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NICOLE KEESLING
ALLEN COUNTY RECORDER
FORT WAYNE, IN

DEDICATION, PROTECTIVE
RESTRICTIONS, COVENANTS, LIMITATIONS, EASEMENTS AND
APPROVALS APPENDED TO THE PLAT OF ROOSEVELT RESERVES, SECTION I, A
SUBDIVISION IN ADAMS TOWNSHIP, ALLEN COUNTY, INDIANA

Roosevelt Land Development Group, LLC (the "Developer") declares that it is the owner of the real estate shown and legally described in this plat ("Real Estate"), and lays off, plats and subdivides the Real Estate in accordance with the information shown on the certified plat attached to and incorporated by reference in this document. The platted Subdivision shall be known and designated as Roosevelt Reserves, Section I, a Subdivision in Adams Township, Allen County, Indiana (the "Subdivision"). All capitalized terms used herein shall have the meaning provided in Article I below unless expressly stated otherwise, or where context clearly indicates and requires an alternate meaning.

The Lots shall be subject to and impressed with the covenants, limitations, easements and restrictions hereinafter set forth. The provisions herein contained shall run with the land and shall inure to the benefit of the Owners of the Lots and the land included therein, and their respective legal representatives, successors, grantees, heirs and assigns.

The Lots shown on the Plat are numbered from 1 through 49, inclusive, and all dimensions are shown in feet and decimals of a foot on the Plat. All streets and easements specifically shown or described are expressly dedicated to public use for their usual and intended purposes.

PREFACE

In addition to the recordation of the Plat and this Declaration, there will also be filed with the Secretary of State of Indiana, articles of incorporation for an Indiana not-for-profit corporation to be known as Roosevelt Reserves Association, Inc. (the "Association"), and each Owner of a Lot in the Subdivision shall become a member of the Association, and be bound by its articles of incorporation and bylaws, upon acquisition of title to a Lot. Developer reserves the right to subdivide and plat, and to consent to allow third parties to subdivide and plat nearby and/or adjacent real estate as additional Sections of the Subdivision, and the lots in such additional Sections subsequently platted and subdivided may also be permitted or required to be members of the Association upon acquisition of title to a lot to such additional sections as may be more particularly provided in the recorded plats of such additional sections, if any.

ARTICLE I
DEFINITIONS

Section 1.1. Definitions. The following words and phrases shall have the meanings stated, unless the context clearly indicates that a different meaning is intended:

- a. "**Architectural Control Committee**" shall mean and refer to the Developer, the Board of Directors, or their respective designees, exercising the supervisory

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authority described in Article VI of this Declaration, subject to and as further described in such Article VI.

- b. "Articles" shall mean and refer to the articles of incorporation of the Association approved by the Indiana Secretary of State, including any and all amendments to those articles.
- c. "Assessment" shall mean and refer to and Annual Assessment or Special Assessment levied in accordance with and further described in Article V below.
- d. "Association" Roosevelt Reserves Association, Inc. an Indiana nonprofit corporation and/or its successors and assigns.
- e. "Authority Transfer Date" shall have that meaning provided in Section 4.1 below.
- f. "Builder" shall mean an individual or entity who is licensed to build single-family residential dwellings in the county in which the subdivision is located and is the Owner of a Lot in the Subdivision.
- g. "Board of Directors" shall mean and refer to the duly elected or appointed board of directors of the Association pursuant to the Bylaws.
- h. "Bylaws" shall mean the Bylaws adopted by the Association, including any and all amendments to those Bylaws.
- i. "Committee" shall mean the Architectural Control Committee established under Section 6 of these Covenants.
- j. "Common Area" shall mean and refer to all real property owned by the Association for the common use and enjoyment of Owners.
- k. "Covenants" shall mean and refer to the restrictions, limitations and covenants imposed under this Declaration and the Plat.
- l. "Developer" shall mean and refer to Roosevelt Land Development Group, LLC, and any Successor Developer designated by the Developer; provided, however, that any rights and obligations of Developer has under shall cease and terminate once Developer no longer owns any real estate within the subdivision.
- m. "Declaration" shall mean and refer to this Declaration, Protective Restrictions, Covenants, Limitations, Easements and Approvals Appended to the Plat of Roosevelt Reserves, a Subdivision in Adams Township, Allen County, Indiana, and all recorded amendments, including any Specific Subdivision Covenants amendment thereof recorded in the Office of the Recorder of Allen County, Indiana.



- n. "Lot", and in plural form, "Lots", shall mean and refer to any of the platted lots in the Plat, or any tract(s) of Real Estate which may consist of one or more Lots or part(s) of them upon which a residence may be or is erected in accordance with the Covenants, and any applicable zoning ordinance; provided, however, that no tract of land consisting of part of a Lot, or parts of more than one Lot, shall be considered a "Lot" under these Covenants unless the tract has a frontage of at least 50 feet in width at the established front building line as shown on the Plat and further meets the requirements of Section 7.4 of this Declaration.
- o. "Member" shall mean and refer to the Owners in their capacity of members of the Association pursuant to Article III of this Declaration and in accordance with the Bylaws.
- p. "Owner", and in the plural form, "Owners", shall mean and refer to the record owner(s) (whether one or more persons or entities) of fee simple title to a Lot or Lots, including land contract buyers, but excluding those having an interest in a Lot merely as security for the performance of an obligation.
- q. "Governmental Authority" shall mean and refer to the applicable governmental Plan Commission and/or Governmental Authority, or its successor agency, then having zoning authority and jurisdiction over the Real Estate to issue improvement location permits, and to issue certificates of occupancy for residences constructed on Lots.
- r. "Plat" shall mean and refer to the recorded plat of Roosevelt Reserves.
- s. "Subdivision" shall mean and refer to Roosevelt Reserves as further described in the first paragraph of this Declaration, including all existing and future sections of such subdivisions.

ARTICLE II

PROPERTY RIGHTS.

Section 2.1 Owners' Easements of Enjoyment. Each Owner shall have the right and a perpetual, nonexclusive easement of ingress, easement, access, use, and enjoyment into the Common Areas that is appurtenant to and passes with the title to every Lot, subject to the following rights which are granted to the Association and the Developer:

- a. To charge reasonable admission and other fees for the use of any recreational facility located in the Common Area.
- b. To impose reasonable restrictions, limitations, conditions, rules, and regulations regarding Owner's use and enjoyment of the Common Area.
- c. To suspend the voting rights and right to the use of the recreational facilities in the Common Area for any period during which any Assessment against an Owner's



Lot remains unpaid, or an Owner is in violation of the Covenants, the Articles, the Bylaws, or any rule or regulation duly promulgated by the Association.

