

## Memorandum

To: All homeowners in Indian Village  
From: Grant F. Shipley, attorney-at-law  
Subject: The almost insurmountable problems facing Indian Village, as far as neighborhood governance

### Overview of the problem

It seems apparent that some people in Indian Village really want to have a neighborhood association, even to the point of arguing over who should be the directors or governors of that association. In one sense this is good: many neighborhood associations face apathy rather than energetic involvement. But the recent squabbles hide an even deeper problem: The Neighborhood Association simply has no legal basis for performing the functions everybody thinks it should do. Here's why.

### I. Restrictive Covenants

Indian Village Community Association exists in part to enforce the Restrictive Covenants, to assess dues in accordance with those covenants, to expend money on maintenance in accordance with those Covenants, and to otherwise enforce the Restrictive Covenants against those who choose to ignore them. So what are restrictive covenants?

Restrictive Covenants are different from zoning ordinances. Restrictive covenants arise out of private agreements. Zoning ordinances arise out of legislation by the City of Fort Wayne. We're focusing on the private agreement aspect of land use governance, when we talk about restrictive covenants. Here's what the Indiana Supreme Court says about restrictive covenants:

A restrictive covenant is an agreement between a grantor and a grantee in which the latter agrees to refrain from using his property in a particular manner. . . . Restrictive covenants have also been described as "restrictions arising out of agreements between private parties who, in the exercise of their constitutional right of freedom of contract, can impose whatever lawful restrictions upon the use of their lands that they deem advantageous or desirable."

(I am quoting from *Story Bed & Breakfast, LLP v. Brown County Area Plan Commission*, 819 N.E.2d 55, 64 (Ind.Ct.App. 2004).)

I want to give you direct quotations of court decisions and statutes, so that you can see I am not making this up. It is important for you to understand that this is the law, as declared by the Indiana Supreme Court and as declared by our General Assembly.

So a restrictive covenant is an agreement arising out of a contract between a seller of real estate and a buyer of real estate (a grantor and a grantee). So where did Indian Village's Restrictive Covenants come from?

Let's look at the Restrictive Covenants which were recorded by a landowner (City and Suburban Building Company) on June 16, 1927, applicable to Section "A" of Indian Village. This was the first part of Indian Village to be laid out (platted). I am enclosing a copy of those

To: Indian Village homeowners  
October 13, 2014  
page 2

Restrictions along with this Memorandum. City and Suburban Building Company owned all of the land that is presently Indian Village; it carved off a large part for the initial plat (Section "A"), and then declared "for itself and for its successors and assigns and for its and their future grantees" (in other words, all those who bought land in Section "A") that certain restrictions would apply. These Covenants called for the creation of a neighborhood association called "Indian Village Community Association" which would collect maintenance charges and manage the maintenance fund. These Restrictions also said that, in the future, the developer could hand over to the Association the right to enforce the Covenants. The "membership" was to be drawn from "Indian Village Addition," a term not further defined (did that mean only Section "A"?). The Restrictive Covenants, however, only applied to Section "A."

There was a surprise buried in these Restrictive Covenants. Look at page 1, "Persons Bound by these Restrictions." "All owners . . . agree and covenant . . . to conform to and observe the following covenants . . . for a period of twenty-five years from May 1st, 1927, provided, however, that each of said restrictions shall be renewable in the manner hereafter set forth."

Twenty-five years after May 1, 1927 is May 1, 1952.

The power to amend this "sunset" provision is set forth in Section 12. That sunset provision "can be modified only by petition to the Circuit Court of Allen County, Indiana, signed by at least 65-percent of the owners . . .". Frankly, that "modification" provision was intended to apply only to modification of Restrictive Covenants as related to the use of property. Other than that there really is no procedure for renewing the Restrictive Covenants.

So that's the first problem with these Restrictive Covenants: They expired. The Covenants are in the nature of a contract between the developer and the buyers, so that people who buy lots in Section "A" of Indian Village are subject to all the terms and conditions of those Restrictive Covenants – including the fact that the Covenants may have disappeared in 1952, since nobody apparently noticed. (I have checked the Recorder's Office to see if there was any renewal of these Covenants before they expired in 1952; no such document has turned up. I likewise checked the records of the Allen Circuit Court; they have no record of any such petition or proceeding.)

The Restrictive Covenants in Section "A" can be (or at least it used to be) subject to modification by petition of 65% of the landowners. That is how covenants are changed: The landowners change them in a way that is recordable in the Office of the Allen County Recorder.

It is important to realize that Indian Village Community Association, Inc. plays no role in creating restrictive covenants. If authorized by the Restrictive Covenants (as established by the owners), then the Association can enforce those Covenants. It cannot amend them. It cannot repeal them. Only the homeowners acting in concert can change the Covenants. Therefore the Restrictive Covenants are not part of the corporation documents. The Neighborhood Association must abide by the Restrictive Covenants, when it goes about its business.

To: Indian Village homeowners  
October 13, 2014  
page 3

## II. More problems when Indian Village expanded

The City and Suburban Building Company went out of business in the Depression. A successor landowner, The City and Suburban Land Company, was formed in the 1930's, but did not do any further development of Indian Village. Instead, sometime around 1945, all the remaining land in Indian Village was sold to John R. Worthman, Inc., a developer. It was Mr. Worthman who started the process of laying out the remaining Sections of Indian Village. The first new Section to be laid out (on July 30, 1945) was designated Section "B." I have attached a copy of the plat and Restrictive Covenants applicable to Section "B." The plat includes Protective Covenants (that's the same as Restrictive Covenants). The first thing you will notice is that there is no mention of Indian Village Community Association, or any other neighborhood association. There is also no mention of how to amend these Covenants. So Section "B" is its own little stand-alone neighborhood, with its own Protective Covenants, and no neighborhood association. That's not to say that the residents could not form a club. But one of the problems with Section "B" is that there are no mandatory dues, there is no maintenance fund, and there is no provision for the creation of an association to collect maintenance fees.

Mr. Worthman did not stop with Section "B," however. The next section (Section "C") was platted in May of 1947. I am attaching those Covenants for your review as well.

So now let's look at Section C's Restrictive Covenants (enclosed with this Memorandum). Section 8 of the Protective Covenants recognizes the existence of Indian Village Community Association, as provided for in the Covenants established under Section "A." (Note there is no mention of Indian Village Community Association having anything to do with Section "B.") In essence, Section "C" members have the right to join Indian Village Community Association and have all the benefits of membership, the same as residents in Section "A." There is a maintenance fund established which the Association will manage, but the maintenance fees collected in Section "C" are for the benefit of the Addition (Section "C"). Section 10 of the Protective Covenants provide that the Covenants continue to automatically renew for successive periods of ten years each, unless the Covenants are changed or invalidated by a petition of 65% of the then owners of lots in Section "C."

Section "D" was platted in April of 1950. The plat and Restrictive Covenants for Section "D" are enclosed with this Memorandum. Section 9 refers to an existing neighborhood association, Indian Village Community Association, which the developer thought was governed by the terms and conditions of the Restrictions for Sections "A," "B," and "C." (Even though Section "B" did not mention the Association at all.) Section 9 indicates that the purpose of the Association is to use the maintenance fund; a maintenance fee "not to exceed Five Dollars" was to be charged. Each homeowner in Section "D" had the right to apply for membership in the Neighborhood Association, and would be entitled to all the same benefits as would be enjoyed by the owners of lots in Sections "A," "B," and "C." Section 10 of the Covenants provide that the Restrictive Covenants would automatically be continued to be extended each ten years, unless 65% of the then-owners of lots petitioned for amendment or abolition of the Covenants.

Finally Section "E" was platted in 1953. This is the final Section of Indian Village that Mr. Worthman platted. There are adjacent areas (Indian Hills and Enola Court) that were never formally mentioned as a Section of Indian Village. I am enclosing the plat and Restrictive

To: Indian Village homeowners

October 13, 2014

page 4

Covenants which John Worthman recorded in 1953, applicable to Section "E." Section 8 of these Covenants calls for the creation of an incorporated or unincorporated not-for-profit community association for the benefit of Section "E." There is no mention of Indian Village Community Association. Rather, the maintenance fund (Section 10) is to be used only for doing things "for the benefit of said addition."

In other words, this was not handled properly. Section A's Restrictive Covenants have expired. Section B's Restrictive Covenants do not mention any neighborhood association at all. Section "C" recognizes the existence and authority of Indian Village Community Association but suggests that the maintenance fees collected within Section "C" are to be used for the benefit of Section "C." Section "D" refers to Indian Village Community Association, and hints that the members are to be afforded the same rights as those in Sections "A," "B," and "C." Section "E" does not mention Indian Village Community Association, but recognizes that a community association may be recognized by the developer, and that community association will collect dues and expend them for maintenance within Section "E."

So exactly what is the authority Indian Village Community Association, Inc.? It has nothing to do with Section "A," since those Restrictive Covenants expired. It has nothing to do with Section "B," since there never was any recognition of Indian Village Community Association (or any neighborhood association) in those Covenants. It is probably a neighborhood association which may represent Sections "C" and "D," although it may well be that the members in Section "C" can vote for Directors of their own Indian Village Community Association, and the members in Section "D" vote on their own Directors for their own Indian Village Community Association. And Section "E" has its own association.

This does not bode well for finding any legal authority in Indian Village Community Association, Inc. to act as if Indian Village exists as a single, unified neighborhood.

### III. Constitution and By-laws

Indian Village Community Association, Inc. was formed as Indiana corporation in 2012. Before that, it appears that the entity was an unincorporated association. The unincorporated association was governed by a Constitution and By-laws (a copy is enclosed with these materials). Apparently the Constitution and By-laws go back for decades, because they refer to a situation that no longer exists today. Article II of the Constitution shows that it was written after Section "B" was platted, but before Sections "C," "D," and "E" were platted. The "addition" to which it refers, Indian Village, is described as "Indian Village, Section "A" and Indian Village, Section "B." So this must have been drafted before the Restrictive Covenants for "A" expired in 1952. As far as I can tell, the Constitution and By-laws were not updated until 2002, to add provisions about late payment penalties for maintenance fees.

Remember, all the provisions of the Constitution apply to Indian Village or "said Addition" – Sections "A" and "B." So this Constitution does not govern a neighborhood association representing homeowners in Sections "C," "D," and "E."

The first thing that comes to mind is that there are no restrictive covenants in Section "A" at all, and there is no homeowners association called for by Section "B" Covenants. The

To: Indian Village homeowners  
October 13, 2014  
page 5

Constitution and By-laws fail to address the fact that there are three additional Sections, each with their own Restrictive Covenants, for which Indian Village Community Association has been designated as the authorized neighborhood association. (At least for "C" & "D"; Section "E" is silent on naming the neighborhood association.)

So if push comes to shove (as it recently has), it's time to point out that Indian Village Community Association, Inc. presently does not have any rights with respect to Sections "A" or "B," and that the Constitution and By-laws which everyone keeps referring to do not apply to Sections "C," "D," and "E." In other words, the rules of governance for Indian Village Community Association, Inc. are those in the Indiana statutes, not the Restrictive Covenants, not the Constitution. Indian Village Community Association, Inc. exists, of course, but its powers and duties are in question. It is authorized to collect dues and perform maintenance in Sections "C" and "D," and probably in Section "E." But there are serious doubts whether homeowners in Sections "A" and "B" can elect Directors of this neighborhood association, if the only duties of that neighborhood association are to perform maintenance services in Sections "C," "D," and "E."

#### IV. The Solution

In 2012 and 2013, the Board of Directors recognized the huge mistakes that were made in the past concerning the Restrictive Covenants and the establishment of governance for Indian Village. There was no simple method to recreate a new neighborhood called Indian Village and a new neighborhood association that would be able (legally) to collect dues, perform maintenance, and enforce the Restrictive Covenants. So the Board authorized an inquiry with Representative Dan Leonard, to see if the Indiana General Assembly would enact a law that would allow Indian Village to come together as a single neighborhood, with a single set of Restrictive Covenants. Representative Leonard responded favorably, and did a strong job in both the House and in the Senate shepherding this legislation through. It was signed by the Governor effective July 1, 2014. That statute is IC 32-21-2-3.5 (enclosed with these materials). If 65% of the homeowners in the various Sections sign a Petition accepting identical restrictive covenants (and this offer can be extended also to Indian Hills and Enola Court), then a new neighborhood is created with each Section of the neighborhood having the same restrictive covenants, the same rights and the same responsibilities. That process has started, and a draft of proposed Covenants has been circulated for people to sign petitions. As of today, we do not yet have 65%.

