

2005-037458

12-5-05

**DECLARATION OF COVENANTS AND RESTRICTIONS  
APPLICABLE TO LOTS IN BEAUTY CREEK VILLA HOMES, AN  
ADDITION TO PORTER COUNTY, INDIANA**

**NOVEMBER**

This Declaration made this 2<sup>ND</sup> day of ~~October~~, 2005 by Naples-VPZ Development LLC, hereinafter referred to as "Owner" or "Developer".

**RECITALS, INTENT AND PURPOSES**

WHEREAS, the Owner holds title to certain real estate in Porter County, Indiana, which is more particularly described as "Final Plat Beauty Creek Villa Homes" attached hereto and incorporated herein by reference; and

WHEREAS, the Owner as Developer has caused a plat of subdivision to be approved by the Porter County Indiana Planning Commission and the same has been recorded in the Office of the Recorder on the 5<sup>th</sup> day of December, 2005 as Document No. 2005-037457.

49-F-6

NOW, THEREFORE, the Owner and Developer hereby declare that all of the property described on "Final Plat Beauty Creek Villa Homes" except Open Space A, B, C & Park Lot shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the property. These easements, restrictions, covenants and conditions shall run with the real estate described in Exhibit "Final Plat Beauty Creek Villa Homes" as part of a general plan of development and shall be binding on all parties having or acquired any right, title or interest in the property or any part thereof, and shall inure to the benefit of each owner thereof.

**ARTICLE I**

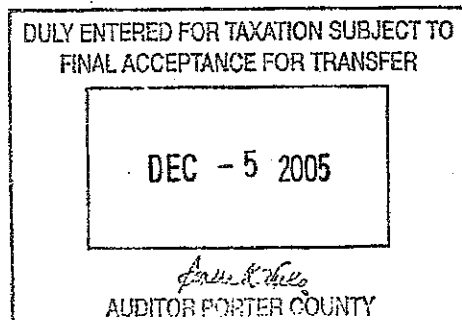
**ARCHITECTURAL CONTROL**

No building, improvement, or other structure shall be commenced, erected or maintained on the property and no exterior addition, change or alteration shall be made until the plans, specifications, plot plan, and exterior elevations have been submitted to and approved in writing by the developer (Naples-VPZ Development, LLC), or its duly authorized agents or assigns. The submission so made shall also include the square footage of the proposed improvement. Architectural approval shall be the responsibility of the developer until 90% of the units have been built. At that time, the Property Owners Association shall create a committee and be responsible for approvals.

2005-037458

STATE OF INDIANA  
PORTER COUNTY  
FILED FOR RECORD  
12/05/2005 03:51PM  
LINDA D. TRINKLER  
RECORDER

REC FEE: \$25.00  
PAGES: 8



The Owner and Developer, his employees, agents and representatives shall not be liable for any damage, loss or prejudice suffered or claimed by any owner or contractor who submits such plans on account of (a) any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions; (b) any structural or other defects in any work done according to such plans and specifications; (c) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (d) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, and; (e) the development of any property within the Beauty Creek Villa Homes to Porter County, Indiana. Any person submitting plans to the Owner and Developer shall hold the Owner and Developer harmless from all damage, loss or prejudice suffered or claimed by any third party, including attorneys' fees incurred.

## ARTICLE II

### USE/DESIGN RESTRICTIONS

- A. CONVEYANCE.** Each lot shall be conveyed as a separately designated and legally described freehold interest subject to the terms, conditions and provisions hereof.
- B. USE.** All lots in this subdivision shall be used for single-family attached residential purposes only.
- C. MINIMUM FLOOR AREA STANDARD LOTS.** The computation of square footage shall exclude porches, breezeways, garages and basements. All garages shall be attached to the principal residence structure and shall be sized for a minimum of two cars. Minimum square footage is per unit and is measured to the centerline of the building.
- 1.) All ranch & lofted ranch residential structures shall have a minimum of 1,600 square feet not including basement levels on normal or walkout lots. If the loft of a ranch exceeds 20% of the 1<sup>st</sup> floor square footage, it must meet the square footage minimums of a 1 ½ or 2 story.
  - 2.) All 1 ½ and 2-story residential structures shall have a minimum total floor area of 1,900 square feet.
  - 3.) Bi Level & Tri level homes shall be prohibited.
  - 4.) No dwelling including value of lot shall have an initial offering price of less than \$199,900.
- D. ROOF PITCHES.** Roof pitches are to be a minimum of 6/12.

