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ANITA MATHER

ALLEN COUNTY RECORDER

FORT WAYNE, IN

**ALLEN COUNTY
FLOODPLAIN RESTRICTIVE COVENANT
PERTAINING TO CUT AND FILL**

This Restrictive Covenant is made and entered into this 20th day of April 2022, by North Eastern Development Corp. (Owner)).

RECITALS

A. Owner is the owner of that certain real property and improvements located at 12001 Coldwater Rd. Fort Wayne IN 46845 and more particularly described on Exhibit, "A" which is attached hereto and incorporated herein as if fully set forth ("Property"). The Owner took title to the Property pursuant to that certain Warranty Deed dated August 25, 2021 and recorded in the Allen County Recorder's Office on August 26, 2021 as Document Number 2021057377.

B. Owner has submitted floodplain compensatory cut and fill plans to the Department of Planning Services for purposes of demonstrating compliance with the flood regulations of the Allen County Zoning Ordinance, which plans are attached hereto as Exhibit "B," and incorporated herein by reference ("Cut and Fill Plans").

C. Owner is voluntarily agreeing to record this Restrictive Covenant in order to induce the Department of Planning Services to approve the attached Cut and Fills Plans and to demonstrate that Owner's use of the Property is in compliance with the provisions of the Allen County Zoning Ordinance.

D. This subdivision has compensatory floodplain storage located within the legal boundaries of this plat as described. As a result the developer has committed on behalf of the developer and successor owners, to maintain and not disturb the compensatory storage areas by virtue of a restrictive covenant recorded on 4/26/2022, as Document Number 2022022826 in the Office of the recorder of Allen County, Indiana.

DECLARATION

NOW, THEREFORE, Owner declares that the Property is hereby subjected to, encumbered and impressed with the Restrictive Covenant contained herein and every part of the Property shall be owned, leased, transferred, developed, improved, occupied and otherwise used in compliance herewith.

1. **Cut and Fill Plans.** Owner agrees to perform the work on the Property as shown on the attached Cut and Fill Plans. The cut and fill area, as shown on the attached Cut and Fill



{11326/123/00322552-1 RWE}

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Plans shall not be amended, modified, altered or changed in any manner, except as expressly provided by Section 4 below.

2. **Enforcement.** In the event of any breach, default or noncompliance of the covenants, limitations and restrictions contained in this Restrictive Covenant, the Allen County Zoning Administrator and/or the Allen County Plan Commission each shall have the option (but not the obligation) to enforce this Restrictive Covenant, at law or in equity, in the event of a breach of an obligation in this Restrictive Covenant; and in the event such an enforcement action is commenced, the Allen County Zoning Administrator and/or the Allen County Plan Commission (as applicable) shall have the remedies allowed by the Allen County Zoning Ordinance governing the Property at the time of the enforcement action, which remedies shall be cumulative and not exclusive. A violation of this Restrictive Covenant shall be deemed a violation of the Allen County Zoning Ordinance governing the Property at the time of the violation; provided, however, that nothing in this Restrictive Covenant shall be construed as giving any person the right to compel enforcement of this Restrictive Covenant by the Allen County Zoning Administrator and/or the Allen County Plan Commission, or any successor agency having zoning jurisdiction over the Property. Any delay or failure to enforce any provision of this Restrictive Covenant shall not be construed or held to be a waiver.

3. **Invalid Provision/Severability.** If any provision of this Restrictive Covenant is found to be invalid or unenforceable by any court with jurisdiction then, to the extent permissible under Indiana law, such provision may be amended by said court to the least extent possible in order to make said provision valid and enforceable. The invalidity or unenforceability of any particular provision of this Restrictive Covenant shall not affect the other provisions of it; and, to the extent such provision cannot be amended in accordance with the preceding sentence to be valid and enforceable, this Restrictive Covenant shall be construed in all respects as if such invalid or unenforceable provision was omitted.

4. **Amendments.** No amendments, modifications, alterations, or additions to this Restrictive Covenant or the Cut and Fill Plans shall be binding, unless such changes are made and approved in a writing signed by the Allen County Zoning Administrator.

5. **Waiver.** A waiver of a breach of any term in this Restrictive Covenant will not be considered (a) a waiver of a further breach of the same term, or (2) a waiver of a breach of any other term, or (3) a waiver of any party's right to declare an immediate or a subsequent default.

6. **Binding Effect.** This Restrictive Covenant is a covenant running with the land and shall be binding on the Property, Owner and all of Owner's successors in title to the Property.

7. **Authority to Sign.** Each person signing this Restrictive Covenant in a representative capacity on behalf of a party warrants and represents to each other party that (1) the person executing this Restrictive Covenant has the actual authority and power to so sign, and to bind the person's respective principal to the provisions of this Restrictive Covenant; and (2) all entity action necessary for the making of this Restrictive Covenant has been duly taken.



SO DECLARED BY THE UNDERSIGNED as of the date first written above.

"OWNER"
North Eastern Development Corp.

