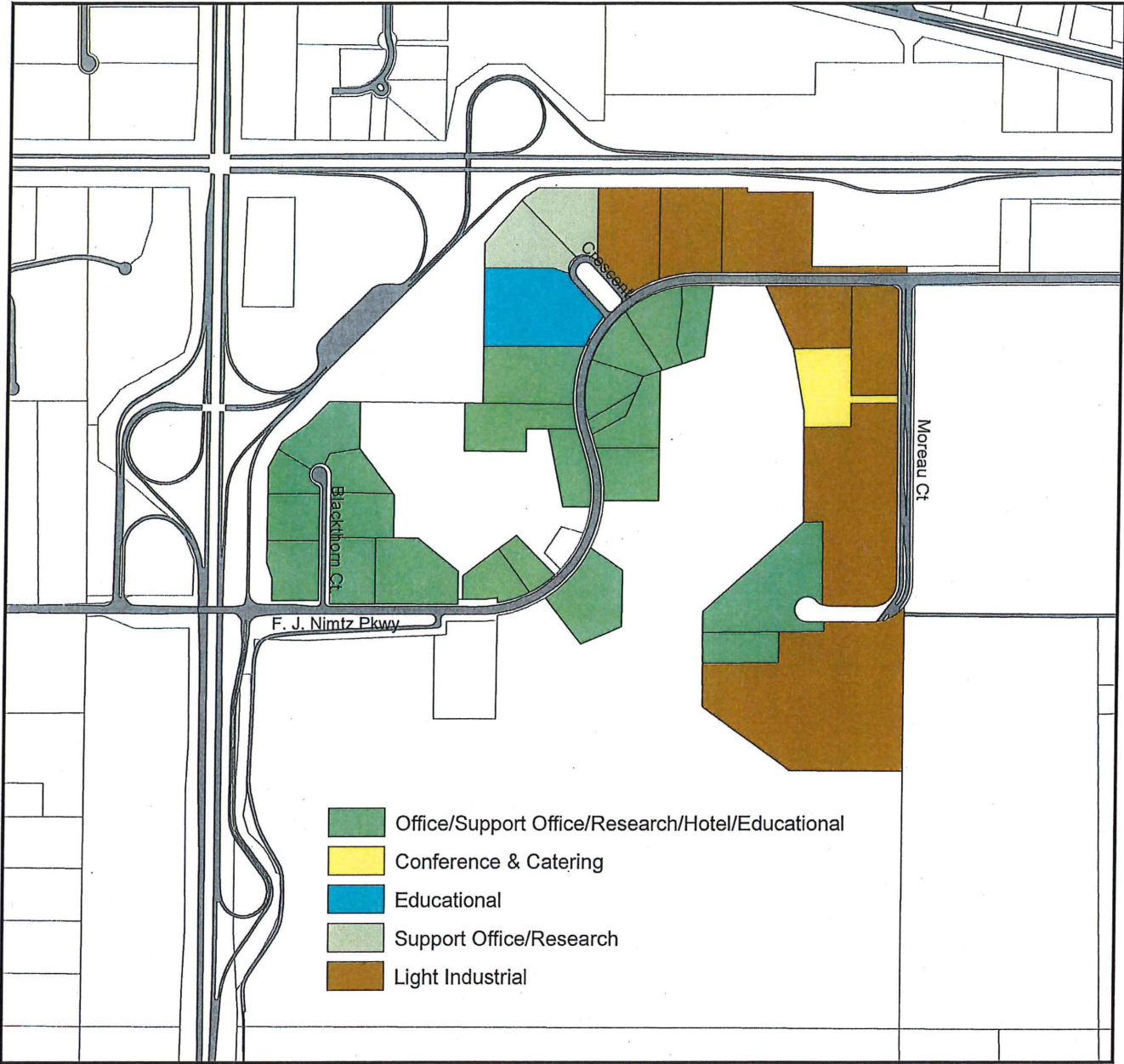
Exhibit "A" Lot Designation



A part of Sections 19, 20, 29 and 30, Township 38 North, Range 2 East, German Township, South Bend, St. Joseph County, Indiana:

All of Lots Numbered 1, 2, 3 and 4 as defined in the recorded plat of Blackthorn Corporate Office Park, recorded as Document No. 9438010 on October 4, 1994 in the Office of the Recorder of St. Joseph County, Indiana.

