

**DEDICATION, PROTECTIVE
RESTRICTIONS, COVENANTS, LIMITATIONS, EASEMENTS AND
APPROVALS APPENDED TO THE PLAT OF CHESTNUT CREEK SECTION II A
SUBDIVISION IN ABOITE TOWNSHIP, ALLEN COUNTY, INDIANA**

PREFACE

New Venture Development Corp. (the "Developer") by James Morlan its President declares that Developer is the owner of the real estate shown and legally described in the Plat, and lays off, plats and subdivides the real estate in accordance with the information shown on the Plat attached to and incorporated by reference in this document. The platted subdivision shall be known and designated Chestnut Creek Section II a subdivision in Aboite Township, Allen County, Indiana, including all existing and future sections of such subdivisions (the "Subdivision").

Developer desires to provide for the preservation of the values and amenities in the community and for the maintenance of common areas or facilities; and to this end, desires to subject the Plat to the covenants, restrictions, easements, charges, and liens set forth in this document, each and all of which is and are for the benefit of the Lots and Owners.

All Lots in the Subdivision shall be subject to and impressed with the covenants, limitations, easements and restrictions set forth herein. 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 3 through 6, 62 through 65 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.

In addition to the recordation of the Plat and this document, the Developer shall incorporate the Association, as further defined below, and each Owner of a Lot in the Subdivision shall become a member of the Association, and be bound by its Articles and Bylaws.

Developer reserves the right to subdivide and plat, and to consent to allow third parties to subdivide and plat, nearby and 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.



COVENANTS

Section 1. DEFINITIONS. Capitalized terms as used in these Covenants shall have the meaning ascribed to them in this Section 1, except as otherwise set forth in these Covenants. When used in these Covenants, unless the context shall prohibit or otherwise require, the following words shall have all the following meanings and all definitions shall be applicable to the singular and plural forms of such terms:

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". Chestnut Creek Community Association, Inc., an Indiana nonprofit corporation, its successors and assigns.

1.3 "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.

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

1.5 "Bylaws". The bylaws adopted by the Association, including any and all amendments to those bylaws.

1.6 "Common Area". All real property shown on the Plat described to be devoted to the common use and enjoyment of the Owners of Lots in the Subdivision, unless such real property is transferred or encumbered by an easement or other right pursuant to Section 2.1.3 below, and all real property owned by the Association for the common use and enjoyment of Owners. For the avoidance of doubt, the Common Area excludes the Access Easements referred to on the Plat reserved for the exclusive use of the Association and governmental entities referred to on the Plat.

1.7 "Covenants". This document and the restrictions, limitations and covenants imposed under it and the Plat, and any amendments or additions hereto as may be recorded in the Office of the Recorder of Allen County, Indiana, from time to time.

1.8 "Successor Developer". A successor in title to any Lot who is designated as the "Developer" for all purposes, and if so designated, shall succeed to all of the rights of the initial Developer, but only if the deed of conveyance or other recorded instrument specifically designates the transferee as the successor Developer.

1.9 "Lot". Any of the platted lots in the Plat that meet the requirements of Section 7.4. For the avoidance of doubt, a Lot shall not include any portion of the Common Areas.

1.10 "Owner". The record owner (whether one or more persons or entities) of fee simple title to a Lot, including land contract buyers, but excluding those having an interest in a Lot merely



as security for the performance of an obligation unless and until such interest holder has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

1.11 "Governmental Authority". The applicable governmental plan commission, building department or commission, and/or zoning authority, or any successor agency, then having building and zoning authority and jurisdiction over the Subdivision to issue improvement location permits, and to issue certificates of occupancy for residences constructed on Lots.

1.12 "Plat". The recorded secondary plat of Chestnut Creek Section II.

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. The Association and Developer shall have the right:

- 2.1.1 To impose reasonable restrictions, limitations, conditions, rules, and regulations regarding Owner's use and enjoyment of the Common Area.
- 2.1.2 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 of the Association.
- 2.1.3 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, may cause the Association to, or if the real estate is still owned by Developer, transfer, dedicate or convey such portions of the Common Area to adjoining Lot Owners as may necessary to allow such adjoining Lot Owners to comply with the requirements of the applicable zoning ordinance, permit requirements, or with provisions of Section 7. The Developer may cause the Association to, or if the real estate is still owned by Developer, the Developer may, grant and convey 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 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.