- d. To dedicate or transfer all, or any part, of the Common Area or any interest or easement therein to any public agency, authority or utility upon the vote and approval of at least two-thirds (2/3) of each class of Association members; provided, however, that Developer, without such vote and approval, may, prior to the time when fee simple title to all Lots have been conveyed by Developer, transfer, dedicate or convey such portions of the Common Area to adjoining Lot Owners as may be necessary to allow such adjoining owners to comply with the requirements of the Governmental Authority, permit requirements, or with provisions of Article VII, and the Developer may also grant and convey utility or drainage easements in, on and over any Common Area, before the Authority Transfer Date, but no such easement shall be granted over areas on which structures or buildings then exist. No such dedication or transfer, except those made by Developer as provided above, shall be effective unless an instrument signed by at least two-thirds (2/3) of each class of Association members agreeing to such dedication or transfer, is recorded.

2.2 Delegation of Use. An Owner may delegate, in accordance with the Bylaws, the Owner's right to use and enjoy the Common Area and any recreational facilities located thereon, to members of the Owner's family residing on the Owner's Lot, and tenants or land contract purchasers who reside on the Owner's Lot subject to such rules, covenants, and restrictions as may be adopted by the Association from time to time.

ARTICLE III **THE ROOSEVELT RESERVE'S OWNERS' ASSOCIATION, INC.**

Section 3.1. Membership and Voting Rights.

- a. **Membership In Association.** All Owners shall at all times (by virtue of their ownership and/or interest in a Lot) be Members of the Association, and shall be subject to and bound by the Articles and Bylaws of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot.
- b. **Association Classes of Membership.** The Association shall have the following two classes of voting memberships:
 - i. **Class A.** Class A membership consists of all Owners, except Developer and any Builder. Class A Members shall be entitled to one vote for each Lot owned after and only after the Authority Transfer Date set forth in Section 4.1. Notwithstanding the foregoing, prior to the Authority Transfer Date, Class A Lot Owners shall have no voting rights in the Association. When more than one person holds an interest in a Lot, all such persons shall be Members, provided, however, that any vote, for such Lot shall be exercised as its Owners among



themselves determine; but in no event shall more than one vote be cast with respect to each Lot.

- ii. **Class B.** Class B membership consists of Developer. The Class B member shall be entitled to six (6) votes for each Lot of which it is the Owner. Class B membership shall cease upon the happening of either of the following events, whichever occurs first:

1. When fee simple title to all Lots have been conveyed by Developer; or
2. on the date which is ten (10) years immediately following the date on which this Declaration is submitted for recording with the Office of the Recorder of Allen County, Indiana; or
3. when Developer executes and records an irrevocable disclaimer of its Class B membership.

- c. Additional Sections. The Developer reserves the right to subdivide and plat, and to consent to and allow third parties to subdivide and plat nearby and/or adjacent real estate as additional Sections of the Subdivision, and each Owner of a Lot in such additional Sections shall, pursuant to the terms of that recorded plat and covenants, also be Members of the Association as provided therein, and provided further that Developer shall have Class B voting rights for its lots in such additional Sections in a ratio of not more than three to one (3:1).

ARTICLE IV **INITIAL MANAGEMENT AND CONTROL BY DEVELOPER.**

Section 4.1 Definition of "Authority Transfer Date". The Authority Transfer Date is that date upon which Class A members of the Association shall have and hold voting rights for each Lot as set forth in section 3.2 hereof and in the Articles and Bylaws of the Association. Such Date shall be the earlier of:

- a. When title to seventy-five percent (75%) of all of the Lots in the Subdivisions have been conveyed by Developer (as applicable) to a third party. For purposes of Section 4.1(a), the term "Subdivisions" includes all Lots in additional or future Sections of the Subdivision which are shown as Lots in the final primary Plat of this Subdivision as future Sections; or
- b. When Developer, in its sole and absolute discretion, so determines and provides sixty (60) days' prior Notice to the Owners.

Section 4.2 Management Prior to the Authority Transfer Date. Prior to the Authority Transfer Date the Developer shall appoint all members of the Board of Directors of the Association, and the Class A members shall have no voting rights in the Association. Directors appointed by the Developer shall serve at the will of the Developer and shall be deemed to be



Owners only for the purpose of serving on the Board. Notwithstanding the foregoing, at all times prior to the Authority Transfer Date, one (1) member of the Board of Directors appointed by Developer shall be designated by the City of Fort Wayne, Indiana, Department of Redevelopment (the "Department of Redevelopment") from time to time, who shall be subject to removal only upon request of the Department of Redevelopment. Meetings of the Board of Directors, prior to the Authority transfer Date, shall not be required to be held open to Owners, and Notice of such meetings to Owners shall not be required and Class A Members shall have no voting rights in the Association as provided in Section 3.1 above. In addition, prior to the Authority Transfer Date, the Board shall not be required to seek Owner approval of the budget or Assessment, subject to Section 4.3 below.

Section 4.3 Assessment Limitations. Prior to the Authority Transfer Date, the Board may increase the Annual Assessment, but not by more than 15% above the Annual Assessment for the previous year.

ARTICLE V **COVENANT FOR MAINTENANCE ASSESSMENTS.**

Section 5.1 Creation of the Lien and Personal Obligation of Assessments. Each Owner, except Developer and a Builder that has been temporarily exempted as provided hereinafter, by acceptance of a deed for a Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) Annual Assessments or charges; (2) Special Assessments for capital improvements and professional accounting, and legal fees of the Association. Such Assessments shall be established and collected as provided in its Declaration and the Bylaws. The Annual Assessment and any Special Assessments, together with interest, late fees, costs and reasonable attorney fees, shall be a charge on a Lot and shall, until paid, be a continuing lien upon the Lot against which each such Assessment is made. Each Assessment, together with interest, costs and reasonable attorney fees, shall also be the personal obligation of the Owner(s) of such Lot at the time when the Assessment became due. Each Annual Assessment shall be equal as between each Lot regardless of size of the Lot or extent of the improvements thereon, except as provided below, and provided that the first Annual Assessment as to each Lot shall be pro-rated to the date of conveyance of such Lot from Developer to the first successor in interest following Developer for the remaining portion of the then applicable Assessment year. Notwithstanding any other provision herein to the contrary, Developer shall have the absolute and unrestricted right from time to time to temporarily exempt a Builder from the obligation to pay any Assessments or any lien for any such Assessments. A temporary exemption, if so granted by Developer to a Builder shall terminate at the earlier of: (i) two (2) years from the date of acceptance of a deed from Developer; (ii) ninety (90) days after the Developer provides the Builder with written notice of the revocation of the temporary exemption; (iii) the date on which the Builder first conveys title to the Lot, to a successor-in-interest, but nothing contained herein shall prevent Developer from granting the successor-in-interest a temporary exemption pursuant to this Section 5.1 if the successor-in-interest is a Builder; or is an Owner who is otherwise holding the Lot in inventory for sale; or (iv) the date on which a residence located on a Lot is occupied by residents living therein. A Lot Owner first acquiring title from a Builder that was granted a temporary exemption shall be obligated to pay the prorated remaining portion (based upon a per diem basis) of any Assessment at the time of (and concurrently with) the successor in interest's acquisition of



title to the Lot from the Builder. The prorated remaining portion of the Assessment due from the Owner first acquiring title from a Builder shall be a lien against a Lot, and shall be subordinate to the lien of any first mortgage.