Exhibit "B" Use Designation



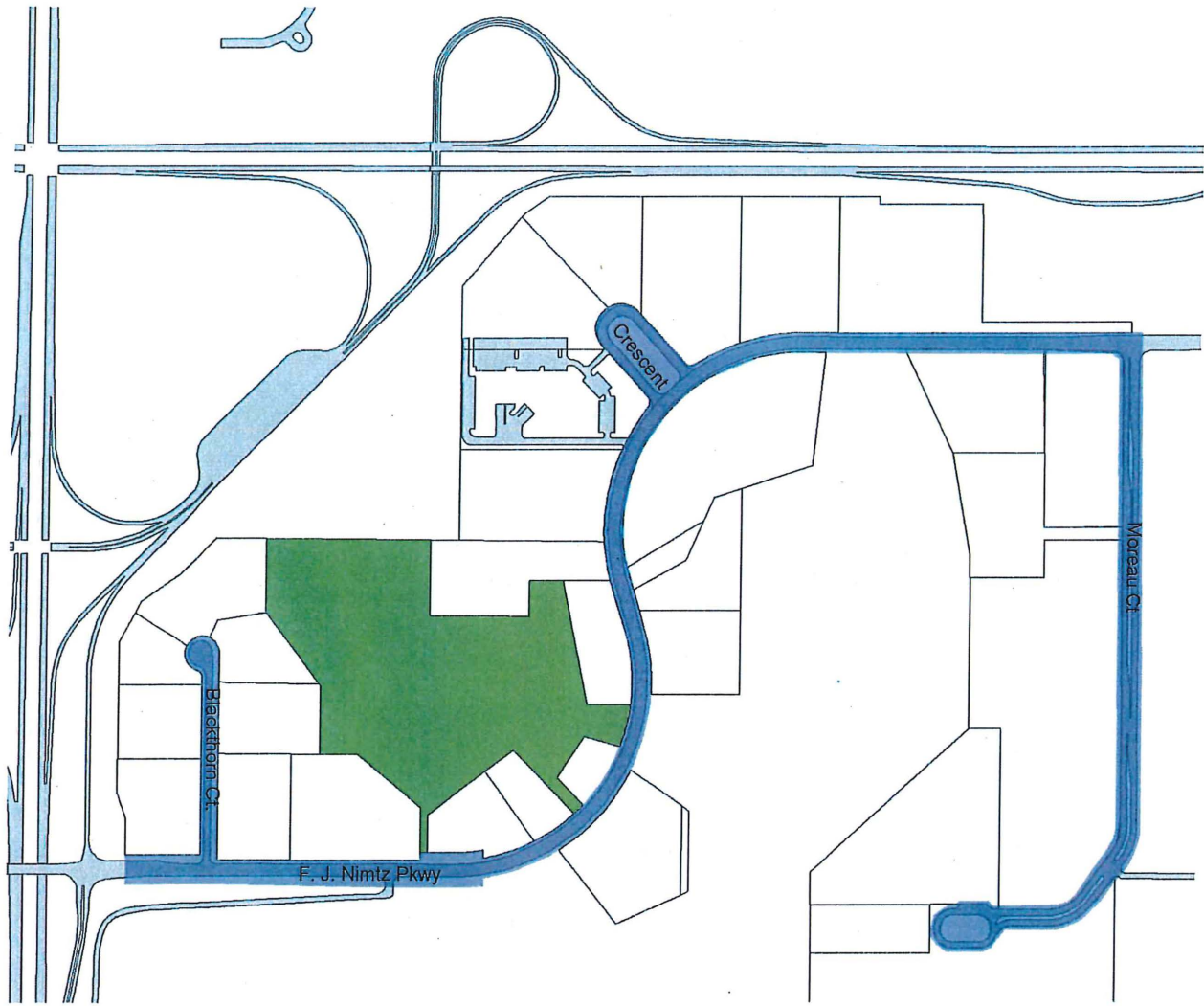
Blackthorn Corporate Park - Covenants & Restrictions

NOTE: Office/Support Office/Research/Hotel/Educational Uses allowed in Light Industrial.
Light Industrial not allowed in Office/Support Office/Research/Hotel/Educational.