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 Bylaws 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. Persons or entities who hold an interest in any Lot merely as security for the performance of an obligation shall not be members of the Association.

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. Class A members shall be entitled to one vote for each Lot owned after and only after the Authority Transfer Date. Prior to the Authority Transfer Date, as defined below, 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; however, the 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.

3.2.2 Class B. Class B membership consists of Developer. The Class B member shall be entitled to 750 votes. Class B membership shall cease upon the happening of the first to occur of the following events (the "Authority Transfer Date"):

3.2.2.1 When fee simple title to all Lots have been conveyed by Developer;

or

3.2.2.2 on December 31, 2035 ; or

3.2.2.3 when Developer executes and records an irrevocable disclaimer of its Class B membership in the Office of the Recorder of Allen County, Indiana.



- 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 to one (3:1).

Section 4. MANAGEMENT AND CONTROL OF THE ASSOCIATION.

4.1 **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 do not need to be members of the Association or Owners. 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.

4.2 **Assessment limitations.** Prior to the Authority Transfer Date, the Board may increase the annual assessment, but not by more than 10% above the annual assessment for the previous year.

4.3 **Upon the Authority Transfer Date.** Upon the Authority Transfer Date as defined above, the Association shall be controlled by the Class A members, who shall appoint the Board to operate the Association in accordance with the terms and conditions of the Articles and Bylaws.

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 along with professional accounting, and legal fees for the Association. Such assessments shall be established and collected as provided in these Covenants and the Bylaws. The annual and special assessments and working capital, 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, 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) 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 (iii) 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 and all Assessments 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 Assessments 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.

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 common impoundment 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.

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 \$650.00 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 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 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 75% of each class of members of the Association in the Subdivisions and the written consent of 75% of each class of members of the Association in any then platted additional Sections, if any, of the Subdivision.



5.5 Notice and Quorum for Any Action Authorized Under Subsections 5.3 and 5.4. Any action authorized under Sections 5.3 and 5.4 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 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 60 days of the date of such meeting.

5.6 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.

5.7 Date of Commencement of Annual Assessments Due Dates. Annual assessments made under Section 5.3 shall commence as of the first day of 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 pro-rated to the date of closing. The Board of Directors shall fix the amount of the annual assessment against each Lot at least 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.

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

5.8.1 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 in the event the maximum legal rate permitted by law is less than 12% per annum.

5.8.2 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.

5.9 Subordination of Assessment Lien to First Mortgage Liens. Except as otherwise provided in Section 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.

5.10 Storm Water System. Detention ponds, retention ponds, stormwater drainage swales and systems, conduits, pipes, drainage easements and other facilities located within easements or Common Areas have been constructed and established for the purpose of controlling stormwater. The Association shall perform all maintenance, repair and replacement including, but not limited to, mowing, weed control, sediment protection, wetland protection and all other maintenance in a manner in compliance with the Allen County Surveyor and Allen County Drainage Board requirements in effect from time to time. If at any time in the future the Association fails and/or refuses to perform any and all necessary maintenance, repair, mowing or weed control or sediment control in a manner consistent with the Allen County Surveyor and Allen County Drainage Board requirements, either of them may, but shall not be obligated to, perform the necessary maintenance and the Association shall be directly liable for all costs and expenses incurred by the Allen County Surveyor and Allen County Drainage Board in performing any and all maintenance, repair, mowing or weed control of the detention and retention ponds, drainage swales, pipes, conduits and other drainage facilities. The Association, the Allen County Surveyor and the Allen County Drainage Board, or its successor agencies, shall have the right to order any access or drainage easement to remain open and free of obstructions as well as order the Association to carry out its obligations to maintain, repair or replace any storm water drainage systems, all water quality amenities, and any current or future storm water detention system improvements as provided hereinabove.