Once there are enough signatures to form a new Indian Village, then either a brand new non-profit corporation is established or, in the alternative, Indian Village Community Association, Inc. proposes new By-laws for everyone's review. If there have been problems in the past concerning governance issues, the new By-laws can correct those problems. The new By-laws will specify how many members of the Board of Directors there are, what the terms of their service will be (staggered three year terms? for example), which officers will be selected by the Board of Directors, what the duties of those officers will be, etc. (The usual By-laws provisions that you see in almost all neighborhood associations, for example.)

But we cannot put the cart before the horse. The first thing is to create a neighborhood called Indian Village. That does not exist today.

To: Indian Village homeowners  
October 13, 2014  
page 6

#### VI. What Happens if Nothing is Done?

If you like things the way they are, then:

1. Any resident of Section "A" and Section "B" does not have to pay dues, cannot vote for neighborhood association matters, and simply is not a member of Indian Village Community Association.
2. The members of Sections "C," "D," and "E" will have to figure out among themselves whether they have one association for those three Sections, two associations (one for Sections "C," "D," and one for Section "E," or three separate neighborhood associations. Once they have figured that out, the Board or Boards of Directors will have to be elected from within each said Section, and new By-laws will have to be created.
3. Anyone who disagrees with the way money is spent will have the right to see an attorney about suing whoever it is on the Board of Indian Village Community Association, Inc. has authorized an improper expenditure. Clearly no liens can be imposed on members in Sections "A" or "B" for nonpayment of maintenance fees. In those Sections, dues are voluntary.

Sure, if this is what you want, then do nothing. The existing Board of Directors saw this as being a recipe for disaster, and has taken positive steps to cure the problem (even to the point of getting a law passed by the Indiana General Assembly!).

#### Conclusion

The old way of doing things – simply showing up at a meeting and demanding that a vote be taken – may have existed when Indian Village Community Association was really an unincorporated association, like a club. However, for about two years it has been existing an Indiana non-profit corporation, and therefore everyone (members, officers and directors) must follow the laws pertaining to non-profit corporations. And we can't just abolish the corporation and go back to the old way. The old way, under the Constitution, applies only to Sections "A" and "B." And those Sections do not have Restrictive Covenants that recognize the existence of Indian Village Community Association. There is no role for Indian Village Community Association to play under the Restrictive Covenants in Sections "A" and "B." So you get nowhere.

If you have any questions, do not hesitate to contact me.

**Shipley & Associates**

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Peter M. Certia being duly sworn upon his oath says that he is the trust officer of the State Loan and Trust Company, Guardian of Robert Kelso, a minor and hereby acknowledges execution of the within Bill of Sale as guardian of said minor under order of court entered.

Peter M. Certia

Subscribed and sworn to before me this 12th day of July, 1927.

Genevieve Henry,

(Notary Seal)  
My commission expires Sept. 10th, 1929  
Recorded July 20, 1927 1.55 P.M.  
Recorder Allen County, Indiana

&&&

2685

July 18, 1927

To Louis W. Maloney and Helen Maloney, and all others concerned.

You Are Hereby notified, That I intend to hold a Mephanic's Lien on Lot number one (1) of Schorr's Addition, being a subdivision of part of Hanna's Park Addition of Fort Wayne, Allen County, Indiana, according to recorded plat thereof as well as dwelling house recently erected thereon by me for the sum of Three Hundred Fifty and no/100 Dollars, for work and labor done and materials furnished by me in the erection and completion of said house, which work and labor done, and materials furnished, was done and furnished by me at your special instance and request, and within the last sixty days.

William J. Bennett

Recorded July 20, 1927 3.35 P.M.

Recorder Allen County, Indiana

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2714

DECLARATION OF RESTRICTIONS AFFECTING LOTS 1 to 203, SECTION A, INDIAN VILLAGE

Whereas, The City and Suburban Building Company, corporation having heretofore executed a plat of Section A, Indian Village, to the City of Fort Wayne, recorded in Book 13, Pages 35 and 36 in the Recorder's Office in Allen County, Indiana; and having to the public all of the streets, roads, trails, ways, and parks for street or park or boulevard purposes, respectively, as are shown thereon, and being the owner of all lots in said addition, now desires to place restrictions on certain of said lots for the use and benefit of the present owners and for its future grantees, which are hereby made a part of said plat.

Now, Therefore, in consideration of the premises, the City and Suburban Building Company for itself and for its successors and assigns and for its and their future grantees, hereby agrees that all of said lots in Section A, Indian Village shall be and are hereby restricted as to their use in the manner hereinafter set forth.

DEFINITION OF TERMS USED:

For the purpose of these restrictions the word "Street" shall mean any street, pass, way, trail or boulevard of whatever name which is shown on the recorded plat of Section A, Indian Village, and which has been heretofore dedicated to the public for the purpose of a public street or for park or boulevard purposes.

The word "OUTSTANDING" shall mean an included, covered structure not directly attached to the residence to which it is appurtenant.

The word "Lot" may mean either any lot as platted, or any tract or tracts of land as conveyed, which may consist of one or more lots or part or parts of one or more lots as platted, and upon which a residence may be erected in accordance with the restrictions hereinafter set forth or as set forth in the individual deeds from the City and Suburban Building Company.

or from its successors and assigns. A corner lot shall be deemed to be any such platted, or any tract of land as conveyed having more than one street contiguous to it. street upon which the lot or part thereof, fronts, as hereinafter provided shall be deemed a front street, and any other street contiguous to any such lot shall be deemed to be a street.

PERSONS BOUND BY THESE RESTRICTIONS:

All owners who now own or shall hereafter acquire any interest in any of the lots in Section 1, Indian Village shall be taken and held to agree and covenant with the owners of the lots shown on said plat, and with its successors and assigns, to conform to and observe the covenants, restrictions and stipulations as to the use thereof and the construction and improvements thereon, for a period of twenty-five years from May 1st, 1927, and, however, that each of said restrictions shall be renewable in the manner herein set forth.

1. USE OF LAND, None of said lots may be improved used or occupied for other than residential purposes, and no flat, duplex nor apartment house, though intended for residential purposes may be erected thereon. Any residence erected or maintained thereon shall be designed for occupancy by a single family. Not more than one residence shall be erected or maintained on any one lot.

SECTION 2.

FRONTAGE OF LOTS AND COST OF RESIDENCES, For the purpose of these restrictions the following lots or part or parts thereof, as indicated in this Section, shall be deemed to front the streets designated, the minimum cost of any residence to be erected or maintained upon

such lots, exclusive of outbuildings and ground improvements, shall be as follows:

Frontage of Lots	Minimum Cost of Residence	Lot No.	Lot Frontage	Minimum Cost of Residence
Manito Blvd.	\$9,500.00	48	Hiawatha Blvd.	\$6,000.00
Manito Blvd.	9,500.00	49	Hiawatha Blvd.	6,000.00
Manito Blvd.	9,500.00	50	Hiawatha Blvd.	6,000.00
Manito Blvd.	9,500.00	51	Hiawatha Blvd.	6,000.00
Manito Blvd.	9,500.00	52	Hiawatha Blvd.	6,000.00
Manito Blvd.	9,500.00	53	Hiawatha Blvd.	6,000.00
Manito Blvd.	9,500.00	54	Ojibway Trail	6,000.00
Manito Blvd.	9,500.00	55	Hiawatha Blvd.	6,000.00
Manito Blvd.	9,500.00	56	Hiawatha Blvd.	6,000.00
Manito Blvd.	9,500.00	57	Hiawatha Blvd.	6,000.00
Owassa Way	6,000.00	58	Hiawatha Blvd.	6,000.00
Owassa Way	6,000.00	59	Hiawatha Blvd.	6,000.00
Owassa Way	6,000.00	60	Hiawatha Blvd.	6,000.00
Owassa Way	6,000.00	61	Hiawatha Blvd.	6,000.00
Owassa Way	6,000.00	62	Hiawatha Blvd.	6,000.00
Owassa Way	6,000.00	63	Hiawatha Blvd.	6,000.00
Owassa Way	6,000.00	64	Hiawatha Blvd.	6,000.00
Owassa Way	6,000.00	65	Hiawatha Blvd.	6,000.00
Owassa Way	6,000.00	66	Hiawatha Blvd.	6,000.00
Owassa Way	6,000.00	67	Opechee Way	5,000.00
Owassa Way	6,000.00	68	Wawonaissa Trail	5,000.00
Owassa Way	6,000.00	69	Opechee Way	5,000.00
Owassa Way	6,000.00	70	Wawonaissa Trail	5,000.00
Owassa Way	6,000.00	71	Wawonaissa Trail	5,000.00
Wawonaissa Trail	5,000.00	72	Opechee Way	5,000.00
Wawonaissa Trail	5,000.00	73	Opechee Way	5,000.00
Wawonaissa Trail	5,000.00	74	Opechee Way	5,000.00
Hiawatha Blvd.	6,000.00	75	Opechee Way	5,000.00
Hiawatha Blvd.	6,000.00	76	Opechee Way	5,000.00
Hiawatha Blvd.	6,000.00	77	Opechee Way	5,000.00
Hiawatha Blvd.	6,000.00	78	Nokomis Road	5,000.00
Hiawatha Blvd.	6,000.00	79	Nokomis Road	5,000.00
Hiawatha Blvd.	6,000.00	80	Opechee Way	5,000.00
Hiawatha Blvd.	6,000.00	81	Opechee Way	5,000.00
Hiawatha Blvd.	6,000.00	82	Opechee Way	5,000.00
Hiawatha Blvd.	6,000.00	83	Opechee Way	5,000.00
Algonquin Pass	5,000.00	84	Opechee Way	5,000.00
Algonquin Pass	5,000.00	85	Opechee Way	5,000.00
Algonquin Pass	5,000.00	86	Opechee Way	5,000.00
Algonquin Pass	5,000.00	87	Opechee Way	5,000.00
Hiawatha Blvd.	6,000.00	88	Manito Blvd.	9,500.00
Hiawatha Blvd.	6,000.00	89	Manito Blvd.	9,500.00
Hiawatha Blvd.	6,000.00	90	Manito Blvd.	9,500.00
Hiawatha Blvd.	6,000.00	91	Manito Blvd.	9,500.00
Hiawatha Blvd.	6,000.00	92	Manito Blvd.	9,500.00
Hiawatha Blvd.	6,000.00	93	Manito Blvd.	9,500.00
Hiawatha Blvd.	6,000.00	94	Opechee Way	5,000.00