**E. EXTERIOR.**

1. All residential dwellings shall have on hundred percent (100%) face brick or stone on the front first floor exterior thereof.
2. Only horizontal pre treated cedar siding, cement board siding, stone, dryvit or brick may be used on the remainder of the structure. Vinyl siding, aluminum siding and 4x8 sheets of siding shall be specifically prohibited.

**F. TEMPORARY STRUCTURES.** No structure of a temporary character, such as a trailer, basement, tent, shack, garage, barn, or other building shall be used on the property at any time as a residence, either temporarily or permanently.

**G. STORAGE SHEDS.** No accessory storage shed or other additional structure shall be placed, erected or altered on any lot until the complete construction plans, site plan and specifications are approved pursuant to the section entitled, "ARCHITECTURAL CONTROL." Notwithstanding anything contained herein to the contrary, no more than one (1) additional structure shall be permitted on each lot. The total square footage of said additional structure shall not exceed one hundred twenty (120) square feet and the materials and color used on the exterior of said structure shall be the same as the materials and color used on the exterior of the residence located on said lot.

**H. TYPE OF CONSTRUCTION.** No building previously constructed elsewhere shall be moved upon any lot within this subdivision.

**I. APPEARANCE.** All plumbing stacks and roof vents or ventilators shall be located in the rear of the house roof.

**J. DRIVEWAYS.** All driveways are to be of rigid poured concrete or paver brick.

**K. STORAGE.** No recreational vehicle (motor home, trailer, boat, camper, etc.) shall be permitted to be parked on any lot or anywhere in the subdivision for more than 48 hours unless in a garage.

**L. MAILBOXES.** A standard mailbox approved by the developer shall be installed at the lot purchaser or homeowners' expense.

**M. FENCES/POOLS.** Fences no greater than (5') five feet in height may be constructed around side and rear yards of any lot in the subdivision. A (6') six foot height may be allowed if the same is required by ordinance or statute around a swimming pool after the pool has been installed. In any and all events, wood and chain link fences are prohibited from use anywhere in the subdivision. All fences shall be of PVC material, brick or wrought iron and of a design approved by the architectural committee. Architectural approval is required on a site plan with specifications prior to the installation of the fence. No above ground swimming pools shall be installed on any homesite.

**N. SIDEWALKS.** Any residence or dwelling house erected on any lot shall provide a five (5') foot public sidewalk of poured concrete along all street frontage and within the public right-of way.

Concrete sidewalks must be installed at time of construction prior to occupancy. Waiver may be granted December 1-April 1 due to inclement weather

**O. CURBS.** The lot purchaser or homeowner shall be responsible for the curbs installed by the developer. Should a curb be damaged during or after construction, the builder or owner shall replace damaged section within 90 days in a matter satisfactory to Porter County Highway Dept. Should owner fail to do this, developer may have the work done and record a lien against the property.

**P. GRADING & EXCESS MATERIAL.**

- 1.) Grading of lots shall be in compliance with the Porter County requirements and the master-grading plan prepared for this development plus grading shall be performed so as not to damage the adjacent lot or lots.
- 2.) All excess material that is to be removed from any lot by reason of construction purposes shall not be removed from this subdivision. All such materials shall be used for fill purposes on any lot or lots within Beauty Creek whose existing grades are lower than the adjacent top of street curb as determined by declarant. At the prior written direction of the architectural review committee, said surplus material shall be removed and so deposited at the expense of the party charged with removing said material. Lot owners who are depositing excess material are responsible to level out material.

- 3.) No building debris or concrete (including washouts) is to be placed on any lot other than the lot they are working on at present time. All infrastructure are the responsibility of the builder/lot owner until Porter County accepts the subdivision. Owners, whether legal or reserve, are to maintain their lot(s) from debris, mowing and erosion.

