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ANITA MATHER
ALLEN COUNTY RECORDER
FORT WAYNE, IN

AMENDED AND RESTATED DEDICATION, PROTECTIVE RESTRICTIONS, COVENANTS, LIMITATIONS, EASEMENTS AND APPROVALS APPENDED TO THE PLAT OF FOX HOLLOW, SECTION II, A SUBDIVISION IN PERRY TOWNSHIP, ALLEN COUNTY, INDIANA

11835610

This Amended and Restated Dedication, Protective Restrictions, Covenants, Limitations, Easements and Approvals Appended To the Plat of Fox Hollow, Section II, a Subdivision in Perry Township (the "Covenants"), Allen County, Indiana, is made and entered into as of the 28th day of December, 2018, by Springmill Woods Development, LLC., an Indiana limited liability company by Jamie S. Lancia, its Member, declares that it is the Developer of real estate shown and legally described in this plat (the "Real Estate"), which original plat was recorded in Plat Cabinet G, page 190, as Document No. 2017061381 in the Office of the Recorder of Allen County, Indiana (the "Original Declaration"). Springmill Woods Development, LLC is now the owner of the Real Estate and all Lots in the Original Declaration, and is the Successor Developer to the original Developer in the Original Declaration. Pursuant to the power of amendment of the Plat in the Original Declaration reserved in the Developer, as set forth in the Original Declaration in Covenant Section 7.26.2, Springmill Woods Development, LLC, as the Successor Developer, completely amends and restates in its entirety the Original Declaration and the recorded Covenants contained therein, and henceforth, the Real Estate shall be subject to all of the terms and conditions of this amended and restated Plat and the Covenants contained herein. The Lots shown on this Declaration and Plat are numbered from 29 through 77 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 document, there has been recorded Articles of Incorporation for an Indiana not-for-profit corporation known as Fox Hollow Community Association, Inc. (the "Association"), and each Owner of a Lot in the Subdivision of Fox Hollow shall become a member of the Association, and be bound by its Articles of

METROPOLITAN TITLE OF IN, LLC
9604 COLDWATER ROAD SUITE 105
FORT WAYNE, IN 46825
NED0919

AUDITOR'S OFFICE
Duly entered for taxation. Subject to final acceptance for transfer.
Sep 23 2019
Nicholas D Jordan
AUDITOR OF ALLEN COUNTY

Incorporation and By-Laws, 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.

Section 1. DEFINITIONS. The following words and phrases shall have the meanings stated, unless the context clearly indicates that a different meaning is intended:

1.1 "Articles". The Articles of Incorporation of the Association approved by the Indiana Secretary of State, including any and all amendments to those Articles.

1.2 "Association". Fox Hollow Community Association, Inc., an Indiana nonprofit corporation, its successors and assigns.

1.3 "Benefitted Subdivisions". The Subdivisions platted and to be platted by Developer or its affiliated entities in the Fox Hollow and Edenbridge subdivisions (including any future Sections and future Villa Sections, if any).

1.4 "Builder". 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.

1.5 "Board of Directors". The duly elected or appointed board of directors of the Association.

1.6 "By-Laws". The By-Laws adopted by the Association, including any and all amendments to those By-Laws.

1.7 "Committee". The Architectural Control Committee established under Section 6 of these Covenants.

1.8 "Common Area". Those areas designated on the Plat as Common Area, excluding however, the Common Area Detention Ponds and Entrance Area.

1.9 "Common Area Detention Ponds and Entrance Area". Those areas designated in any Section of Fox Hollow or Edenbridge (including future Sections and future Villa Sections) that either contain one (1) or more detention ponds or the common entrance for the Subdivision off of Coldwater Road.

1.10 "Covenants". This Declaration and the restrictions, limitations and covenants imposed under it and the Plat.

1.11 "Developer". Springmill Woods Development, LLC, an Indiana limited liability company, and any Successor Developer designated in a recorded instrument by the Developer.

