DocId:20002077
Tx:40012744
221100288
CANDY MYERS
NOBLE CO, IN - RECORDER
RECORDED AS PRESENTED
11/16/2022 10:29 AM
REC FEE: 25.00 PGS: 15

DEDICATION, PROTECTIVE RESTRICTIONS, COVENANTS LIMITATIONS, EASEMENTS, AND APPROVALS OF THE PLAT OF ORCHARD VALLEY RESERVE, SECTION I, A SUBDIVISION IN NOBLE COUNTY, INDIANA

Orchard Valley Reserve, LLC an Indiana limited liability company makes this Dedication, Protective Restrictions, Covenants, Limitations, Easements, and Approvals of the Plat of Orchard Valley Reserve, Section I, a Subdivision in the Town of Avilla, Noble County, Indiana, which shall apply to the Real Estate and to all of the Lots in Orchard Valley Reserve, Section I subdivision. Additionally, all streets shown on the Plat are dedicated as public right of way for public use.

The Lots in Section I of Orchard Valley Reserve, Section I are numbered 19 through 45 inclusive, and all dimensions of the Lots as shown on the Plat are in feet and decimals of a foot. All easements specifically shown or described on the Plat are expressly dedicated to the Owners or the public, as applicable, for the uses described, and their usual and intended purposes.

RECITALS

A. All capitalized terms used in these Recitals have the meanings given them in Section 1.

B. The Subdivision is part of a tract of real estate that currently is planned to be subdivided as Orchard Valley Reserve, Section I with a maximum of 27 Lots.

C. These Covenants shall run with the land as described on the face of the recorded Plat, be considered as a part of each conveyance of a Lot without being written in the deed for such conveyance, and be for the mutual benefit and protection of the Owners, both present and future.

D. The Developer intends that each Owner will become a Class A Member of the Association, and be bound by the Articles and the Bylaws.

COVENANTS

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

1.1 ***"Annual Assessment".*** A regular assessment made by the Association under Section 4.3, on an annual basis.

1.2 ***"Articles".*** The articles of incorporation adopted by the Association and approved by the Indiana Secretary of State, and all amendments to those articles.

1.3 ***"Assessments" (and the singular form), "Assessment".*** Collectively, Annual Assessments and Special Assessments.

1.4 ***"Association".*** Orchard Valley Reserve Association, Inc., an Indiana nonprofit corporation, and its successors and assigns.

1.5 ***"Board".*** The duly elected board of directors of the Association.

1.6 ***"Bylaws".*** The bylaws duly adopted by the Association, and all amendments to those bylaws.

1.7 ***"Orchard Valley Reserve, Section I Subdivision".*** Orchard Valley Reserve, Section I as will be recorded in the Office of the Recorder of Noble County, Indiana.

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

1.9 ***"Common Area".*** The real property designated as Block "E" on the face of the Plat, together with such other property designated as "Common Area" on the face of the recorded plats of future sections in Orchard Valley Reserve Subdivision.

1.10 ***"Covenants".*** This Dedication, Protective Restrictions, Covenants, Limitations, Easements, and Approvals of the Plat of Orchard Valley Reserve, Section I, a Subdivision in Noble County, Indiana.

1.11 ***"Developer".*** Orchard Valley Reserve, LLC, an Indiana limited liability company, and any successor or assign designated as the Successor Developer in a document that is recorded in the Office of the Recorder of Noble County, Indiana.

1.12 ***"Dwelling" (and in the plural form), "Dwellings".*** A structure used as a residential living unit located upon a Lot, including the garage and any appurtenances.

1.13 ***"Lot" (and in plural form), "Lots".*** A lot in the Plat, or any tract(s) of Real Estate that consist of one or more Lots, or a part of a Lot, upon which a Dwelling is constructed in accordance with these Covenants, or such further restrictions as may be imposed by the Ordinance, or any applicable governmental permit or requirement; provided, however, that no tract of land consisting of part of Lot, or parts of more than one Lot, shall be considered a "Lot" under these Covenants unless the tract has a frontage of at least 70 feet in width at the established front building line as shown on the Plat, and has a total area of at least 8,700 square feet.

1.14 ***"Member" (and in the plural form), "Members".*** A member in good standing of the Association.