Lot No.	Frontage of Lots	Minimum Cost of Residence	Lot No.	Frontage of Lots	Minimum Cost of Residence
95	Opechee Way	\$5,000.00	150	Indian Village Blvd.	\$5,000.00
96	Opechee Way	\$5,000.00	151	Indian Village Blvd.	\$5,000.00
97	Opechee Way	\$5,000.00	152	Indian Village Blvd.	\$5,000.00
98	Opechee Way	\$5,000.00	153	Indian Village Blvd.	\$5,000.00
99	Opechee Way	\$5,000.00	154	Indian Village Blvd.	\$5,000.00
100	Opechee Way	\$5,000.00	155	Indian Village Blvd.	\$5,000.00
101	Opechee Way	\$5,000.00	156	Indian Village Blvd.	\$5,000.00
102	Opechee Way	\$5,000.00	157	Indian Village Blvd.	\$5,000.00
103	Opechee Way	\$5,000.00	158	Indian Village Blvd.	\$5,000.00
104	Opechee Way	\$5,000.00	159	Indian Village Blvd.	\$5,000.00
105	Opechee Way	\$5,000.00	160	Indian Village Blvd.	\$5,000.00
106	Opechee Way	\$5,000.00	161	Wawonaissa Trail	\$5,000.00
107	Opechee Way	\$5,000.00	162	Wawonaissa Trail	\$5,000.00
108	Opechee Way	\$5,000.00	163	Wawonaissa Trail	\$5,000.00
109	Opechee Way	\$5,000.00	164	Wawonaissa Trail	\$5,000.00
110	Opechee Way	\$5,000.00	165	Hiawatha Blvd.	\$6,000.00
111	Opechee Way	\$5,000.00	166	Hiawatha Blvd.	\$6,000.00
112	Opechee Way	\$5,000.00	167	Hiawatha Blvd.	\$6,000.00
113	Opechee Way	\$5,000.00	168	Hiawatha Blvd.	\$6,000.00
114	Opechee Way	\$5,000.00	169	Hiawatha Blvd.	\$6,000.00
115	Hiawatha Blvd.	\$6,000.00	170	Hiawatha Blvd.	\$6,000.00
116	Hiawatha Blvd.	\$6,000.00	171	Hiawatha Blvd.	\$6,000.00
117	Hiawatha Blvd.	\$6,000.00	172	Hiawatha Blvd.	\$6,000.00
118	Hiawatha Blvd.	\$6,000.00	173	Hiawatha Blvd.	\$6,000.00
119	Hiawatha Blvd.	\$6,000.00	174	Algonquin Pass	\$5,000.00
120	Hiawatha Blvd.	\$6,000.00	175	Algonquin Pass	\$5,000.00
121	Ojibway Trail	\$6,000.00	176	Algonquin Pass	\$5,000.00
122	Ojibway Trail	\$6,000.00	177	Hiawatha Blvd.	\$6,000.00
123	Indian Village Blvd.	\$5,000.00	178	Hiawatha Blvd.	\$6,000.00
124	Indian Village Blvd.	\$5,000.00	179	Hiawatha Blvd.	\$6,000.00
125	Indian Village Blvd.	\$5,000.00	180	Hiawatha Blvd.	\$6,000.00
126	Indian Village Blvd.	\$5,000.00	181	Wawonaissa Trail	\$5,000.00
127	Indian Village Blvd.	\$5,000.00	182	Wawonaissa Trail	\$5,000.00
128	Indian Village Blvd.	\$5,000.00	183	Wawonaissa Trail	\$5,000.00
129	Indian Village Blvd.	\$5,000.00	184	Wawonaissa Trail	\$5,000.00
130	Indian Village Blvd.	\$5,000.00	185	Owaisa Way	\$5,000.00
131	Indian Village Blvd.	\$5,000.00	186	Owaisa Way	\$5,000.00
132	Indian Village Blvd.	\$5,000.00	187	Owaisa Way	\$5,000.00
133	Indian Village Blvd.	\$5,000.00	188	Owaisa Way	\$5,000.00
134	Indian Village Blvd.	\$5,000.00	189	Owaisa Way	\$5,000.00
135	Indian Village Blvd.	\$5,000.00	190	Owaisa Way	\$5,000.00
136	Indian Village Blvd.	\$5,000.00	191	Owaisa Way	\$5,000.00
137	Indian Village Blvd.	\$5,000.00	192	Owaisa Way	\$5,000.00
138	Indian Village Blvd.	\$5,000.00	193	Owaisa Way	\$5,000.00
139	Indian Village Blvd.	\$5,000.00	194	Owaisa Way	\$5,000.00
140	Manito Blvd.	\$5,000.00	195	Owaisa Way	\$5,000.00
141	Manito Blvd.	\$5,000.00	196	Owaisa Way	\$5,000.00
142	Manito Blvd.	\$5,000.00	197	Owaisa Way	\$5,000.00
143	Manito Blvd.	\$5,000.00	198	Owaisa Way	\$5,000.00
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146	Indian Village Blvd.	\$5,000.00	201	Owaisa Way	\$5,000.00
147	Indian Village Blvd.	\$5,000.00	202	Manito Blvd.	\$5,000.00
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SECTION 3, APPROVAL OF PLANS: The City and Suburban Building Company reserves for itself, its successors or assigns, the right to approve the plans and specifications of any building to be erected on or maintained on any lot, and shall have the right to refuse to approve any such plans and specifications thereby prohibiting the erection or maintenance of any residence which in its opinion is not suitable or desirable in its opinion for aesthetic or other reasons. In passing such plans and specifications, it shall have the right to take into consideration the ability of the proposed building to the site upon which it is proposed to erect the same, the harmony thereof with the surroundings, and the effect of the building as planned on the view and outlook from the adjacent or neighboring property. It is understood and agreed that the purpose of this paragraph is to cause the plat to develop into a beautiful, harmonious residence section.

Section 4.

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on corner lots shall conform with the architecture of the residence to be erected or  
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porches or bays shall encroach on these free spaces. The average width of such free or  
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Billboards or other advertising signs or devices may be erected and maintained as are  
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agents, may live on said premises but may not own same either directly or indirectly.

Section 12. DURATION OF RESTRICTION AND RIGHT TO ENFORCE. The herein enumerated restrictions,  
covenants, reservations, limitations, agreements, covenants, and conditions shall be deemed as  
covenants and not as conditions hereof, and shall run with the land, and shall bind the  
owners, until the first day of May, 1952, in any event, and continuously thereafter, and can  
be modified only by petition to the Circuit Court of Allen County, Indiana, signed by at  
least sixty-five per cent of the owners of the legal title to all of the land on both sides  
of the street, within the block in which is located the property, the use of which is sought  
to be altered by said proposed change, the failure to enforce any of the restrictions herein  
set forth at the time of its violation, shall in no event be deemed to be a waiver of the  
right to do so thereafter. A violation of these restrictions shall not give the right of re-  
sult, but shall give to any property owner in said addition, injuriously affected thereby, a

cause of action for damages and injunctive relief.

SECTION 13. MOVING OF BUILDINGS. No building or other structure which has been first erected or constructed upon real estate, other than that herein described, shall be erected or permitted to be moved on any lot in said addition. Provided that this covenant shall not exclude the removal or relocation of buildings and structures between points in the addition known as Indian Village.

SECTION 14. LIQUOR RESTRICTIONS. No intoxicating liquor shall be sold on said premises.

SECTION 15. MAINTENANCE FUND. The Real Estate herein contracted for shall be subject to an annual maintenance charge of Five Dollars (\$5.00) a lot to be paid to the Indian Village Community Association on the first day of January of each year, beginning with the year 1927 and shall continue to be payable to such Association until such Association shall, by its proceedings, reduce or abolish the same.

USE, Said fund is to be expended in caring for the vacant and unimproved land in said addition, removing the grass and weeds therefrom, and keeping the snow cleared off of the sidewalks in said addition and for maintaining all the grass and planted areas within the boundaries of the streets and driveways therein and for doing any other thing necessary or desirable in the opinion of the seller.

COLLECTION. The seller shall have a lien on all lots sold in said addition for the payment of the aforesaid maintenance fund, due and to become due and said liens shall be superior to all other liens, except mortgages for purchase money and improvement of said real estate and shall be enforceable in the same manner as mechanic liens now in force together with attorney fees, and the record buyer of such lot shall be personally liable for all maintenance charges. Upon demand the seller shall furnish to any buyer or mortgagee a certificate showing the unpaid maintenance charges against any lot. The seller may, at his discretion, waive any right for a limited period of time, the aforesaid liens against any lot for the benefit or better security of the mortgagee.

MEMBERSHIP. The buyer of any lot in Indian Village Addition shall be entitled to membership in said association. At such a time as fifty (50) or more buyers have purchased lots in Indian Village Addition. They shall at that time form the organization heretofore known to as the Indian Village Community Association, for the purposes herein mentioned. Said Community Association shall elect from their membership, proper officers for the conduct of its business. Upon the completion of organization of said Community Association, all maintenance funds then in the hands of the seller shall be turned over to the Association for its use, as herein provided. As such time as seller may desire, it may delegate, by an instrument in writing, such rights, and powers, as it may determine, to such Community Association, relating to the control and maintenance of lots, and the power to approve or reject the plans and specifications for any proposed residence to be erected, in said addition and such Community Association shall assume responsibility for such power so delegated. Their enforcement and said seller may be relieved therefrom as stipulated in said instrument.

WITNESS our hand and corporate seal this 16th day of June, 1927.

(Corporate Seal)  
Recorded July 21, 1927 8.55 A.M.  
Recorder Allen County, Indiana

City and Suburban Building Company  
By William H. Scheiman, President  
By John D. Banning, Secretary

&&&

2730

To J. A. Bloom and all others concerned:

7/21, 1927

## DECLARATION OF RESTRICTIONS AFFECTING LOTS 1 to 203, SECTION A, INDIAN VILLAGE.

Whereas, The City and Suburban Building Company, corporation having heretofore executed a plat of Section A, Indian Village, to the City of Fort Wayne, recorded in Plat Book 13, Pages 35 and 36 in the Recorder's Office in Allen County, Indiana, and having dedicated to the public all of the streets, roads, trails, ways, and parks for street or park or boulevard purposes, respectively, as are shown thereon, and being the owner of all lots in said addition, now desires to place restrictions on certain of said lots for the use and benefit of the present owners and for its future grantees, which are hereby made a part of said plat.

Now, Therefore, in consideration of the premises, the City and Suburban Building Company for itself and for its successors and assigns and for its and their future grantees, hereby agrees that all of said lots in Section A, Indian Village shall be and are hereby restricted as to their use in the manner hereinafter set forth.

### DEFINITION OF TERMS USED

For the purpose of these restrictions the word "Street" shall mean any street, road, pass, way, trail or boulevard of whatever name which is shown on the recorded plat of Section A, Indian Village, and which has been heretofore dedicated to the public for the purpose of a public street or for park or boulevard purposes.

The word "OUTSTANDING" shall mean an inclosed, covered structure not directly attached to the residence to which it is appurtenant.

The word "Lot" may mean either any lot as platted, or any tract of tracts of land as conveyed, which may consist of one or more lots or part or parts of one or more lots as platted, and upon which a residence may be erected in accordance with the restrictions hereinafter set forth or as set forth in the individual deeds from the City and Suburban Building Company or from its successors and assigns. A corner lot shall be deemed to be any such lot as platted, or any tract of land as conveyed having more than one street contiguous to it. The street upon which the lot or part thereof, fronts, as hereinafter provided shall be deemed to be a front street, and any other street contiguous to any such lot shall be deemed to be a side street.

### PERSONS BOUND BY THESE RESTRICTIONS:

All owners who now own or shall hereafter acquire any interest in any of the lots in Section A, Indian Village shall be taken and held to agree and covenant with the owners of the lots shown on said plat, and with its successors and assigns, to conform to and observe the following covenants, restrictions and stipulations as to the use thereof and the construction of residences and improvements thereon, for a period of twenty-five years from May 1st, 1927, provided, however, that each of said restrictions shall be renewable in the manner hereinafter set forth.

Section 1. USE OF LAND: None of said lots may be improved used or occupied for other than private residence purposes, and no flat, duplex nor apartment house, though intended for residence purposes may be erected thereon. Any residence erected or maintained thereon shall be designed for occupancy by a single family. Not more than one residence shall be erected or maintained on any one lot.