Updated 11/12/15



Exhibit "C" Common Areas



 **NORTH**

 Retention/Natural

 Streetscape

Exhibit "D" Landscape Easement Areas

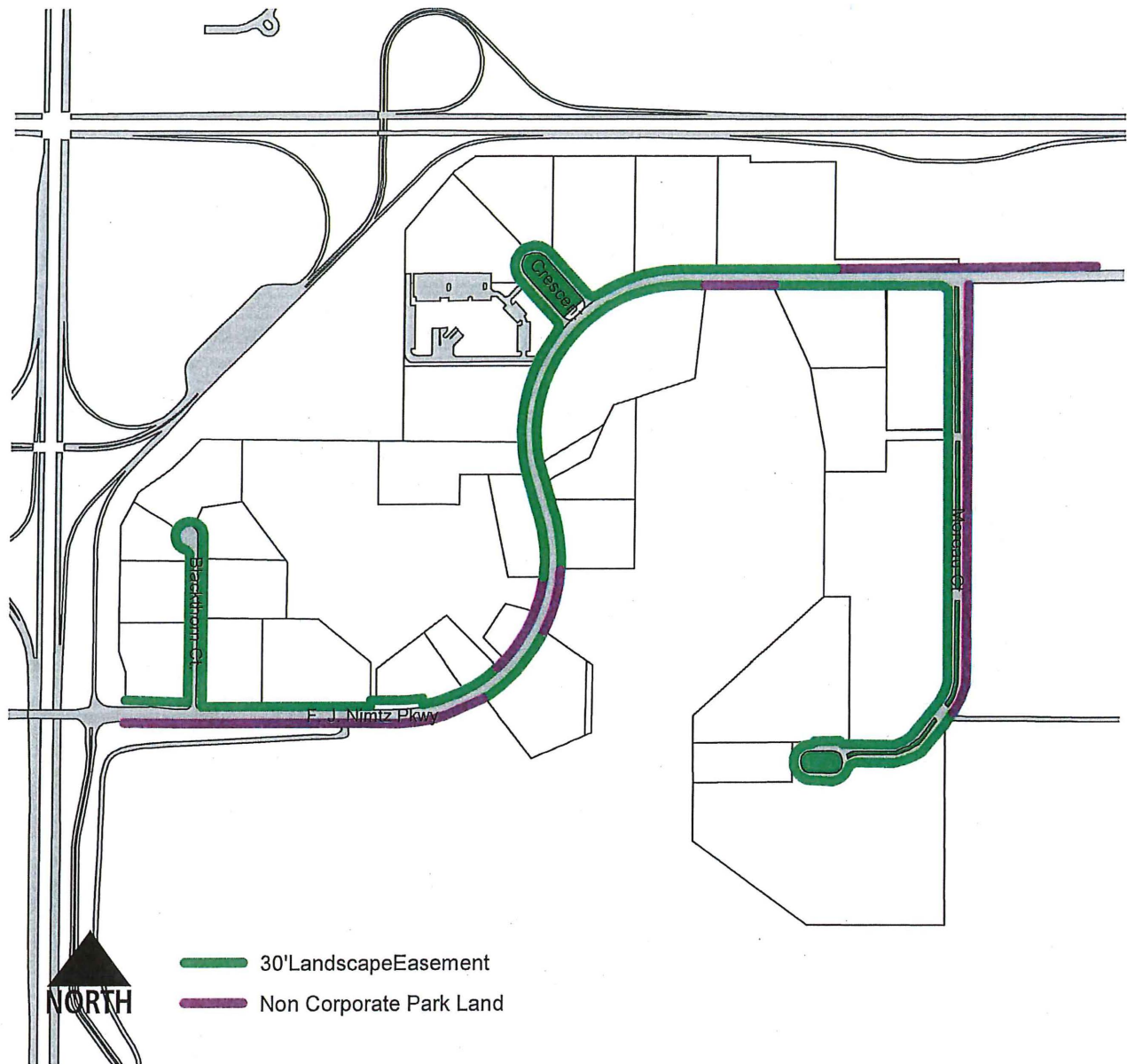


EXHIBIT B

Development Guidelines for Blackthorn Corporate Park

[See attached.]