1.12 "Lot", and in plural form, "Lots". 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.

1.13 "Owner, and in the plural form, "Owners". 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.

1.14 "Zoning Authority". The applicable governmental Plan Commission and/or Zoning 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.

1.15 "Plat". This recorded secondary plat of Fox Hollow, Section II.

1.16 "Subdivision". This Section of the Subdivision of Fox Hollow, as well as and including all existing and future sections of the Fox Hollow and Edenbridge Subdivisions.

Section 2. PROPERTY RIGHTS.

2.1 Owners' Easements of Enjoyment. Each Owner shall have the right and an easement of enjoyment in the Common Area 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.

2.1.1 To charge reasonable admission and other fees for the use of any recreational facility located in the Common Area.

2.1.2 To impose reasonable restrictions, limitations, conditions, rules, and regulations regarding an Owner's use and enjoyment of the Common Area.

2.1.3 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 By-Laws, or any rule or regulation of the Association.

2.1.4 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 necessary to allow such adjoiners to comply with the requirements of the Zoning Authority, permit requirements, or with provisions of Section 7, 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 By-Laws, 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.

Section 3. MEMBERSHIP AND VOTING RIGHTS

3.1 Membership of Owner. All Owners shall be members of the Association, and shall be subject to and bound by the Articles and By-Laws of the Association from the commencement of ownership to a Lot. Membership shall be appurtenant to and may not be separated from ownership of a Lot.

3.2 Association Classes of Membership. The Association shall have the following two classes of voting memberships:

3.2.1 **Class A.** Class A membership consists of all Owners, except Developer. Class A members shall be entitled to one vote for each Lot owned after and only after the Authority Transfer Date (as defined in Section 4 hereof). 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. The vote, when applicable and effective, 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.

3.2.2 **Class B.** Class B membership consists of Developer. The Class B member shall be entitled to six hundred votes (600) votes less that number of votes which Class A members are entitled to exercise. Class B membership shall cease upon the happening of either of the following events, whichever occurs first:

3.3.2.1 When fee simple title to all Lots have been conveyed by

Developer; or

3.3.2.2 on December 31, 2025; or

3.3.2.3 when Developer executes and records an irrevocable disclaimer of its Class B membership.

3.2.3 **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 (3) votes for each additional lot in any such additional Sections of the Subdivision.

Section 4. INITIAL MANAGEMENT AND CONTROL BY DEVELOPER

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. Such Date shall be the earlier of:

(a) When title to fifty percent (50%) of all of the Lots in the Subdivision have been conveyed by Developer to a third party. For purposes of Section 4.1(a), the term "Subdivision" includes any additional or future sections of the Subdivision which are shown on the final primary plat of the Subdivision as future sections or which additional sections are platted as additional sections of the Subdivision within ten (10) years from the first conveyance of a lot in the Subdivision by the Developer to a third party, or

(b) When Developer, in its sole and absolute discretion, so determines and provides sixty (60) days prior Notice to the Owners.

4.2 Prior to the Authority Transfer Date. Prior to the Authority Transfer Date as

defined above, 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. Meetings of the Board of Directors, prior to the Authority Transfer Date, shall not be required to be held open to Lot Owners, and notice of such meetings to Owners shall not be required. In addition, prior to the Authority Transfer Date, the Board shall not be required to seek Owner approval of the budget or the Annual Assessment.

4.3 Assessment Limitations. Prior to the Authority Transfer Date, the Board may increase the annual assessment, but not by more than eight percent (8%) above the annual assessment for the previous year.

Section 5. COVENANT FOR MAINTENANCE ASSESSMENTS

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; and (3) Administrative Fees. Such assessments shall be established and collected as provided in these Covenants and the By-Laws. The annual and special assessments and Administrative Fees, together with interest, costs and reasonable attorney fees, shall be a charge on a Lot and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney fees, shall also be the personal obligation of the Owner of such Lot at the time when the assessment became due. 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 as a Lot Owner 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) six (6) years from the date of acceptance of a deed from Developer; (ii) thirty (30) 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 if the successor-in-interest is a Builder; or is 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 not be subordinate to the lien of any first mortgage.