1.15 ***"Ordinance".*** The Town of Avilla Subdivision Regulations and Zoning Ordinance, or such other land use ordinance that is applicable to the Real Estate.

1.16 ***"Owner" (and in the plural form), "Owners".*** The record owner(s) (whether one or more persons or entities) of fee simple title to a Lot, including contract sellers, but excluding those having an interest in a Lot merely as security for the performance of an obligation.

1.17 ***"Plan Commission".*** The Town of Avilla, Indiana Plan Commission or its successor agency.

1.18 ***"Plat".*** The Secondary Plat of Orchard Valley Reserve, Section I, as recorded on _____, 2022 as Instrument Number _____ in the Office of the Recorder of Noble County, Indiana.

1.19 ***"Real Estate".*** The real estate legally described on the face of the recorded Plat.

1.20 ***"Subdivision."*** Orchard Valley Reserve, Section I, as shown on the Plat.

2. ***PROPERTY RIGHTS.***

2.1 ***Owners' Easements of Enjoyment.*** Each Owner shall have the right and an easement of enjoyment in the Common Area that is appurtenant and passes with title to every Lot, subject to the following rights, which are expressly granted to the Association:

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

2.1.2 To suspend the voting rights and right of an Owner to use any recreational facilities in the Common Area for any period during which an Assessment against the Owner's Lot remains unpaid, or the Owner is in violation of these Covenants, the Articles, the Bylaws, or any published rule of the Association; and

2.1.3 To dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members; provided however, that no such dedication or transfer shall be effective unless an instrument signed by at least two-thirds of the Class A Members, and the Class B Member, which evidences the consent or agreement to such dedication or transfer, is recorded in the Office of the Recorder of Noble County, Indiana.

2.2 ***Delegation of Use.*** Any Owner may delegate, in accordance with the Bylaws, the Owner's right to use and enjoy the Common Area and recreational facilities in it, to members of the Owner's family, tenants, or contract purchasers who reside on the Owner's Lot.

3. *MEMBERSHIP AND VOTING RIGHTS.*

3.1 Every Owner shall be a Member of the Association. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot.

3.2 The Association has the following two classes of voting memberships:

3.2.1 **Class A.** Class A membership in the Association consists of all Owners except the Developer. Class A Members shall be entitled to one vote for each Lot owned. When more than one person owns a Lot, all such persons shall be Members. The vote for such Lot shall be exercised as its Owners among themselves determine; but in no event shall more than one vote be cast with respect to a Lot.

3.2.2 **Class B.** Class B membership consists of the Developer. The Class B Member shall be entitled to 500 votes less that number of votes that all Class A Members are entitled to exercise. Class B membership shall cease upon the happening of either of the following events, whichever occurs first:

3.2.2.1 When fee simple title to all Lots in all Sections of Orchard Valley Reserve Subdivision have been conveyed by the Developer; or

3.2.2.2 On December 31, 2042.

4. *COVENANT FOR MAINTENANCE ASSESSMENTS.*

4.1 ***Creation of Lien and Personal Obligation of Assessments.*** Each Owner (except the Developer) by acceptance of a deed to a Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association all Assessments made with respect to the Owner's Lot. Assessments shall be established and collected as provided in these Covenants, the Articles, and the Bylaws. Assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land, and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was Owner of a Lot at the time when the Assessment against it became due. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

4.2 ***Purpose of Assessments.*** Assessments levied by the Association shall be used exclusively for the purposes of, (i) promoting the recreation, health, and welfare of Owners and other occupants in all present and future sections of the Orchard Valley Reserve Subdivision, (ii) improvement and maintenance of the Common Area and any other common impoundment basin located in the Common Area through and into which the Subdivision's surface waters drain, (iii) the improvement and maintenance of such other facilities in the Orchard Valley Reserve Subdivision as the Board reasonably determines is necessary to achieve such purposes, and (iv) for the repairs and maintenance described in Section 5.1.

4.3 ***Maximum Annual Assessments.*** Initially, the maximum Annual Assessment shall be $395. Subsequent Annual Assessments may be made as follows:

4.3.1 Beginning January 1st of the year immediately following the first conveyance of a Lot by Developer, the maximum Annual Assessment may be increased each year by the Board, by a percentage not more than 8% above the Annual Assessment for the previous year, without a vote of the Members.