Development Guidelines

Amended as of November 12, 2015

TABLE OF CONTENTS

Introduction	1
Design Review and Approval Process	1
Required Information	2
Architectural Design	3
Setbacks	4
Fencing	4
Loading and Service Areas	5
Vehicular Circulation and Parking	5
Site Utilities	7
Site Signage	7
Construction Phase	8
Landscaping	9
Maintenance	11
Additional Information	12

INTRODUCTION

These *Development Guidelines* are cited in the Declaration of Protective Covenants & Restrictions for the Blackthorn Corporate Park (Covenants) as Recorded at the Office of the Recorder, St. Joseph County, Indiana. The purpose of these Guidelines is to assist the Applicant in achieving a certain level of quality in site development, consistent with the concepts for Blackthorn.

These *Development Guidelines* do not supersede, but rather supplement, the Covenants and the specific requirements and provisions included therein. The Applicant should refer to the Covenants for a variety of specific requirements. The intent of the Covenants is to ensure consistent high quality development, thus protecting and enhancing the investment of all Blackthorn Owners.

The *Development Guidelines* shall apply to all properties in Blackthorn and are an addition to the requirements of the City of South Bend Municipal Code. All standards set forth herein are subject to the criteria established in the current Federal, State, or City of South Bend regulations, whichever criteria are the most restrictive.

The Applicant should refer to the Covenants, the City of South Bend Zoning Code, the Airport Economic Development Area Development Plan, and any other applicable instruments governing development within Blackthorn.

These *Development Guidelines* are intended to aid the Applicant in achieving a style, character and quality of development conforming to the goals and objectives for Blackthorn as described in Article II of the Covenants.

DESIGN REVIEW AND APPROVAL PROCESS

The Design Review and Approval Process has two steps. The first step is to submit to the Architectural and Site Plan Committee (Committee) a preliminary conceptual plan which includes: building elevation, types of materials, and a site plan. Step two is to submit more detailed plans and specifications as stated in section 5.4 of the Declaration of Protective Covenants & Restrictions for the Blackthorn Corporate Park.

In order to ensure the orderly marketing and development of the property, the Architectural and Site Plan Review Committee (Committee) will act promptly on any submittals seeking Committee approval. All building construction and site improvements must be reviewed and approved by the Committee before local or state building permits are secured and any on-site construction begins.

Prior to the Committee taking action, plans and specifications of the proposed project must be reviewed by the Committee. The Committee will act on each application within thirty (30) days of the receipt of the Required Information. For a typical building project, three (3) sets of plans and specifications must be submitted. The following section, "Required Information," details the information that must be included. One copy will remain on file with the Committee.

REQUIRED INFORMATION

The following list identifies the information that must be supplied to the Committee. Each Applicant is encouraged to submit preliminary drawings and information to the Committee for review before the formal review process begins.

Required Information is as follows:

1. Architectural plans and specifications including building elevations, types of materials, exterior colors, exterior site lighting, and floor plans;
2. A Site plan showing the location and design of all Improvements, including without limitation: lighting plan, number, size and layout of parking spaces, ingress/egress, setbacks, easements, utilities, and sign locations;
3. Complete landscaping plan showing type, species, variety, location and size (at installation) of all plantings including trees, shrubs, turf (seed or sod), irrigation plans and natural conservation areas, including the identification of all trees of six (6) or more inches in caliper which are specimen caliper plantings that will be removed or destroyed.
4. Sign and/or Signage plans showing size, height, design, color, materials, location, construction and lighting with respect to each intended Sign;
5. Such other information as the Committee may require which is pertinent to the evaluation of the plans and specifications.

Variances to the requirements of these Guidelines and the Covenants may be permitted when deemed appropriate by the Committee, and shall follow Section V of the Covenants.