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 residents in the Subdivisions, for the improvement of Common Areas in the Subdivisions, the proportionate cost of the maintenance of any Storm Water 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. The Assessment shall include a pro rata share of the Common Area Detention Ponds and Entrance Area as provided in Section 1.10.

5.3 Maximum Annual Assessments. Until January 1 of the year immediately following the first conveyance by Developer of a Lot in this Section of the Subdivision, the maximum annual assessment shall be Two Hundred Eighty and no/100 Dollars ($280.00) per Lot. From and after the Authority Transfer Date, subsequent assessments may be made by the Board of Directors, as follows:

5.3.1 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 eight percent (8%) above the annual assessment for the previous year, without a vote of the membership.

5.3.2 From and after the Authority Transfer Date, the maximum annual assessment may be increased by a percentage in excess of eight percent (8%) only by the vote or

written consent of a majority of each class of members of the Association.

5.4 Special Assessments for Capital Improvements. In addition to the annual assessments authorized in Section 5.3, 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; provided that any such assessment shall require the written consent of at least seventy-five percent (75%) of each class of members of the Association in the Subdivision including the written consent of seventy-five percent (75%) of each class of members of the Association in any then platted additional Sections, if any, of the Subdivision.

5.5 Administrative Fees. The Association may assess Administrative Fees for Dues Statement Letters and Notice of Covenant Violation Letters as provided in Sections 5.5.1, 5.5.2 and 5.5.3.

5.5.1 The Association may assess against a Lot a reasonable charge for providing a letter (a "Dues Statement Letter") setting forth the status of any annual or special assessments due from any Lot Owner. From time to time, the Association is requested by sellers, buyers, mortgage lenders and real estate closing service providers on behalf of Lot Owners to set forth the current status of payment of annual and special assessments with respect to any Lot. The Association incurs time, cost and expense in providing such letters. The Dues Statement Letter administrative fee is initially fixed at Sixty-Five and no/100 Dollars ($65.00) per letter. The Board of Directors of the Association shall have the right to adjust/increase this administrative fee from time to time.

5.5.2 The Association may assess against a Lot a reasonable charge for providing letters notifying Lot Owners of any violations or breaches of the Covenants (a "Notice of Covenant Violation Letter"). The Association from time to time notifies Lot Owners of violations and breaches of the Covenants. The Association may incur administrative time and expense in receiving and reviewing complaints of any Covenants violations, reviewing the pertinent provisions of the Covenants, onsite inspections, consultation with third parties, mailing and other time, cost and expenses. After the Association has sent a Lot Owner a First 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 the Lot Owner 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 Sixty-Five and no/100 Dollars ($65.00) per letter. The Board of Directors of the Association shall have the right to adjust/increase this administrative fee from time to time. The second and 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, including legal fees, costs and expenses.

5.5.3 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 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 annual or special 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 Covenants.

5.6 Notice and Quorum for Any Action Authorized Under Subsections 5.3 and 5.4. Any action authorized under Sections 5.3 and 5.5 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 thirty (30) days, nor more than sixty (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 of each class of members, 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 sixty (60) days of the date of such meeting.

5.7 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots, including any additional Sections and may be collected on a

monthly, quarterly, or yearly basis; provided, however, Lots owned by Developer upon which there is no residence constructed and Builders granted a temporary exemption pursuant to Section 5.1 shall not be subject to annual or special assessments.

5.8 Date of Commencement of Annual Assessments Due Dates. Annual assessments made under Section 5.3 shall commence as of the first day following the first conveyance of a Lot by Developer, excepting Lots owned by the Developer and Builders whose Lots are temporarily exempted. The first annual assessment shall be prorated to the date of closing. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of the date the annual assessment is due. Written notice of the annual assessment shall be given to every Owner. The due dates shall be established by the Board of Directors. The Association may, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association stating whether an assessment on a Lot has been paid.