Section 2. FRONTAGE OF LOTS AND COST OF RESIDENCES: for the purpose of these restrictions the following lots or part or parts thereof, as indicated in this Section, shall be deemed to front on streets designated, the minimum cost of any residence to be erected or maintained upon said lots, exclusive of outbuildings and ground improvements, shall be as follows:

Lot No.	Frontage of Lots	Minimum Cost of Residence	Lot No.	Frontage of Lots	Minimum Cost of Residence
1	Manito Blvd.	\$9,500.00	103	Opechee Way	\$5,000.00
2	Manito Blvd.	\$9,500.00	104	Opechee Way	\$5,000.00
3	Manito Blvd.	\$9,500.00	105	Opechee Way	\$5,000.00
4	Manito Blvd.	\$9,500.00	106	Opechee Way	\$5,000.00
5	Manito Blvd.	\$9,500.00	107	Opechee Way	\$5,000.00
6	Manito Blvd.	\$9,500.00	108	Opechee Way	\$5,000.00
7	Manito Blvd.	\$9,500.00	109	Opechee Way	\$5,000.00
8	Manito Blvd.	\$9,500.00	110	Opechee Way	\$5,000.00
9	Manito Blvd.	\$9,500.00	111	Opechee Way	\$5,000.00
10	Manito Blvd.	\$9,500.00	112	Opechee Way	\$5,000.00

Lot No.	Frontage of Lots	Minimum Cost of Residence	Lot No.	Frontage of Lots	Minimum Cost of Residence
11	Owaissa Way	\$6,000.00	113	Opechee Way	\$5,000.00
12	Owaissa Way	\$6,000.00	114	Opechee Way	\$5,000.00
13	Owaissa Way	\$6,000.00	115	Hiawatha Blvd.	\$6,000.00
14	Owaissa Way	\$6,000.00	116	Hiawatha Blvd.	\$6,000.00
15	Owaissa Way	\$6,000.00	117	Hiawatha Blvd.	\$6,000.00
16	Owaissa Way	\$6,000.00	118	Hiawatha Blvd.	\$6,000.00
17	Owaissa Way	\$6,000.00	119	Hiawatha Blvd.	\$6,000.00
18	Owaissa Way	\$6,000.00	120	Hiawatha Blvd.	\$6,000.00
19	Owaissa Way	\$5,500.00	121	Ojibway Trail	\$6,000.00
20	Owaissa Way	\$5,500.00	122	Ojibway Trail	\$8,500.00
21	Owaissa Way	\$5,500.00	123	Indian Village Blvd.	\$8,500.00
22	Owaissa Way	\$5,500.00	124	Indian Village Blvd.	\$8,500.00
23	Owaissa Way	\$5,500.00	125	Indian Village Blvd.	\$8,500.00
24	Owaissa Way	\$5,500.00	126	Indian Village Blvd.	\$8,500.00
25	Wawonaissa Trail	\$5,500.00	127	Indian Village Blvd.	\$8,500.00
26	Wawonaissa Trail	\$5,500.00	128	Indian Village Blvd.	\$8,500.00
27	Wawonaissa Trail	\$5,500.00	129	Indian Village Blvd.	\$8,500.00
28	Hiawatha Blvd	\$6,000.00	130	Indian Village Blvd.	\$8,500.00
29	Hiawatha Blvd	\$6,000.00	131	Indian Village Blvd.	\$8,500.00
30	Hiawatha Blvd	\$6,000.00	132	Indian Village Blvd.	\$8,500.00
31	Hiawatha Blvd	\$6,000.00	133	Indian Village Blvd.	\$8,500.00
32	Hiawatha Blvd	\$6,000.00	134	Indian Village Blvd.	\$8,500.00
33	Hiawatha Blvd	\$6,000.00	135	Indian Village Blvd.	\$8,500.00
34	Hiawatha Blvd	\$6,000.00	136	Indian Village Blvd.	\$8,500.00
35	Hiawatha Blvd	\$6,000.00	137	Indian Village Blvd.	\$8,500.00
36	Hiawatha Blvd	\$6,000.00	138	Indian Village Blvd.	\$8,500.00
37	Algonquin Pass	\$5,500.00	139	Indian Village Blvd.	\$8,500.00
38	Algonquin Pass	\$5,500.00	140	Manito Blvd.	\$9,500.00
39	Algonquin Pass	\$5,500.00	141	Manito Blvd.	\$9,500.00
40	Algonquin Pass	\$5,500.00	142	Manito Blvd.	\$9,500.00
41	Hiawatha Blvd.	\$6,000.00	143	Manito Blvd.	\$9,500.00
42	Hiawatha Blvd.	\$6,000.00	144	Indian Village Blvd.	\$8,500.00
43	Hiawatha Blvd.	\$6,000.00	145	Indian Village Blvd.	\$8,500.00
44	Hiawatha Blvd.	\$6,000.00	146	Indian Village Blvd.	\$8,500.00
45	Hiawatha Blvd.	\$6,000.00	147	Indian Village Blvd.	\$8,500.00
46	Hiawatha Blvd.	\$6,000.00	148	Indian Village Blvd.	\$8,500.00
47	Hiawatha Blvd.	\$6,000.00	149	Indian Village Blvd.	\$8,500.00
48	Hiawatha Blvd.	\$6,000.00	150	Indian Village Blvd.	\$8,500.00
49	Hiawatha Blvd.	\$6,000.00	151	Indian Village Blvd.	\$8,500.00
50	Hiawatha Blvd.	\$6,000.00	152	Indian Village Blvd.	\$8,500.00
51	Hiawatha Blvd.	\$6,000.00	153	Indian Village Blvd.	\$8,500.00
52	Hiawatha Blvd.	\$6,000.00	154	Indian Village Blvd.	\$8,500.00
53	Hiawatha Blvd.	\$6,000.00	155	Indian Village Blvd.	\$8,500.00
54	Ojibway Trail	\$5,500.00	156	Indian Village Blvd.	\$8,500.00
55	Hiawatha Blvd.	\$6,000.00	157	Indian Village Blvd.	\$8,500.00
56	Hiawatha Blvd.	\$6,000.00	158	Indian Village Blvd.	\$8,500.00
57	Hiawatha Blvd.	\$6,000.00	159	Indian Village Blvd.	\$8,500.00

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58	Hiawatha Blvd.	\$6,000.00	160	Indian Village Blvd.	\$8,500.00
59	Hiawatha Blvd.	\$6,000.00	161	Wawonaissa Trail	\$8,500.00
60	Hiawatha Blvd.	\$6,000.00	162	Wawonaissa Trail	\$8,500.00
61	Hiawatha Blvd.	\$6,000.00	163	Wawonaissa Trail	\$8,500.00
62	Hiawatha Blvd.	\$6,000.00	164	Wawonaissa Trail	\$8,500.00
63	Hiawatha Blvd.	\$6,000.00	165	Hiawatha Blvd.	\$6,000.00
64	Hiawatha Blvd.	\$6,000.00	166	Hiawatha Blvd.	\$6,000.00
65	Hiawatha Blvd.	\$6,000.00	167	Hiawatha Blvd.	\$6,000.00
66	Hiawatha Blvd.	\$6,000.00	168	Hiawatha Blvd.	\$6,000.00
67	Opechee Way	\$5,000.00	169	Hiawatha Blvd.	\$6,000.00
68	Wawonaissa Trail	\$5,000.00	170	Hiawatha Blvd.	\$6,000.00
69	Opechee Way	\$5,000.00	171	Hiawatha Blvd.	\$6,000.00
70	Wawonaissa Trail	\$5,000.00	172	Hiawatha Blvd.	\$6,000.00
71	Wawonaissa Trail	\$5,000.00	173	Hiawatha Blvd.	\$6,000.00
72	Opechee Way	\$5,000.00	174	Algonquin Pass	\$8,500.00
73	Opechee Way	\$5,000.00	175	Algonquin Pass	\$6,000.00
74	Opechee Way	\$5,000.00	176	Algonquin Pass	\$6,000.00
75	Opechee Way	\$5,000.00	177	Hiawatha Blvd.	\$6,000.00
76	Opechee Way	\$5,000.00	178	Hiawatha Blvd.	\$6,000.00
77	Opechee Way	\$5,000.00	179	Hiawatha Blvd.	\$6,000.00
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87	Opechee Way	\$6,000.00	189	Owaissa Way	\$5,500.00
88	Manito Blvd.	\$9,500.00	190	Owaissa Way	\$5,500.00
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Section 8. SIDE LINE RESTRICTIONS: Free or open spaces shall be left on every lot, on both sides of the residence erected thereon. No part of any residence except stoops or open verandas or bays shall encroach on these free spaces: The average width of such free or open space required on each side of any residence on said lot shall not be less than twenty (20) percent of the width of the residence, exclusive of porches or verandas, but in no event shall the free space be less than five feet on either side of said residence.

Section 9. SMOKE: The heating apparatus in or for a building upon these premises shall be operated smokelessly by using smoke free fuel or by installation of approved smokeless furnaces, boilers or other equipment.

Section 10. SIGNS AND BILLBOARDS: No billboards or other advertising signs or devices shall be placed or maintained on any lot except one sign advertising the lot or house and lot for sale or lease and having not more than three and one-quarter (3 1/4) square feet of surface. Such billboards or other advertising signs or devices may be erected and maintained as are necessary during the original sale of said lots by City and Suburban Building Company.

Section 11. RACIAL RESTRICTIONS: Said real estate cannot be sold or occupied by any person of the Mongolian or Ethiopian Race or any person who is native of any of the Balkan or Southern European Countries. Such persons, when acting in the capacity of servants to the owners or occupant may live on said premises but may not own same either directly or indirectly.

Section 12. DURATION OF RESTRICTION AND RIGHT TO ENFORCE: The herein enumerated restrictions, rights, reservations, limitations, agreements, covenants, and conditions shall be deemed as covenants and not as conditions hereof, and shall run with the land, and shall bind the grantee, until the first day of May, 1952, in any event, and continuously thereafter, and can be modified only by petition to the Circuit Court of Allen County, Indiana, signed by at least sixty-five per cent of the owners of the legal title to all of the land on both sides of the street, within the block in which is located the property, the use of which is sought to be altered by said proposed change, the failure to enforce any of the restrictions herein set forth at the time of its violation, shall in no

event be deemed to be a waiver of the right to do so thereafter. A violation of these restrictions shall not give the right of reentry, but shall give to any property owner in said addition, injuriously affected thereby, a cause of action for damages and injunctive relief.

Section 13. MOVING OF BUILDINGS: No building or other structure which has been first erected or constructed upon real estate, other than that herein described, shall be moved or permitted to be moved on any lot in said addition. Provided that this covenant shall not exclude the removal or relocation of buildings and structures between points in the addition known as Indian Village.

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USE, Said fund is to be expended in caring for the vacant and unimproved land in said addition, removing the grass and weeds therefrom, and keeping the snow cleared off of the sidewalks in said addition and for maintaining all the grass and planted areas within the boundaries of the streets and driveways therein and for doing any other thing necessary or desirable in the opinion of the seller.

COLLECTION, The seller shall have a lien on all lots sold in said addition to secure the payment of the aforesaid maintenance fund, due and to become due and said liens shall be superior to all other liens, except mortgages for purchase money and improvement of said real estate and shall be enforceable in the same manner as mechanic liens now in force, together with attorney fees, and the record buyer of such lot shall be personally liable for all maintenance charges. Upon demand the seller shall furnish to any buyer or mortgagee, a certificate showing the unpaid maintenance charges against any lot. The seller may at its discretion, waive any right for a limited period of time, the aforesaid liens against any lot for the benefit or better security of the mortgagee.

MEMBERSHIP, The buyer of any lot in Indian Village Addition shall be entitled to membership in said association. At such time as fifty (50) or more buyers have purchased lots in Indian Village Addition. They shall at that time form the organization heretofore referred to as the Indian Village Community Association, for the purposes herein mentioned. Said Community Association shall elect from their membership, proper officers for the conduct of its business. Upon the completion of organization of said Community Association, all maintenance funds then in the hands of the seller shall be turned over to the Association for its use, as herein provided. As such time as seller may desire, it may delegate, by an instrument in writing, such rights, and powers, as it may determine, to such Community Association, relating to the control and maintenance of lots, and the power to approve or reject the plans and specifications for any proposed residence to be erected, in said addition, and such Community Association shall assume responsibility for such power so delegated and their enforcement and said seller may be relieved therefrom as stipulated in said instrument.

WITNESS our hand and corporate seal this 16th day of June, 1927.

City and Suburban Building Company

(Corporate Seal)

By William H. Scheiman, President

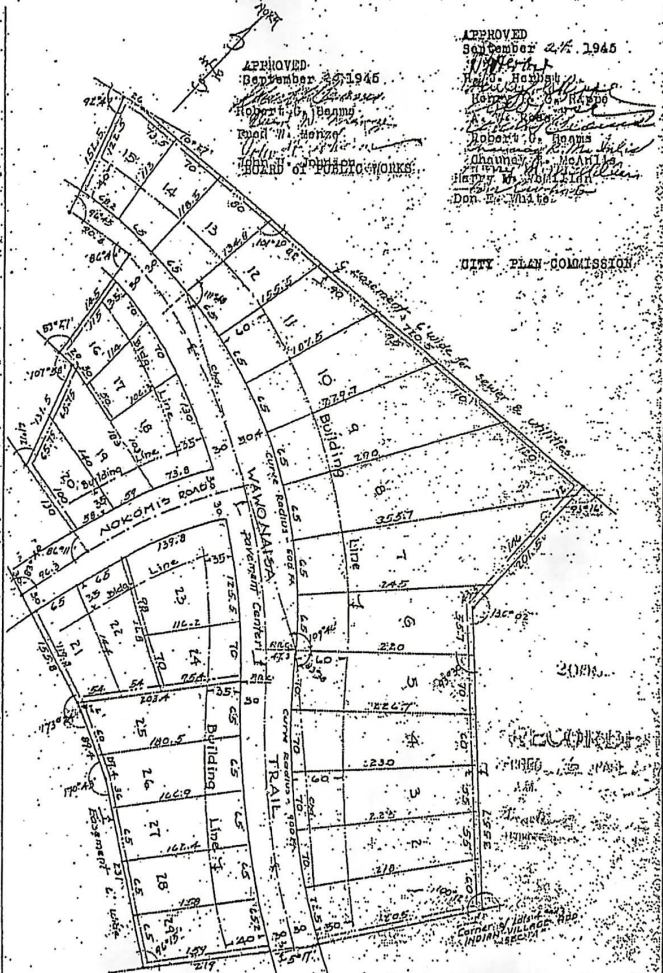
By John D. Banning, Secretary

Recorded July 21, 1927 8.55 A.M.