ARCHITECTURAL DESIGN

The purpose of the Architectural Guidelines is to produce orderly and aesthetically pleasing development of high quality architecture in harmony with the character of Blackthorn and existing improvements, which serves to enhance not only the individual building, but also the entire Blackthorn development. It is the intent of these Guidelines to encourage innovative architectural design. All buildings shall conform with the following requirements.

1. Overall design: Buildings shall be designed in such a way that all sides of the building are equally attractive, rather than placing *all* emphasis on the front elevation and neglecting the aesthetics of the side and/or rear elevations. Any accessory buildings and enclosures, whether attached to or detached from the main building, shall be compatible to the main building in design and materials.
2. Exterior materials: The approval of exterior materials, including type, color, texture and durability, and the extent of use of any single material or combination of materials shall be solely at the discretion of the Committee. Exterior materials shall conform to and be in harmony with the external design of neighboring structures and natural landscape. The Committee shall not arbitrarily or unreasonably withhold its approval of such use of exterior materials. Applicants are encouraged to contact the Committee early in the architectural design stages of their project to discuss or propose appropriate exterior materials. Corrugated metal or pre-engineered metals installed with exposed fasteners are prohibited on the exterior wall of any building. The use of masonry materials as the dominant finish is strongly encouraged.
3. Rooftops: All rooftop surfaces, equipment and accessories shall be approved by the Committee according to the following guidelines:
 - a. The roof surface materials, texture, and reflectivity shall be reviewed considering their effects on the views of other Blackthorn Lots and structures.
 - b. Rooftop mechanical equipment, vents and ducts shall be screened, covered and installed in a manner which hides said mechanical equipment from the view of other Blackthorn Lots, public streets, common areas, and buildings. Screening height shall be a minimum of twelve inches above materials being screened.
 - c. Rooftop solar collectors, skylights and other potentially reflective rooftop building elements shall be designed and installed in a manner which prevents reflected glare and obstruction of views of other Blackthorn Lots

and buildings.

- d. Rooftop antennas and towers must be specifically approved by the Committee upon recommendation by the St. Joseph County Airport Authority, as to their height and location.

SETBACKS

The purpose of the Setback Requirements is to establish a coordinated streetscape image, provide sufficient space between buildings to ensure adequate light and privacy and to provide sufficient space between roads, buildings and parking to ensure privacy and sound control. No improvement or portion thereof shall be permitted within the Building Setback Areas as herein defined, except for improvements below ground, landscaping, signs, or driveways.

1. Minimum setbacks for buildings and parking lots from adjacent street rights-of-way and Lots shall be as follows:

Setback from Nimtz Parkway/Moreau Court	70 feet
Setback from all other public street right of way	50 feet
Setback from Side and Rear Lot Lines (not adjacent to streets)	25 feet

2. Driveways shall be setback from adjacent property lines at least twenty-five feet, except where access driveways are shared by adjacent owners. Access drives shared by two or more adjacent Sites is encouraged.
3. All setback areas shall be planted and landscaped in accordance with the Landscape Guidelines.

FENCING

The purpose of the Fencing Guidelines is to provide for security, for screening of unsightly areas, and for visual relief and buffering where appropriate. Fencing Guidelines are as follows:

1. No fence or wall of any kind shall be constructed unless specifically approved by the Committee.
2. Objects such as water towers, storage tanks, processing equipment, cooling

towers, communication towers, vents, and other structures or equipment shall be compatible with the building architecture or screened from view of adjacent properties, parking areas, public streets, and common areas by using fences and/or walls and shall be approved, in writing, by the Committee before construction or erection of said structures or equipment. The St. Joseph County Airport Authority may have final approval or disapprove of such structures or equipment concerning height and location.

3. Screen fences or walls shall be of a height at least equal to that of the equipment to be screened.
4. Materials and colors of fences and walls shall be compatible with the building architecture.
5. Chain link and/or barbed wire fencing is not permitted in Blackthorn without specific approval of the Committee.
6. No fence or wall shall be located within the setback areas of any lot.