Section 5.2 Purpose of Annual Assessments. The Annual Assessments levied by the Association shall be used exclusively to promote the recreation, health and welfare of the Owners, for the improvement of Common Areas in the Subdivisions, the proportionate cost of the maintenance of any Stormwater Detention Basins located in any Common Areas into which the Subdivision's storm waters drain and attendant water level control structures, for professional accounting and legal fees of the Association, and for solid waste disposal as provided in Section 8.

Section 5.3 Maximum Annual Assessments. Until January 1 of the year immediately following the first conveyance by Developer of a Lot, the maximum Annual Assessment shall be \$375.00 per Lot. From and after the Authority Transfer Date, subsequent assessments may be made by the Board of Directors, as follows:

- a. From and after the Authority Transfer Date, the maximum Annual Assessment may be increased each year by the Board of Directors, by a percentage not more than 8% above the Annual Assessment for the previous year, without a vote of the Members.
- b. From and after the Authority Transfer Date, the maximum Annual Assessment may be increased by a percentage in excess of 15% only by the vote or written consent of a majority of the Members.

Section 5.4 Administrative Fees.

- a. The Association, including any property management company acting on behalf of the Association, may assess against a Lot a reasonable charge for the time and expense incurred by the Association providing a letter (a "Dues Statement Letter") setting forth the status of any Assessments due from any Owner. From time to time, the Association is requested by sellers, buyers, mortgage lenders and real estate closing service providers on behalf of any Owner (or Owners) to set forth the current status of payment of Assessments with respect to any Lot. The Dues Statement Letter administrative fee is initially fixed at Fifty and 00/100 Dollars (\$50.00) per letter. The Board of Directors of the Association shall have the right to adjust/increase this administrative fee to reflect any charges in the actual cost of each Dues Statement Letter from time to time.
- b. The Association may assess against a Lot a reasonable charge for providing letters notifying the Owners of such Lot of any violations or breaches of the Declaration and/or the Bylaws (a "Notice of Covenant Violation Letter"). The Association may incur administrative time and expense in receiving and reviewing complaints of any Declaration violations, reviewing the pertinent provisions of the Declaration, onsite inspections, consultation with third parties, mailing and other time, cost and



expenses. After the Association has sent a Lot Owner one (1) Notice of Covenant Violation Letter, the Association may assess a reasonable administrative fee for sending a second and any subsequent Notice of Covenant Violation Letters sent to an Owner (or Owners) for the same or substantially the same violation. The administrative fee for any second and subsequent Notice of Covenant Violation Letters is initially fixed at Fifty and 00/100 (\$50.00) per letter. The Board of Directors of the Association shall have the right to adjust/increase this administrative fee from time to time. A second or any subsequent Notice of Covenant Violation Letters may not be sent more often than every twenty (20) days. The assessment of this administrative fee shall be in addition to and not in lieu of any other remedies of the Association for an Owner's Violation or breach of this Declaration and/or the Bylaws, including legal fees, costs and expenses.

- c. The administrative fees for the Dues Statement Letter and the Notice of Covenant Violation Letter shall become delinquent and shall, together with interest, become a continuing lien on the applicable Lot and shall run with the Lot if not paid within thirty (30) days after the date of the issuance of the applicable letter. If the administrative fee for the Dues Statement Letter or the Notice of Covenant Violation Letter is not paid when due, notice of the lien may be recorded in the Recorder's Office of the County of Allen, Indiana and the Association shall have the right to recover the administrative fee against the Lot Owner personally and/or by foreclosing its lien, and pursuing any other remedy that is available to the Association for non-payment of any Assessment, with the same force and effect as if the administrative fee for a Dues Statement Letter or a Notice of Covenant Violation Letter was a delinquent Assessment as provided in the Declaration.

Section 5.5 Special Assessments For Capital Improvements. In addition to the Annual Assessments authorized and provided in this Article V, the Association may levy, in any assessment year, a Special Assessment applicable to that year for the purpose of defraying, in whole or in part, the cost of any new construction, or repair or replacement of an existing capital improvement in the Common Area, including fixtures, related personal property and professional accounting and legal fees (a "Special Assessment"); provided that any such Special Assessment levied generally as to all Lots shall require the written consent of at least two-thirds (2/3) of Members.

Section 5.6 Notice and Quorum for Any Action Authorized Under Subsections 5.3 and 5.5. Any action authorized under Sections 5.3 and 5.5 requiring a vote of the Members shall be taken at a meeting of the Association called for that purpose, written notice of which shall be sent to all members not less than 15 days, nor more than 60 days, in advance of the meeting. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite percentage required by Section 5.3 and/or Section 5.5. Members who were not present in person or by proxy may give their consent in writing, provided the same is obtained by an officer or agent of the Association within 60 days of the date of such meeting.



Section 5.7 Uniform Rate of Assessment. Assessments must be fixed at a uniform rate for all Lots, and may be collected on a yearly basis on such dates as may be determined by the Board of Directors.

Section 5.8 Effect of Nonpayment of Assessments/Remedies of the Association.

- a. Any Assessment not paid within 30 days after its due date shall bear interest from the due date at the rate of 12% per annum or at the maximum legal rate permitted by the State of Indiana whichever is greater.
- b. The Association may bring an action against each Owner personally obligated to pay the same, and foreclose the lien of an assessment against a Lot. No Owner may waive or otherwise escape liability for the assessments made under the Covenants by non-use of the Common Area or abandonment of a Lot. The lien for delinquent assessments may be foreclosed in the same manner as mortgages are foreclosed in Indiana. The Association shall also be entitled to recover the attorney fees, late fees, costs and expenses incurred because of the failure of an Owner to timely pay any Assessments.

Section 5.9 Subordination of Assessment Lien to First Mortgage Liens. The lien imposed to any Lot as a result of any unpaid Assessment shall at all times be subordinate to the lien of any first mortgage or such Lot. Any sale or transfer of any Lot shall not affect the Assessment lien against it. No sale or transfer of a Lot shall relieve an Owner of such Lot from liability for any Assessment subsequently becoming due, or from the lien of an unpaid Assessment as to such Lot. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such Assessments as to Assessments which become due prior to such sale or transfer.