Recorder Allen County, Indiana



B



APPROVED  
 September 23, 1945  
 Robert S. Hanna  
 Board of Public Works

APPROVED  
 September 24, 1945  
 Robert S. Hanna  
 Board of Public Works

CITY PLAN COMMISSION

(X)  
 court order  
 shall remain  
 In my  
 undersigned  
 place, our n

State of  
 County of

Before  
 on this 20th  
 John A. Word  
 Treasurer, (C  
 platting and  
 corporation.

CERTIFICATE OF SURVEY  
 I hereby certify that the plat above shown  
 presents accurately the form and dimensions  
 of lots, streets, and easements in Indian  
 Village Addition, Section B, and that the said  
 plat lies wholly within the land described

John A. Word  
 Treasurer  
 John A. Word  
 Treasurer

PLAT OF INDIAN VILLAGE ADDITION, SECTION 16,

Fort Wayne, Indiana

John R. Worthman, Inc., an Indiana corporation, be and they be, John R. Worthman, its president, hereby declares that it holds legal title to, and hereby causes to be planted into lots, streets, and easements in accordance with the plan and plat hereto attached, all of the land situated in the Southwest Quarter of Section 16, Township 30 North, Range 22 East, in Allen County, Indiana, by notes and bounds described as follows, to-wit:

Commencing at the north corner of Lot 4 in the plat of Indian Village, Section A, as recorded; thence southwesterly on the rear lines of Lots 4, 5, and 6, in said plat, a distance of 205.0 feet to the west corner of said lot 6; thence continuing southwesterly on the rear lines of Lots 7, 8, and 9, in said plat, a distance of 219.0 feet to the east corner of lot 11 in said plat; thence northwesterly on the rear lines of Lots 11, 12, 13, 14 and 15, in the said plat, a distance of 231.0 feet to the north corner of said lot 15; thence continuing northwesterly on the rear lines of Lots 16 and 17, in said plat, a distance of 89.4 feet to the north corner of said lot 17; thence continuing northwesterly on the north line of lot 18, in said plat, a distance of 155.8 feet to the north corner of said lot 18; thence continuing thence northwesterly on the aforesaid center line, a distance of 96.7 feet to an intersection by the north line, produced southeasterly, of Lot 19 of said plat; thence northwesterly on the aforesaid north line of Lot 19, a distance of 180.0 feet to the north corner of said lot 19; thence northwesterly on the rear line of Lots 20, 21 and 22, of said plat, a distance of 131.5 feet to the northeast corner of said lot 22; thence west on the north line of said lot 22, a distance of 20.0 feet to the southeast corner of Lot 25 of said plat; thence northwesterly on the east line of the aforesaid Lot 25, a distance of 145.0 feet to the center line of Wagonwheel Trail as in said plat recorded; thence southwesterly on the aforesaid center line, a distance of 80.8 feet to an intersection by the west line, produced southeasterly, of Lot 26 in said plat; thence northwesterly on the aforesaid east line of lot 25, a distance of 152.5 feet to the northeast corner thereof; thence northwesterly on the south line of Lot 30 in said plat, a distance of 265.0 feet to the southeast corner of the lot aforesaid; thence north 86 deg 30 min east on the south boundary line of the United States Government Defense Housing Project area, a distance of 729.5 feet; thence southerly on a line deflecting right 93 deg 18 min from the aforesaid line, a distance of 201.5 feet; thence by a deflection left of 48 deg 58 min 355.77 feet to the point of beginning, containing 10.47 acres of land; SUBJECT to an easement for sewers, and public utilities, in, upon, and under, a strip of land, six feet in width, lying next to and bordering upon all lots of the said plat herein mentioned and referred to;

to be known as "Indian Village Addition, Section 16," to the City of Fort Wayne, Indiana.

The lots are numbered (1) to (29), consecutively, and their sizes and dimensions in feet are noted on all lots, streets and easements on the face of the plat.

The rear six feet of all lots, and border strips six feet in width along the borders of all lots adjoining lots of Indian Village, Section "A", to-wit: Lots 1, 29, 21, 20, 16, and 15, are reserved as easements for the installation and maintenance of sewers, and public utility structures for the benefit of lots in this plat:

PROTECTIVE COVENANTS

All lots of the plat back lines are:

The undersigned hereby declares that it holds legal title to, and hereby causes to be planted into lots, streets, and easements in accordance with the plan and plat hereto attached, all of the land situated in the Southwest Quarter of Section 16, Township 30 North, Range 22 East, in Allen County, Indiana, by notes and bounds described as follows, to-wit:

(A) All lots no structure shall be on any lot other than one and one-half story three cars.

(B) No build fast to the front lot line. No building feet on note from 14 feet to any side 14 feet.

(C) No dwell area of less than 90 building set back in pieces nearer than 10 feet from plat.

(D) No noxious structure on any lot situated on an any lot.

(E) No person or occupy any building prevent occupancy by with an owner or tenants.

(F) No traffic on any building, or any temporary or permanent kind be used as a road.

(G) No dwell be permitted on any lot of such dwelling, and the lot not be less than one story structure in case of a one and one-half story.

(H) All sewers and all present and future subdivisions shall be maintenance of sewers other public utility.

(I) The foreign building on all the until January 1, 1986 extended for successive majority of the then covenants in this plat.

(J) If the plat assigns shall violate it shall be liable for property situated with at law or in equity as to violate any such covenants or be recovered.

PROTECTIVE COVENANTS

All lots of this plat are subject to the provisions of building and setback lines as shown on the plat and recited herein.

The undersigned owner further determines and provides that the lots of this plat shall be subject to the following protective restrictions and limitations as to their future use, to-wit:

(1) All lots shall be used for residential purposes only, and no structure shall be erected, altered, added, or permitted to remain on any lot other than one detached single-family dwelling, not to exceed two and one-half stories in height and a private garage for not more than three cars.

(2) No building shall be located on any lot nearer than forty feet to the front lot line; nor nearer than ten feet to any side street line. No building, except a garage or other out-building located eight feet or more from the front lot line, shall be located nearer than five feet to any side line of lot.

(3) No dwelling shall be placed or erected on any lot having an area of less than six thousand square feet, nor within at the front building set-back line or less than fifty feet. Also shall not be placed nearer than the set-back line indicated on the recorded subdivision plan.

(4) No noxious or offensive trade or commercial activity may be carried on on any lot.

(5) No persons of any race other than the white race shall use or occupy any building on any lot, except that this covenant shall not prevent occupancy by domestic servants or a different race domestic with an owner or tenant.

(6) No trailer, basement, tent, shack, garage, barn or other out-building, on any lot, shall at any time be used as a residence temporarily or permanently, nor shall any structure of a temporary kind be used as a residence.

(7) No dwelling costing less than six thousand dollars shall be permitted on any lot, and the ground-floor area of the main structure of such dwelling, exclusive of one-story open porches and garages, shall not be less than seven hundred sixty square feet in the case of a one-story structure; nor less than five hundred seventy-six square feet in case of a one and one-half, two, two and one-half story structure.

(8) An easement upon, under, and over the rear six feet of each lot and all lots and utility lines and easements as indicated on the recorded subdivision plat is reserved for the construction, installation and maintenance of sewers, conduits, pipe lines, electrical lines, and other public utility for the benefit and use of said lots.

(9) The foregoing covenants shall run with the land, and shall be binding on all the parties, and all the persons claiming thereunder, until January 1, 1956, at which time said covenants shall be automatically extended for successive periods of ten years, unless otherwise provided in a deed of the then owners of the lots, or unless the said covenants are terminated or in part waived.

(10) If the parties hereto, or any of them, or their heirs or assigns shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons owning any real property situated within the subdivision, to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant, and either to prevent him or them from so doing, or to recover damages or other dues for such violations.

APPROVED  
September 22, 1945

*Robert H. Beane*  
Notary Public  
*John W. ...*  
*John W. ...*  
*John W. ...*

NOTARY PUBLIC COMMISSION

(X) In violation of any one of these covenants by judgment or  
court order and it shall affect any of the other provisions which  
shall remain in full force and effect.

In witness whereof on this 20th day of July, 1945, we, the  
undersigned, duly authorized officers of Worthman, Inc.,  
do hereby certify that the official seal

WORTHMAN, INC.

By *John R. Worthman*  
President  
By *Allie J. Worthman*  
Secretary-Treasurer  
Allie J. Worthman

State of Indiana  
County of Allen, 1945

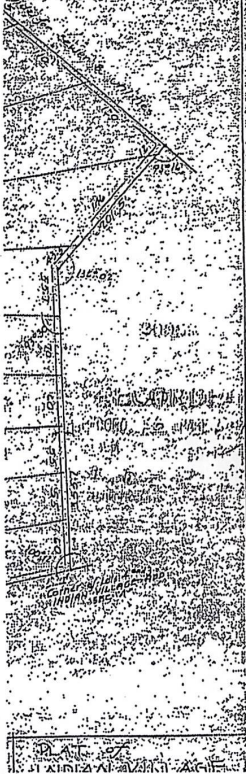
Before me, a Notary Public in and for said County and State,  
on this 20th day of July, 1945, appeared in person the above-named  
John R. Worthman, President, and Allie J. Worthman, Secretary-  
Treasurer, of Worthman, Inc., and acknowledged the foregoing  
planning and covenants to be the formal and legal act of said  
corporation.

*Katharine E. Smith*  
Notary Public.  
Katharine E. Smith

My commission expires Aug 1, 1947

20063-8

RECORDED  
RECORD 76 PAGE 409-7  
JUL 21 1945  
*John R. Worthman*  
SECRETARY-TREASURER





10168

RECORDED

BOOK 17 PAGE 60

APR 11 1919

*W. C. ...*

PROTECTIVE COVENANTS

1. USE OF LAND. All lots shall be used for residential purposes only, and no noxious or offensive trade or commercial activity may be conducted on any of said lots. No building or structure other than a single detached dwelling house not to exceed two stories in height to be used for the occupancy of a single family, shall be erected, altered, placed or permitted to remain on any of said lots nor shall any such building be occupied for any purpose except that of private residences exclusively nor shall any part or portion thereof be used or occupied except solely as a residence, provided, however, that this restriction shall not exclude the erection on any of said lots of one private garage for not more than three (3) cars and in addition thereto one proper one-story out-building for use as a tool or garden house not to exceed a ground floor area of one hundred (100) square feet.

2. BUILDING AND GRADE LINES. No building, including porches, open or enclosed, but excluding terraces, and no fence, wall, or hedge more than thirty (30) inches high, shall be located on any lot nearer than 30 feet to the front lot line, nor nearer than the side building line of corner lots as shown on the attached plat. No building, excepting a garage or other out-building located on the rear one-third of any such lot, shall be located nearer than five feet to any side lot line. No residence or attached appurtenance shall be located more than 15 feet behind the building set-back lines as established herein. To maintain harmonious lot grades, the original owners reserve the right to establish said grades prior to construction of any building.

3. MINIMUM LOT AREA. No single family dwelling shall be placed, erected or maintained on any lot having an area of less than six thousand (6,000) square feet, nor a width at the front building set-back line of less than fifty-five (55) feet.

4. GROUND FLOOR AREA. No dwelling house shall be erected or permitted on any of said lots, the ground floor area of which, exclusive of porches, terraces and garages, is less than 750 square feet in the case of a one-story structure, or less than 576 square feet in the case of a 1½ or 2 story structure.