LOADING AND SERVICE AREAS

The purpose of the Loading and Service Area Guidelines is to provide for the design of loading and servicing areas in a functional and aesthetically pleasing manner. The guidelines are as follows:

1. Loading and servicing areas shall not be visible from any public street or adjacent properties.
2. Loading and servicing areas shall be designed as an integral part of the building architecture.
3. Loading and servicing areas shall be designed so that the entire loading and servicing operation is conducted within the confines of the building site. No loading or servicing shall be conducted between a building and a street.
4. Installation of one or more truck bays or docks must be specifically approved by the Committee.

VEHICULAR CIRCULATION AND PARKING

The purpose of the Vehicular Circulation and Parking Guidelines is to provide for safe and convenient movement of motor vehicles, to limit vehicular/pedestrian conflicts, to

limit paved areas, to provide screening of paved areas, and to soften the visual impact of parking lots by providing interior planting. The guidelines are as follows:

1. Number of parking stalls: All parking facilities on each site shall be sufficient to serve the business conducted without using adjacent streets or parking lots. In the case of multiple use buildings, such as office and production, parking requirements shall be determined for each use separately. Minimum parking space requirements are as follows:

Office Buildings	1 space per 250 sq. ft.
Support Office/Research/others	1 space per 600 sq. ft.

2. Minimum parking stall dimensions shall be in accordance with the City of South Bend Zoning Code.
3. No parking is permitted on lawn, dirt, gravel, slag, or other unpaved surfaces. Each Owner and Occupant shall be responsible for enforcing this requirement on their respective Lot.
4. Parking will not be permitted on any street or in setback areas.
5. Visitor drop-off zones and parking should be provided near visitor entrances, however, visitor parking is not permitted within the setback area.
6. Employee parking shall be separated from visitor and front entrance traffic.
7. All parking shall be screened from public streets by appropriate landscaping (see Landscaping Guidelines).
8. In parking lots, landscaped islands must be installed in intervals of not less than every twenty parking spaces; and at the end of all rows of parking. Parking islands shall have a minimum width of nine feet. A continuous poured-in-place concrete curb shall be installed around all vehicular parking and circulation areas to protect lawns and landscaping from vehicular traffic.
9. The use of parking bumpers in surface parking lots is prohibited.
10. External loudspeakers or public address systems are prohibited.
11. All curb cuts onto public streets shall be on-grade curb return types. Residential type, ramped curb cuts are not permitted.
12. Parking areas shall be broken into sections not to exceed 200 cars. Parking areas shall be separated by a major landscaped buffer to provide visual relief.

13. All parking spaces must be designated by painted lines.
14. All parking lot and road pavement sections shall be designed by a registered engineer.

SITE UTILITIES

The purpose of the Site Utilities Guidelines is to promote the coordinated development of utilities in Blackthorn and to minimize utility costs and adverse visual impacts caused by utility structures and appurtenances. The guidelines are as follows:

1. All permanent utility lines shall be underground.
2. Transformers shall be grouped with utility meters where possible and shall be screened in a manner approved by the Committee.
3. Utility appurtenances including telephone pedestals, utility meters, irrigation system backflow preventers, transformers, etc. are not to be visible from adjacent sites, parking areas, public streets, pedestrian walkways and shall be screened in a manner approved by the Committee.

SITE SIGNAGE

The purpose of the Signage Guidelines is to establish a coordinated graphic program that provides for individual Occupant identification and directional communication in a distinctive and aesthetically pleasing manner. This graphic system is a major factor in creating and preserving the design character and integrity of Blackthorn. Size and placement of all signage shall be considered an integral part of site development, and a signage plan shall be submitted for the approval of the Committee.

The Signage Guidelines apply to the categories of signage as follows:

1. **Identification Signage:** The first category applies to signs used for identification of buildings and/or Owner/Occupants. Each site is limited to one Identification sign. The design, style and material of the Identification sign shall match and compliment the design, style and material of the building. Signs should be constructed of masonry with either backlit or externally lit cut-out graphics. The sign should include the full street address of the building. The design of all

identification signs must be approved by the Committee.