5.9 Effect of Nonpayment of Assessments/Remedies of the Association.

5.9.1 Any assessment not paid within thirty (30) days after its due date shall bear interest from the due date at the rate of twelve percent (12%) per annum or at the maximum legal rate permitted by the State of Indiana whichever is greater.

5.9.2 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, costs and expenses incurred because of the failure of an Owner to timely pay assessments made under this Section 5.

5.10 Subordination of Assessment Lien to First Mortgage Liens. Except as otherwise provided in Article 5.1 hereof, the lien of the assessments made under the Covenants shall at all times be subordinate to the lien of any first mortgage. Any sale or transfer of any Lot shall not affect the assessment lien against it. No sale or transfer shall relieve an Owner or Lot from

liability for any assessment subsequently becoming due, or from the lien of an assessment. 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.

5.11 Storm Water Drainage System Maintenance. The Association shall be obligated to maintain, repair and/or replace, if necessary, the Common Area Detention Ponds, including the storm water drainage system, all storm water quality amenities, and any current or future Storm Water Detention Basin located thereon, together with its outlet and water level control structures, as filed and approved by the Allen County Plan Commission and/or the Allen County Surveyor and/or the Allen County Drainage Board in conjunction with the approval of the Subdivision. The total cost of such maintenance, repair and replacement shall be assessed in accordance with Sections 1.10 and 5.2 hereof.

The Allen County Drainage Board, or its successor agency, shall have the right to order the Association to carry out its obligations to maintain, repair or replace the Storm Water Drainage System, all water quality amenities, and any current or future storm water detention system improvements as provided hereinabove. Assessments which have been collected by the Allen County Drainage Board from Lots in the Subdivision will be utilized by the Drainage Board and/or by the Allen County Surveyor for repair and maintenance of the regulated storm pipe system prior to the initiation of the Association's maintenance and repair obligations.

Section 6. ARCHITECTURAL CONTROL

6.1 Construction Approval. No structure or improvement, including but not limited to, building, residence, garage, fence, wall, in-ground swimming pool and spa, 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 (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. Above ground swimming pools are prohibited in on all Lots. The Developer shall serve as the Architectural Control Committee until residences are constructed on all Lots in the Subdivision 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 Section 6.3, 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 Section 6. 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 is in harmony with respect to its external design and location in relation to the surrounding structures and topography in the Subdivision. The Developer shall have the right to temporarily exempt any Builder or Lot Owner from submitting landscaping plans. Such exemption may be revoked at any time by the Developer and the Lot Owner shall thereafter be required to submit for approval a landscaping plan and to install the approved landscaping pursuant to these covenants, including Article 6.7 hereof.

6.2 Dwelling Facade, Front Exteriors. The street/front facade of every residence constructed on any Lot shall have a portion of either brick, stone masonry, or such other materials as may be approved by the Architectural Control Committee.

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 By-Laws) 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.

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 By-Laws) 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.

6.5 Time Constraint. In the event the Architectural Control Committee (or Board of Directors of the Association or other representative acting under Sections 6.1, 6.2, 6.3 or 6.4) fails to act to approve, modify, or disapprove the design and location of a proposed improvement or structure within thirty (30) 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 for the plans and specifications so submitted.