5.11 Administrative Fees. 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 besides Builder. 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 \$150 per letter. The Board of Directors of the Association shall have the right to adjust/increase this administrative fee from time to time. The administrative fees for the Dues Statement 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 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, Builder is exempt, 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 was a delinquent assessment as provided in the Covenants.

Section 6. ARCHITECTURAL CONTROL.



6.1 Control. 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, 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. 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 6.2 hereof.

6.2 Construction Approval. No structure or improvement, including but not limited to, any building, residence, garage, fence, wall, in-ground swimming pool and spa, exterior lighting, swing set, play equipment, trampoline, 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. 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 comply with the terms and conditions herein. 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 Section 6.6 hereof. Owners who have not paid any applicable assessments or who are in violation of any covenants herein shall not be eligible to construct or erect any additions to any building or residence or other Structures until all assessments have been paid and any violations have been cured.

6.3 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 and regularly mow and maintain the Lot. Should the Lot Owner fail to comply with the requirements as set forth herein, the Association shall have the right to enter upon the Lot and seed the entire Lot with grass, and to mow and maintain the Lot 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 covenant, which lien shall be subject to the same collection rights and remedies granted to the Association in Section 5. The lien shall not become effective against bona fide purchasers for value without notice thereof, unless and until said lien is duly recorded in the Recorder's Office of Allen County, Indiana. After the completion of home, residence, building, or other Structure the Owner shall seed the remaining portion of the



Lot, excluding any landscaping, sidewalk, driveway, and similar area, and Owner shall maintain the lawn by regular mowing the lawn and providing for general upkeep. Owner shall be responsible for weed control in lawn and all landscape beds, all of which shall be maintained in accordance with all Allen County and/or City of Fort Wayne ordinances. The Board of Directors shall have the right to correct the problem at Owner's expense, which expense may become a lien on the Lot of the Owner and foreclosed and collected upon as any other lien in these Covenants.

6.4 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 structures in the Subdivisions. Such delegation shall be made in writing, signed by the Developer, and delivered or mailed to the Association's registered office.

6.5 Time Constraint. In the event the Architectural Control Committee (or its designated representative under Section 6) fails to act to approve, modify, or disapprove the design and location of a proposed improvement or structure within sixty (60) days after complete and detailed 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.

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). All Owners, except 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. 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 have the right, upon thirty (30) days prior written notice to a Lot Owner, to require the Lot 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 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 pursuant to plans and specifications imposed by the Developer upon the Lot Owner, with such Developer-imposed landscaping plans and specifications and the installation thereof to be installed and completed by



the Lot Owner within one hundred twenty (120) 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. Neither the Architectural Control Committee, the Developer, nor the Association, or any of their designated representatives, officers, directors, agents, employees, members, owners, or otherwise, assumes liability or responsibility for any defect in any Structure constructed from any plans and specifications submitted to them for approval, nor for any actions of any contractor, subcontractor, or builder in connection therewith. Neither the Architectural Control Committee, the Developer, nor the Association, or any of their designated representatives, officers, directors, agents, employees, members, owners, or otherwise 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 to the fullest extent permitted by law. 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 the Architectural Control Committee, the Developer, nor the Association, or any of their designated representatives, officers, directors, agents, employees, members, owners, or otherwise 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 any Lots 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, or black wrought iron fences, and may deny approval of unreasonable sight or view obstruction, such as stockade fences, spruce trees or arborvitae plantings. The Association reserves the right to come on or about these Lots 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. The cost incurred by the Association shall be assessed to the Owner. The Owner shall reimburse the Association within thirty (30) days of the date on which the Owner is invoiced by the Association or a lien may be placed on the property. 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, 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 cars with a square fee of 660 which attached garage shall have two (2) or more overhead garage doors which have an aggregate width of not less than 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:

- 7.1.1 the Owner has obtained any and all required governmental approvals necessary or required in order to conduct the home occupation on the Lot;
- 7.1.2 the Association 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;
- 7.1.3 any such home occupation use shall be conducted entirely within the residence and/or any approved outbuilding, such home occupation shall be clearly incidental and secondary to the use of the Lot for a residence for single-family dwelling purposes and shall not change the overall residential character thereof;
- 7.1.4 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;
- 7.1.5 no person shall be employed in such home occupation other than a member of the immediate family who actually resides in the residence;
- 7.1.6 the operating of the Association shall not be considered a business activity under this 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 2200



square feet for a one-story residence, or a total living area exclusive of open porches, breezeways and garages of less than 2600 square feet for a residence that has more than one-story with the first floor having at least 1800 square feet.