4.3.2 From and after January 1st of the year immediately following the first conveyance of a Lot by Developer, the maximum Annual Assessment may be increased by a percentage in excess of 8%, only by the vote or written consent of a majority of the Class A Members, and with the written consent or approval of the Class B Member.

4.4 ***Special Assessments for Capital Improvements.*** In addition to Annual Assessments, the Association may levy, in any year, a Special Assessment applicable to that year for all or any of the following purposes: (i) to defray, in whole or in part, the cost of any new construction, or repair or replacement of an existing capital improvement in the Common Area, including fixtures and related personal property, and (ii) for an item of repair, maintenance, or replacement, the cost of which was not included in the Association's budget for that year; provided, however, that any such Special Assessment shall require the vote or written consent of 75% of the Class A Members, and the written consent or approval of the Class B Member; and provided further, that no such Special Assessment for any such purpose shall be made if the Special Assessment in any way would jeopardize or affect the Association's ability to pay or satisfy the Association's other financial obligations.

4.5 ***Notice and Quorum for Any Action Authorized Under Sections 4.3 and 4.4.*** Any action authorized under Section 4.3.2 and Section 4.4 shall be taken at a meeting of the Association called for that purpose, written notice of which meeting shall be given to all of the Members in accordance with the Bylaws. If the proposed action is favored by a majority of the votes cast by the Class A Members at such meeting, but such vote is less than the requisite percentage of the Class A Members, Class A Members who were not present in person or by proxy may give their consent in writing, providing such consent is obtained by an officer of the Association within 30 days of the date of such meeting.

4.6 ***Uniform Rate of Assessment.*** Both Annual Assessments and Special Assessments shall be fixed at a uniform rate for all Lots, and may be collected no more frequently than monthly, and no less frequently than annually.

4.7 ***Date of Commencement of Annual Assessments.*** Annual Assessments shall commence as to all Lots then subject to Annual Assessments, on the first day of the month immediately following the first conveyance of a Lot by the Developer. The Board shall fix the amount of the Annual Assessment against each Lot at least 30 days in advance of the date the Annual Assessment is due. Written notice for the payments of the Annual Assessment shall be given to every Owner.

4.8 ***Due Dates.*** The due dates for payment of Assessments shall be as established by the Board, and shall be identified in the notice given to the Owners under Section 4.7. The Association shall, upon demand and for a reasonable charge, furnish a certification signed by an officer of the Association stating whether an Assessment against a Lot has been paid.

4.9 ***Effect of Nonpayment of Assessments/Remedies of the Association.***

4.9.1 Each Owner is personally liable and responsible to pay an Assessment made with respect to the Owner's Lot, in full and when due. Any Assessment not paid within 30 days after its due date shall bear interest from the due date at the rate of 12% per annum, or at the legal rate of interest in Indiana, whichever is higher. Each Owner that fails to pay an Assessment when due also is personally liable and responsible to immediately pay to the Association a late fee of $150 for each delinquent Assessment. Any Assessment, interest, or late fee not paid when due shall be a lien on the Lot for which they are due.

4.9.2 The Association may bring an action at law against an Owner that is delinquent in the payment of an Assessment, including any interest or late fees due under Section 4.9.1, and may foreclose the lien created against the Owner's Lot under Section 4.1. No Owner may waive or otherwise escape liability for Assessments made under these Covenants by non-use of the Common Area or abandonment of a Lot. The lien for delinquent Assessments may be foreclosed in the same manner as mechanic's liens are foreclosed in Indiana; provided, however, that any lien created under Section 4.1 shall not expire by lapse of time in the Association pursuing its remedies. The Association shall also be entitled to recover the reasonable attorneys' fees, costs, and expenses incurred because of the failure of an Owner to timely pay an Assessment, interest, or late fees.

4.10 ***Subordination of Assessment Lien to First Mortgage.*** The lien of an Assessment shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the lien of an Assessment lien against it. No sale or transfer shall relieve an Owner or Lot from liability for payment of any Assessment subsequently becoming due, or from the lien of any Assessment.