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). In addition to such other landscaping plan requirements of the Architectural Control Committee, each Lot shall be landscaped with at least twelve (12) well developed shrubs and one (1) well developed tree. All Owners, except Developer, shall landscape or cause to be landscaped the Owner's 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 landscaping plans and specifications to conclusively establish that the landscaping plans and specifications were actually submitted for approval and approved and that the landscaping was installed in compliance with these landscape covenants and the approved landscaping plans and specifications. 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 of such events, the Developer shall the right, upon thirty (30) days prior written notice to a Lot Owner, to require the Lot Owner to install the previously approved, or to submit landscaping plans and specifications for approval by the Architectural Control Committee and install such landscaping. In the event an Owner fails to submit landscaping plans and specifications or in the event the Architectural Control Committee denies approval of any submitted 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 Lot Owner to install landscaping pursuant to plans and specifications imposed by the Developer upon the Lot Owner, within thirty (30) days from the date of the Developer's written demand. In the event a Lot 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 Lot Owner, in the same manner and pursuant to the same procedures that assessments may be recovered and liens foreclosed against a Lot Owner pursuant to these Covenants.

6.7 Non-liability of Architectural Control Committee. Plans and specifications are not reviewed for engineering or structural design or quality of materials, or to assure that any improvements constructed pursuant thereto are located within recorded setbacks established by either the Plat, the Covenants, or applicable zoning ordinances, or designed or constructed pursuant to Covenants 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 Builder 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 by way of legal or equitable relief or in damages to anyone 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 Lot Owner, for himself and for all parties claimed by or through such Lot 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 to recover seeking legal or equitable relief or damages and hereby releases all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provide that a general release does not extend to claims, demands, and causes of actions not known at the time this release is given.

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 29 through 35 and Lots 61, 62 and Lot 77 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, in its discretion, 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, or black wrought iron fences, and may deny approval of unreasonable sight or view obstruction, such as stockade or chain link fences, spruce trees or arborvitae plantings. The Architectural Control Committee, the Association (and any of their respective contractors and agents) shall have the right to come on or about Lots 29 through 35 and Lots 61, 62 and 77 to remove any 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.

Section 7. GENERAL PROVISIONS

7.1 Use. Except as otherwise provided in this Section 7.1, Lots may not be used for any uses or 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 (2½) stories in height. Each residence shall include a garage attached as part of the residence, which garage shall have a floor area of not less than three hundred and seventy-five (375) square feet; to accommodate not less than two (2) cars which attached garage shall have one (1) or more overheard garage doors which have an aggregate width of not less than sixteen (16) feet for all such overhead garage doors; such overhead doors to be located on the exterior wall of the garage which is accessed by the driveway. 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:

(i) the Owner has obtained any and all required governmental approvals necessary or required in order to conduct the home occupation on the Lot;

(ii) 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;

(iii) 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 single-family residential character thereof;

(iv) 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; and

(v) no person shall be employed in such home occupation other than a member of the

immediate family who actually resides in the residence.

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 one thousand two hundred (1,200) square feet for a one-story residence, or a total living area exclusive of open porches, breezeways and garages of less than one thousand five hundred (1,500) square feet for a residence that has more than one story.

7.3 Building Lines. 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 any side yard 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 ordinance (currently the Allen County Subdivision Control Ordinance), whichever is less. For Lots 29 through 35 and Lots 61 and 62 that abut ponds in the Subdivision, any dwelling or structure on such Lots shall not be located nearer than fifteen (15) feet to the rear Lot line as shown on the Plat and all other Lots shall not be located nearer than twenty five (25) feet on the Plat.

7.4 Minimum Lot Size. No residence shall be erected or placed on a Lot having a width of less than fifty (50) feet at the front Lot building setback line, nor shall any residence be erected or placed on any Lot having an area of less than six thousand (6,000) square feet.

7.5 Utility Easements. 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 three (3) wires and have a capacity of not less than two hundred (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.

7.5.1 Obstruction of Easements. All easements dedicated in 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 utilities and other 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, storm drainage, 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.

7.6 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 Association and the Allen County Surveyor and/or the Allen County Drainage Board (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 by the Lot Owner, as shall be reasonably necessary to keep the drainage easements and conductors unobstructed.