- a. Identification signs shall be constructed of masonry or stone materials. Where Identification signs use aluminum or other such metal, box construction, masonry or stone materials must represent more than fifty percent of the total area of the sign face.
 - b. In the case of multiple tenants, all may be identified on the same sign, up to a maximum of three tenants. Where there are more than three tenants, the building should be identified with a name and the tenants listed on a Directory inside the Building.
 - c. No sign shall exceed forty sq. ft. per face. It is the intention of the guidelines that sign size be in aesthetic balance with the site and building.
 - d. The sign shall be placed no closer than twenty-five (25) feet and no further than thirty (30) feet from the street.
 - e. The sign must be placed so it does not obscure any other identification, information, or vehicular control signs.
 - f. Building mounted identification signs must be specifically approved by the Committee.
2. Temporary Signage: Temporary signs can be used for real estate sales or leasing, construction and design team information or future Occupant identification. Temporary signs, including real estate signage, must be approved by the Committee in writing.
 3. Electronic and digital signage is not permitted in Blackthorn Corporate Park without specific approval of the Committee.

CONSTRUCTION PHASE

The purpose of the Construction Phase Guidelines is to minimize the adverse impacts of construction on the site's natural systems and other related activities:

1. Prior to starting construction of each major project phase, a pre-construction conference with the Committee shall be conducted by the Applicant. The Applicant shall arrange for representatives of the following organizations to attend the conference:

- a. General Contractor
- b. Applicant's development team
- c. Applicable utility companies as necessary

The general purpose of the pre-construction conference is to outline the phasing and responsibilities of key tasks such as:

- a. Utility connections
 - b. Final grading and drainage construction
 - c. Project driveway interface with existing roads.
 - d. Fine grading and landscaping.
2. Construction sites shall be maintained in a neat and orderly manner. All trash shall be kept in enclosed containers and emptied frequently.
 3. At the end of the construction period, by phase, the Applicant shall submit to the Committee reproducible copies of record drawings (as-builts) showing the actual locations of all underground utilities and irrigation systems.
 4. It is the responsibility of the Applicant to protect the area designated as Conservation Easement from all construction processes. This protection should include without limitation, enclosing the area and the area's drip line with a temporary fence and construction of a temporary ditch to prevent runoff from reaching the Conservation area.

LANDSCAPING

The Landscape Guidelines recognize that landscaping is of primary importance to the establishment of the design character of Blackthorn. The Guidelines are intended to promote the establishment of compatible and continuous landscape development to enhance and unify Blackthorn. More specifically, the guidelines are intended to provide for a neat and well maintained appearance in areas not covered by buildings, parking, or Conservation Easements; to enhance and preserve the existing site character; to minimize the adverse visual and environmental impacts of large paved areas. The landscaping requirements are as follows:

1. Applicants must submit a proposed landscape plan and budget. As a general

rule, Applicants are required to spend no less than four percent of total project construction costs or \$15,000 per acre on landscape improvements. Earth work, Lighting, and Site Utilities are not intended to be included in the costs of landscaping.

2. The landscape plan as required for review by the Committee must be prepared by a qualified Landscape Professional. Every effort shall be made to preserve as many existing trees as is reasonably practicable. In the event a healthy tree of six (6) or more inches in caliper must be removed or destroyed to permit construction, a replacement tree shall be planted. New plant materials shall compliment the existing natural landscape.
3. Landscaping in accordance with the approved plan must be implemented and completed within one hundred twenty (120) days, weather permitting, after building occupancy.
4. All parking lots shall be landscaped as follows:
 - a. Provide landscaped islands in parking lot interiors per the requirements of the Vehicular Circulation and Parking Guidelines.
 - b. The setback space between public streets and parking lots shall be fully landscaped. Where possible, berming shall be provided in order to screen parked cars. Berms shall conform to the Committee's requirements.