7.3 No dwelling or structure shall be located on a Lot in violation of the building setback lines as shown on the Plat.

7.4 Minimum Lot Size. No residence shall be erected or placed on a Lot having a width less than the front Lot minimum building setback line depicted on the Plat for the Lot, nor shall any residence be erected or placed on any Lot having an area of less than 6,500 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 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.

7.5.1 All easements dedicated on the Plat or these Covenants shall be kept free of all permanent structures, and any structure, fence, 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.

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 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.



7.7 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. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly or unkept condition on his or her Lot. Nothing which could cause embarrassment, discomfort, annoyance or nuisance to the occupants of other portions of the Subdivision or which result in a cancellation of any insurance for any portion of the Subdivision, or which would be in violation of any law or governmental code or regulation shall be permitted in the Subdivision.

7.8 Structures Other Than Single-Family Residence. Except as specifically permitted herein, 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 Section 6, permit to be erected and maintained in its sole and absolute discretion residential playground equipment such as swing sets, trampolines, 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, trailer, jet ski, snowmobile, recreational vehicle, motor home, truck, bus, camper, or 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 continuous hours, or for a period which is the aggregate is in excess of 16 days per calendar year. The term "truck" as used in this Section is defined to mean any motor vehicle which has a gross vehicle weight rating in excess of 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 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, 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 Section 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. Political signs maybe allowed thirty days (30) days before election and must be removed within five days (5) after the election, or as otherwise required by law.



7.12 Antennas. No radio or television antenna with more than 24 square feet of grid area, or that attains a height in excess of 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, unless approved by the Architectural Control Committee. 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 Architectural Control Committee under Section 6 and 7.8.

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 and shall be placed in the garage or in an enclosed approved structure at the end of collection day. 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 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, unless approved by the Architectural Control Committee. Notwithstanding the foregoing, roll roofing may be used for flat roofs if approved in writing by the Architectural Control Committee. 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 Association 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.

7.17 Driveways. All driveways that are less than 130 feet long from the street to the garage shall be poured concrete and not less than 16 feet in width. Any driveway more than 130 feet long from the street to the garage may be asphalt and not less than 12 feet in width.

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 an open-loop geothermal system, swimming pool or lawn irrigation.

7.19 Street Utility Easements. In addition to the utility easements designated in this document, public street rights-of-way, as shown on the Plat, are reserved and granted to all public utility companies, the Owners of any Lot 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, 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.

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 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.

7.22 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.

7.23 Enforcement. Except as otherwise provided in these Covenants, the Association, Developer and any Owner (individually or collectively) shall have the right—including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein—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 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.



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, and after the Authority Transfer Date, the amendment shall require the written consent of at least 75% of the members of the Association in the Subdivisions. 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 Section 1. 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 until the Authority Transfer Date, 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 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 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 or Common Area (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 on the minimum requirements of a Lot under these Covenants.

7.28 Exterior Façade. The exterior front façade of any Dwelling in the Subdivision directly facing a public street shall have wood, brick, stone, masonry or such other materials as may be approved by the Architectural Control Committee.

7.29 Geothermal & Irrigation. All Lots directly abutting any retention pond located on any Common Area shall be permitted to access and use the water in the pond for an open loop geothermal heating and cooling system. No Lot shall be permitted to use any such retention pond for a closed loop geothermal system. Access to and use of the retention pond for a geothermal system shall require the prior written approval of the Association. As a condition of approval, the Association shall be entitled to impose reasonable conditions of the approval, such as by way of illustration and not limitation, size and location of water intake source, pump and water line location and size as well as screening and burying of any line and pump. Neither the Developer nor the Association shall have any liability to any Lot Owner due to the inadequacy of the water or inability of the water level or volume to service any such geothermal system.