5. RACIAL RESTRICTIONS. No persons of any race other than the white race shall own, use or occupy any building or any lot, except that this covenant shall not prevent occupancy by domestic servants of a different race domiciled with an owner or tenant.

6. NO TEMPORARY DWELLINGS. No trailer, basement, tent, shack, garage, barn or other out-building on any lot shall at any time be used as a residence temporarily or permanently, nor shall any structure of a temporary character be used as a residence.

7. SIGNS AND BILLBOARDS. No billboards or other advertising signs or devices shall be placed or maintained on any lot, other than one (1) sign having not more than 24 square feet of surface, advertising the lot or dwelling house for sale or lease; provided, however, that such billboards or other advertising signs or devices may be erected and maintained as are deemed necessary by the original owners or their agents for the original sale of said lots.

8. INDIAN VILLAGE COMMUNITY ASSOCIATION. Subject to the articles and constitution of Indian Village Community Association, an organization now in existence upon which there have been conferred

the enjoyment, exercise and other duties, and privileges by the lot and plat of Indian Village, Scott Port Wayne, Allen County, Indian 35-36, and in the declaration of 217 Section 14, in said Indian Acous Record 72, Pages 384-388 in Recorder of Allen County, Indian in Indian Village, Section "C", and be registered as such on the be entitled to membership in said exercise and enforcement of all and privileges with regard to said Village, Section "C", as have the Association with respect to Indi

9. MAINTENANCE FUND. The of each and every lot in said maintenance fee of not to exceed be used by said Association for snow or other obstruction and improving grass and planted and driveways) in looking after, appearance of said addition and for such other purposes as the A use is for the benefit of said A imposed shall be and constitute interior only to taxes, assessments and the lien of such maintenance same manner as provided in the S liens.

10. ALTERATION, INVALIDATION TO ENFORCE.

(a) Upon the date here of these covenants, they shall be with the land for additional and years each, except as herein after

(b) At any time by the (65% of the then owners of the vote for each lot as platted or they may then own, evidenced by said owners or their duly author Office of the Recorder of Allen protective covenants may be chan

(c) Invalidation of a ment or court order shall in no visions which shall remain in fu

(d) The owner, present his legal representative, success force any and all of the foregoing limitations by injunction or oth tempt to violate any of the cove shall have a cause of action for law or in equity against the per ing to violate such covenants, o so violating any such covenants for such violation; provided, no such right or cause of action to at the time of such violation or shall in no event be deemed to b thereafter; and provided further

the enjoyment, exercise and enforcement of certain rights, powers, duties, and privileges by the terms and provisions of the dedication and plat of Indian Village, Section "A", an Addition to the City of West Wayne, Allen County, Indiana, as recorded in Plat Book 13, page 35-36, and in the declaration of restrictions affecting Lots 1 to 217, Section "A", in said Indian Village, all in the Office of the Recorder of Allen County, Indiana, the owner of each and every lot and be registered as such on the books of said Association, therefor and entitled to membership in said Association, and the enjoyment, exercise and enforcement of all of the same rights, powers, duties and privileges with regard to said lots 1 to 217, inclusive, Indian Village, Section "A", as have heretofore been conferred upon said Association with respect to Indian Village, Section "A".

9. Maintenance Fund. There shall be imposed upon the owner of each and every lot in said Indian Village, Section "A" an annual maintenance fee of not to exceed Five Dollars (\$5.00), which shall be used by said Association for the purpose of removing grass, weeds, and improving grass and planted areas within the boundaries of streets and driveways; in blocking after, promoting and maintaining the best appearance of said Addition and of the lots and grounds in it, and for such other purposes as the Association may desire, provided that the use is for the benefit of said Addition. Such maintenance fee shall be imposed shall be and constitute a lien on each and every such lot, and the lien of such maintenance fee shall be enforceable in the same manner as provided in the Statute for enforcement of mechanic's liens.

10. ALTERATION, INVALIDATION, EXTENSION, VIOLATION AND RIGHT TO ENFORCE

(a) Upon the date hereinabove provided for the expiration of these covenants, they shall be automatically extended to run with the land for additional and successive periods of ten (10) years each, except as hereinafter provided.

(b) At any time by the agreement of sixty-five percent (65%) of the then owners of lots, said owners being allowed one (1) vote for each lot as platted or conveyed as herein provided, which said owners or their duly authorized agents and duly recorded in the Office of the Recorder of Allen County, Indiana, any and all of these restrictive covenants may be changed or abolished entirely.

(c) Invalidation of any one of these covenants by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

(d) The owner, present and future, of any of said lots, his legal representative, successors, grantees and assigns may enforce any and all of the foregoing covenants, restrictions and limitations by injunction or otherwise and on violation or attempt to violate any of the covenants herein and each of them shall have a cause of action for damages and injunctive relief at law or in equity against the person or persons violating or attempting to violate such covenants, either to prevent him or them from violating any such covenants or to recover damages or other dues for such violation; provided, however, that the failure to exercise such right or cause of action to enforce any of the covenants herein at the time of such violation or attempt to violate such covenants shall in no event be deemed to be a waiver of the right to do so hereafter; and provided further that any violation of these covenants

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shall not give rise to re-entry nor shall it affect the interest of any person holding a lien upon said premises excepting for the violation thereof after such lien shall have ripened into a possessory title.

IN WITNESS WHEREOF, the undersigned owners have affixed their signatures this 12<sup>th</sup> day of May, 1947.

John R. Northman  
John R. Northman

Alice L. Northman  
Alice L. Northman

STATE OF INDIANA )  
COUNTY OF ALLEN ) SS:

Before me, the undersigned, a Notary Public in and for said County and State, this 12<sup>th</sup> day of May, 1947, personally appeared the above named John R. Northman and Alice L. Northman, husband and wife, and acknowledged the execution of the foregoing plat, protective covenants, easements and restrictions to be their free and voluntary act and deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

Ruth Driver  
Ruth Driver

Notary Public

My Commission Expires:

December 17, 1947



PLANS, APPROVALS, AFFIDAVITS, RESTRICTIONS, EASEMENTS AND PROTECTIVE COVENANTS FOR  
INDIAN VILLAGE SECTION 72,  
AN ADDITION TO THE CITY OF FORT WAYNE, ALLEN COUNTY, INDIANA.

John R. Werthman and Alice L. Werthman, husband and wife, of Allen County, Indiana, being the owners of the following described real estate:  
Parts of the East half of the Southeast Quarter of Section 16, Township 30 North, Range 14 East in Allen County, State of Indiana, to-wit: That tract of land lying west of Indian Village, Sections 107 and 108 and part of Lots numbered One (1) to Eleven (11) inclusive in Meadow Lark Acres, Additions to the City of Fort Wayne, and south of the center line of Gateway Trail, according to the plats thereof, as recorded in the plat records of Allen County, Indiana; together with all of that part of said Meadow Lark Acres lying south of the aforesaid center line of Gateway Trail, according to the plat thereof recorded as aforesaid.

havey cause said real estate to be platted into lots, streets, and easements in accordance with the plan and plat hereon shown, to be known as INDIAN VILLAGE SECTION 72. In addition to the City of Fort Wayne, Allen County, Indiana, subject to the assessments, protective covenants, restrictions, and limitations, attached hereto, and said streets, easements and limitations:  
The lots in said Addition are numbered Forty-four (44) to One hundred twenty-three (123) consecutively and inclusive, and divisions in face and decimal parts of a foot are used on all lots, streets, and easements on the face of the plat; all lots are subject to the provisions of building setback lines and easements as indicated on the face of the plat, and as hereinafter more specifically set forth.  
The undersigned several hereby declare and provide that the aforesaid lots are to be subject to the protective restrictions and limitations appended hereto as to their use, said restrictions and limitations to be covenants running with the land hereby platted for the mutual benefit of all persons, past, present and future, of any of the lots in said Indian Village, Section 72, until January 1, 1977, except as hereinafter provided.



JOHN R. WERTHMAN  
ALICE L. WERTHMAN  
John R. Werthman  
Alice L. Werthman  
Witnesses:  
John A. Werthman  
John P. Werthman  
Allen L. Werthman  
Witnesses of Allen, Co. Indiana, a Notary Public, in and for said County and State; this 7th day of April, 1956, personally appeared John R. Werthman and Alice L. Werthman, husband and wife, and acknowledged the execution of the foregoing plat and covenants to be their voluntary act and deed.  
This 7th day of April, 1956.

CERTIFICATE OF SURVEY  
I hereby certify that this plat presents accurately the form and dimensions of all lots, streets and easements therein contained, and that the plat line wholly within the land described.  
A. K. HINES, PROFESSIONAL SURVEYOR  
REGISTERED NO. 72

Southwest Corner of NE 1/4 of SE 1/4 SEC. 16-30-14.  
APPROVED April 1956  
John R. Werthman  
Alice L. Werthman  
John A. Werthman  
John P. Werthman  
Allen L. Werthman  
Witnesses:  
John A. Werthman  
John P. Werthman  
Allen L. Werthman  
Witnesses of Allen, Co. Indiana, a Notary Public, in and for said County and State; this 7th day of April, 1956, personally appeared John R. Werthman and Alice L. Werthman, husband and wife, and acknowledged the execution of the foregoing plat and covenants to be their voluntary act and deed.  
This 7th day of April, 1956.  
Duly Entered at Station  
JUL 17 1956

SEE 91-40767 AMEND 7/21/98  
SEE 98-3752 AMEND 7/21/98





10. ALTERNATION, INVALIDATION, EXTENSION, VIOLATIONS AND RIGHT TO REPOSE.

(a) Upon the date heretofore provided for the expiration of these covenants, they shall be automatically extended to run with the land for additional and successive periods of ten (10) year each, except as hereinafter provided.

(b) At any time by the agreement of sixty-five percent (65%) of the then owners of lots, said owners being allowed one (1) vote for each lot as platted or conveyed as herein provided, which they may then own, evidenced by an instrument in writing signed by said owners or their duly authorized agents and duly recorded in the Office of the Recorder of Allen County, Indiana, any and all of these protective covenants may be changed or abolished entirely.

(c) Invalidation of any one of these covenants by judgment of court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

(d) The owner, present and future, of any of said lots; his legal representative, successors, grantees and assigns may enforce any and all of the foregoing covenants, restrictions and limitations by injunction or otherwise and on violation or an attempt to violate any of the covenants herein they and each of them shall have a cause of action for damages and injunctive relief at law or in equity against the person or persons violating or attempting to violate such covenants, either to prevent him or them from so violating any such covenants or to recover damages or other dues for such violation; provided, however, that the failure to exercise such right or cause of action to enforce any of the covenants herein at the time of such violation or attempt to violate such covenants shall in no event be deemed to be a waiver of the right to do so hereafter; and provided further that any violation of these covenants shall not give rise to re-entry nor shall it affect the interest of any person holding a lien upon said premises excepting for the violation thereof after such lien shall have ripened into a possessory title.

IN WITNESS WHEREOF, the undersigned owners have affixed their signatures this 1st day of April, 1950.

John R. Workman  
John R. Workman  
Alice L. Workman  
Alice L. Workman

STATE OF INDIANA )  
COUNTY OF ALLEN ) SS:

Before me, the undersigned, a Notary Public, in and for said County and State, this 1st day of April, 1950, personally appeared the above named John R. Workman and Alice L. Workman, husband and wife, each over the age of twenty-one (21) years, and acknowledged the execution of the foregoing plat, protective covenants, easements and restrictions to be their free and voluntary act and deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

K. Annabelle Young  
Notary Public

My Commission Expires

Dec. 23, 1954.