ARTICLE VI
ARCHITECTURAL CONTROL

Section 6.1 Construction Approval. No structure or improvement, including but not limited to, building, residence, garage, fence, wall, in-ground swimming pool and spa, pool house, exterior lighting, swing set, play equipment, permanent basketball goals or other structures for sports and recreation, statues, lawn ornaments, or other non-living landscaping ornamentation device or any other structure shall be commenced, erected or maintained upon a Lot, nor shall any exterior addition (each of the foregoing being a "Structure" or collectively, "Structures"), change or alteration be made to a structure on a Lot unless and until the plans and specification showing the Structure's nature, kind, shape, height, materials and location are submitted to and approved by the Architectural Control Committee in writing as to the Structure's harmony of external design and location in relation to the surrounding structures and topography in the Subdivision. The Developer shall serve as the Architectural Control Committee until the Transfer of Control Date at which time the Board of Directors of the Association shall serve as the Architectural Control Committee. Until the Association succeeds to the Architectural Control Committee's responsibilities pursuant to this Section 6.1, the Developer may from time to time, in writing, appoint another entity, individual, or group of individuals to act as its representative for the



Developer in some or all matters regarding its rights, duties, and responsibilities under this Article VI. The burden of proof shall be upon the party submitting the plans and specifications (including any landscaping plans) to conclusively establish that the plans and specifications were actually submitted for approval and that the Structure's harmony of external design and location in relation to the surrounding structures and topography in the Subdivision.

Section 6.2 Lawn. In the event the Owner of a Lot fails to commence construction on a Lot within twelve (12) months after the purchase of said Lot, the Lot Owner shall seed the entire Lot with grass sufficient to cause grass to cover materially all of such Lot and regularly mow and maintain same. Following completion of any construction on a Lot, but in no event later than twelve (12) months following the date of commencement of such construction, the Owner of such Lot shall similarly cause all unimproved portions of the Lot to be seeded in a manner sufficient to cause grass to grow over all unimproved or otherwise landscaped portions of such Lot. All grass on each Lot shall be regularly mowed and maintained in a manner consistent with a first-class neighborhood, however no Owner may mow, or cause to be mowed, the grass upon their Lot(s) at any time after sundown or before sunrise. Should the Lot Owner fail to comply with the requirements as set forth herein, the Architectural Control Committee shall have the right to enter upon the Lot and seed all or part of any Lot with grass, and to mow and maintain the Lot at their Owner's expense and shall have the right to claim a lien upon the Lot and to recover personally from the Lot Owner for all their costs, expense and attorney fees incurred as a result of any default or breach of this Section 6.2, which lien shall be subject to the same collection rights and remedies granted to the Association for unpaid Assessments in Section 5.

Section 6.3 Committee Authority. The Architectural Control Committee shall have the exclusive authority and responsibility to review plans for construction of all Structures proposed to be constructed in the Subdivision. The Developer from time to time may delegate to its representative or to the Board of Directors (or such other entity designated in the Articles or Bylaws) of the Association the authority and responsibility to review plans for construction of fences; residential yard playground equipment and basketball poles in the Subdivisions. Such delegation shall be made in writing, signed by the Developer, and delivered or mailed to the Association's registered office.

Section 6.4 Board of Directors Authority. After residences are constructed on all Lots in the Subdivision, the Board of Directors (or such other entity designated under its Articles or Bylaws) of the Association shall then succeed to the Architectural Control Committee's responsibilities of Developer under this Section 6 to review construction, modifications and additions of any and all improvements and Structures in the Subdivision, including by way of illustration and not limitation, the improvements and Structures described in Section 6.1 hereof.

Section 6.5 Time Constraint. In the event the Architectural Control Committee fails to act to approve, modify, or disapprove the design and location of a proposed improvement or Structure within 45 days after said plans and specifications have been submitted to it, approval will not be required, and approval under this Section 6 will be deemed to have been given.

Section 6.6 Landscaping/Construction Activity. Once construction of any structure is commenced on any Lot, there shall be no lapse of construction activity greater than sixty (60)



consecutive days (excluding any days where construction is delayed or not possible due to adverse weather conditions or other similar conditions reasonably outside of the Owner's control). All Owners, general exception of Developer, shall landscape or cause to be landscaped, their Lot in a manner as to maintain consistency with the integrity of the landscaping contained on other Lots in the Subdivision on which residences have been constructed. The burden of proof shall be upon the party submitting the plans and specifications to conclusively establish that the plans and specifications were actually submitted for approval and that the landscaping was installed or designed in compliance with these landscape covenants. Upon completion of a residence, all landscaping as approved in the plans and specifications shall be installed promptly, and in no event, later than one hundred eighty (180) days following the issuance of the certificate of occupancy for the residence constructed thereon or fifteen (15) months from the initial commencement of construction, whichever is earlier. In the event landscaping plans were not submitted to the Architectural Control Committee for approval, or in the event landscaping plans were submitted and approved by the Architectural Control Committee but the Landscaping installed was not in accordance with the approved landscaping plans and specifications, then and in either case, the Developer shall have the right, upon thirty (30) days prior written notice to an Owner, to require the Owner to either install within sixty (60) days the landscaping previously approved, or to submit new or initial (if no landscaping plans and specifications were ever submitted) landscaping plans and specifications for approval by the Architectural Control Committee. In the event the Architectural Control Committee denies approval of such landscaping plans and specifications, the Architectural Control Committee shall have the right to determine and require that landscaping be installed consistent with the integrity of the landscaping contained on other Lots in the Subdivision on which residences have been constructed. The Developer shall have the right to file an action to enforce compliance and recover all its costs, expenses, and attorney fees as well as to require the Owner to install pursuant to plans and specifications imposed by the Developer upon the Owner, with such Developer-imposed landscaping plans and specifications and the installation thereof to be installed and completed by the Owner within one hundred twenty (120) days from the date of the Developer's written demand. In the event an Owner fails to comply therewith, the Developer and any contractor or agent of the Developer shall be and is hereby granted a license to enter upon the Lot, to install the landscaping, to recover the costs thereof, together with interest and attorney fees from the Owner, in the same manner and pursuant to the same procedures that Assessments may be recovered and liens foreclosed against an Owner pursuant to these Covenants. The Developer shall have the right to temporarily exempt any Builder or Owner from submitting landscaping plans. Such exemption may be revoked at any time by the Developer and the Owner shall thereafter be required to submit for approval a landscaping plan and to install the approved landscaping pursuant to these covenants, including Section 6.6 hereof.

Section 6.7 Non-liability of Architectural Control Committee. Plans and specifications submitted to the Architectural Control Committee are not reviewed for engineering or structural design or quality of materials, or to assure improvements constructed pursuant thereto are located within recorded setbacks established by either the Plat, or applicable zoning ordinances, or designed or constructed pursuant to the Plat, this Declaration, the Bylaws, or building codes, and by approving such plans and specifications, neither the Architectural Control Committee, the Developer, its representative, nor the Association assumes liability or responsibility therefore for any defect in any structure constructed from such plans and specifications, nor for any actions of any Owner (or their agents) in connection therewith. Neither the Architectural Control Committee,



the Developer, its representative, the Association, the Board of Directors, nor the officer, directors, members, employees, agents, or any appointed representative of any of them shall be liable to any person by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval, modification, or disapproval of any such plans and specifications. Every Owner, for himself and for all parties claimed by or through such Owner, agrees not to bring any action or suit against Architectural Control Committee, the Developer, its representative, the Association, the Board of Directors, or the officers, directors, members, employees, agents, or appointed representatives of any of them and [hereby] releases all claims, demands, and causes of action arising out of or in connection with any action, or failure to act, under this Article 6.