7.29.1 No Lot abutting any retention pond shall be permitted to access, use, or draw water from any pond for irrigation purposes without the prior written consent of the Association which approval may be withheld or conditioned in its sole and absolute discretion. Any approval so granted may impose conditions and restrictions as well as the requirement to pay an annual fee of not less than \$250.00, and any such approval may be revoked at any time upon 15 days prior written notice to the Lot Owner. Any fee charged for irrigation need not be uniform for each Lot and differential irrigation fees may be based upon Lot size, irrigation water usage, and whether the Lot Owner has an open loop geothermal system that discharges into the pond.

Section 8. MANDATORY SOLID WASTE DISPOSAL. Unless weekly refuse/garbage pickup services are provided by a governmental entity having jurisdiction thereof, the Association shall have the right to contract for disposal of garbage and other solid waste and charge 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.

Section 9. ATTORNEY FEES AND RELATED EXPENSES. In the event the Association, Developer, an Owner, or the Governmental 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, the successful party seeking enforcement thereof shall 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; 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.

Section 10. 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 in front of the Lot (or between the Lot and the road(s)) 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 a Builder for a Lot on which a sidewalk is required to be constructed, Builder shall be considered as an Owner subject to enforcement of this Covenant but only with respect to that Lot. The Owner is required to do maintenance on sidewalks when needed.



Section 11. FLOOD PROTECTION GRADES. No dwelling or other structure or improvement shall be constructed on 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 protection grade elevation, with the exception of the lots listed in Section 11.1. 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.

11.1 FEMA FLOOD PROTECTION GRADES. The Lowest floors for the residences on the following lots shall be at Flood Protection Grade (FEMA Base Flood Elevation plus 2 feet):

Lot Number	FEMA Base Flood Elevation	FEMA Base Flood Elevation plus 2 Feet (Flood Protection Grade)
3	819.0	821.0
4	819.0	821.0
5	819.0	821.0
6	819.0	821.0
62	821.5	823.5
63	821.5	823.5
64	821.5	823.5
65	825.8	827.8

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 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 these Covenants.

Section 13. WETLAND AREAS WITHIN LOTS OR BLOCKS. No person shall make or allow to be made, any alteration, improvement, or disturbance in, to or about the soils, vegetation, or hydrology of the delineated wetland without first obtaining the express written consent in the form of a 401 Water Quality Certification from the Indiana Department of Environmental Management (IDEM). Nothing herein shall constitute a waiver of the obligation of any person to comply with all applicable laws and regulations including, without limitation, the applicable laws and regulations of the State of Indiana. Alteration, improvement, or disturbance in, to or about soils, vegetation, or hydrology without express written consent of IDEM will result in enforcement action against the responsible party by IDEM.



IN WITNESS WHEREOF New Venture Development Corp. by its duly authorized President James Morlan Owner of the Real Estate, has signed this document on this 15th day of November 2023.

Developer

By: James Morlan
Its: President

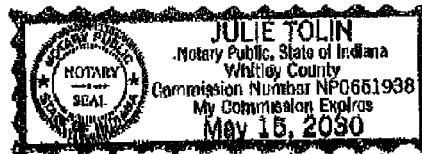
STATE OF INDIANA)
)§
COUNTY OF ALLEN)

Before me, a Notary Public in and for said County and State, this 15th day of November, 2023 personally appeared James Morlan known to me to be the duly authorized President of New Venture Development Corp. and acknowledged the execution of the above and a foregoing as his voluntary act and deed and on behalf of said corporation for the purposes and uses set forth in this document.

Witness my hand and notarial seal.

Signed: _____

My Commission Expires:



* * * * *

This instrument was prepared by Logan C. Stevens, Attorney at Law, # 36085-02
Carson LLP, 301 W. Jefferson Boulevard, Suite 200, Fort Wayne, Indiana 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. Logan C. Stevens