10. MAINTENANCE FUND. There shall be imposed upon the owner of each and every lot (as the word "lot" is defined in paragraph one (1) above) in said Indian Village, Section "B", an annual maintenance fee not to exceed five dollars (\$5.00) to be assessed by and paid to Indian Village, Inc. or its successor sponsors in the development and promotion of said Addition or to such community association as such sponsor shall recognize, as hereinabove provided. For the purpose of removing grass, weeds, snow or other obstructions from sidewalks; in maintaining, preserving, and improving grass and planted areas within the boundaries of streets; in locking after, promoting and maintaining the best appearance of said Addition and of the lots and grounds in it; and for such other purposes as such sponsor or association may desire, provided such use is for the benefit of said Addition. Said maintenance fee shall continue to accrue and become a lien upon any of said lots as soon as title thereto has been divested from the undersigned owner or its successor sponsors in the development and promotion of said Addition or when a dwelling house shall have been erected thereon, and shall be payable on the first day of January of each year thereafter. Indian Village, Inc., the original owner, or its successor sponsors in the development and promotion of said Addition or such community association, when recognized as aforesaid, shall have a lien on all lots sold in said Addition to secure the payment of the aforesaid maintenance charges and to certify that said liens shall be superior to all other liens except mortgages for purchase money and improvements of said real estate and shall be enforceable in the same manner as unsecured liens together with attorney fees. Upon demand the undersigned owner or said association shall defend to any buyer's mortgage a certificate showing the unpaid maintenance charges against any lot, and the original owner or said association may at its discretion waive any right for a limited period of time the aforesaid liens against any lot. Upon the recognition by the undersigned sponsor or such community association as hereinabove provided said maintenance funds shall in the hands of the original owner shall be turned over to the association for its use as herein provided.

11. ALTERATION, INVALIDATION, EXTENSION, VIOLATIONS AND RIGHT TO RESCUE.

(a) Upon the date hereinabove provided for the expiration of these covenants, they shall be automatically extended to run with the lots for additional and successive periods of ten (10) years each, except as hereinafter provided.

(b) At any time by the agreement of sixty-five percent (65%) of the then owners of lots, said owners being allowed one (1) vote for each lot as placed or surveyed as herein provided, which they may then own, evidenced by an instrument in writing signed by said owners or their duly authorized agents and duly recorded in the Office of the Recorder of Allen County, Indiana, any and all of these protective covenants may be changed or abolished entirely.

(c) Invalidation of any one of these covenants by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

(d) The owner, present and future, of any of said lots, his legal representative, successors, agents and assigns may enforce any and all of the foregoing covenants, restrictions and limitations by injunction or otherwise and on violation or an attempt to violate any of the covenants herein they and each of them shall have the right of action for damages and in equity against the law or in equity against the person or persons violating or attempting to violate such covenants, either to prevent them or them from violating any such covenants or to recover damages or other dues for such violation; provided, however, that the failure to exercise such right or cause of action to enforce any of the covenants herein



any and all of the covenants, restrictions and conditions by imposition of otherwise and on violation or an attempt to violate any of the covenants herein they and each of them shall have a cause of action for damages and injunctive relief at law or in equity against the person or persons violating or attempting to violate such covenants, either to prevent him or them from so violating any such covenants or to recover damages or other relief for such violation, provided, however, that the failure to exercise such right or cause of action to enforce any of the covenants herein shall not constitute a waiver of the right to do so thereafter; and provided further that any violation of these covenants shall not give rise to a lien upon said premises excepting for the violation thereof after such lien shall have ripened into a possessory title.

IN WITNESS WHEREOF, the undersigned owner has executed these presents and has caused the signatures of its duly authorized officers and the corporate seal to be affixed hereto this 23rd day of August, 1954.



INDIAN VILLAGE, INC.  
 By: John R. Northman  
 John R. Northman, President  
Alice L. Northman  
 Alice L. Northman, Secretary

STATE OF INDIANA )  
 COUNTY OF ALLEN )

Before me, the undersigned, a Notary Public, in and for said County and State, this 23rd day of August, 1954, personally appeared John R. Northman and Alice L. Northman, President and Secretary respectively of Indian Village, Inc., an Indiana corporation, and acknowledged the execution of the foregoing instrument for and on behalf of said corporation as their free and voluntary act and deed and to be the formal and legal act of said corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

My Commission Expires  
 March 23, 1954



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# CONSTITUTION

## PREAMBLE

Whereas, by the terms of the Plat, and the Dedication thereof, and the statement of restrictions and provisions relating thereto, of Indian Village, an Addition to the City of Fort Wayne, Indiana, it was provided that there should be formed an Association of owners of lots in said Addition for certain definite purposes, and also for other general purposes not specified, and whereas, such an Association has been in existence informally for a number of years;

And whereas, it is deemed advisable to state definitely the purposes of such Association, and terms of the organization thereof, and in order that the same may be effective for the purposes for which it is organized, this Constitution as adopted by the members of said Association.

## ARTICLE I - Name

The name of this Association shall be **INDIAN VILLAGE COMMUNITY ASSOCIATION.**

## ARTICLE II - Purposes and Objects

The purposes and objects of this Association shall be:

Section 1. To have, enjoy, exercise and enforce all rights, powers, duties and privileges, and to perform all functions, conferred upon such Association by the terms and provisions of the Dedication and Plat of Indian Village, Section A, an Addition to the City of Fort Wayne, Allen County, Indiana, as recorded in Plat Book 13, pages 35-36, and in the Declaration of Restrictions affecting Lots 1 to 217, Section A, in said Indian Village, as recorded in Miscellaneous Record 72, pages 384 to 388, inclusive, all in the Office of the Recorder of Allen County, State of Indiana, and by the terms and provisions of the Dedication and Plat of Indian Village, Section "B," an Addition to the City of Fort Wayne, Allen County, Indiana, as recorded in Plat Record 16, pages 109 and 109a, and in the declaration of covenants, restrictions and limitations affecting lots 1 to 29, Indian Village, Section "B," as recorded in Miscellaneous Record Book 112, page 566 all in the Office of the Recorder of Allen County, State of Indiana, both the foregoing Indian Village, Section "A" and Indian Village, Section "B" are hereinafter referred to as Indian Village or as "said Addition."

Section 2. To provide for the maintenance and betterment of said Addition, and to encourage, foster, promote and improve the social and community spirit, civic relations, and the general welfare of said Addition and its environs, and of the owners of lots and residents of said Addition.

## ARTICLE III - Membership

Every owner of a lot in Indian Village shall automatically be a member of this Association and shall remain a member so long, but only so long, as such ownership continues.

## ARTICLE IV - Meetings of Association

Section 1. The annual meeting of the Association shall be held on the first Monday of March in each year, for the election of members of the Board of Governors, reports of officers, and such other business as may be appropriate for such a meeting.

Section 2. Special meetings of the Association shall be held upon order of the Board of Governors, or on a call issued by the President or Secretary.

Section 3. Fifteen (15) members shall constitute a quorum for the transaction of all business.

Section 4. At all meetings of the Association, each member shall be entitled to one (1) vote, regardless of the number of lots owned, and, where a lot is owned by a corporation, firm, tenants by the entities, in common, or in joint tenancy, such owner or owners shall have the right to one (1) vote, such vote to be cast by their accredited representative, regardless of the number of persons interested in such joint or common tenancy or the number of lots held by them.

Section 5. Roberts Rules of Order shall govern the conduct of meetings of the Association and control, except where modified by, or in conflict with, this Constitution and the By-Laws adopted hereunder.

#### ARTICLE V - Board of Governors

Section 1. The business and prudential affairs of the Association, and the general management and control of its activities, shall be vested in a Board of Governors, five (5) in number. Upon the adoption of this Constitution, the Association shall elect five (5) members to the Board of Governors, and three (3) receiving the highest vote to serve for a term of two (2) years, and the two (2) receiving the next highest vote to serve for a term of one (1) year; and hereafter, at each annual meeting of the Association, there shall be elected in alternate years two members, and three members, respectively, to the Board of Governors to hold for a term of two (2) years and until their successors are elected and qualified, except Secretary and Treasurer shall be elected for a term of three years.

Section 2. No one shall be eligible to election to the Board of Governors except a member of the Association.

Section 3. A meeting of the Board of Governors shall be held immediately after the annual meeting of the Association, for the purpose of organization and the election of officers, and regular meetings of the Board may be held at such times as the Board of Governors may prescribe. Special meetings of the Board may be held at such times as the Board may designate upon call of the President or Secretary.

Section 4. A majority of the Board shall constitute a quorum for the transaction of business.

#### ARTICLE VI - Officers

Section 1. The officers of the Association shall consist of a President, a Vice-President, and a Secretary/Treasurer.

Section 2. The officers shall be elected by the Board of Governors out of their own number to hold office for a term of two (2) years except the Secretary/Treasurer, who shall hold office for a term of three (3) years or until his or her successor is elected and qualified. The Secretary/Treasurer shall receive a salary which shall be set at the beginning of each year by the Board of Governors.

Section 3. The President shall preside over all meetings of the Association and over all meetings of the Board of Governors and shall have such other authorities and powers as the Presidents of similar Associations usually enjoy.

Section 4. The Vice-President shall serve in the capacity of President, with like powers and authority, when the President is absent or unable to act.

NVA (Constitution (March 11, 1994)  
Revised NOV. 2009 DIRECTOR'S

Section 5. The Secretary shall be custodian of the books and records and seal of the Association; he shall keep and record the minutes of all meetings of the Association and of the Board of Governors; submit reports to the Association at its annual meeting, and to the Board of Governors at such times as may be required by the Board. He shall collect and receipt for all maintenance fees and other monies that may be due or payable to the Association, and shall periodically, or at such times as the Board may designate, turn over all funds in his hands to the treasury, taking the receipt of the Treasurer therefor.

Section 6. The Treasurer shall have charge and custody of all funds of the Association, and shall make and keep accurate records of all receipts and disbursements. He shall render an annual account of the finances of the Association and of its receipts and disbursements to the annual meeting of the Association and shall make such other reports to the Board of Governors as the Board may require. He shall disburse the funds of the Association under and in accordance with the direction of the Board of Governors.

Section 7. The accounts of the Secretary and the Treasurer shall be audited by a committee of members of the Association, or by an Auditor appointed by the Board of Governors for that purpose, annually.

Section 8. The Treasurer shall, and the Secretary may be required by the Board of Governors, to give bond to the Association for the faithful performance of their duties and for the accounting of all funds and monies that may come into their hands in such amount and with such sureties as may be determined by the Board of Governors.

Section 9. In the event of the disqualification, or continued inability to act, of any member of the Board of Governors or of any officer, or in the event of misconduct, the Board of Governors, after giving such officer notice, may hold a meeting for the purpose of listening to any charges regarding such disqualification, inability or misconduct, in which such officer shall be entitled to be present, and after such hearing, shall have the right, by majority vote of the other members of the Board, to declare the office of such officer or member of the Board to be vacant.

Section 10. The Board of Governors, by a majority vote, shall have the right to fill any vacancy in the Board of Governors or in any office by election from the membership of the Association. The officer so elected to hold office until the organization meeting of the Board following the next annual meeting.

Section 11. The Board of Governors shall have authority to appoint such committees as they deem necessary or advisable to carry on the activities of the Association, and to confer such powers to such committees as the Board of Governors may deem advisable.

#### ARTICLE VII - Fiscal Year

The fiscal year of the Association shall begin on the 1<sup>st</sup> day of January of each year.

#### ARTICLE VIII - Nominations and Elections

Elections for membership on the Board of Governors shall be by ballot and nominations may be made by a Nominating Committee appointed prior to such election by the Board of Governors or may be made from the floor.

#### **ARTICLE IX - Notices of Meetings**

Section 1. Written notice of the annual meeting of the Association, as well as of all special meetings of the Association, shall be mailed to all members of the Association, as their names and addresses appear upon the records of the Association, not less than ten (10) days before the holding of any such meeting, and the date of the mailing of such notices shall be deemed to be the date of the giving of notice thereby.

Section 2. Notices of all meetings shall set forth the time and place at which the meeting is to be held, and the general nature of the business which is to be transacted at such meeting.

Section 3. Notice of regular and special meetings of the Board of Governors shall be given to each member of the Board of Governors by the Secretary, not less than five (5) days before the holding of such meeting; such notice may be given orally, by telephone or telegraph, or by mail to the last address appearing on the books of the Association, and the mailing of such notice shall be deemed to be the date on which such notice is given. Such notice shall state the time and place of holding of the meeting; and in general, the business to be transacted thereat.

Section 4. Any member of the Association or of the Board of Governors may waive notice of any meeting by written waiver filed with the Secretary of the Association.

#### **ARTICLE X - Amendments**

Amendments to the Constitution or By-Laws of the Association may be made by vote of a majority of those present at any annual or special meeting of the Association, provided due notice of the proposed amendment has been given to the members of the Association in the notice of the meeting; provided further, that the Board of Governors, by a majority vote, may adopt an amendment to either the Constitution or By-Law of the Association at any meeting of which the members of the Board of Governors have had proper notice under this Constitution, and provided further, that a copy of such amendment shall be mailed by the Secretary of the Association to each member of the Association promptly after its adoption. Any amendment so adopted by the Board of Governors shall be and remain in full force and effect from the time of its adoption, unless and until it is subsequently rescinded, modified or set aside by the members of the Association at a meeting called for that purpose. At the written request of five (5) members of the Association, the Secretary shall issue a call for a meeting of the members of the Association to pass on any amendment so adopted by the Board of Governors.