Section 6.8 Fence and Landscaping Restrictions. No fence, tree, bush, shrubbery, earthen mound or other planting or sight obstruction shall be erected, planted or maintained in the rear yard of Lots 34-37 that unreasonably obstructs the sight or view of lakes and ponds in the Subdivision unless approved by the Architectural Control Committee in its sole and absolute discretion. In exercising its discretion, the Architectural Control Committee may, approve reasonable sight or view obstructions of lakes and ponds in such rear yards in the Subdivision, such as by way of illustration and not limitation, certain types of trees, black wrought iron or picket-style fences no higher than four and one half (4 ½) feet, and may deny approval of unreasonable sight or view obstruction, such as stockade or chain link fences, "privacy fences" spruce trees or arborvitae plantings. The Architectural Control Committee reserves the right to come on or about any Lot to remove sight obstructions, including removing fences or trimming or removing trees, bushes, shrubbery and other plantings or erected sight obstruction located in such rear yards that obstruct the sight or view thereon at the Lot Owner's expense if the Lot Owner fails to promptly eliminate or reduce the sight or view obstruction after written request from the Architectural Control Committee. For purposes of this Section, the rear yard is defined as any portion of these Lots that is located between the rear of the exterior of the residence located on the Lot and the rear Lot line. Except as otherwise provided above, and subject to any applicable setbacks, ordinances, or restrictions promulgated any governmental authority having jurisdiction over the Subdivision, an Owner may construct a fence on their Lot no higher than eight (8) feet tall, and provided that it is constructed with a white vinyl or black wrought iron material.

Section 6.9 Restriction on Self-Builds. Notwithstanding anything herein to the contrary, no Builder may construct any improvements or structures on a Lot intended for occupancy by the Builder (or the owners, shareholders, members, managers, or officers of such Builder).

ARTICLE VII

GENERAL PROVISIONS

Section 7.1 Use. Except as otherwise provided in this Section 7.1, Lots may not be used for any uses and purposes other than for single-family residential uses and purposes. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one single-family residence not to exceed two and one-half stories in height. Each residence shall include a garage attached as part of the residence, to accommodate not less than two (2) cars. No Lot shall be used for any purpose other than as a single-family residence, provided however, Developer shall have the sole authority to approve a Builder using the home on any Lot as a model for the purpose of



selling homes in the Subdivision constructed or to be constructed by the Builder. Developer shall further have the sole authority to approve outdoor signage and/or flag poles in connection with the Builder's model home. A home occupation may be permitted so long as:

- a. the Owner has obtained any and all required governmental approvals necessary or required in order to conduct the home occupation on the Lot;
- b. the Architectural Control Committee has been provided with written notice of the proposed home occupation at the earlier of forty-five (45) days prior to the commencement of the home occupation in the residence or forty-five (45) days prior to the date of filing of any required application with any applicable governmental agency, if required;
- c. any such home occupation use shall be conducted entirely within the residence and such home occupation shall be clearly incidental and secondary to the use of the residence for single-family dwelling purposes and shall not change the character thereof;
- d. there shall be no sign attached to the exterior of the residence or free-standing sign or display that indicates from the exterior that the residence is being utilized in whole or in part for any purpose other than that of a single-family residence;
- e. no person shall be employed in such home occupation other than a member of the immediate family who actually resides in the residence; and
- f. the operation of the Association shall not be considered a business activity under this Section 7.1.

Section 7.2 Dwelling Size. No residence shall be built on a Lot having a ground floor area upon the foundation, exclusive of any open porches, breezeways or garages, of less than 1,450 square feet for a one-story residence, or a total living area exclusive of open porches, breezeways and garages of (i) less than 1,900 square feet for a residence that has more than one story, or (ii) 1,750 square feet for a residence that is "split-level" or one and one-half stories. Until the full repayment or earlier termination of the Legacy Loan approved by the Fort Wayne Common Council on December 20, 2022, this Section 7.2 may not be amended, nor shall any waivers of this section be granted, without the express written approval of the Fort Wayne Redevelopment Commission.

Section 7.3 Building Setbacks. No dwelling or structure shall be located on a Lot in violation of the front building setback line as shown on the Plat. No dwelling shall be located nearer than a distance of five (5) feet from each side yard Lot line, nor twenty-five (25) feet from the front or back Lot Line. The aggregate width of both side yards for any dwelling or structure other than a fence shall be a minimum of ten (10) feet or the minimum specified in the applicable zoning/subdivision control ordinance, whichever is more. For Lots located on corners that intersect two streets, any dwelling or structure on such corner Lot shall not be located nearer than twenty-five (25) feet to the rear Lot line as shown on the Plat.



Section 7.4 Minimum Lot Size. No residence shall be erected or placed on a Lot having a width of less than 50 feet at the front Lot minimum building setback line, nor shall any residence be erected or placed on any Lot having a total area of less than 8,275 square feet.

Section 7.5 Exterior Façade. The exterior façade of any Dwelling in the Subdivision directly facing a public street shall be constructed with at least twenty percent (20%) of brick, stone, masonry or such other materials as may be approved by the Architectural Control Committee. Until the full repayment or earlier termination of the Legacy Loan approved by the Fort Wayne Common Council on December 20, 2022, this Section 7.5 may not be amended, nor shall any waivers of this section be granted, without the express written approval of the Fort Wayne Redevelopment Commission.

Section 7.6 Utility Easements.

- a. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat. No Owner shall erect on a Lot, or grant to any person, firm or corporation the right, license, or privilege to erect or use, or permit the use of, overhead wires, cable, poles or overhead facilities of any kind for any utility service or for electrical, telephone or television service (except such poles and overhead facilities that may be required at those places where distribution facilities enter and leave the Subdivision). Nothing contained in these Covenants shall be construed to prohibit street lighting or ornamental yard lighting serviced by underground wires or cables. Electrical service entrance facilities installed for any residence or other structure on a Lot connecting it to the electrical distribution system of any electric public utility shall be provided by the Owner of the Lot that constructs the residence or structure, and shall carry not less than 3 wires and have a capacity of not less than 200 amperes. Any public utility charged with the maintenance of underground installations shall have access to all easements in which said installations are located for operation, maintenance and replacement of service connections.
- b. All easements dedicated on the Plat or these Covenants shall be kept free of all permanent structures, and any structure, shrubbery, trees, or other installation thereon, whether temporary or permanent, shall be subject to the paramount right of the entities for which such easements are intended to benefit, to install, repair, maintain or place any utilities, including but not limited to electrical, phone, water and sewage utilities, and the removal of any such obstructions by utilities or sewage treatment works shall in no way obligate them either in damages or to restore the easement or any obstruction thereon to its original form.