Where berms are not possible due to space limitations, the parking shall be screened through the use of coniferous trees and/or appropriate shrub plantings or screen walls.
5. A minimum of fifty percent (50%) of the space between the public street and parking lots of buildings shall be planted in irrigated lawn with the lawn on the street side of the landscaped area, in order to preserve a visually continuous lawn planting along public streets. This lawn planting may be interrupted with shrub beds at entry points and in key accent areas as appropriate.
6. All Plant Materials installed shall be of minimum size at the time of planting, as follows:
 - a. Shade trees 3 inch caliper
 - b. Coniferous trees 6 feet height
 - c. Ornamental trees 2 inch caliper
 - d. Shrubs 3 feet height or 1 gallon
7. All areas not paved or built upon, but disturbed during the construction period must be landscaped with trees and irrigated lawn or planted with native grasses

and ground covers. Large uninterrupted areas of gravel or bare soil is prohibited.

8. All irrigation systems are to be below ground, fully automatic systems in compliance with applicable building code requirements.

MAINTENANCE

The purpose of the Maintenance Guidelines is to define the minimum maintenance standards to promote a uniform, neat and clean appearance throughout Blackthorn. Maintenance requirements are as follows:

1. Owners and Occupants shall maintain their Improvements in good and sufficient repair and in an aesthetically pleasing manner.
2. Improvements which are damaged by the elements, vehicles, fire or any other cause shall be repaired as promptly as the extent of the damage will permit. Buildings which cannot be repaired due to such extensive damage, shall be demolished within sixty (60) days of the date of damage.
3. Buildings which happen to be vacant for any reason, shall be secured and maintained.
4. Sites shall be maintained in a safe, clean and neat condition free of rubbish and weeds. Roads and pavements shall be kept true to line and grade in good repair.
5. Landscape Areas: The following lists the maintenance responsibilities of the different landscape areas:
 - a. Common areas are landscaped and maintained by the Association.
 - b. Landscape Easements are initially landscaped and maintained by the Owner until such time as they are accepted by the Association. Thereafter, the lawn in the Landscape Easements will be maintained by the Owner and the plantings will be maintained by the Association.
 - c. Site and parking landscape areas are to be landscaped and maintained by the Owner in accordance with these guidelines.
 - d. Conservation Easements are to be reserved by the Commission. These areas are to be left natural and are not to be maintained.

6. Landscape Maintenance: Maintenance requirements of the landscaped areas in Blackthorn are as follows:
 - a. All plantings shall be maintained in a healthy growing condition. Fertilization, weeding and pruning are to be carried out on a regular basis.
 - b. Dead or dying plants shall be removed and replaced as quickly as possible (thirty days maximum).
 - c. All plantings are to be irrigated as necessary to maintain healthy growing conditions.
7. If minimum maintenance standards are not achieved by the Owner or Occupant, the Association may take action as set forth in the Covenants.

ADDITIONAL INFORMATION

The following information is not required by the Committee; however, Developers are encouraged to submit the information as it may avoid unnecessary delays.

1. Complete grading and drainage plans showing all relevant elevations of drainage and retention areas, flow points and storm detention, and provisions for erosion control;

The purpose of the site grading plans are to unify the grading of Blackthorn in terms of earth form, preservation of topographic features and compatibility of relationships between buildings, parking areas, roads, and adjacent properties. All site grading shall conform to the following requirements:

- a. Lot grading will be done in such a way as to preserve the existing topographic features and to provide positive drainage. All site grading shall be designed to meet the following standards:

	Minimum Slope	Maximum Slope
Landscape areas	2%	3:1
Parking Lots	2%	4%
Driveways	2%	5%
Pedestrian paths	1%	8%

- b. No cut or fill slopes of any type shall be steeper than 3:1 with smooth vertical transitions. Where space limitations demand, terracing with

approved retaining walls shall be utilized.

- c. Where retaining walls are required, they shall be of a material compatible with the building architecture.
 - d. Berms, channels, swales, etc., shall be graded in such a way as to be an integral part of the grading, and paved surfaces designed with smooth transitions between changes in slope.
2. Proposed construction schedule covering each phase of construction on the Site;
 3. Description of proposed operations and/or uses, including number of employees expected and proposed for the future;
 4. Characteristics of the intended use of the Site with emphasis on measures taken to mitigate any adverse effects caused by the development;
 5. Architect's total estimated cost of construction of the proposed improvements.

Owners are encouraged to construct additional paths on each lot and provide bike storage areas on each Site for employees.

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