**Q. LOT MAINTENANCE.** Builder or lot purchaser agrees to maintain lot and not allow weeds or grass to grow in excess of 6" in height. If builder fails to maintain lot, developer may hire a contractor to cut weeds and bill buyer or builder. Should bill not be paid within 30 days, developer may record a lien against the lot.

**R. EROSION CONTROL.** The front, side and rear yards of each lot shall be seeded or sodded in grass within nine (9) months after the Certificate of Occupancy is issued, furthermore all owners of record shall be responsible for Erosion Control maintenance of their lot from date of contract sale.

**S. TREES.** Homeowners shall be required to plant one (1) tree within ninety (90) days of occupancy between the structure and the sidewalk and 2 trees in the rear of home. On corner lots, three (3) trees must be planted (1 in front and 2 on side). Trees must be at least 1 ½" caliper. Developer shall have the right to plant and charge homeowner tree cost and labor for non-compliance with lien rights for non-payment within thirty (30) days.

**T. SOILS.** All soils are guaranteed suitable for normal building loads to a depth for a full eight (8) foot basement under the main structure and 8' garage footings. In the event unsuitable soil is found, it shall be the Owners option to refund all earnest money or repair soils to be suitable for building. In any event, all building is to cease until a mutual decision has been reached between the parties.

### ARTICLE III

#### OWNERS ASSOCIATION

**A. OUTLOTS.** As shown on all the recorded Plats of this Subdivision, Open Space A,B,C and Park Lot &/or Detention Areas and Property Owners Association Park shall be platted and set aside for the specific purpose of utility easements, storm water management and park use.

**B. PROPERTY OWNERS ASSOCIATION.** A Property Owners Association shall be created and incorporated for the express purpose of ownership of the Outlots and Park, and to ensure the high standards of maintenance and operation of the property in the Subdivision set aside for entrance monument, utility easements and storm water management. The Developer shall be responsible for the Property Owners Association Management until 80% of the units are occupied. At that time, a meeting of all owners shall occur and a Board of Directors elected from the Owners. The Board shall consist of a President, Vice President, Secretary and Treasurer. Bylaws of the Association will be approved and ratified by a simple majority of the owners present at the initial meeting, and may be modified as stated in the bylaws. This authority shall specifically not apply to Article 11 of this instrument. Every record owner of a fee simple interest in the lots in the Subdivision shall become and be a member of the Not-for-Profit Corporation, and each such member shall be entitled to one (1) vote for each lot owned by him on each matter submitted to a vote of members, provided, that where title to a lot is in more than one (1) name, such co-owners acting jointly shall be entitled to but one (1) vote. Each adjacent 1/2 lot as measured to the centerline of the unit on the Plat of the Subdivision shall be deemed to be a separate lot entitling the Owner thereof to one (1) vote for each such adjacent lot owned. All owners shall be responsible for annual assessments as determined by the Bylaws and Rules and Regulations established by the Beauty Creek Villa Homes Property Owners Association. Each assessment, together with such interest, costs and reasonable attorney fees shall be the personal obligation of the person who is the owner of such homesite at the time the assessment is levied.

**C. USE OF OUTLOTS.** All Owners of the Beauty Creek Villa Homes shall be permitted to use the area of the Outlots delineated on the Plat for any use not inconsistent with the Drainage and Retention designed for the Subdivision. No structure of any type or kind shall be erected, placed or altered nor shall any of the Natural areas be changed or disturbed on any Outlots in any manner by any party or lot owner.

**B. ENFORCEMENT.** The Owner or Developer, his heirs, successors and assigns, or any owner of a lot or any mortgagee of property within the subdivision, shall have the right to enforce any provision of this Declaration by any proceeding of law or equity. The failure to enforce any provisions of this Declaration shall in no event be deemed a waiver of the right to do so thereafter. Homeowners Association shall have the right to adopt and enforce violations through fines and shall have lien rights to enforce payment. In any litigation relating to the Declaration of Covenants and Restrictions, including litigation with respect to any instrument, document or agreement made under or in connection with the Declaration, the prevailing party as deemed by a court of competent jurisdiction shall be entitled to recover all of its litigation costs, expenses and reasonable attorney's fees.