Section 7.7 Surface Drainage Easements. Surface drainage easements and Common Area used for drainage purposes as shown on the Plat are intended for either periodic or occasional use as conductors for the flow of surface water runoff to a suitable outlet, and the grading of the drainage easements shall be constructed and maintained so as to achieve this purpose. Such easements shall be maintained in an unobstructed condition and the County Surveyor (or any other



proper public authority having jurisdiction over storm drainage) shall have the right to determine if any obstruction exists, and to repair and maintain, or require such repair and maintenance, as shall be reasonably necessary to keep the drainage easements and conductors unobstructed.

Section 7.8 Nuisance. No noxious or offensive activity shall be carried upon any Lot, nor shall anything be done there which may be or become an annoyance or nuisance to residents in the Subdivision.

Section 7.9 Structures Other Than Single-Family Residence. Except as specifically permitted hereinafter, no structure, whether temporary, permanent, or otherwise, shall be erected, maintained, or used on any Lot other than one single-family residence. Prohibited structures include, by way of illustration and not limitation, detached garage, shack, storage shed, portable basketball goal and an above ground pool. Notwithstanding the foregoing, the Architectural Control Committee may, subject to compliance with Article VI and upon Owner's application as provided in Article VI, permit to be erected and maintained in its sole and absolute discretion residential playground equipment such as swing sets, in-ground swimming pools, hot tubs or other similar outdoor spas, cabanas, and fences. In exercising such discretion, the Architectural Control Committee may establish, maintain, and revise from time to time guidelines for consideration and evaluation of such structures, and shall endeavor to act reasonably consistent in the application of its guidelines then in effect and in consideration and evaluation of any such requested approvals. The decision of the Architectural Control Committee shall not be subject to appeal or challenge.

Section 7.10 Vehicle Storage.

(a) No boat, boat trailer, trailer, jet ski, snowmobile, recreational vehicle, motor home, truck, bus, camper, any motor vehicle not currently titled, registered, or having a current license plate, or any non-operable motor vehicle shall be permitted to be parked outside an enclosed garage on a Lot or on any public or private street in the Subdivision for periods in excess of 48 hours, or for any other period which is in the aggregate, in excess of sixteen (16) days per calendar year. The term "truck" as used in this Section 7.10 is defined to mean any motor vehicle which has a gross vehicle weight rating in excess of 11,500 pounds. In determining the 48-hour or sixteen (16) calendar day requirements of this Section, there shall be included any temporary removal or moving of such prohibited parking or storage where the primary purpose of such removal or moving is to avoid or evade the requirements of this Section. In addition to the foregoing, no Owner may cause or permit any vehicle to be parked on any sidewalks or on any public or private street in the Subdivision overnight. No vehicles of any nature shall be parked on any portion of the Subdivision or a Lot except on the surfaced parking area thereof.

(b) If upon the Association's provision of notice an offending vehicle owner does not remove a prohibited or improperly parked vehicle from the Subdivision, the Association shall have the option and right to have the vehicle towed away at the vehicle owner's expense. By this provision, each Owner and vehicle owner provides the Association with the necessary consent to effect the tow. In the event the vehicle owner fails to pay such costs upon demand, the Association shall have the right to levy a charge for the costs against the Lot and Owner in question, that is, against the Owner as the owner of the vehicle or for the Owner's family, guests, employees, or visitors as owner(s) of the vehicle (as such, the Lot Owner is liable for the vehicle violations of



the Owner's family, guests, visitors, and invitees), and the charge shall be collected as is provided for in these Covenants.

(c) Whether or not the Association exercises its right to have the vehicle so towed, the Association shall nonetheless have the right to seek compliance with this Section by injunctive and other relief through the courts; and/or any other remedy conferred upon the Association's right to tow shall in no way be a condition precedent to any other remedies available to the Association incident to the enforcement of this Subsection.

Section 7.11 Free-Standing Poles. Except as provided in Section 7.1, no clotheslines or clothes poles, or any other free standing, semi-permanent or permanent poles, rigs, or devices, regardless of purpose, with the exception of a flag pole displaying the United States federal or state flag, and with the exception of a permanent basketball pole, also with the exception of yard lighting shall be constructed, erected, or located or used on a Lot, provided however, that the installation and location thereof must be approved by the Architectural Control Committee under Article VI and Section 7.9.

Section 7.12 Signs. Except as provided in Section 7.1, no sign of any kind shall be displayed to the public view on a Lot except one professional sign of not more than five square feet, advertising a Lot for sale or rent, or signs used by a Builder to advertise a Lot during the construction and sales periods.

Section 7.13 Antennas. No radio or television antenna with more than six (6) square feet of grid area, or that attains a height in excess of four (4) feet above the highest point of the roof of a residence, shall be placed upon, or attached to a residence on a Lot. No free-standing radio or television antenna shall be permitted on a Lot. A Satellite receiving disk or dish shall be permitted on a Lot; provided however, that the installation and location of a satellite dish must be approved by the Committee under Article VI and Section 7.9.

Section 7.14 Oil Drilling. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted on or in a Lot. No derrick or other structure designed for boring for oil or natural gas shall be erected, maintained or permitted on a Lot.

Section 7.15 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on a Lot, except that dogs, cats or other common household pets (which, for purposes of this Section 7.15 excludes any exotic animal, chickens, pigs, and any outdoor birds or rodents) may be kept, provided that they are not kept, bred or maintained for any commercial purpose. In case of a dispute or disagreement, the Architectural Control Committee is herewith granted the authority to conclusively determine whether an animal is or is not a permitted household pet. Any permitted household pet shall be leashed or otherwise similarly constrained at all times when it is taken off of the respective Owner's Lot, or when is outside of any fenced in (including, underground invisible fences designed for pets) portion of such Lot. Further, no household pet shall reside predominantly outside of the dwelling constructed on a Lot (which, for purposes of this Section 7.15 shall mean spending an average in excess of eight (8) hours (consecutive or non-consecutive) within any given twenty-four (24) hour period, or otherwise as may be reasonably



determined by the Board of Directors). No Owner may keep any household pet outside of their dwelling constructed on the Lot if such pet would cause a violation of Section 7.8 above by way of the noise generated or caused by such pet (e.g., no barking dogs may be continuously left outside on any Lot).

Section 7.16 Garbage/Dumping. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage and other waste shall not be kept except in sanitary containers. No incinerators shall be kept or allowed on a Lot. Garbage cans shall not be placed at the street for collection and pick-up earlier than 4:00 p.m. on the day prior to the scheduled pickup and shall be removed from the street prior to 9:00 p.m. on the date of the scheduled pickup. Garbage cans shall be located inside an enclosed garage except when placed at the street for trash pickup.

Section 7.17 Workmanship and Maintenance of Lots and Dwelling Units. All structures on a Lot shall be constructed in a substantial, good and workmanlike manner and of new materials. No roof siding, asbestos siding or siding containing asphalt or tar as one of its principal ingredients shall be used in the exterior construction of any structure on a Lot, and no roll roofing of any description or character shall be used on the roof of any residence or attached garage (or any parts thereof) on a Lot. No Lot, lawn or landscaping shall be permitted to become overgrown or unsightly or fall into disrepair. Should the Lot Owner fail to comply with the requirements as set forth within, the Architectural Control Committee shall have the right to make any necessary alterations, repairs or maintenance approved by the Architectural Control Committee to carry out the provision herein. The Association shall have the right to claim a lien upon the Lot, and to recover personally from the Lot Owner, for all of their costs, expenses and attorney fees.