5. *MAINTENANCE OF COMMON AREA, DWELLINGS, AND LOTS.*

5.1 ***Maintenance Obligations of Association.*** The Association shall be obligated and responsible to maintain and repair the Common Area and all storm water collection, water quality systems, and other appurtenant drainage facilities in the Common Area in accordance with all applicable governmental permits and approvals; and the cost of such maintenance and repair shall be subject to Assessment under Section 4.

5.2 ***Maintenance Obligations of Owners.*** Each Owner shall be solely responsible, at the Owner's sole cost and expense, to keep the Owner's Dwelling and Lot in good condition and repair, and to maintain, repair, and replace (if necessary), all improvements situated on the Lot.

5.3 ***Maintenance and Repair Rights of Association.*** In the event an Owner fails to maintain or repair the Owner's Lot and Dwelling, and all other improvements located on the Lot as required under Section 5.2, the Association, in addition to all other remedies available to it under these Covenants or the law, and without waiving any of such remedies, shall have the right (but not the obligation), through its agents and employees, to enter upon the Owner's Lot, and to repair or maintain the Lot, the exterior of the Dwelling, and any other improvements on the Lot to the required condition; and each Owner (by acceptance of a deed for a Lot) covenants

and agrees to pay to the Association all reasonable costs and expenses incurred by the Association in performing such repair or maintenance, immediately upon the Association's demand. Such costs incurred and demanded by the Association, together with interest as provided in Section 4.9, costs, and reasonable attorneys' fees, shall have the same status as both a continuing lien on the Lot and the improvements located on it, and the personal obligation of the Owner, as an unpaid Assessment, the Association shall have the same remedies available under Section 4.9, and the failure of any such Owner to pay the same shall have the same consequences as a failure to pay an Assessment when due.

5.4 ***Maintenance Easement.*** By acceptance of a deed of conveyance for a Lot, the Owner of the Lot grants and conveys to the Association, and to the agents, employees, and independent contractors of the Association, the right and a permanent easement to have access to the Owner's Lot, and to perform all maintenance, repairs, and replacements required or allowed to be performed by the Association on the Owner's Lot under Section 5.3

5.5 ***Liability for Damage or Loss.*** The Association shall indemnify and hold each Owner harmless for any loss or damage that occurs on or to an Owner's Lot or improvements located on it, as the result of maintenance or repair activities by or on behalf of the Association; and any such loss or damage to improvements shall be repaired or restored to substantially the same condition as existed before the loss or damage occurred, at the sole cost or expense of the Association.

6. *ARCHITECTURAL CONTROL.*

6.1 No building, fence, wall, in-ground swimming pool, attached solar heating panels, yard light, pole light, or other structure, swing set, or basketball goal (whether freestanding or mounted on a Dwelling or garage), or initial or subsequent landscaping shall be commenced, erected, or maintained by an Owner upon a Lot, nor shall any exterior addition, change, or alteration be made to a Dwelling or other structure on a Lot, until the plans and specifications showing the nature, kind, shape, height, materials, color, and location of the structure, landscaping, or modification or alteration proposed are submitted by or on behalf of the Owner to the Developer, and are approved in writing by the Developer. Except as otherwise provided in Section 6.2 or Section 6.3, the Developer shall have the exclusive authority and responsibility to review such plans and specifications to determine whether the external design and location of the proposal is in harmony with the surrounding Dwellings, other structures, and topography in the Subdivision. Except as otherwise approved in writing by the Developer, Granite Ridge Builders, Inc. shall have the exclusive right to construct all Dwellings in the Subdivision.

6.2 Until Dwellings have been constructed on all of the Lots in the Subdivision, and certificates of occupancy have been issued for such Dwellings, the Developer shall have the right to appoint a Committee composed of three members to review and approve proposed plans and specifications under Section 6.1. If a Committee is so appointed, a majority of the Committee may appoint a representative to act for it. In the event of the death or resignation of any member of the Committee, the Developer shall have full authority to appoint a successor.

6.3 After Dwellings are initially constructed on all Lots in the Subdivision, and certificates of occupancy have been issued for such Dwellings, or at such earlier time as the Developer may elect, the Developer may delegate to the Board (or to such other entity designated in the Articles or the Bylaws) the authority and responsibility to review plans and specifications under Section 6.1, which delegation shall be made in writing, signed by the Developer, and evidenced by a document recorded in the Office of the Recorder of Noble County, Indiana. Upon such delegation and recording, the Board (or other entity designated under the Articles or the Bylaws) shall succeed to the Developer's responsibilities under Section 6.1 to review subsequent construction, modifications, and additions of structures and landscaping in the Subdivision.