Restrictions do not provide for forfeiture or reversion thereof.

In witness whereof, Naples-VPZ Development LLC, has caused this instrument to be signed this 2nd day of November, 2005.

William McCabe  
William McCabe, Managing Partner

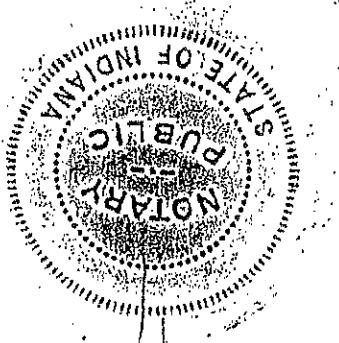
STATE OF INDIANA     )  
                                  )  
COUNTY OF LAKE    )

SS:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named William McCabe, and to me known to be such Managing Partner and acknowledged the execution of the foregoing Document for and on behalf of said Limited Liability Company and by its authority.

WITNESS my hand and Notarial seal this 2nd day of November, 2005.

Melissa Buckmaster Johnson  
Melissa Buckmaster Johnson



My Commission Expires: 9/20/10

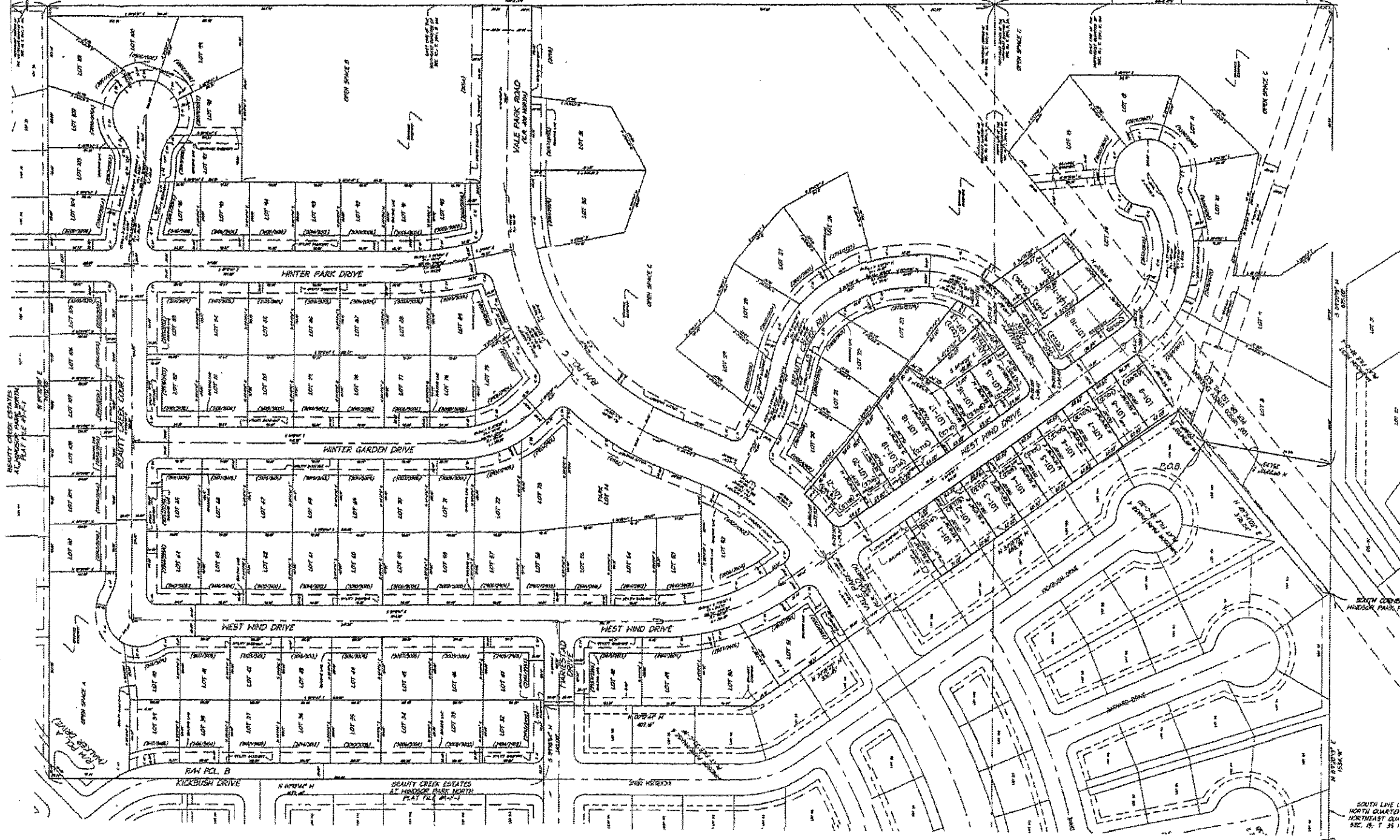
County of Residence : Lake

THIS INSTRUMENT PREPARED BY: William McCabe

### DESCRIPTION OF BEAUTY CREEK VILLA HOMES

A parcel of real estate in the Southeast Quarter of Section 10 and the Northeast Quarter of Section 15, Township 35 North, Range 6 West of the Second Principal Meridian in Porter County, Indiana, described as follows:

Commencing at the Southwest corner of said Southeast Quarter, also being the Northwest corner of said Northeast Quarter; thence South 00°23'09" East 663.55 feet along the West line of said Northeast 1/4 to the South line of the North Quarter of said Northeast Quarter and said South line also being the South line of Windsor Park Phase 2 as per plat thereof, recorded in Plat File 33-C-3B in the Office of the Recorder of Porter County; thence North 89°20'13" East 1534.91 feet along said South lines to the Southeast corner of Lot 92 in said Windsor Park Phase 2; thence North 48°34'03" East 378.84 feet along the Southerly line of said Windsor Park Phase 2 and the Southerly line of Windsor Park Phase 4 as per plat thereof, recorded in Plat File 33-C-3D in the Office of the Recorder of Porter