Section 7.18 Driveways; Sidewalks. All driveways on Lots from the street to the garage shall be poured concrete and not less than 16 feet in width. Each Owner shall be solely responsible for the snow and/or ice removal of the driveway and other paved portions (including sidewalks) on or crossing such Owner's Lot(s).

Section 7.19 Individual Utilities. No individual water supply system or individual sewage disposal system shall be installed, maintained or used on a Lot in the Subdivision except that an individual water system may be used for the purpose of a swimming pool or lawn irrigation.

Section 7.20 Street Utility Easements. In addition to the utility easements designated in this document, easements in the streets, shown on the Plat are reserved and granted to all public utility companies, the Owners of the Real Estate and their respective successors and assigns, to install, lay, erect, construct, renew, operate, repair, replace, maintain and remove every type of gas main, water main and sewer main (sanitary and storm), electric, telephone, or cable TV service, or any other public utility with all necessary appliances, subject, to all reasonable requirements of any governmental body having jurisdiction over the maintenance and repair of said streets.

Section 7.21 Storm Water Runoff. No rain and storm water runoff, sump pump, or such things as roof water, street pavement and surface water caused by natural precipitation, shall at any time be discharged or permitted to flow into the sanitary sewage system serving the Subdivision, which shall be a separate sewer system from any storm water and surface water runoff



sewer system. No sanitary sewage shall at any time be discharged or permitted to flow into the Subdivision's storm and surface water runoff sewer system.

Section 7.22 Completion of Infrastructure. Before any residence on a Lot shall be used and occupied as such, the Developer shall install all infrastructure improvements serving the Lot as shown on the approved plans and specifications for the Subdivision filed with the Governmental Authority and other governmental agencies having jurisdiction over the Subdivision. This covenant shall run with the land and be enforceable by the Governmental Authority or by any aggrieved Owner.

Section 7.23 Certificate of Compliance. Before a Lot may be used or occupied, such user or occupier shall first obtain from the Governmental Authority the improvement location permit and certificate of occupancy or compliance then required by the Governmental Authority.

Section 7.24 Enforcement. Except as otherwise provided in these Covenants, the Association, Developer and any Owner (individually or collectively) shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, Covenants, reservations, liens and or subsequently imposed by the provisions of these Covenants or the Plat. Failure by the Association, Developer or an Owner to enforce any provisions in this Declaration or any other Covenants shall in no event be deemed a waiver of the right to do so later.

Section 7.25 Invalidation. Invalidation of any one of these Covenants by judgment or court order shall not affect the remaining provisions, and such provisions shall remain in full force and effect.

Section 7.26 Duration of Covenants. These Covenants shall run with the land and be effective for a period of 20 years from the date the Plat and these Covenants are recorded; after which time the Covenants shall automatically be renewed for successive periods of 10 years.

Section 7.27 Amendments. Any provision of these Covenants may be amended, but such amendment is subject to the following requirements and limitations:

- a. Except as otherwise provided in Sections 7.27(b), 7.2, and 7.5, in order to amend any provisions of these Covenants, the amendment shall require the vote of at least 75% of the Members. Further, until single-family residences are constructed on all Lots in the Subdivision and certificates of occupancy are issued for those residences, in order to amend these Covenants, the Developer, in addition to those persons whose signatures are required under this Section 7.27(a), also must approve and sign the amendment in order for the amendment to be valid and effective.
- b. Notwithstanding the provisions of Section 7.27(a), Developer and its successors and assigns shall have the exclusive right until the later of (i) the transfer of control date, or (ii) six (6) years following the date of this Declaration, to amend the Plat or any of the Covenant provisions, provided however such amendment shall not serve to reduce the minimum size and other requirements contained in Section 7.2, without the written consent of at least 85% of the Owners.



Section 7.28 Lot Size Alterations. No Lot or combination of Lots may be further subdivided until approval for such subdivision has been obtained from the Governmental Authority; except, however, the Developer and its successors in title shall have the absolute right to increase the size of any Lot by adding to such Lot a part of an adjoining Lot (thus decreasing the size of such adjoining Lot) so long as neither of the Lots from which land was added or deleted violates the limitations imposed under Section 1.1(l) and the requirements of Section 7.4.

Section 7.29 Approved Builders. The Architectural Control Committee shall have the right to approve each Builder proposed for the construction and renovation of a dwelling unit on a Lot. No non-approved Builder may be utilized by any Owner. The Architectural Control Committee shall not approve any dwelling unit for commencement of construction or occupancy for which an approved Builder has not been employed. The only matters with respect to renovation of an existing dwelling unit for which an approved Builder is not required are: exterior painting (color and materials must be approved by the Architectural Control Committee) and interior work not visible from any other portion of the Subdivision. After the Authority Transfer Date, the requirements of this Section 7.29 may not be modified in any manner that materially and adversely affects Developer's remaining interest (if any) in the Subdivision.

ARTICLE VIII LEASING OF LOTS

Section 8.1 Lease of Dwelling by Owner. For the purpose of maintaining the residential character of the Subdivision and for the protection of all Owners with regard to the investment made into each individual Lot and the improvements thereon, any lease of a Lot or the improvements thereon by an Owner shall be subject to the conditions and restrictions set forth below:

- (a) No Owner shall lease his Lot or the improvements thereon or enter into any other rental or letting agreement for his Lot or for the improvements thereon without the prior written consent of the Board of Directors of the Association. Such consent shall not be unreasonably withheld. Any Owner desiring to enter into a lease for their Lot or any improvements thereon shall make written application to the Board of Directors, which application shall include a copy of the proposed lease and shall state the reasons why the applicant wishes to lease his Lot, the name of the proposed tenant, at least three (3) financial references of the proposed tenant, and such other information as may be required by the Board of Directors from time to time. Within sixty (60) days following the receipt of the application, the Board of Directors of the Association shall issue its written approval or disapproval to the Owner. In the event the Board of Directors fails to issue written approval or disapproval within such period, the application for all purposes shall be deemed approved. No approval shall be withheld because of the race, creed, color, sex or national origin of the proposed lessee. In no event shall an Owner enter into a lease or rental agreement for their Lot or the improvements thereon except in accordance with the



terms and conditions of the proposed lease submitted to the Board of Directors pursuant to this Section 8.1(a).