By: 

Its: President _____

Printed: Joseph L. Zehr

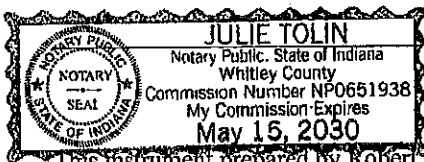
STATE OF INDIANA)
) SS:
COUNTY OF Allen)

Before me, the undersigned, a notary public for Whitley County, state of Indiana, personally appeared Joseph L. Zehr, President the duly authorized representative of North Eastern Development Corp., and acknowledged the execution of this instrument this 20th day of April 2022.

My Commission Expires:



Notary Public
Printed Name: _____
Resident of _____ County, Indiana



This instrument prepared by Robert W. Eherenman, Attorney at Law, Atty. No. 16703-53

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. – Robert W. Eherenman, Esq.

When recorded, mail this document to: Department of Planning Services, 200 East Berry Street, Suite 150, Fort Wayne Indiana 46835

{11326/123/00322552-1 RWE}



March 18, 2021
June 2, 2021 Revision (25ft strip added)
November 22, 2021 Revision (delete southwest block areas)

North Eastern Development Corp.
Pulfer Property
Coldwater Road
Fort Wayne, IN
Weatherstone - Section I

[Prepared by Duane A. Brown, LS #80040337, D. A. Brown Engineering Consultants, Inc., Job No. 1909-02, based on information contained on Plat of Survey #32-12-28-04 as recorded in Allen County Document No. 2020001116 (and on Job No. 1909-02, Plat of Survey #32-12-28-03 as recorded in Allen County Document No. 2019056964; and on Job No. 1503-01, Plat of Survey No. 32-12-28-01 as recorded in Allen County Document No. 2015043225)]

Legal Description:

A tract of land located in the Southeast Quarter of Section 28, T32N, R12E, in Allen County, the State of Indiana, more fully described as follows:

COMMENCING at a Rebar stake with cap (FIRM 0042) situated in the Northeast corner of said Southeast Quarter; Thence South 01 Degrees 47 Minutes 07 Seconds East (Indiana State Plane Coordinate System East Zone-GPS Grid Basis of Bearings), a distance of 1322.47 feet along the East line of said Southeast Quarter to the point of intersection with the South line extended and the South line of the tract of land described in the conveyance to MRG Properties, LLC in Allen County Document No. 2008051784 [also being the South line extended of Corbin Place as recorded in Allen County Document No. 990045707 (Plat Cabinet E, page 36)]; Thence South 01 Degrees 47 Minutes 07 Seconds East, a distance of 413.37 feet along the East line of said Southeast Quarter [also being the East line of the tracts of land described in the conveyances to David E. & Dana G. Smith (Allen County Document No. 700012556) and to Jason W. Sample (Allen County Document No. 2012049509)] to a Marker Spike with tag (FIRM 0042) in the Southeast corner of said Sample tract; Thence South 01 Degrees 47 Minutes 07 Seconds East, a distance of 582.02 feet along the East line of said Southeast Quarter to a Marker Spike with tag (FIRM 0042) in the point of intersection with the centerline of the Roy Delagrang Drain, the **TRUE POINT OF BEGINNING**; Thence South 01 Degrees 47 Minutes 07 Seconds East, a distance of 333.82 feet along the East line of said Southeast Quarter to a Marker Spike with tag (FIRM 0042) in the Southeast corner thereof; Thence South 88 Degrees 36 Minutes 36 Seconds West, a distance of 2093.48 feet along the South line of said Southeast Quarter to a Rebar stake with cap (FIRM 0042); Thence North 01 Degrees 23 Minutes 24 Seconds West, a distance of 164.08 feet; Thence North 27 Degrees 26 Minutes 23



Seconds East, a distance of 50.00 feet to the beginning of a non-tangent circular arc; Thence Southeasterly, a distance of 37.82 feet along said non-tangent circular arc that is concave Northeasterly, having a radius measuring 225.00 feet, having a central angle measuring 09 Degrees 37 Minutes 52 Seconds, and having a long chord bearing South 67 Degrees 22 Minutes 33 Seconds East and measuring 37.78 feet to the beginning of a non-tangent line; Thence North 19 Degrees 04 Minutes 55 Seconds East, a distance of 168.37 feet along said non-tangent line; Thence North 33 Degrees 41 Minutes 21 Seconds East, a distance of 257.50 feet; Thence North 04 Degrees 13 Minutes 46 Seconds East, a distance of 350.00 feet; Thence North 82 Degrees 42 Minutes 02 Seconds East, a distance of 350.00 feet; Thence South 78 Degrees 58 Minutes 26 Seconds East, a distance of 350.00 feet; Thence North 58 Degrees 29 Minutes 15 Seconds East, a distance of 242.28 feet to the point of intersection with the centerline of the Roy Delagrang Drain; Thence continuing along said centerline with the following courses and distances:

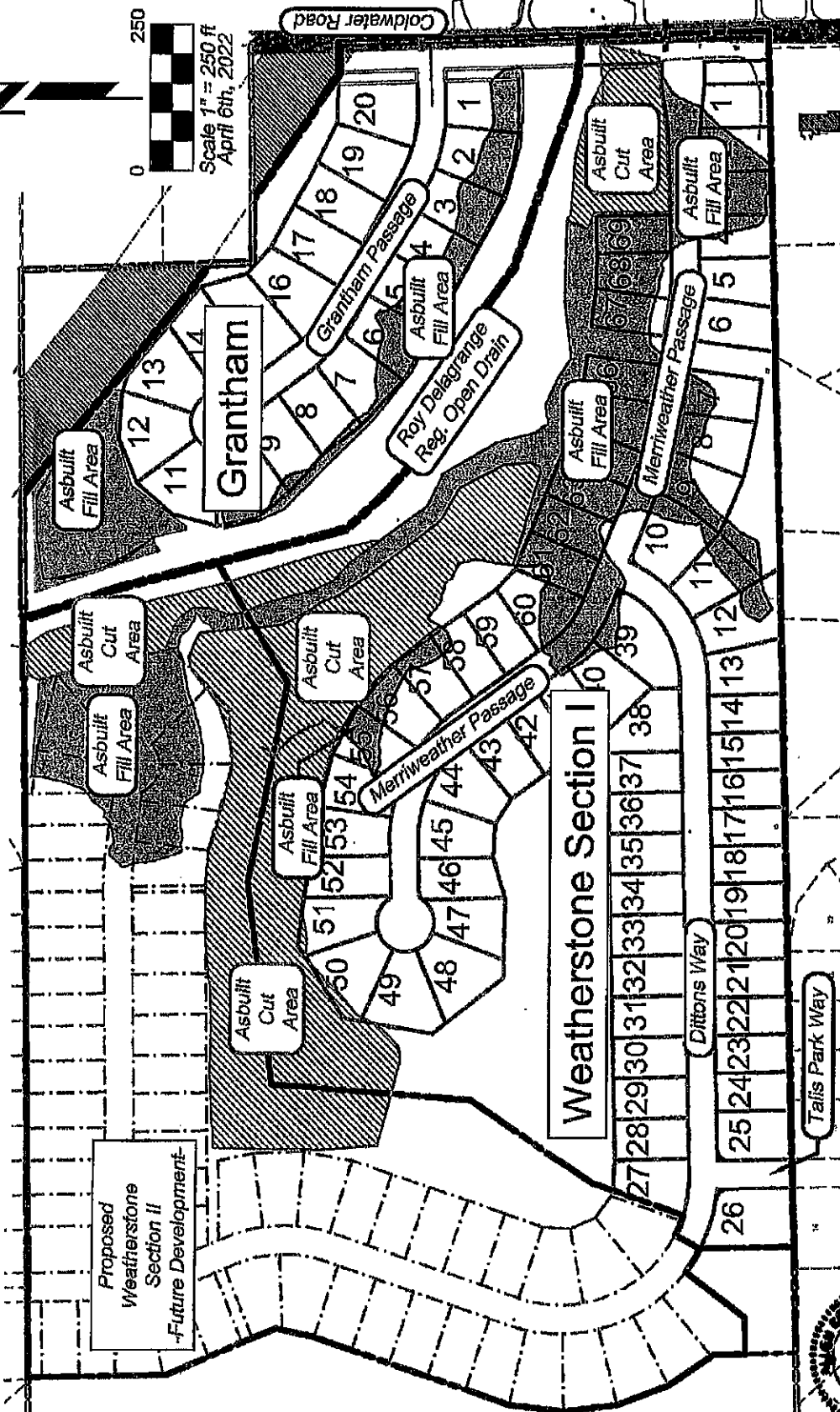
South 14 Degrees 09 Minutes 45 Seconds East for 234.71 feet, South 41 Degrees 12 Minutes 48 Seconds East for 82.99 feet, South 46 Degrees 47 Minutes 41 Seconds East for 77.87 feet, South 57 Degrees 32 Minutes 37 Seconds East for 82.42 feet, South 61 Degrees 15 Minutes 24 Seconds East for 79.08 feet, South 70 Degrees 41 Minutes 45 Seconds East for 139.63 feet, South 53 Degrees 25 Minutes 51 Seconds East for 84.29 feet, South 70 Degrees 56 Minutes 15 Seconds East for 337.93 feet, South 84 Degrees 19 Minutes 34 Seconds East for 53.25 feet, and North 86 Degrees 46 Minutes 42 Seconds East for 28.03 feet to the **POINT OF BEGINNING.**

Said tract containing 32.310 Acres, more or less, and being subject to all public road rights-of-way and to all easements of record.



Exhibit B

Weatherstone and Grantham - Cut and Fill Detail



Proposed Weatherstone Section II - Future Development

This drawing is not intended to be represented as a Retracement or Original Boundary Survey, a Route Survey, or a Surveyor Location Report as defined in 866 IAC 1-12.



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Job No: 1909-02

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