County to the Southeast corner of Lot 102 in said Windsor Park Phase 4 and the POINT OF BEGINNING; thence Northeasterly and Northwesterly along the Southerly and Easterly lines of said Windsor Park Phase 4 the following 2 courses and distances; North 48°34'03" East 77.60 feet and North 34°18'22" West 683.76 feet to the Northeast corner of Lot 108 in said Windsor Park Phase 4 said Northeast corner also being the Southeast corner of Windsor Park Phase 6 as per plat thereof, recorded in Plat File 33-C-3F in the Office of the Recorder of Porter County; thence Northwesterly, Northerly and Westerly along the Easterly and Northerly lines of said Windsor Park Phase 6 the following 3 courses and distances; North 34°18'22" West 330.45 feet, North 00°12'44" West 407.16 feet and South 89°18'54" West 140.00 feet to the Southeast corner of Beauty Creek Estates at Windsor Park North as per plat thereof, recorded in Plat File 49-F-1 in the Office of the Recorder of Porter County; thence Northerly and Easterly along the Easterly and Southerly lines of said Beauty Creek Estates at Windsor Park North the following 2 courses and distances; North 00°12'44" West 977.41 feet and North 89°20'58" East 1470.48 feet to the East line of the Southeast Quarter of said Section 10; thence South 00°31'23" East 1862.06 feet along said East line to the Southeast corner of said Southeast Quarter said Southeast corner also being the Northeast corner of said Northeast Quarter of Section 15; thence South 00°27'00" East 664.49 feet along the East line of said Northeast Quarter to the Southeast corner of said North Quarter of the Northeast Quarter of Section 15; thence South 89°20'13" West 875.00 feet along the South line of said North Quarter; thence North 09°22'12" East 251.23 feet to the Point of Beginning. Containing 71.79 acres more-or-less and subject to all legal highways and easements.



SOUTH LINE ( NORTH QUARTER  
NORTHEAST QUARTER  
SEC. 16, T. 35 N.