- (b) Any lease or attempted lease by an Owner of his Lot, and the improvements thereon, except in accordance with this Article VIII, shall be void; provided, however, any certificate executed by a duly authorized officer of the Association waiving the Association's right to approve a lease, or otherwise indicating the approval of the Board of Directors of such lease pursuant to this Article may be relied upon by any lessee and shall, with respect to such lessee, be absolutely binding upon the Association and the Owners unless such lessee has actual knowledge that the certificate was procured fraudulently or by reason of misrepresentation of a material fact.
- (c) Notwithstanding any other provision to the contrary, no Owner shall enter into, nor may the Board of Directors approve, any lease or attempted lease or other rental arrangement (for any period of time) by an Owner of their Lot within the first twelve (12) months following any transfer, sale or conveyance of a Lot or the completion of any dwelling unit or living structure thereon. Further, in no event shall any Lot or the improvements thereon be leased, rented, or occupied by persons other than the Owner(s) of such Lot for any period of time longer than two (2) years within any given four (4) year period.

Section 8.2 Terms of Lease. Notwithstanding any other provision to the contrary, any lease which is approved by the Association shall contain a term no shorter than one (1) year nor longer than two (2) years. At the end of such term, the Owner of the Lot covered by said lease may obtain a renewal of the lease so long as the Owner complies with the provisions of this Article VIII and resubmits a new lease to the Association. Any lease entered into pursuant to this Article VIII shall contain terms reasonably satisfactory to the Association including, but not limited to, the following:

- (a) That the lessee has received a copy of this Restatement and the Bylaws of the Association and agrees to abide by such Restatement and Bylaws;
- (b) That the lessee and the Owner are jointly and severally liable and responsible for all dues and fees which are due and owing to the Association during the term of the lease; and
- (c) That tenant has inspected the Lot and the improvements thereon and finds same to be in satisfactory condition pursuant to the terms and conditions of the lease.
- (d) That the tenant understands and agrees that they may not sublet nor assign the lease without the prior written consent of the Association upon submission of an application to the Board of Directors in the manner proscribed in Section 8.1 hereof.

Section 8.3 Limitations. This Article VIII shall be limited by the following:



- (a) With respect to a mortgagee that is a bank, mortgage company, life insurance company or savings and loan association, the provisions of Section 1 of this Article VIII shall not be applicable to such mortgagee of Owner that such mortgagee acquires possession of Owner's Lot during the period while foreclosure proceeding is pending or to such mortgagee who obtains title to said Lot as a result of foreclosure or conveyance in lieu thereof.
- (b) The restrictions provided by this Article VIII shall in no event apply to any use or occupancy of a Lot by the spouse, ex-spouse, child, parent, or sibling of an Owner who is a natural person, or the primary beneficiary, sole shareholder or member, or any family member thereof in the case of an Owner who is not a natural person.

ARTICLE XI

MISCELLANEOUS.

Section 9.1. Mandatory Solid Waste Disposal. Unless weekly refuse/garbage pickup services are provided by a governmental entity having jurisdiction thereof, the Association shall be obligated to contract for disposal of garbage and other solid waste and may pay for the cost of such disposal through Assessments established under Article V. An Owner who privately arranges for solid waste disposal to service the Owner's Lot shall not be exempt from payment of any part of an Assessment attributable to the cost of waste disposal for which the Association contracts under this Article VIII.

Section 9.2 Attorney Fees and Related Expenses. In the event the Association, Developer, or a Governmental Authority is successful in any proceeding, whether at law or in equity, (a) brought against an Owner to enforce any restriction, covenant, limitation, easement, condition, reservation, lien, or charge now or subsequently imposed by the provisions of this Declaration or the Bylaws, or (b) brought against the Association, Developer, or the Board of Directors (or any of them, individually), by an Owner or any other person and arising out of or relating to any action or inaction with respect to the Subdivision, the successful party shall be entitled to recover from the party against whom the proceeding was brought, the reasonable attorney fees and related costs and expenses incurred in such proceeding; and provided further, however, in no event shall the Developer or the Association or their respective officers, directors, agents, or employees ever be held liable for any attorney fees or litigation costs and expenses of any other party in any legal proceeding. As used herein, the term "successful party" shall include, without limitation, a party who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other party of its claim or defense. The attorney's fee award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorney's fees reasonably incurred.

Section 9.3 Sidewalks. Plans and specifications for the Subdivision approved by and on file with the Governmental Authority require the installation of concrete sidewalks within the street rights-of-way on both sides of the streets as the obligation of the Owner of the Lot (exclusive of Developer). The sidewalk to be located on a Lot shall be completed in accordance with such plans and specifications prior to the issuance of a certificate of occupancy for such Lot. This



covenant is enforceable by the Governmental Authority, the Developer, the Association, or an Owner, by specific performance or other appropriate legal or equitable remedy. Should a certificate of occupancy be issued to Developer for a Lot on which a sidewalk is required to be constructed, Developer shall be considered as an Owner subject to enforcement of this Covenant but only with respect to that Lot.

Section 9.4 Zoning Ordinance Requirements. Notwithstanding any other provision herein to the contrary, in the event any applicable zoning ordinance (as modified by any variance that may have been granted with respect to any Lot or the Subdivision) in effect at the time of the recordation of these Covenants contains more stringent requirements than of the Plat or this Declaration, the more stringent zoning ordinance requirements (but as modified by any granted variance) in effect on the date of recordation of hereof or thereof shall apply; provided, however, nothing contained herein shall prohibit any Lot or the Subdivision from applying for or from being granted a variance with respect to any current or future enacted zoning ordinance, but no variance may be granted which would establish less stringent requirements than the terms and provisions of the Plat or this Declaration.

Section 9.5 Flood Protection Grades. No Dwelling or other structure or improvement shall be constructed or maintained in violation of the flood protection grades established on the recorded plat for each Lot so that the minimum elevation of the first floor, and the minimum sill elevation for any opening into the dwelling equals or exceeds the minimum flood grade protection elevation. The flood grade protection levels have been approved by the Allen County Surveyor's office and are to minimize potential damage from flooding, surface water and rain events.

[SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, Roosevelt Land Development Group, LLC, as declarant and Developer of the Real Estate, has executed this document on the 26 day of Oct, 2023.

"Developer"

ROOSEVELT LAND DEVELOPMENT GROUP, LLC

By: Jerry Starks, its Manager

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, a Notary Public in and for said County and State, this 26 day of October, 2023, personally appeared Jerry Starks, the duly authorized Manager of Roosevelt Land Development Group, LLC, (the "Company") and acknowledged the execution of the above and foregoing document as his voluntary act and deed on behalf of the Company for the purposes and uses set forth in this document.

Witness my hand and seal on this 26 day of October, 2023.

KARMA PETERSON
_____, Notary Public

My Commission Expires: 4/25/29
My County of Residence: Allen
My Commission Number: NP0733267



KARMA PETERSON, Notary Public
Allen County, State of Indiana
Commission Number NP0733267
My Commission Expires April 25, 2029

This instrument prepared by Jacob A. Gattuso, Attorney No. 36438-02, Barrett McNagny LLP, 215 E. Berry Street, Fort Wayne, IN 46802.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. /s/ Jacob A. Gattuso.