6.4 In the event the Developer (or the Committee or the Board or other entity acting under Section 6.2 or Section 6.3) fails to approve or disapprove the design and location of a proposed structure or landscaping within 30 days after plans and specifications have been submitted to it, approval will not be required, and approval under Section 6.1 will be deemed to have been given.

6.5 Plans and specifications are not reviewed under Section 6.1 for engineering or structural design or quality of materials, or to assure that any improvement to be constructed pursuant to such plans and specifications is located within building set back lines established under these Covenants, the Plat, or the Ordinance, or is designed or constructed pursuant to these Covenants or applicable building codes or other governmental requirements or permits. By approving such plans and specifications, the Developer, the Committee, the Board, and any of their respective representatives or members acting under Section 6.1 do not assume any liability or responsibility for any defect in any structure or other improvement constructed pursuant to such plans and specifications; nor shall any of them be liable for any damages or equitable relief by reason of mistake in judgment, negligence, or nonfeasance arising out of, or in connection with, any approval, modification, or disapproval of any such plans and specifications. Every Owner, for the Owner and all persons claiming by, through, or under the Owner, by acceptance of a deed for a Lot, agrees not to bring any action or suit against the Developer, the Committee, the Board, or their respective officers, directors, agents, employees, or designated representative, as applicable, releases all claims, demands, and causes of action arising under, or related to, review, approval, modification, or disapproval of plans and specifications under Section 6.1, and waives the provisions of any law that provide a general release does not extend to claims, demands, and causes of action not known at the time this release is given.

7. *GENERAL PROVISIONS.*

7.1 ***Use.*** Lots may not be used except for single-family residential purposes.

7.2 ***Dwelling Size and Type; Garage.***

7.2.1 No Dwelling shall be built on any Lot having a total square footage no less than the following: a ranch 1,200 total square footage; one and half story 1,350 total square footage; and two story 1,600 total square footage.

7.2.2 Each Dwelling shall have some stone or brick on the front elevation unless otherwise approved by the developer.

7.2.3 Each Dwelling shall include not less than a two-car garage, which shall be built as part of the Dwelling, have a floor area of not less than 400 square feet, and shall have one or more doors with an aggregate width of not less than 16 feet.

7.3 ***Building Lines.*** No structure shall be located on a Lot nearer to the front Lot line, or nearer to the side street line than the minimum building setback lines shown on the Plat. In any event, no building shall be located nearer than fie (5) feet to the interior side lines of a Lot. No dwelling shall be located on an interior Lot nearer than twenty (20) feet to the rear Lot line.

7.4 ***Minimum Lot Size.*** No Dwelling shall be erected or placed on a Lot having a width of less than sixty (60) at the minimum building setback line, nor shall any Dwelling be erected or placed on any Lot having an area less than 9,600 square feet.

7.5 ***Utility Easements.*** Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat. Easements shown as "U.&S.D. Esmt" on the face of the recorded Plat denotes non-exclusive Utility and Surface Drainage Easement granted to the jurisdictional municipality, to public and private utilities (having appropriate Certificates of Territorial Authority), and including, but not necessarily limited to, Northern Indiana Public Service Company (and its successors and assigns). No Owner shall erect on a Lot, or grant to any person, firm, or corporation, the right, license, or privilege to erect or use, or permit the use of, overhead wires, poles, or overhead facilities of any kind for electrical, telephone, or television service (except such poles and overhead facilities that may be required at those places where distribution facilities enter and leave the Subdivision). No such overhead facilities shall be permitted within the public right of way located within the Subdivision. Nothing in these Covenants shall be construed to prohibit street lighting or ornamental yard lighting serviced by underground wires or cables. Electrical service entrance facilities installed for any Dwelling or other structure on a Lot connecting it to the electrical distribution system of any electrical public utility shall be provided by the Owner of the Lot who constructs the Dwelling or structure, and shall carry not less than three wires and have a capacity of not less than 200 amperes. Any public utility charged with the maintenance of underground installations shall have access to all easements in which such installations are located for operation, maintenance, or replacement of service connections.