7.7 Nuisance. No nuisance, 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 Owners in the Subdivision.

7.8 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 goals and above-ground pools. Notwithstanding the foregoing, the Architectural Control Committee may, subject to compliance with Section 6, permit to be erected and maintained in its sole and absolute discretion residential playground equipment such as swing sets, in-ground swimming pools, 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.

7.9 Outside Storage. No boat, boat 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 forty-eight (48) hours, or for a period which is the aggregate is in excess of sixteen (16) days per calendar year. The term "truck" as used in this Section 7.9 is defined to mean any motor vehicle which has a gross vehicle weight in excess of eight thousand seven hundred (8,700) pounds or which is rated at a load carrying capacity of one-ton or more. In determining the 48-hour or sixteen-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 time requirements of this Section.

7.10 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, 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 Sections 6 and 7.8.

7.11 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.

7.12 Antennas. No radio or television antenna with more than twenty-four (24) square feet of grid area, or that attains a height in excess of six (6) feet above the highest point of the roof of a residence, shall be attached to a residence on a Lot. No free-standing radio or television antenna shall be permitted on a Lot. No solar panels (attached, detached or free-standing) are permitted on a Lot. 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 Sections 6 and 7.9.

7.13 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.

7.14 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on a Lot, except that dogs, cats or other household pets 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.

7.15 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. Garbage cans shall be located inside an enclosed garage except when placed at the street for trash pickup.

7.16 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 on a Lot. No Lot, lawn, landscaping or structure shall be permitted to become overgrown,

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 all costs and expenses incurred in making any such alterations, repairs and maintenance, as well as any and all attorney fees.

7.17 Driveways. All driveways on Lots from the street to the garage shall be poured concrete and not less than sixteen (16) feet in width, provided however, in the event the driveway serves a side loading garage, then in that event, the driveway shall be poured concrete and not less than fourteen (14) feet in width at the street.

7.18 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.

7.19 Street Utility Easements. In addition to the utility easements designated in this document, easements in the streets, as 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, nevertheless, to all reasonable requirements of any governmental body having jurisdiction over the maintenance and repair of said streets.

7.20 Storm Water Runoff. No rain and storm water runoff or natural precipitation, whether collected by roof, gutter, down spout, tile, surface drain, drainage tile, perimeter tile or sump pump, shall at any time be discharged or permitted to flow into any 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.

7.21 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 Zoning Authority and other governmental agencies having jurisdiction over the Subdivision. This covenant shall run with the land and be enforceable by the Zoning Authority or by any aggrieved Owner.

7.22 Certificate of Compliance. Before a Lot may be used or occupied, the Owner shall first obtain from the Zoning Authority the improvement location permit and certificate of occupancy or compliance then required by the Zoning Authority.

7.23 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 charges now 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 the Covenants shall in no event be deemed a waiver of the right to do so later.

7.24 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.

7.25 Duration of Covenants. These Covenants shall run with the land and be effective for a period of thirty (30) years from the date the Plat and these Covenants are recorded; after which time the Covenants shall thereafter automatically be renewed for consecutive periods of ten (10) years until terminated by operation of law or pursuant to Article 7.27 hereof.

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

7.26.1 Except as otherwise provided in Section 7.26.2, in order to amend any provisions of these Covenants, the amendment shall require the written consent of at least

seventy-five percent (75%) of each class of members of the Association in the Subdivisions and the written consent of seventy-five percent (75%) of each class of members in any then platted additional Sections, if any, of the Subdivision. For purposes of this Section 7.26.1, the term "Owner" and "Lots" shall have the same meaning with respect to "Owners" and "Lots" in such future sections, as the term "Owner" and "Lots" is defined in Sections 1.10 and 1.11. 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 7.26.1, also must approve and sign the amendment in order for the amendment to be valid and effective.

7.26.2 Notwithstanding the provisions of Section 7.26.1, Developer and its successors and assigns shall have the exclusive right for a period of four years from the date the Plat and these Covenants for this Section are recorded, to amend the Plat or any of the Covenant provisions; provided, however, that 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 seventy-five percent (75%) of the Owners.

