

*Amended  
Commitments*

**IN THE HANCOCK COUNTY AREA PLANNING COMMISSION  
RE: PETITION OF HANCOCK PROPERTIES, INC. FOR APPROVAL  
OF A PRELIMINARY PLAN FOR BAY CREEK SUBDIVISION**

**AMENDED COMMITMENT CONCERNING THE USE AND  
DEVELOPMENT OF REAL ESTATE**

In accordance with I.C. §36-7-4-613, Hancock Properties, Inc., previous owner of the subject real estate, filed for approval before the Hancock County Area Wide Planning Commission a Petition for Approval of Preliminary Plan regarding the subject real estate.

In furtherance of said Petition, on June 15, 1998, Hayes F. O'Brien, as President of Hancock Properties, executed certain Commitments regarding the use and development of the real estate.

The Town Council of the Town of McCordsville, Indiana, accepted said Commitments and gave its approval for the Preliminary Plan of Hancock Properties, Inc. pertaining to said real estate thereafter known as Bay Creek at Geist.

Subsequent to acceptance of said Commitments from the Town of McCordsville, Indiana, Hancock Properties, Inc. sold the subject real estate to Cross Cord LLC.

Since the transfer of said real estate from Hancock Properties, Inc. to Cross Cord LLC, there have arisen certain questions with regard to said Commitments and in order to clarify said Commitments, they are restated herein as amended.

Statement of COMMITMENT for real estate described on Exhibit "A" attached hereto:

In consideration of approval of the Town of McCordsville and the Hancock County Area Planning Commission of a Preliminary Plan heretofore submitted by Hancock Properties, Inc. and subsequently acquired by Cross Cord LLC, Cross Cord LLC, for and on behalf of its predecessors in interest, itself, and its successors in interest, agree that:

1. The number of lots shall not exceed 308 houses with an average minimum lot width of 75 feet;
2. The homes located within the 30 acres located in the northwest portion of the project shall have a minimum living space of 2,000 square feet for a single story house and 2,400 square feet for a two-story house exclusive of basements, porches and garages;

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HANCOCK COUNTY RECORDER  
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*Carly DeWitt*

*Carolyn Stacey*  
HANCOCK COUNTY RECORDER

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3. The minimum square footage of houses in all other areas of the project shall be 1,500 square feet for a single story house and 1,700 square feet for a two-story home exclusive of garages, porches and basements;
4. Where vinyl siding is used on a house, it must be of the highest premium grade and a minimum of 50% of the front of the house must be masonry. Also, where a vinyl house backs up to a county road, then 50% of the back of the house must be masonry. If a vinyl house is located on a corner lot, then 50% of the front of the house and 50% of the side of the house facing the street must be masonry. If a home is of a Colonial or Cape Cod design, then this masonry requirement shall not apply. There may only be 6 colors of vinyl used on houses in the project. The Town Council for the Town of McCordsville shall approve the 6 colors of vinyl and the style of vinyl to be used shall be lap-board in appearance. For the purposes of calculating the 50% masonry requirement set forth herein, excluded from said calculation shall be the area occupied by windows, doors and garage doors. With regard to vinyl siding mentioned herein, Hancock Properties, Inc. or its representative shall, at the time it requests approval of this building permit through the Town of McCordsville, Indiana, submit simultaneously therewith a certificate from the Vinyl Siding Institute indicating the proposed siding to be used associated with said permit until it has been approved by said Institute.
5. The wooded area (approximately 4 acres) located adjacent to the southeast boundary of Highland Springs shall not be developed and shall be kept in its natural state as a common area;
6. The portion of the Real Estate designated for Retail/Commercial on the Commercial Areas shown on the Preliminary Plan may only be used for only those business uses designated as "Acceptable - Permitted Uses" on "Exhibit B" hereto;
7. No duplexes, condominiums, or multi-family uses of any type will be permitted on the Real Estate;
8. The Bay Creek Property Owners Association, Inc (to be formed by the Developer) shall provide for up to one hundred (100) associate family amenities package memberships to be made available (on a first come first serve basis) to families living in Highland Springs or Cardinal Woods or within a one (1) mile radius of Bay Creek provided that such area is located within the corporate limits of the Town of McCordsville. The annual dues to be charged associate members shall not exceed the amount charged regular members who are residents of Bay Creek;

9. The type and design of street lights to be located within Bay Creek shall be subject to the approval of the Town of McCordsville; and
10. The Developer shall pay up to one-half (½) of the cost of a pedestrian trail or walkway to be located within the sixty-five (65) foot half right-of-way on the east side of County Road 600 West (Mt. Comfort Road) along the entire edge of development.