7.6 ***Surface Drainage Easements.*** Surface drainage easements and any Common Area used for drainage purposes as shown on the Plat, are intended for either periodic or occasional use as conductors for the flow of surface water runoff to a suitable outlet; and the surface of the Real Estate shall be constructed and maintained so as to achieve this intention. Such easements shall be maintained in an unobstructed condition.

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

7.8 ***Other Structures.*** No structure of a temporary character, basement, tent, shack, garage, barn, or other outbuilding shall be constructed, erected, located, or used on any Lot for any purpose (including use as a Dwelling), either temporarily or permanent. No play sets, "jungle gyms", trampoline, basketball goals, in-ground pools, spas, or hot tubs may be erected or installed on a Lot unless the Owner obtains prior approval under Section 6.

7.9 ***Signs.*** No sign of any kind shall be displayed to the public view on a Lot except one sign of not more than six square feet, advertising a Lot for sale, or signs used by a builder to advertise a Lot during construction and sales periods.

7.10 ***Outside Storage.*** No boat, boat trailer, recreational vehicle, motor home, truck, camper or camping trailer, bicycle, or any other wheeled vehicle shall be permitted to be parked outside of the garage or stored anywhere on a Lot for periods in excess of a total of eight (8) days per calendar year. The term "truck", as used in this Section 7.10, means every motor vehicle designed, used, or maintained primarily for the transportation of property, which is rated one-ton or more.

7.11 ***Swimming Pools and Hot Tubs.*** No above ground pool shall be permitted to be installed or maintained on any Lot. In-ground pools, spas, hot tubs, whirlpools, and similar structures shall be permitted to be installed and or maintained on a Lot, but only after prior approval is obtained under Section 6.

7.12 ***Fences.*** No fence shall be permitted on any Lot unless first approved by the Developer, for so long as Developer owns a Lot in the Subdivision, and the Architectural Control Committee. No fence shall be permitted on any Lot adjacent to a pond.

7.13 ***Freestanding Poles.*** No clothesline or clothes poles, or any other freestanding, semi-permanent, or permanent poles, rigs, or devices, regardless of purpose (except freestanding basketball goals and flag poles approved by the Committee under Section 6, but excluding pole lights, which are governed by Section 7.24), shall be constructed, erected, located, or used on a Lot.

7.14 ***Antennas.*** No radio or television antenna with more than four (4) square feet of grid area, or that attains a height in excess of two feet above the highest point of the roof of Dwelling, shall be attached to a Dwelling. No freestanding radio or television antenna, or satellite receiving disk or dish shall be permitted on a Lot. No detached or freestanding heating solar panels are permitted on a Lot. However, solar heating panels attached to a Dwelling or garage may be approved under Section 6.1.

7.15 ***Garbage; Trash.*** All garbage, trash, and recycle containers or receptacles shall be kept, stored, and placed in either the garage of a Dwelling, or in an area that is screened from view by a structure approved under Section 6.1. Each Owner shall be responsible for properly depositing garbage, trash, and recyclables in cans or containers with lids in a manner that is sufficient for pickup by the appropriate authorities. Garbage and recycle containers shall be placed outside at the curb no earlier than the evening before the day of collection, and shall be returned to the garage or other approved storage area no later than the evening of the day of collection.

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

7.17 ***Animals.*** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on a Lot, except that dogs, cats, and other household pets may be kept, provided they are not kept, bred, or maintained for any commercial purpose. All pets of an Owner shall be kept inside the Owner's Dwelling, except on a temporary basis. No dog houses or similar structure shall be constructed, erected, located, or used on a Lot for any purpose. Each Owner shall insure that any pet of the Owner does not create a nuisance for the other Owners.

7.18 ***Dumping.*** No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage and other waste shall not be kept except in sanitary containers. No incinerators shall be kept or allowed on a Lot.

7.19 ***Workmanship.*** All structures on a Lot shall be constructed in a substantial, good and workmanlike manner and of new materials. No roof siding, asbestos siding, or siding containing asphalt or tar as one of its principal ingredients shall be used in the exterior construction of any structure on a Lot, and no roll roofing of any description or character shall be used on the roof of any Dwelling or attached garage on a Lot.