7.27 Lot Size Alterations. No Lot or combination of Lots may be further subdivided until approval for such subdivision has been obtained from the Zoning 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 1.10 and the requirements of Section 7.4.

Section 8. **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 Section 5. 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 Section 8.

Section 9. **ATTORNEY FEES AND RELATED EXPENSES.** In the event the Association, the Developer, an Owner, or the Zoning Authority is successful in any proceeding, whether at law or in equity, brought against an Owner to enforce any restriction, covenant, limitation, easement, condition, reservation, lien, or charge now or subsequently imposed by the provisions of these Covenants, such successful party seeking enforcement thereof shall (except as limited hereafter) be entitled to recover from the party against whom the proceeding was brought, the reasonable attorney fees and related litigation costs and expenses incurred in such proceeding; provided, 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 involving these Covenants.

Section 10. **SIDEWALKS.** Plans and specifications for the Subdivision approved by and on file with the Zoning Authority require the installation of concrete sidewalks within the street rights-of-way in front of Lots 29 through 52 and Lots 53 through 58 and Lots 68 through 77 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 Zoning 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 11. **FLOOD PROTECTION GRADES.** In order to minimize potential damage to residences from surface water, minimum flood protection grades are hereby established as set forth below. All residences on such Lots shall be constructed so that the minimum elevation of the first floor, or the minimum sill elevation of any opening below the first floor, equals or exceeds the applicable minimum flood protection grade established in this Section 11. The flood protection grades shall be Mean Sea Level ("MSL") and are as follows:

Lot 29	839.7 feet Mean Sea Level
Lots 30 and 31	852.1 Front 840.0 Rear feet Mean Sea Level
Lots 32 through 34	840.0 feet Mean Sea Level

Lots 39 and 40	852.1 feet Mean Sea Level
Lot 52	858.6 feet Mean Sea Level
Lots 54 and 55	857.9 feet Mean Sea Level
Lots 60 through 63	852.5 feet Mean Sea Level
Lots 67 and 68	857.9 feet Mean Sea Level

Section 12. 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 these Covenants, the more stringent zoning ordinance requirements (but as modified by any granted variance) in effect on the date of recordation of these Covenants shall apply; provided, however, nothing contained herein shall prohibit Developer or any Lot Owner in 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 these Covenants.

Section 13. EQUINE/FARMING ACTIVITIES. The Owners of Lots in the Subdivision and their successors-in-title hereby waive and release any and all rights, which they may have or hereafter have to remonstrate against or otherwise object to, interfere with, or oppose any pending or future farming or equine operations adjacent to the Subdivision.

IN WITNESS WHEREOF, SPRINGMILL WOODS DEVELOPMENT, LLC, an Indiana limited liability company, by its duly authorized Member, Jamie S. Lancia, Owner of the Real Estate, has signed these Covenants and this Amended and Restated Declaration document on this 28th day of December, 2018.

Developer:
SPRINGMILL WOODS DEVELOPMENT, LLC

By: Jamie S. Lancia, its Member

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, a Notary Public in and for said County and State, this 28th day of December, 2018 personally appeared Jamie S. Lancia, known to me to be the duly authorized Member of Springmill Woods Development, LLC, the Successor Developer to North Eastern Development Corp., and acknowledged the execution of the above and foregoing as his voluntary act and deed and on behalf of said limited liability company for the purposes and uses set forth in this document.

Witness my hand and notarial seal.

My Commission Expires: 6/17/19
Resident of Allen County, Indiana

Lisa R, Faux, Notary Public

This instrument prepared by Vincent J. Heiny, Attorney at Law, Carson LLP, Suite 200, 301 W. Jefferson Blvd., Fort Wayne, Indiana 46802, Telephone: (260) 423-9411.

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/ Vincent J. Heiny*

LISA R FAUX
Allen County
My Commission Expires
June 17, 2019