This COMMITMENT shall be binding on Hancock Properties, Inc., Cross Cord LLC, its successors and assigns, subsequent owners of the Real Estate, and any other person acquiring an interest therein.

This COMMITMENT and the Preliminary Plan may be modified or terminated only by a decision of the Hancock County Area Planning Commission which has been approved by the Town of McCordsville, both made only after a public hearing after proper notice has been given.

This COMMITMENT may be enforced jointly or severally by:

1. The Hancock County Area Planning Commission and the Hancock County Board of Zoning Appeals;
2. The Town of McCordsville, Indiana;
3. The Hancock County Commissioners; and
4. Any person who is aggrieved by a violation of the COMMITMENT, including but not limited to all owners of real estate which is abutting or adjoining the Real Estate.

In the event it becomes necessary to enforce this COMMITMENT in a court of competent jurisdiction, and the owner of the Real Estate is found to be in violation of this COMMITMENT, the owner shall pay all reasonable costs in the enforcement of this COMMITMENT, including attorney fees.

The undersigned hereby authorizes the Hancock County Area Planning Commission, the Town of McCordsville, Indiana, and the Hancock County Commissioners to record this COMMITMENT in the Office of the Recorder of Hancock County, Indiana upon final approval of the Hancock County Commissioners and the Town of McCordsville, Indiana, to the Petition for Approval of Preliminary Plan.

This COMMITMENT shall run with the land and be binding upon the parties hereto,

Hancock County Recorder  
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Attachment  
Nick Hofmeister  
April 13, 1998

Acceptable Businesses and Non Acceptable Businesses for Bay Creek Retail Development Section

ACCEPTABLE - Permitted Uses

1. Retail Business
2. Eating & Drinking Establishments
3. Offices & Banks
4. Personal & Professional Services
5. Public Parks and Playgrounds
6. Fire Stations & Municipal Buildings
7. Public Utility Structures
8. Accessory Uses
9. Essential Service
10. Cleaning & Laundry Plants
11. Private Clubs
12. Drive-in Businesses
13. Veterinary Hospital
14. Group Child Care Centers Class A and B
15. Gas Station & Convenience Store

NON-ACCEPTABLE - Special Exceptions

1. Supply Yards
2. Dairies
3. Multiple-Family Dwellings
4. Wholesale Business
5. Warehouses
6. Commercial Schools
7. Churches
8. School, Public and Parochial
9. Farm Implement Sales, Service
10. Mobile Home Parks
11. Public Transportation Terminals
12. Mobile Home Sales
13. Livestock Auction
14. Recreation Vehicle Parks
15. Slaughter House
16. Used Car Sales
17. Massage parlor, massage schools, massage clinic and similar facilities.  
(Ord. Number 1995-10-A 10-2-95)
18. Adult book store, adult museum or similar adult facility.
19. Adult movie theater, adult amusement arcade or similar adult facility
20. Mobile Home
21. Antique shops

IN THE HANCOCK COUNTY AREA PLANNING COMMISSION  
RE: PETITION OF HANCOCK PROPERTIES, INC. FOR APPROVAL  
OF A PRELIMINARY PLAN FOR BAY CREEK SUBDIVISION

COMMITMENT CONCERNING THE USE AND DEVELOPMENT OF REAL ESTATE

In accordance with I.C. §36-7-4-613, Hancock Properties, Inc. ("Petitioner"), having heretofore filed its Petition for Approval of a Preliminary Plan (the "Petition") regarding real estate located in Hancock County, Indiana, which is described below, makes the following COMMITMENT concerning the use and development of the parcel of real estate ("Real Estate"):

(See attached "Exhibit A" for legal description)

Statement of COMMITMENT:

If the Preliminary Plan of the Real Estate is approved as presented to the Hancock County Plan Commission on May 26, 1998, the Petitioner agrees that:

1. the number of lots shall not exceed 308 houses with an average minimum lot width of 75 feet;
2. the homes located within the 30 acres located in the northwest portion of the project shall have a minimum living space of 2,000 square feet for a single story house and 2,400 square feet for a two-story house exclusive of basements, porches and garages;
3. the minimum square footage of houses in all other areas of the project shall be 1,500 square feet for a single story house and 1,700 square feet for a two-story home exclusive of garages, porches and basements;
4. where vinyl siding is used on a house, it must be of the highest premium grade and a minimum of 50% of the front of the house must be masonry. Also, where a vinyl house backs up to a county road, then 50% of the back of the house must be masonry. If a vinyl house is located on a corner lot, then 50% of the front of the house and 50% of the side of the house facing the street must be masonry. If a home is of a colonial or Cape Cod design, then this masonry requirement shall not apply. There may only be 6 colors of vinyl used on houses in the project. The Town Council for the Town of McCordsville shall approve the 6 colors of vinyl and the style of vinyl to be used shall be lap-board in appearance;
5. the wooded area (approximately 4 acres) located adjacent to the southeast boundary of Highland Springs shall not be developed and shall be kept in its natural state as a common area;
6. the portion of the Real Estate designated for Retail/Commercial on the

Commercial Areas shown on the Preliminary Plan may only be used for only those business uses designated as "Acceptable - Permitted Uses" on "Exhibit B" hereto;

7. no duplexes, condominiums, or multi-family uses of any type will be permitted on the Real Estate;
8. the Bay Creek Property Owners Association, Inc. (to be formed by the Developer) shall provide for up to one hundred (100) associate family amenities package memberships to be made available (on a first come first serve basis) to families living in Highland Springs or Cardinal Woods or within a one (1) mile radius of Bay Creek provided that such area is located within the corporate limits of the Town of McCordsville. The annual dues to be charged associate members shall not exceed the amount charged regular members who are residents of Bay Creek;
9. the type and design of street lights to be located within Bay Creek shall be subject to the approval of the Town of McCordsville; and
10. the Developer shall pay up to one-half (1/2) of the cost of a pedestrian trail or walkway to be located within the sixty-five (65) foot half right-of-way on the east side of County Road 600 West (Mt. Comfort Road) along the entire edge of development.

This COMMITMENT shall be binding on the Petitioner, its successors and assigns, subsequent owners of the Real Estate, and other persons acquiring an interest therein.

This COMMITMENT and the Preliminary Plan may be modified or terminated only by a decision of the Hancock County Area Planning Commission which has been approved by the Town of McCordsville, both made only after a public hearing after proper notice has been given.

This COMMITMENT may be enforced jointly or severally by:

1. The Hancock County Area Planning Commission and the Hancock County Board of Zoning Appeals;
2. The Town of McCordsville, Indiana;
3. The Hancock County Commissioners; and
4. Any person who is aggrieved by a violation of the COMMITMENT, including but not limited to all owners of real estate which is abutting or adjoining the Real Estate.

In the event it becomes necessary to enforce this COMMITMENT in a court of competent

jurisdiction, and the owner of the Real Estate is found to be in violation of this COMMITMENT, the owner shall pay all reasonable costs in the enforcement of this COMMITMENT, including attorney fees.

The undersigned hereby authorizes the Hancock County Area Planning Commission, the Town of McCordsville, Indiana, and the Hancock County Commissioners to record this COMMITMENT in the Office of the Recorder of Hancock County, Indiana upon final approval of the Hancock County Commissioners and the Town of McCordsville, Indiana to the Petition for Approval of Preliminary Plan.

This COMMITMENT shall run with the land and be binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, Hancock Properties, Inc. has executed this instrument this 15<sup>th</sup> day of June, 1998.

HANCOCK PROPERTIES, INC.

BY: James A. O'Brien  
ITS: President

"PETITIONER"

STATE OF INDIANA        )  
  )        SS:  
COUNTY OF HANCOCK    )

Before me, a Notary Public in and for said County and State, personally appeared JAMES A. O'BRIEN, the President of Hancock Properties, Inc., Petitioner, who acknowledged the execution of the foregoing instrument, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 15<sup>th</sup> day of June, 1998.

Ronald R. Pritzke

Ronald R. Pritzke, Notary Public



My Commission Expires: 11/13/01  
County of Residence: Hancock

This instrument was prepared by Ronald R. Pritzke, Attorney at Law.