7.20 ***Driveways.*** All driveways on Lots from the street to the garage shall be poured concrete and not less than 16 feet in width, or of such other width or composition as is specifically approved under Section 6.1.

7.21 ***Vehicles.*** No unlicensed or unregistered automobile or other motorized vehicle may be parked, maintained, disassembled, or allowed to remain in a state of disassembly, on any Lot.

7.22 ***Individual Utilities.*** No individual water supply system or individual sewage disposal system shall be installed, maintained, or used on a Lot.

7.23 ***Street Utility Easements.*** In addition to the utility easements designated in this document, easements in the streets, as shown on the Plat, are reserved and granted to all public utility companies, the Developer, and their respective successors and assigns, to install, lay, erect, construct, renew, operate, repair, replace, maintain and remove every type of gas main, water main and sewer main (sanitary and storm) with all necessary appliances; subject, nevertheless, to all reasonable requirements of any governmental body having jurisdiction over the Subdivision as to maintenance and repair of said streets.

7.24 ***Lighting.*** Each Owner shall cause a yard light to be installed in the front yard of the Owner's Lot, at a location between not less than 12 feet or more than 20 feet from the edge of the curb behind the adjacent paved street. No pole light installed on a Lot shall exceed a height of six feet above grade, and no light attached to a Dwelling shall be installed above the peak of its roofline.

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

7.26 ***Completion of Infrastructure.*** Before any Dwelling shall be used and occupied as such, the Developer, or any subsequent Owner of the Lot on which the Dwelling is located, shall install all infrastructure improvements serving the Lot, as shown on the Plat and all other applicable plans and specifications for the Subdivision approved with the Plan Commission and all other governmental agencies having jurisdiction over the Subdivision. The obligations in this Section 7.26 shall run with the land, and shall be enforceable by the Plan Commission or by any aggrieved Owner.

7.27 ***Landscaping.*** Each Owner, in developing a Lot by constructing a Dwelling thereupon, shall plant a minimum of twelve (12) well developed shrubs and one (1) tree at a minimum of two inch caliper on the lot within One Hundred Twenty (120) days of the completion of the Dwelling. In the event landscaping is not completely installed within One Hundred Twenty (120) days from completion, the Developer or Association shall have the right to install such landscaping and assess the cost of the landscaping and installation to the Lot Owner as provided for assessments in Section 4 within ten (10) days of a written notice to Lot Owner to install such landscaping. As stated in Section 4, any assessment shall be subject to the lien and collection provisions, including attorneys' fees.

7.28 ***Certificate of Occupancy.*** Before a Lot may be used or occupied, such user or occupier shall first obtain the improvement location permit and certificate of occupancy required by the Ordinance.

7.29 ***Enforcement; No Forfeiture.*** The Association, the Developer, and any Owner (individually or collectively) shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or subsequently imposed under or by these Covenants. Failure by the Association, the Developer, or an Owner to enforce any provision in these Covenants shall in no event be deemed as a waiver of the right to do so later. If there is a violation or breach of any provision of these Covenants, there shall be no right of reversion or forfeiture of title by reason of such violation or breach.

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

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

7.32 ***Subdivision.*** No Lot or combination of Lots may be further subdivided until approval for such subdivision has been obtained from the Plan Commission; except, however, the Developer and its successors in title shall have the absolute right to increase the size of any Lot by adding to such Lot a part of an adjoining Lot (thus decreasing the size of such adjoining Lot), so long as the effect of such addition does not result in the creation of a "Lot" which violates the limitation imposed under Section 1.13.

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

8.1 After Dwellings are initially constructed on all Lots in the Subdivision, and certificates of occupancy are issued by the Plan Commission for such Dwellings, in order to amend a provision of these Covenants, an amendatory document must be signed by the Owners of at least 75% of all the Lots in the Orchard Valley Reserve Subdivision. For purposes of this Section 8.1, the term "owner" shall have the same meaning with respect to Lots in such future sections, as the term "Owner" is defined in Section 1.16.

8.2 Until Dwellings are initially constructed on all Lots in the Subdivision and certificates of occupancy are issued for those Dwellings, in order to amend the Covenants, the Developer, in addition to those persons whose signatures are required under Section 8.1, also must approve and sign the amendatory document.