#### **BY - LAWS**

##### **BY-LAW NO. 1 - Collection of Maintenance Fund**

Section 1. The Secretary shall keep and maintain at all times an up-to-date list of the owners of lots in Indian Village, and from time to time shall note all changes in ownership, and, as far as possible, shall keep a record of the addresses of the respective owners.

Section 2. The Secretary shall notify all new owners of lots in the Addition of their right to membership in the Association and shall forward an application for membership. Upon receipt of an executed application by a new owner of a lot or lots in said Addition, the Secretary shall note the filing of the same and of the granting of such membership.

Section 3. The Secretary shall keep an itemized record of the accrual of all maintenance fees and of other dues that become due to the Association of all payments thereof, and of delinquencies.

Section 4. The Secretary shall mail notice to all owners of lots in said Addition, not less than

ten (10) days prior to the 1<sup>st</sup> day of January of each year, of the maintenance fees which will become due on that date, and of all delinquencies owing by such owners on the lot owned by them, and of the place where payment of such charges may be made.

Section 5. The Secretary shall report all collections, and make remittance thereof, to the Treasurer, and at the end of three (3) months after the same becomes due, shall report all delinquencies to the Board of Governors for its action.

Section 6. The Secretary shall furnish, on request, a statement of the maintenance fee status of any lot to the owner thereof, or to any one desiring to purchase such lot or to accept a lien thereon, and when all maintenance charges have been paid in full, the Secretary may issue a maintenance charge clearance to any such owner or person.

Section 7. Whenever a delinquency exists in the payment of any maintenance charge or charges upon any lot in said Addition, no action shall be taken to enforce the lien securing the same, except upon the vote and authority of a majority of the Board, but said Board, upon consideration of the matter, may, by resolution of a majority of the Board, take steps to enforce and foreclose the lien, provided for by the Declaration of Restrictions affecting lots 1 to 217 Section A, Indian Village, for the purpose of securing payment to the Association of any maintenance charges which are in arrears.

### **BY-LAW NO. 2 Maintenance Fund Disbursement**

Section 1. The maintenance charge funds shall be held in a separate account by the Treasurer, and shall be disbursed by him first for the following purposes; namely, in caring for vacant and unimproved lands in Section A, and Section B, Indian Village, in removing grass and weeds, snow or other obstructions from sidewalks, in maintaining, preserving and improving grass and planted areas within the boundaries of streets and driveways, in looking after, promoting and maintaining the best appearance of said Addition and of the lots and grounds in it.

Section 2. Any balance of such maintenance fund charges received, and any funds received from other sources, shall be disbursed by the Treasurer for such purposes as the Board of Governors may order or direct beneficial to the interest of the Addition.

### **BY-LAW NO. 3 Powers Relating to Control and Maintenance of Lots and Approval and Rejection of Proposed Plans**

Section 1. All powers conferred upon such Association, relating to the control and maintenance of lots, and to the approval and rejection of plans and specifications for proposed residences, shall be, and are, vested in the Board of Governors.

Section 2. The Board of Governors may appoint one or more of its own members, or a non-member, who possesses expert qualifications in that connection, as a Committee, for the purpose of examining and passing upon plans and specifications for proposed residences in Indian Village, and such Committee shall report to the Board its findings in connection therewith, and its recommendations as to the approval or rejection thereof.

Section 3. The Board of Governors shall act upon such plans and specifications for proposed residences, and the recommendations of said Committee thereon, and shall approve or reject such plans within 10 days from the time when said plans and specifications are first submitted to the Association for its approval or rejection. The action of the Board of Governors thereon shall be final.

## BY-LAWS

### BY-LAW NO. 1 Collection of Maintenance Fund

Section 1. The Secretary/Treasurer shall keep and maintain at all times an up-to-date list of the owners of lots in Indian Village, and from time to time shall note all changes in ownership, and, as far as possible, shall keep a record of the addresses of the respective owners.

Section 2. The Secretary/Treasurer shall notify all new owners of lots in the Addition of their mandatory membership in the Association.

Section 3. The Secretary/Treasurer shall keep an itemized record of the accrual of all maintenance fees and of other assessments that become due to the Association of all payments thereof and of delinquencies.

Section 4. The Secretary/Treasurer shall notify all owners of lots in said Addition, not less than ten (10) days prior to the 1<sup>st</sup> day of January of each year, of the maintenance fee which will become due on that date, and of all delinquencies owed by such owners on the lot owned by them, and of the place where payment of such charges may be made.

Section 5. The Secretary/Treasurer shall report all collections and all delinquencies to the Board of Governors at the end of three (3) months after the same becomes due, for its action. Action will be taken following the current Mandatory Maintenance Fee Policy.

Section 6. The Secretary/Treasurer shall furnish, on request, a statement of the maintenance fee status of any lot to the owner thereof, or to any one desiring to purchase such lot or to accept a lien thereon, and when all maintenance charges have been paid in full, the Secretary/Treasurer may issue a maintenance charge clearance to any such owner or person.

Section 7. Whenever a delinquency exists in the payment of any maintenance charge or charges upon any lot in said Addition, no action shall be taken to enforce the lien securing the same, except upon the vote and authority of the Board of Governors, but said Board, upon consideration of the matter, may, by resolution of a majority of the Board, take steps to enforce and foreclose the lien provided for by the Declaration of Restrictions affecting all lots in Sections A-F, Indian Village, for the purpose of securing payment to the Association of any maintenance charges which are in arrears.

### BY-LAW NO. 2 Maintenance Fund Disbursement

Section 1. The maintenance charge funds shall be held in a separate account by the Secretary/Treasurer and shall be disbursed by him for the purposes outlined in the approved annual budget, as directed by the Board of Governors, in looking after, promoting and maintaining the best appearance of said Addition and of the lots and grounds in it.

Section 2. Any balance of such maintenance fund charges received, and any funds received from other sources shall be disbursed by the Secretary/Treasurer for such purposes as the Board of Governors may order or direct beneficial to the interest of the Addition.

### BY-LAW NO. 3 Powers Relating to Control and Maintenance of Lots and Approval and Rejection of Proposed Plans

Section 1. All powers conferred upon such Association, relating to the control and maintenance of lots, and to the approval and rejection of plans and specifications for proposed residences, shall be, and are, vested in the Board of Governors.

46

Section 2. The Board of Governors may appoint one or more of its own members, or a non-member, who possesses expert qualifications in that connection, as a Committee for the purpose of examining and passing upon plans and specifications for proposed residences in Indian Village, and such Committee shall report to the Board its findings in connection therewith, and its recommendations as to the approval or rejection thereof.

Section 3. The Board of Governors shall act upon such plans and specifications for proposed residences, and the recommendations of said Committee thereon, and shall approve or reject such plans within 10 days from the time when said plans and specifications are first submitted to the Association for its approval or rejection. The action of the Board of Governors thereon shall be final.

## MANDATORY MAINTENANCE FEE POLICY

At the October 2002 Semiannual Meeting the residents approved the following policy regarding late payments of the mandatory maintenance fee outlined in the Protective Covenants. The maintenance fee is payable January 1 for the following year.

Protective Covenants, Page 4, Paragraph 2, imposes a yearly maintenance fee of \$30.00 on each lot which is payable January 1 each year. Line 5 of Paragraph 2 states that nonpayment of the yearly fee "shall constitute a LIEN on each and every lot."

The first billing of each year is mailed to the property owner on December 1 and is payable January 1. Each additional billing for any previously UNPAID fee will have a \$5.00 late fee added to the total amount due.

### A \$5.00 late fee will be added to the amount due with each successive billing.

1 <sup>st</sup> billing will be mailed Dec 1 for payment January 1	\$30.00
2 <sup>nd</sup> billing will be mailed Mar 1 for payment April 1	\$35.00
3 <sup>rd</sup> billing will be mailed May 1 for payment June 1	\$40.00
4 <sup>th</sup> billing will be mailed Aug 1 for payment September 1	\$45.00

If full payment is not received within 18 months a LIEN will be filed at the Allen County Recorder's Office. We will add to the LIEN the cost of filing and withdrawing the LIEN. Billings will continue, at the rate of four billings per year for each year of unpaid maintenance fees. If a new LIEN has to be filed due to previously unpaid maintenance fees, all additional fees will be added to the amount due. This will assure that fees will be paid.



\*172447 IC 32-21-2-3.5

**WEST'S ANNOTATED  
INDIANA CODE  
TITLE 32. PROPERTY  
ARTICLE 21. CONVEYANCE  
PROCEDURES FOR REAL  
PROPERTY  
CHAPTER 2. RECORDING  
PROCESS**

*The statutes and Constitution are current  
with all 2014 Public Laws of the 2014  
Second Regular Session and Second  
Regular Technical Session of the 118th  
General Assembly.*

**32-21-2-3.5 Recording of replacement  
covenants; application**

Sec. 3.5. (a) This section applies only to land  
developments that include:

- (1) at least two hundred fifty (250) single family homes; and
- (2) at least two (2) different sections of lots:
  - (A) whose titles have all been conveyed from the land developer;
  - (B) whose first plat and covenants have been recorded in the office of the county recorder for at least fifteen (15) years;
  - (C) that are all governed by one (1) homeowners association; and
  - (D) that are not all subject to the same homeowners association covenants.

(b) Except as provided in subsection (c), if the lots included as part of one (1) homeowners association are not all subject to the same homeowners association covenants, new replacement covenants may be recorded by the homeowners association using one (1) of the following methods:

- (1) The homeowners association covenants may be recorded in accordance with section 3 of this chapter.
- (2) Notwithstanding any covenant

provisions or bylaws of the homeowners association concerning amendments or revisions to homeowners association covenants, the homeowners association may:

- (A) distribute to the owner of each lot included as part of the homeowners association:
- (i) a proposed set of homeowners association covenants that would apply to all lots included as part of the homeowners association; and
- (ii) a petition to be signed by each lot owner on which the owner indicates whether the owner approves or disapproves of applying the proposed covenants to all lots included as part of the homeowners association; and
- (B) submit the petitions and covenants to the county recorder if:

- (i) the lesser of a percentage of lot owners specified in the covenants or two-thirds (  $\frac{2}{3}$  ) of all lot owners approve of applying the covenants to all lots included as part of the homeowners association, as indicated by the petitions signed by the lot owners; and
- \*172448 (ii) notwithstanding section 3 of this chapter, the signature of each lot owner has been affirmed before a notary public or an officer of the homeowners association submits an affidavit with the covenants and the petitions that verifies and certifies the signatures on the petitions.

Homeowners association covenants submitted to a county recorder in accordance with this subdivision are considered to be in effect on the date the covenants are recorded.

(c) A new replacement covenant described in subsection (b) does not apply to and is not binding on property in one (1) section of lots to the extent that the new replacement covenant:

- (1) changes an existing covenant that pertains to minimum lot area or minimum home size; or
- (2) adds a new covenant that pertains to minimum lot area or minimum home size.

(d) A new replacement covenant described in subsection (b) applies only prospectively, beginning on the date the covenant is recorded.

The adoption of a new replacement covenant does not require a person to alter the person's home or lot to comply with the new replacement covenant if the condition of the person's home or lot was permissible or authorized under the previous covenant.

**CREDIT(S)**

*As added by P.L.43-2013, SEC.2, eff. July 1, 2013.  
Amended by P.L.122-2014, SEC.1, eff. July 1, 2014.*

**HISTORICAL NOTES**

**HISTORICAL AND STATUTORY  
NOTES**

2014 Legislation

P.L.122-2014, Sec.1, in Subsec. (a)(2), substituted "two (2) different sections of lots" for "twelve (12) different sections of lots".

**REFERENCES**

**LIBRARY REFERENCES**

Common Interest Communities ~~27~~.  
Westlaw Topic No. 83T.

**REFERENCES**

**RESEARCH REFERENCES**

Encyclopedias

Ind. Law Enycl. Covenants § 14, Creation by General Development Schemes.