8.3 **NOTWITHSTANDING THE PROVISIONS OF SECTIONS 8.1 AND 8.2**, the Developer and its successors and assigns shall have the exclusive right for a period of six (6) years from the date the Plat and these Covenants are recorded, to amend any provisions in these Covenants (except Section 7.2 and Section 8.1), without approval of the Owners.

8.4 In order for any amendment of these Covenants to be effective, the approval of the Plan Commission shall be required.

9. ***ATTORNEYS' FEES AND RELATED EXPENSES.*** In the event the Association, the Developer, an Owner, or the Plan Commission brings an action, whether at law or in equity, to enforce any restriction, covenant, limitation, easement, condition, reservation, lien, or charge now or subsequently imposed by provisions of these Covenants, the prevailing party in such action shall be entitled to recover from the party against whom the proceeding was brought, the reasonable attorneys' fees and related costs and expenses incurred in such proceeding.

10. ***SIDEWALKS.*** Plans and specifications for the Subdivision approved by, and on file with, the Town of Avilla Plan Department require the installation of concrete sidewalks within the street rights-of-way in front of certain Lots, as shown on the approved plans. Installation of such sidewalks shall be the obligation of the Owners of those Lots (exclusive of the Developer). The sidewalk to be located on a Lot shall be completed in accordance with such plans and specifications prior to the issuance of a certificate of occupancy for such Lot. A violation of this Section 10 shall be enforceable by the Plan Commission or its successor agency, or by the Developer, by specific performance or other appropriate legal or equitable remedy.

11. ***FLOOD PROTECTION GRADES.*** In order to minimize potential damage to Dwellings from surface water, all Dwellings on the Lots identified below shall be constructed so that the minimum elevation of a first floor, or the minimum sill elevation of any opening below the first floor, equals or exceeds a minimum flood protection grade listed below for that Lot. All elevations are shown in feet per North American Vertical Datum 1988. For lots 39 through and including Lot 41, the flood protection grade shall be 973.0 feet NAVD, and Lot 42 through and including Lot 45, the flood protection grade shall be 968.5 feet NAVD.

12. ***GEOTHERMAL SYSTEMS.***

12.1 Each Owner shall have the right to install and maintain a system with a closed loop heat exchanger designed to use retention or detention ponds located in the Common Area adjacent to such Lots, to serve a Dwelling located on the Owner's Lot, and the right to use the Association property. Any system so installed shall:

12.1.1 Satisfy regulations of the Indiana Department of Natural Resources, and all applicable federal, state, and local laws, ordinances, and regulations;

12.1.2 Satisfy reasonable requirements of the Noble County Surveyor or other applicable governmental agency regarding surface water drainage and erosion control; and

12.1.3 Be installed according to approved guidelines of and by technicians certified by a recognized national trade organization related to geothermal heating systems, or some other nationally-recognized applicable standard.

12.2 Any Owner using property owned by the Association for the purposes described in Section 12.1 agrees to indemnify and hold the Association harmless from and against all claims, losses, damages, and judgments (including reasonable attorneys' fees and litigation expenses) caused by, or resulting from, the Owner's use of Association property in connection with a system.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Orchard Valley Reserve, LLC, an Indiana limited liability company, has signed these Covenants on the 14th day of November, 2022.

Orchard Valley Reserve, LLC,
an Indiana limited liability company

By: Kathleen M. Hartman
Printed name: Kathleen M. Hartman
Position: Member

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, a Notary Public in and for said County and State, this 14th day of Nov, 2022, personally appeared Kathleen M. Hartman, as a Member of Orchard Valley Reserve, LLC, an Indiana limited liability company, and acknowledged the execution of the above and foregoing document on behalf of said company for the purposes and uses set forth in this document.

JILL A. WRIGHT
MY COMMISSION EXPIRES
10-2-2029
SEAL
ALLEN COUNTY
COMMISSION NUMBER NP0648021
NOTARY PUBLIC - STATE OF INDIANA

My Commission Expires: _____

_____, Notary Public

County of Residence: _____

This instrument prepared by: Patrick R. Hess, 201 W. Wayne St., Ft. Wayne, IN 46802
After recording, return to: _____

I affirm, under the penalties of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Patrick R. Hess